IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 21677 OF 2024 (T-RES)
C/W
WRIT PETITION NO. 26611 OF 2023 (T-RES)

IN WP No. 21677/2024

BETWEEN:

1. M/S BIONEEDS INDIA PRIVATE LIMITED
SY NO. 136/1-B,
DEVARAHOSAHALLY VILLAGE,
SOMPURA HOBLI, NELAMANGALA TALUK
BENGALURU RURAL – 562 111
(REPRESENTED BY
SHRI S. N. VINAYA BABU
MANAGING DIRECTOR,
AGED ABOUT 49 YEARS
S/O SHRI M S NAGARAJ)
(UNDER REGISTERED COMPANIES ACT, 1956)

2. SHRI S. N. VINAYA BABU,
MANAGING DIRECTOR,
M/S BIONEEDS INDIA PRIVATE LIMITED,
AGED ABOUT 49 YEARS
S/O SHRI M. S. NAGARAJ,
DEVARAHOSAHALLY VILLAGE,
SOMPURA HOBLI, NELAMANGALA TALUK
BENGALURU RURAL – 562 111

...PETITIONERS

(BY SRI. V. RAGHURAMAN, SENIOR COUNSEL FOR
SRI. C.R. RAGHAVENDRA, ADVOCATE)

AND:

THE COMMISSIONER OF CENTRAL TAX
CENTRAL EXCISE AND SERVICE TAX,
BENGALURU NORTH-WEST GST
COMMISSIONERATE, SOUTH WING,
BMTC BUS STAND COMPLEX, SHIVAJINAGAR
BENGALURU – 560 051

…RESPONDENT

(BY SRI. JEEVAN J. NEERALGI, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH IMPUGNED ORDER-IN-ORIGINAL DATED 28.03.2024 BEARING SL.NO.44/2023-24/COM/BNW/1231/24 HAVING DIN-20240357YX000000E383 TO THE EXTENT OF DEMAND UNDER CLAUSE (I),(III),(IV) R/W RESPECTIVE PORTION OF INTEREST UNDER CLAUSE (V) AND PENALTY UNDER CLAUSE (VII) AND (VIII) AND PENALTY UNDER CLAUSE (X) OF THE ORDER, ISSUED BY THE R1, ENCLOSED AS ANNEXURE-A.

IN WP NO. 26611/2023

BETWEEN:

M/S BIONEEDS INDIA PRIVATE LIMITED
SY NO 136/1-B, DEVARAHOSAHALLY VILLAGE
SOMPURA HOBLI, NELAMANGALA TALUK
BENGALURU (RURAL) – 562 111
(REP. BY SRI S. N. VINAYA BABU
MANAGING DIRECTOR
AGED ABOUT 48 YEARS
S/O SRI M. S. NAGARAJA)
(A PRIVATE LIMITED REGISTERED
UNDER COMPANIES ACT, 1956)

...PETITIONER

(BY SRI. V. RAGHURAMAN, SENIOR COUNSEL FOR
SRI. C. R. RAGHAVENDRA, ADVOCATE)

AND:

1. COMMISSIONER OF CENTRAL TAX (AUDIT)
BENGALURU AUDIT-II, JSS TOWERS,
100 FT ROAD, BANASHANKARI III STAGE
BENGALURU – 560 085

2. ADDITIONAL / JOINT COMMISSIONER OF CENTRAL TAX
NORTH-WET COMMISSIONERATE
2ND FLOOR, SHIVAJINAGAR,
BMTC BUS STAND COMPLEX, SHIVAJINAGAR
BENGALURU – 560 054

3. UNION OF INDIA
MINISTRY OF FINANCE
REP. BY SECRETARY
NORTH BLOCK,
NEW DELHI – 110 001

4. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
(CBIC), R. NO. 227-B,
DEPARTMENT OF REVENUE
NORTH BLOCK,
NEW DELHI – 110 001

5. ADDITIONAL COMMISSIONER OF CENTRAL TAX
(AUDIT-II), BENGALURU,
BUST STAND COMPLEX, BANASHANKARI,
BENGALURU – 560 070.

...RESPONDENTS

(BY SRI. AKASH B. SHETTY, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH IMPUGNED SHOW CAUSE NOTICE DATED 29/09/2023 BEARING FILE NO. GADT/CnG/253/2023-LG-3-CGST-ADT CIR-3-ADT-II AND HAVING DIN 2023095700000004144E7 ISSUED BY R1, ENCLOSED AS ANNEXURE-A, FOR THE REASONS STATED IN THE GROUNDS AND DIRECT THE RESPONDENTS TO APPLY SECTION 13(2) OF THE IGST ACT, 2017 IN RESPECT OF R AND D SERVICES ENTERED INTO FOR EXPORT BY THE PETITIONER AND ETC.,

THESE PETITIONS, COMING ON FOR FURTHER HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In W.P.No.21677/2024, the petitioners seek for the following reliefs:-

"(A) Issue a writ of certiorari or any other writ or direction or order to quash impugned Order-In-Original dated 28.03.2024 bearing Sl.No.44/2023-24/COM/BNW/1231/24 and having DIN-20240357YX000000E383 to the extent of demand under clause (i), (iii), (iv) read with respective portion of interest under clause (v) and penalty under clause (vii) and (viii) and penalty under clause (x) of the order, issued by Respondent No.1, enclosed as Annexure-A.

(B) Grant such other consequential reliefs, as this Honourable High Court may think fit including the cost of this writ petition."

In W.P.No.26611/2023, the petitioner seeks for the following reliefs:-

"(A) Issue a writ of certiorari or any other writ or direction or order to quash impugned show cause notice dated 29.09.2023 bearing File No.GADT/CnG/253/2023-LG-3-CGST-ADT CIR-3-ADT-II and having DIN – 202309570000004144E7 issued by Respondent

No.1, enclosed as Annexure-A, for the reasons stated in the grounds and direct the respondents to apply Section 13(2) of the IGST Act, 2017 in respect of R & D services entered into for export by the petitioner.

(B) Issue a writ of declaration or any other appropriate writ or direction to declare that Notification No.4/2019-IT dated 30.09.2019 issued by Respondent No.3, enclosed as Annexure-B, as unconstitutional as being violative of Article 14 of the Constitution of India, for the reasons specified in the grounds.

(C) In alternative, this Court may "read down" Notification No.4/2019-IT dated 30.09.2019 issued by Respondent No.3, enclosed as Annexure-B, so as to apply to all sectors carrying out research and development services which are exported.

(D) Issue a writ of mandamus, certiorari or any other appropriate writ or direction to declare that Notification No.4/2019-IT dated 30.09.2019 issued by Respondent No.3, enclosed as Annexure-B is to operate retrospectively from 01.07.2017.

(E) Issue a writ in the nature of mandamus of certiorari or any other appropriate writ or order declaring Circular No.31/05/2018-GST, dated 9th February 2018 as amended by Circular No.169/01/2022-GST dt.12.03.2022, issued by the Respondent No.4, enclosed as Annexure-C, as being contrary to the provisions of Section 73/74 of CGST Act, 2017 and also violative of Article 14/19 of the Constitution.

(F) Issue a writ or direction in the nature of a writ or certiorari or any other writ or direction to quash impugned Show Cause notice bearing number 218/2024-25-ADC, dated 18.12.2024 having DIN: 20241257000000924699 issued by Respondent No.5 enclosed as Annexure-S.

(G) Grant such other consequential reliefs, as this Honourable High Court may think fit including the cost of this writ petition."

2. Briefly stated, the facts giving rise to the present petitions are as under:

The petitioner is stated to be engaged in conducting pre clinical trials and studies on pharmaceuticals and non pharmaceutical products for foreign and domestic customers. The petitioner prepares formulations by using test items supplied by the clients or procured under own arrangement, administers them to laboratory animals, study their responses and reactions, prepares and submits detailed reports to the clients.

After notices, proceedings, audit enquiry etc., issued and conducted by the respondents, to which, the petitioner submitted replies, documents etc., and contested the same, the respondents issued the impugned show cause notice dated 29.09.2023 under

Section 74 of the CGST Act for the tax period from July 2017 to March 2022, to which, the petitioner submitted a reply and challenged the same, by preferring W.P.No.26611/2023 seeking the aforesaid reliefs. Subsequently, during the pendency of this petition, the respondents issued one more impugned show cause notice dated 18.12.2024 for the tax period April 2022 to March 2023, pursuant to which, the petitioner got W.P.No.26611/2023 amended by challenging even this show cause notice and seeking further relief's.

Similarly, respondents issued a show cause notice dated 29.06.2020 proposing demands of service tax against the petitioner for the tax period from April 2016 to June 2017 under Section 73(1) of the Finance Act, 1994. The petitioner having submitted replies, the respondents proceeded to pass the impugned order in original dated 28.03.2024 confirming the demands which is assailed by the petitioner in W.P.No.21677/2024 to the extent of the demand under clause (i), (iii), (iv) together with respective portion of interest under clause(v) and penalty under clauses (vii), (viii) and (x) and for other reliefs.

3. The respondents have filed their statement of objections and have contested the petitions and contend that the same are liable to be dismissed.

4. Since common questions of law and fact arise for consideration in both the petitions, they are taken up together and disposed of by this common order.

5. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

6. In addition to reiterating the various contentions urged in the petitions and referring to the material on record, learned Senior counsel for the petitioner submits that the impugned notices and orders are illegal, arbitrary and without jurisdiction or authority of law and the same are contrary to the provisions contained in Section 74 of the CGST Act, 2017 and the IGST 2017 as well as the provisions contained in Section 73(1) of the Finance Act, 1994 and the same deserve to be quashed. It was submitted that the issue in controversy involved in the present petitions are directly and squarely covered by the judgment of this Court in the case of ***M/s.IProcess Clinical Marketing Pvt. Ltd., vs. The Assistant Commissioner of Commercial Taxes - W.P.10989/2025 dated***

08.12.2025. He would also placed reliance upon the following judgements:

i. All India Federation of Tax Practitioners vs UOI (2007) 7 SCC 527
ii. CST vs SGS India Pvt. Ltd 2014 (34) STR 554 Bom
iii. CCE Pune vs Sai Life Sciences Ltd 2016 (42) STR 882 (T-Mum)
iv. Fertin Pharma R&D Pvt.Ltd vs CGST 2020 (38) GSTL 33 (T-Mum)
v. Shayaro Bano vs UOI (2017) 9 SCC 1;
vi. DCIT vs Pepsi Foods Ltd (2021) 433 ITR 295 (SC)

7. Per contra, learned counsel for the respondents submits that there is no merit in the petition and the same are liable to be dismissed.

8. I have given my anxious consideration to the rival submissions and perused the material on record.

9. A perusal of the material on record will indicate that the petitioner is an OECD GLP certified Pre-clinical Contract Research organization (CRO) and performs safety, efficacy, kinetics, analytical and environment risk Assessment (ERA) studies for various clients located globally. We conduct/perform studies on different types of test item/substance like agrochemicals,

pharmaceuticals, vaccines, medical devices, nutraceuticals, specialized chemicals, bio-pesticides etc. The workflow write-up/chart of the activities of the petitioner is as under:

Business Development Team(BD) talks to clients/sponsors and in consultation with the **Head of Department (HOD)** and technical team shares proposal and closes accordingly.
↓
Post approval and sharing of **PTD (Project Transfer Document)** to respective **PM (Project Management),** a **Study Director (SD)** is identified and required quantity/volume of test item/substance will be calculated and shared to clients/sponsors based on studies recommended
↓
If the test item/substance is to be received from overseas/outside India, then permit/approval to be taken for pharmaceutical/vaccines from concerned Indian authority
↓
Once the test item/substance is received, it will be stored in **Test Item Control Office(TICO)** which is a secured area for maintaining and dispensing of test item/substance
↓
Based on the list of studies allotted, PM will share a study schedule and map status of the studies and also raising of invoices. A study plan/protocol will be shared, and the **first invoice** will be raised
↓
As per approved study plan/protocol, study will be initiated. TICO issues requested quantity/volume of test item/substance to SD
↓
During the course of conduct of study, different audits (by **Quality Assurance (QA)**will happen witnessing the reliability of the ongoing progress/conduct.
Wherever necessary different support group such as **Analytical, Bioanalytical, Clinical pathology, Pathology** and **Statisticians** will offer internal support
↓
Based on the raw data generated, SD prepares a Study Report (SR) and draft report is shared to sponsor and PM raises the **final invoice**
↓
SD will archive all data/communication etc in the **ARCHIVES** (**ARC**)

↓
After completion of all studies, remaining quantity of test item/substance will be either sent to sponsor or will be **disposed-off** as per standard procedures and documented.

10. As rightly contended by the learned Senior Counsel for the petitioner, the issue in controversy involved in the present petitions as to whether export of pre-clinical services by the petitioner was exigible/amenable to service tax/GST is directly and squarely covered by the judgment of this Court in ***IProcess Clinical Marketing case supra,*** this Court held as under:-

> *5. As rightly contended by the learned Senior counsel for the petitioner, a perusal of the impugned order will indicate that the respondents have taken note of the aforesaid notification dated 30.09.2019, wherein it is specifically declared and clarified by the Central Government that the place of supply of services, including the nature of services as provided by the petitioner by way of the clinical trials, shall be the location of the recipient of such services, subject to fulfillment of certain terms and conditions. In the instant case, it is an undisputed fact as borne out from the material on record, that the place of recipient of the services provided by the petitioner is in USA, which is outside the territory of India and in a non-taxable territory and consequently, by virtue of the aforesaid notification, the petitioner could not have been saddled with the liability to pay GST.*

6. Insofar as the findings recorded by the respondents that the said notification is prospective and not retrospective in its nature, application and operation is concerned, it is pertinent to note that at the 37th GST Council Meeting conducted / held on 20.09.2019, Item No. 5, which came up for consideration / discussion, was in relation to a request for clarification on GST related export of services with the pharmaceutical sector. The GST Council has made the following recommendations:

Sl. No.	***Proposal***	***Justification***	***Fitment Committee Recommendations***
5	*Request for clarification on GST related to 'export of services' in pharmaceutical sector* *Ref: Association of Biotechnology Led Enterprises (ABLE)*	*Pharma sector in India is made to pay GST of 18% on services given to foreign clients due to lack of clarify on place of supply of pharma R & D Services.* *Indian pharma companies are losing competitiveness as pharma R & D services given to foreign clients are not treated as exports. This has led to loss in export contracts as other countries service providers are cost effective.* *Govt is also losing export revenue of Rs 170 Crores per year.*	***Recommendation**:* ***A notification may be issued under Section 13(13) of IGST Act, to notify that the place of supply of specific R & D services as listed in para 2 when provided by Indian pharma companies to foreign service recipients, shall be the place of effective use and enjoyment of a service i.e location of the service recipient.*** ***Analysis**:* *Indian pharmaceutical industry supplies various kinds of R&D services to recipients located outside India against consideration received in foreign exchange. Some of the example of such services are integraed discovery and development services (involving research, development, prototype and manufacturing arrangements), Integrated Development (involving in-house development of molecule/ substance and subsequent process including testing), processing and testing, in vivo and assay evaluation services, drug metabolism and pharmacokinetics research, safety assessment/ toxicology, analytical testing, bio equivalence and bio availability studies, clinical trials etc. However, these services are performed in India and the reference materials for the above services are made available by foreign recipient in India. The specific R&D Services rendered by Indian*

			Pharma sector to foreign clients are not treated as 'export of service' as place of supply is place of performance of service i.e India as per Section 13(3)(a) of IGST Act. *2. Following are R&D services provided by Pharma companies to foreign clients: -*

Sl. No.	***Type of R & D Services***	***Description***
1	*Integrated discovery and development*	*This process involves discovery and development of molecules. Steps include Designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact*
2	*Integrated development*	
3	*Evaluation of the efficacy of new chemical/biological entities in animal models of disease*	*This is in vivo research (i.e. within the animal) and involves develop of customied animal model diseases and administer of novel chemical in doses to animals to evaluate the gene and*

						protein expression in response to disease. In nutshell this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the client.
				4	*Evaluation of biological activity of novel chemical/biological entities in in-vitro assays*	*This is in vitro research (i.e. outside the animal). An essay is first developed and then the novel chemical is supplied by the client and is evaluated in the assay under optimized conditions.*
				5	*Drug metabolism and pharmacokinetics of new chemical entities*	*This process is involved to investigate whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect to body tissues. Promising*

					compounds are further evaluated in animal experiments using rat and mice.
			6	*Safety Assessment/Toxicology*	*Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicoogy team analyses the potential toxicity of a drug to enable fast end effective drug development.*
			7	*Stability Studies*	*Stability studies are conducted to support formulation development and safety and efficacy of a new drug. It is also done to ascertain the quality, shelf life of the drug in their intended packaging configuration.*
			8	*Bio Equivalence and Bio Availability*	***Bioequivalence** is a term in*

				Studies	*pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.*	
			9	*Clinical trials*	*Every drug that is developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The trials help in*	

		collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage.
10	*Bio analytical studies*	*Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measuremnt of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs, metabolites in biological systems.*

3. Clarification is needed whether pharma R & D services provided to foreign clients falls within Section 13(3)(a) of the IGST Act, 2017, the place of supply where the location of the recipient is outside India, shall be the location where the services are actually performed.

Section 13(3)(a) of IGST Act is as below:-

The place of supply of the following services shall be the location where the services are

			actually performed, namely:- *(a) services supplied* ***in respect of goods*** *which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:* *Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:* *Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or* ***for any other treatment or process*** *and are exported after such repairs or treatment or process without being put to any use in India,* ***other than that which is required for such repairs or treatment or process;*** *4. In pharma R&D services, client provides reference materials, sample drugs, reagnet etc. All these R&D services are administered on the materials supplied at the laboratory of hte pharmaceutical industry. Further it is to say that, such materials supplied by the client gets consumed in the process.* *5. It is important to determine whether service provided fall within the meaning of* ***"goods that are made physically available, by the receiver to the service provider"****, under section 13(3)(a) of IGST Act, 2017. Education Guide of Service Tax released by CBEC answers the questions as below:-* *Services that are related to goods, and which require such goods to be made available to the service provider or a person acting on behalf of the service provider so that the service can be rendered, are covered here. The essential characteristic of a service to be covered under this rule is that* ***the goods temporarily come into the physical possession or control of the service provider****, and without this happening, the service cannot be rendered. Thus,* ***the***

			service involves movable objects or things that can be touched, felt or possessed. *Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly,* ***provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.*** *6. The above clarification implies that samples given by foreign clients to Indian pharma companies should be goods and such goods should temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered.* *7. As is evident from judicial precedents [Vikas Sales Corporation Vs. Commissioner of Commercial Taxes], in order to be considered "goods", the article under consideration shall be a "marketable commodity", i.e. having the following features - (i) It should have an intrinsic value; (ii) It should be freely transferable. As samples provided by oversea clients are in the nature of chemical or biological molecules which are not marketable commodities. Such samples are consumed in order to develop final product by the foreign clients. Even if we consider such sample molecules as goods, as per the Education Guide of Service Tax, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in the category of Section 13(3)(a) of IGST Act, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of*

			the product by the manufacturer, to carry for door-to-door surveys. *8. Prima facie, few samples given by foreign clients to Indian pharma do not make place of supply of specific R&D services as location of service provider as per Section 13(3)(a) of IGST Act and hence such specific services rendered by Indian pharma qualify as 'export of services'* *9. On 27.04.2018, the Finance Secretary observed in the file F.No. 345/58/2018-TRU that "We must follow the best international practice in this. We must change IGST law for this if need be. India has a great potential for service export and we must not let it lose competitive edge. Please find a way out. "An OM dated 14.05.2018 was sent from TRU to GST Policy Wing accordingly. But no reply has been received on the matter.* *10. Section 13(3)(a) was amended vide IGST(Amendment) Act, 2018 to exclude goods 'for any other treatment or process' without being put to use in India other than required for such treatment or process. Sample molecules used in pharma R&D activities undertaken by Indian pharma companies. Such sample molecules are not used in India for any other purpose.* *11. Instead of tweaking IGST Act which may have implicaiton for place of supply of other intermediary services too, as there is provision under Section 13(13) of IGST Act which empowers the Central Government to notify any service or circumstances in which the place of supply shall be the place of supply of effective use or enjoyment of service in order to prevent double taxation or non-taxation of the supply of service, we may issue a notification under Section 13(13) of IGST Act, to notify the place of supply of specific R&D services as listed in para 2 when provided by Indian pharma companies to foreign service recipients, to be the place of effective use and enjoyment of a service i.e. location of the service recipient.*

7. As can be seen from the aforesaid recommendations by the GST Council in its aforesaid meeting, it was recommended to issue a notification under Section 13(13) of the IGST Act to notify that the place of supply of specific R & D services, as listed in para-2 of the recommendations, when provided by Indian pharmaceutical companies to foreign service recipients, such place of the recipients shall be the place of effective use and enjoyment of the service, i.e., location of the service recipient and the relevant portion of the said recommendation at Sl.No.11 of the said minutes of the meeting at Item No.5 specifically refers to clinical trials conducted by the petitioner.

8. In this context, a perusal of the notification at Annexure - G dated 30.09.2019 will fairly indicate that the same was issued pursuant to the aforesaid decision taken in the 37th GST Council Meeting and consequently, having regard to the fact that the recipient of services of the provided by the petitioner is located in USA, pursuant to a tripartite agreement between the petitioner, New York School of Medicine and Administrative Unit of the New York University at New York and the petitioner's associated company at USA for conducting clinical observation studies, I am of the considered opinion that the said notification would operate retrospectively in relation to the petitioner for the period prior to 30.09.2019 also including the subject period, which is April, 2018 to March, 2019.

9. Under identical circumstances, this Court in W.P.No.9505/2021 and connected matters dated 26.11.2025, has held as under:

"In these petitions, the petitioners seek the following reliefs:

*"**In W.P.No.9505/2021:***

(i) quashing the impugned reassessment order dated 31.03.2021 passed by the 1st Respondentfor RC No.581409256 under Sections 7-A(1), 5-A(2-A) and 7-A(2) of the Karnataka Tax on Luxuries Act, 1979 (Annexure-'A');

(ii) quashing the impugned demand notice in Form VI dated 31.03.2021 bearing T. No.129 for RC No.581409256issued by the 1st Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'B');

(iii) quashing the impugned Clarification dated 02.07.2015 bearing No.KTL/CR-08/2013-14 issued by the 2nd Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'C');

(iv) declaring that Sections 3-E(1) and 2(1-C) of the Karnataka Tax on Luxuries Act, 1979, are ultra vires Article 246(3) read with Entry 62 of List II in Schedule VII to the Constitution of India, 1950, if the said provisions are construed so as to provide for the levy of tax under the Karnataka Tax on Luxuries Act, 1979, on the charges for facilities provided to patients admitted in Intensive Care Units;

(v) declaring that the levy of tax under the provisions of the Karnataka Tax on Luxuries Act, 1979, on the charges for facilities provided to patients admitted in Intensive Care Units is ultra vires Arctiles 14 and 21 of the Constitution of India, 1950; and

(vi) pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, and in the interests of justice and equity.

In W.P.No.9378/2021:

(i) stay the operation of the impugned reassessment order dated 31.03.2021 passed by the 1st Respondent for RC 544413134 under Sections 9(1)(b), 5-A(2-A) and 7of the Karnataka Tax on Luxuries Act, 1979,read with Rule 6(3) of the Karnataka Tax on Luxuries Rules, 1979 (Annexure 'A');

(ii) stay the operation of the impugned demand notice in Form VI dated 31.03.2021 for Regn.

CertificateNo.544413134 issued by the 1st Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'B');

(iii) stay the operation of the impugned Clarification dated 02.07.2015 bearing No.KTL/CR-08/2013-14 issued by the 2nd Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'C');

(iv) pass ad-interim ex-parte ordersin terms of VI.(i) to VI.(iii) above; and

(v) pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, and in the interests of justice and equity.

<u>In W.P.No.9491/2021:</u>

(i) quashing the impugned reassessment order dated 30.03.2021 passed by the 1st Respondent RC No.571410291 under Sections 7-A(1), 5-A(2-A) and 7-A(2) of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'A');

(ii) quashing the impugned demand notice in Form VI dated 30.03.2021 bearing T. No.130 for RC No.571410291 issued by the 1st Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'B')

(iii) quashing the impugned Clarification dated 02.07.2015 bearing No.KTL/CR-08/2013-14 issued by the 2nd Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'C');

(iv) declaring that Sections 3-E(1) and 2(1-C) of the Karnataka Tax on Luxuries Act, 1979, are ultra vires Article 246(3) read with Entry 62 of List II in Schedule VII to the Constitution of India, 1950, ifthe said provisions are construedso as to provide for the levy of tax under the Karnataka Tax on Luxuries Act, 1979, on the charges for facilities provided topatientsadmitted in Intensive Care Units, Neo-Natal Intensive Care Units and Coronary/Cardiac Care Units;

(v) declaring that the levy of tax under the provisions of the Karnataka Tax on Luxuries Act, 1979, on the charges for facilities provided to patients admitted in Intensive Care Units, Neo-Natal Care Units and Coronary/Cardiac Care Units is ultra vires Articles 14 and 21 of the Constitution of India, 1950; and

(vi) pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, and in the interests of justice and equity."

In W.P.No.9507/2021:

(i) quashing the impugned reassessment order dated 31.03.2021 passed by the 1st Respondent for RC 532412727under Sections 6(1)(b), 5-A(2-A) and 7of the Karnataka Tax on Luxuries Act, 1979, read with Rule 6(3) of the Karnataka Tax on Luxuries Rules, 1979 (Annexure 'A');

(ii) quashing the impugned demand notice in Form VI dated 31.03.2021 for Regn. Certificate No.532412727 issued by the 1st Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'B');

(iii) quashing the impugned Clarification dated 02.07.2015 bearing No.KTL/CR-08/2013-14 issued by the 2nd Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'C');

(iv) declaring that Sections 3-E(1) and 2(1-C) of the Karnataka Tax on Luxuries Act, 1979, are ultra vires Article 246(3) read with Entry 62 of List II in Schedule VII to the Constitution of India, 1950, if the said provisions are construed so as to provide for the levy of tax under the Karnataka Tax on Luxuries Act, 1979, on the charges for facilities provided to patients admitted in Intensive Care Units and Neo-Natal Intensive Care Units;

(v) declaring that the levy of tax under the provisions of the Karnataka Tax on Luxuries Act, 1979, on the charges for facilities provided to patients admitted in Intensive Care Units andNeo-Natal Intensive Care Units is ultra vires Articles 14 and 21 of the Constitution of India, 1950; and

(vi) pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, and in the interests of justice and equity.

In W.P.No.6804/2022:

a. Quash the impugned demand notice in FORM VI dated 29th January, 2022 issued by the 1st Respondent. A copy of the demand notice in FORM VI dated 29th January, 2022 is herein produced as Annexure - A.

b. Quash the Assessment Order dated 29th January, 2022 issued by 1st Respondent. A copy of the Assessment Order dated 29th January, 2022 is herein produced as Annexure -B.

c. Declare that Section 3-E(1) and 2(1-C) of the provisions of the Karnataka Tax on Luxuries Act, 1979, are ultra vires Article 246(3) read with entry 62 of List II in schedule VII to the Constitution of India, 1950 and that the levy of Tax under the provisions of the Karnataka Tax on Luxuries Act, 1979, on the charges for facilities provided to patients admitted

in intensive care units is ultra vires Article 14 and 21 of the Constitution of India, 1950. A copy of section 3-E(1) and 2(1-C) of the provisions of the Karnataka Tax on Luxuries Act, 1979 is herein produced as Annexure - L.

d. Alternatively remand the matter before Respondent No.1 Assistant Commissioner of Commercial Taxes, yeshwanthpur to reconsider the Assessment of the Petitioner for the year 2014-15 in accordance with law vide Annexure-B.

e. Pass such other and incidental Orders as may be appropriate under the facts and circumstances of the case, including an order as to costs.

<u>In W.P.No.8149/2022:</u>

(i) quashing the impugned assessment order dated 28.03.2022 passed by the 1st Respondent for RC No.581409256 under Sections 6(1)(b), 5-A(2-A) and 7-A(2) of the Karnataka Tax on Luxuries Act, 1979, for AY 2013-14 (Annexure 'A-1');

(ii) quashing the impugned demand notice in Form VI dated 28.03.2022 for RC No.581409256 issued by the 1st Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 for AY 2013-14 (Annexure 'A-2);

(iii) quashing the impugned Clarification dated 02.07.2015 bearing No.KTL/CR-08/2013-14 issued by the 2nd Respondent under the provisions of the Karnataka Tax on Luxuries Act, 1979 (Annexure 'B');

(iv) declaring that Sections 3-E(1) and 2(1-C) of the Karnataka Tax on Luxuries Act, 1979 (Annexures C-1 and C-2), are ultra vires Article 246(3) read with Entry 62 of List II in Schedule VII to the Constitution of India, 1950, if the said provisions are construed so as to provide for the levy of tax on the charges for facilities provided to patients admitted in Intensive Care Units;

(v) declaring that the levy of tax under the provisions of the Karnataka Tax on Luxuries Act, 1979, on the charges for facilities provided to patients admitted in Intensive Care Units is ultra vires Articles 14 and 21 of the Constitution of India, 1950; and

(vi) pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case, and in the interests of justice and equity."

3. A perusal of the material on record will indicate that the petitioners are hospitals having Intensive Care Unit ('ICU' for short) facilities, comprising of exclusive / independent ICU units for its patients. On 25.03.2021, 20.12.2019, 23.03.2021, 20.12.2019, 05.03.2022, and

04.01.2022, the first respondent issued notice to the petitioners' hospital respectively proposing to levy luxury tax on ICU charges collected by the petitioners for patients admitted in the ICU for the assessment years April 2015 - January 2016, April 2015 - March 2016, April 2015 - January 2016, April 2015 - March, 2016, April 2013 - March 2014, April 2014 - March 2015. The petitioners submitted reply dated 03.04.2021, 17.01.2020, 30.03.2021, 27.12.2019, 15.03.2022 and in W.P.No.6804/2022, the petitioner has not submitted its reply, inter alia contending that the petitioners had not collected luxury tax from the patients admitted to ICU during the said assessment years and also that having regard to the amendment to Section 3-E of the Karnataka Tax on Luxuries Act, 1979 ('the said Act, 1979' for short) with effect from 01.04.2016 vide Act 5/2016, having regard to the State Government Notification dated 20.01.2016 issued by the respondent-State in relation to exemption from payment of luxury tax towards charges collected in respect of ICU units in hospitals and the amended provisions contained in Section 3-E of the said Act, 1979, with effect from 01.04.2016 vide Act 5/2016, the said exemption would operate and apply retrospectively and retroactively since the same is by way of a declaration / clarification and consequently, the petitioners would not be liable to pay luxury tax on charges collected towards ICU units from its patients. Pursuant to the aforesaid reply submitted by the petitioners, the first respondent proceeded to pass the impugned assessment order and demand notice dated 31.03.2021, impugned assessment order and demand notice dated 31.03.2021, assessment order and demand notice dated 30.03.2021, assessment order and demand notice dated 31.03.2021, assessment order dated 28.03.2022 and assessment order and demand notice dated 29.01.2022 rejecting the claim of the petitioners. Aggrieved by the impugned assessment orders and demand notice, the petitioners are before this Court by way of the present petitions.

4. Per contra, learned AGA and learned HCGP, on behalf of the respondents would support the impugned orders and submit that the Notification dated 20.01.2016 as well as the amended provision of Section 3-E of the said Act of 1979 were prospective in nature and application and consequently, there is no merit in the petitions and the same are liable to be dismissed.

5. Before adverting to the rivals submissions, it would be necessary to extract Section 3-E of the said Act, 1979, as it stood prior to amendment by Act 5/2016 with effect from 01.04.2016, which reads as under:

""There shall be levied and collected tax at the rate of 8% on the charges collected for luxuries provided in a hospital in a hospital in a room such as accommodation, air-conditioning, telephone, telephone calls, television, radio, music, extra beds and the like, where such charges are more than Rs.1000/- per day per room."

6. By Act 5/2016 with effect from 01.04.2016, the aforesaid provision was amended to read as under:

*"**3-E. Levy and collection of tax on luxury provided in a hospital .**-[(1) There shall be levied and collected a tax at the rate of eight per cent on the charges collected for luxuries provided in a hospital in a room such as accommodation, air conditioning, telephone, telephone calls, television, radio, music, extra beds and the like, [other than facilities provide in a Intensive Care Unit (ICU)] where such charges are more than one thousand rupees per day per room.]"*

7. The said amendment was preceded by the State Government Notification dated 20.01.2016, which also reads as under:

NOTIFICATION

Whereas Section 3-E of the Karnataka Tax on Luxuries Act, provides for levy of tax on luxuries as follows:

"There shall be levied and collected tax at the rate of 8% on the charges collected for luxuries provided in a hospital in a hospital in a room such as accommodation, air- conditioning, telephone, telephone calls, television, radio, music, extra beds and the like, where such charges are more than Rs.1000/- per day per room."

Whereas State Government is of the opinion that Luxury Tax on ICUs provided in the Hospital shall be exempted from the Luxury Tax.

Whereas, under Section 12-A, Sub-Section (1) provided for exempt or reduce of Luxury Tax payable in respect of a class of Hospitals, Clubs, Marriage Halls only.

Whereas, the intention of the Government is to exempt not a class of Hospital but class of facility provided in a Hospital which is not covered in the above said provision.

Whereas, difficulty has arisen to the State Government to give exemption to class of facility provided in a Hospital.

Now, therefore in exercise of the powers conferred under Section 21 of the said Act, Government of Karnataka in order to remove difficulties, hereby makes the following provision:

In exercise of the powers conferred by Section 12-A read with Section 21 of the Karnataka Tax on Luxuries Act, 1979 (Karnataka Act 22 of 1979), the Government of Karnataka being of the opinion that it is necessary in public interest so to do, hereby exempts with immediate effect the tax payable under the said Act, by the proprietor towards luxuries provided in an Intensive Care Unit (ICU) of a Hospital."

8. The aforesaid provisions contained in Section 3-E (pre amendment and post amendment) and the aforesaid notification dated 20.01.2016, will clearly indicate that the respondent-State have categorically exempted payment of luxury tax on charges collected by hospitals towards ICU charges from its patients. The only question that arises for consideration in the present petitions is as to whether the said amendment to Section 3-E of the said Act, 1979, exempting payment of luxury tax on ICU charges collected from patients, is retrospective / retroactive or whether it is retrospective / retroactive in nature and application, as contended by the petitioners, or as to whether it is prospective, as contended by the respondent-State. In this context, it is relevant to state that it is trite law that any amendment / legislation, which merely clarifies, elucidates or declares an earlier existing provision would be retrospective as held by the Constitution Bench of the Apex Court in the case of ***COMMISSIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI V. VATIKA TOWNSHIP PRIVATE LIMITED*** *in* ***(2015) 1 SCC 1****, wherein it is held as under:*

*"**19.1.** Dealing with the first question, the Court noted the contention of the assessee that Chapter XIV-B, which was inserted by the Finance Act, 1995 with effect from 1-7-1995 was a self-contained chapter as it lays down a special procedure for assessment of undisclosed income found during search for the “block period”. It was argued by the assessee that this Chapter contains a charging section (Section 158-BA), a computation section (Section 158-BB), a procedural section for block assessment (Section 158-BC), limitation provision for completion of block assessment (Section 158-BE) and the provisions for imposition of interest and penalty (Section 158-BFA). It was also argued that the scheme of assessment of “undisclosed income” under Chapter XIV-B is different from the scheme of assessment of “total income” of any person in terms of Section 4(1) of the Act. In support of this argument, it was*

submitted that whereas Chapter XIV-B deals with assessment of "undisclosed income", Section 4 of the Act relates to the assessment of "total income". Moreover, "block period" mentioned in Chapter XIV-B was different from the assessment of income of the "previous year" under Section 4(1) of the Act. Even the rate of tax at which the "undisclosed income" is assessed is different inasmuch as it is 60% as specified in Section 158-BA(2) read with Section 113 of the Act, in contradistinction to the taxation of normal income which is at the rates specified in the relevant Finance Act. In a nutshell, it was argued that block assessment falls in Chapter XIV-B for which charging section was Section 158-BA and for assessment of block period, charging section was not Section 4(1) of the Act. On that basis, the assessee wanted the Court to hold that it was not open to the assessing officer to levy surcharge prior to 1-6-2002 i.e. before the insertion of the proviso to Section 113 of the Act.

26. *Notwithstanding the aforesaid position clarified by us, we are of the opinion that dehors this discussion, in any case, on the application of general principles concerning retrospectivity, the proviso to Section 113 of the Act cannot be treated as clarificatory in nature, thereby having retrospective effect. To make it clear, we need to understand the general principles concerning retrospectivity.*

General principles concerning retrospectivity

27. *A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-à-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.*

28. *Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying*

on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. *The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. [(1994) 1 AC 486 : (1994) 2 WLR 39 : (1994) 1 All ER 20 (HL)] Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.*

30. *We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. [(2005) 7 SCC 396] , the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra [(2006) 6 SCC 289] . It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.*

31. *In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.*

32. *Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., LexisNexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:*

"Declaratory statutes

*The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [**Ed.** : The reference is to Central Bank of India v. Workmen, AIR 1960 SC 12, para 29] :'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The*

language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

The above summing up is factually based on the judgments of this Court as well as English decisions.

33. *A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas [AIR 1968 SC 1336 : (1968) 3 SCR 623] , while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows : (AIR p. 1339, para 8)*

"8. … The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act."

34. *It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See CED v. M.A. Merchant [1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404] .)*

35. *We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. ITO [(1976) 1 SCC 906 : 1976 SCC (Tax) 133] , while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force : (SCC p. 914, para 11)*

"11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.'"

(emphasis supplied)

36. *In CIT v. Scindia Steam Navigation Co. Ltd. [AIR 1961 SC 1633 : (1962) 1 SCR 788] , this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year i.e. the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year."*

*9. As stated supra, any registration / amendment if clarificatory, elucidatory or declaratory would be retrospective / retroactive in nature and application. In this context, it is relevant to state that originally that prior to amendment, charging Section i.e. Section 3-E of the said Act 1979, specifically provided for payment of luxury tax on charges collected for luxuries provided in a hospital in a room including accommodation, air conditioning, telephone, telephone calls, etc., where charges are more than Rs.1000/- per room. However, pursuant to the Notification dated 20.01.2016 and the amendment to Section 3-E of the said Act of 1979, the said charging provision, which directed levy of luxury tax on charges collected from the hospital towards accommodation, air condition, etc., has been clarified by stating that the charges collected from patients admitted in ICU would be exempt**;** it follows there from while originally / free amendment, all facilities attached to a room / accommodation in hospital would be available to payment of luxury tax come on the amendment, merely clarifies / declares that the said liability to pay luxury tax would not apply to the patients admitted to ICU and charges collected in this regard by the hospitals.*

10.Learned AGA submits that in the event the petitioners had already collected luxury tax along with ICU charges from the patients for the assessment year 2015-16, the question of granting any relief in favour of the

petitioners would not arise in the facts and circumstances of the instant case.

11. It is also relevant to state that by way of an amendment, the phrase "other than facilities provided in intensive care unit (ICU)" has been inserted by way of clarification / declarations / elucidation by making it clear that all charges towards accommodation rooms in hospital except ICU charges facilities provided in ICU accommodation would be available to luxury tax. In this context also, it is significant to note that amendment which has been inserted to clarify an existing provision is sufficient to come to the conclusion that it relates back to the date of the original provision and the same cannot be treated or construed as prospective as wrongly held by the respondents and averment in this regard is also made in the petitions.

12. Under these circumstances, I am of the considered opinion that the Notification dated 20.01.2016 and the amendment to Section 3-E of the said Act, 1979, specifically declaring, clarifying and elucidating that luxury tax on charges received / collected from patients admitted to in ICUs, would be exempt from payment of luxury tax since the said provision would not apply to such charges is clear from the said amendment. Under these circumstances, having regard to the Notification dated 20.01.2016 and the amendment to Section 3-E of the said Act, 1979, which should operate and apply retrospectively / retroactively to previous assessment years including the subject assessment years, the impugned order deserves to be quashed.

13. In the result, I pass the following:

<u>ORDER</u>

(i) These writ petitions are allowed.

(ii) The impugned assessment order and demand notice dated 31.03.2021 at Annexures - A and B in W.P.No.9505/2021, the impugned assessment order and demand notice dated 31.03.2021 at Annexures - A and B in W.P.No.9378/2021, the impugned assessment order and demand notice dated 30.03.2021 at Annexures - A and B in W.P.No.9491/2021, the impugned assessment order and demand notice dated 31.03.2021 at Annexures - A and B in W.P.No.9507/2021, the impugned

assessment order and demand notice dated 28.03.2022 at Annexures - A1 and A2 in W.P.No.8149/2022 and the impugned assessment order and demand notice dated 29.01.2022 at Annexures A and B in W.P.No.6804/2022 passed by respondent No.1, are hereby set aside."

10. It is well settled that all amendments which are beneficial in nature, which are elucidatory and clarificatory would operate retrospectively when they seek to clarify and elucidate certain existing facts and situations and consequently, having regard to the specific observations made in the 37th GST Council Meeting, whereby it was resolved to clarify the tax liability in GST liability in relation to foreign recipients for R & D services provided by Indian pharmaceutical companies, the impugned notification at Annexure - G dated 30.09.2019 is clearly retrospective being clarificatory and elucidatory in nature and consequently, both the respondents clearly fell in error in coming to the conclusion that the said notification is prospective and not retrospective and would not be applicable for the period prior to 30.09.2019. It follows there from that if the notification dated 30.09.2019 is held construed and treated to be retrospective in nature, application and operation, the petitioner would be entitled to the benefit of the said notification and cannot be saddled with the liability to pay GST, as wrongly demanded by the respondents.

*11. Under identical circumstances, the Apex Court in the case of **Suchitra Components Ltd. v. Commissioner of Central Excise, Guntur** reported in **(2006) 12 SCC 452**, has come to the conclusion that apart*

from amendments to statutory provisions which are clarificatory and elucidatory are retrospective, even circulars, notifications etc., which are clarificatory and elucidatory are also retrospective in nature and held as hereunder:

> *"1. This appeal is directed against Final Order No. 204/05-NB-A dated 14-1-2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Appeal No. E/3422/93-NB-A.*
>
> *2. We have heard Mr A.R. Madhav Rao, learned counsel for the appellant and Mr K. Radhakrishna, learned Senior Counsel for the respondent. We have perused the orders passed by the lower authorities and also of the Tribunal. The point raised by the learned counsel for the appellant is covered by the recent judgment of this Court in CCE v. Mysore Electricals Industries Ltd. [(2006) 12 SCC 448 : (2006) 204 ELT 517] In the said judgment, this Court held that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against the assessee, they have right to claim enforcement of the same prospectively.*
>
> *3. In view of the submission made by the learned counsel for the appellant and also of the judgment of this Court in Mysore Electricals [(2006) 12 SCC 448 : (2006) 204 ELT 517] , the appellant is liable to pay the duty from 29-8-1990 i.e. from the date of issue of the show-cause notice and not from 1-3-1990 as ordered by the Tribunal.*
>
> *4. The civil appeal stands allowed on the above terms. No costs."*

11. In the result, I pass the following:

ORDER

I. The petition is hereby allowed.

II. The impugned order dated 25.02.2025 passed by respondent No.2 vide Annexure-A and the impugned Adjudication order dated 28.03.2024 passed by respondent No.1 vide Annexure-B, are hereby set aside."

11. It is also relevant to state that the samples sent by the foreign clients, whether pharma or non-pharma are not goods, on which operations are done in terms of Section 13(3)(a) of the IGST Act so as to attract the said provision which relates to testing or operations on goods which aspect is clearly dealt with in 37th GST Council Meeting Agenda and minutes to term the same as exports. Further, GST being a consumption tax in India, cannot be charged on exports and pre-clinical services in pharma sector and analysis of samples in non-pharma sector cannot be completed without the reports being sent abroad and the mere performance in India is of no value to the customer unless he gets the reports. Similarly, the position in services tax, being the precursor to the GST regime, contains Rule 4(a) of the Place of Provision of Services Rules, 2012, read with Rule 6A of the Service Tax Rules, 1994 dealing with export of services which are in *pari materia* with the current rules. It is also pertinent to note that as held by this Court in

IProcess Clinical Marketing's case supra, the aforesaid Notification extending benefit to the pharma sector being retrospective in nature, application and operation, silence in the notifications as regards non-pharma products does not mean that they could be taxed which would tantamount to under-classification, particularly when application of Section 13(2) cannot be limited by Section 13(13) of the IGST Act. It must also be borne in mind that the provisions of the IGST Act encompass Section 13 as the guiding principles regarding place of supply when either the location of the supplier or the recipient is outside India; Section 13(2) is the general rule that specifies that place of supply of services would be the place of location of the recipient except in cases covered by sub sections (3) to (13).

12. The relevant provisions relating to GST are set out hereunder:

> *Section 2(6) "export of services" means the supply of any service when,—*
>
> *(i) the supplier of service is located in India;*
>
> *(ii) the recipient of service is located outside India;*
>
> *(iii) the place of supply of service is outside India;*
>
> *(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [1][or*

in Indian rupees wherever permitted by the Reserve Bank of India]; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

13. (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:-

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

> *Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;*

13. According to the respondents, fixing the place of supply where the services are actually performed under Section 13(3)(a) would mean that it would not be exports and would be taxed in India. It is also contended that if the place of supply is in India, the provisions of Section 2(6) would not be satisfied in respect of the place of supply being outside India and therefore, it would fail the test of being export of services though the other clauses may be satisfied.

14. The said contentions of the respondents cannot be accepted since as stated supra and held by this Court in ***IProcess Clinical Marketing's case supra,*** the GST council deliberated on this very aspect and came to a conclusion that the samples are not goods and therefore operations envisaged under Section 13(3)(a) should be in respect of goods; in the instant case, the samples would become goods only after they are marketable which process

happens only after the reports sent to the foreign customer would convince them that the formulation can be marketed at all; these are pre-production testing of materials and formulations which may never reach the market at all and therefore, since they are not covered by Section 13(3)(a), the general rule found in Section 13(2) would apply and if the recipient of services is located outside of India, they would satisfy the test of being exported.

15. Section 13(13) of the IGST Act, 2017 states as under:

> *(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.*

16. This provision is resorted to prevent double taxation or non taxation or for uniform application of rules by way of the government issuing a notification to remove the anomalies or doubts and to specify that the place of supply of a service would be the place of effective use and enjoyment of a service; in the instant case, the aforesaid notification has been issued in terms of ensuring uniform application of the rules for pharma research and

development and allied services and to state that Section 13(2) would apply and not Section 13(3) and therefore, since the effective use and enjoyment is outside India, the benefit of exports is being extended to the petitioner also; further, though the pharma sector only is covered, that by itself would not indicate that the non-pharma sector is excluded by implication especially when the GST council discussed only the pharma sector related issues as that was brought to its notice.

17. As stated earlier, even without a notification being issued under Section 13(13), by the application of the said provision itself, it is clear that the analogy of the samples being not goods and that the reports are sent outside India would equally apply to non-pharma sector and there is therefore no need to create an invidious classification where none exists. As rightly contended by the learned Senior Counsel for the petitioner, even without a notification being issued under Section 13(13), by the application of the general rules in Section 13, it would be more appropriate to classify the same activities in non-pharma sector under Section 13(2) rather than Section 13(3). It must also be borne in mind that notification under Section 13(13) can only apply

the provisions of Section 13 to fix uniformity and cannot go beyond the said section and in doing so, the principles in Section 13 only are to be followed except that the criteria of effective use and enjoyment will determine the place of supply. Under these circumstances, the various contentions urged by the respondents cannot be accepted.

18. As stated supra, the service tax provisions relating to export of services and place of performance were in *pari materia* with the above provisions in the GST regime and are a precursor to the said GST regime; it is an undisputed fact as borne out from the material on record that whether the reports pertain to pharma or non-pharma sectors, they are sent outside India and it is the result of these reports which enable the person to say that they have completed the services; mere performance in India would therefore not be sufficient unless they are communicated to the person outside India and therefore, since the completion of the services is rendered outside the taxable territory, it has to be treated as exports and therefore, under the GST regime they would fall under Section 13(2) of the IGST Act and the appropriate rule in service tax regime would be Rule 3 of the Place of Provision of Services

Rules, 2012 which point out to the location of the recipient of services being the place of provision of services, which being outside India, other conditions being fulfilled, the same would be considered exports.

19. In view of the aforesaid facts and circumstances, I am of the considered opinion that the impugned notices and orders passed by the respondents are illegal, arbitrary and without jurisdiction or authority of law and the same deserve to be quashed.

20. In the result, I pas the following:-

ORDER

(i) WP 26611/2023 is hereby partly allowed;

(ii) The impugned Show Cause Notice at Annexure A dated 29.09.2023 and the impugned Show Cause Notice at Annexure S dated 18.12.2024 and further proceedings pursuant thereto are hereby quashed;

(iii) WP 21677/2024 is hereby partly allowed;

(iv) The impugned Order-in-Original at Annexure-A dated 28.3.2024 to the extent of demand under clauses (i), (iii) and (iv) r/w respective portions of interest under clause (v) and penalty

under clauses (vii) and (viii) and (x) of the impugned order and further proceedings pursuant thereto are hereby quashed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC/SRL
List No.: 3 Sl No.: 7