IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.376 of 2019

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The Commissioner of Central Excise and Services Tax Patna now Commissioner, Central GST and Central Excise Patna-II, C.T.T.C. Building, Sanchar Parishar, Buddh Marg, Patna-800001

... ... Appellant/s

Versus

M/s Indian Oil Corporation Limited, Barauni Refinery, Begusarai, Bihar

... ... Respondent/s

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WITH

Miscellaneous Appeal No. 55 of 2024

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Commissioner of Central Excise, Patna (Now Pr. Commissioner of Central GST and Central Excise, Patna-I) (C.R. Building Avenue, Bir Chand Patel Path, Patna-800001, Bihar).

... ... Appellant/s

Versus

M/s Dadiji Steels Limited, Exhibition Road, Patna, Bihar.

... ... Respondent/s

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WITH

Miscellaneous Appeal No. 310 of 2024

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Sunil Kumar Yadav S/o Rishi Kishun Yadav @ Ram Kishun Yadav Proprietor of M/S Sunil Traders, 15, Sirsiya, Anchal Kotwa, Pipra Kothi, East Champaran.

... ... Appellant/s

Versus

1. The Principal Commissioner Of Customs, Patna, C.R. Building, Bir Chand Patel Marg, Patna- 800001.
2. The Superintendent, Customs (P) Circle Sitamarhi.
3. The Assistant Commandant, SSB, D Coy, 51 ST, SSB, Sitamarhi.

... ... Respondent/s

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WITH

Miscellaneous Appeal No. 311 of 2024

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Sri Madan Kumar, Son of Late Saryug Ram, Resident of Panch Mandir Road, P.S.- Motihari, District- East Champaran.

... ... Appellant/s

Versus

The Commissioner of Customs, Patna, C.R. Building, Bir Chand Patel Marg, Patna-800001.

... ... Respondent/s

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Appearance :

(In Miscellaneous Appeal No. 376 of 2019)

For the Appellant/s : Dr. K.N. Singh (ASG)
Mr. Anshuman Singh, Sr. SC
Mr. Shivaditya Dhari Sinha, Advocate
Mr. Abhinav, Advocate

For the Respondent/s : Mr. D.V. Pathy, Sr. Advocate
Mr. Mohit Agarwal, Advocate
Mr. Hiresh Karan, Advocate
Ms. Shivani Dewalla, Advocate
Mr. Sadashiv Tiwari, Advocate

(In Miscellaneous Appeal No. 55 of 2024)

For the Appellant/s : Dr. K.N. Singh (ASG)
Mr. Anshuman Singh, Sr. S.C.

For the Respondent/s : Mr. D.V. Pathy, Sr. Advocate
Mr. Mohit Agarwal, Advocate
Mr. Lokesh Kumar, Advocate
Mr. Rahul Kumar, Advocate
Mr. Vikash Khanna, Advocate
Ms. Twinkle Kumari, Advocate

(In Miscellaneous Appeal No. 310 of 2024)

For the Appellant/s : Mr. Archana Meenakshee, Advocate

For the Respondent/s : Mr. K.N. Singh, Additional Solicitor General

(In Miscellaneous Appeal No. 311 of 2024)

For the Appellant/s : Mr. Archana Meenakshee, Advocate

For the Respondent/s : Mr. Anshuman Singh, Sr. SC

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 18-03-2026

Heard Mr. K.N. Singh, learned Additional Solicitor General with Mr. Anshuman Singh, learned Senior Standing Counsel for the appellant and Mr. D.V. Pathy, learned Counsel for the respondents in M.A. No.376 of 2019 and M.A.

No.55 of 2024. Also heard Mrs. Archana Minakshi, learned Counsel for the appellants and Mr. K.N. Singh, learned Additional Solicitor General for the respondent in M.A. Nos. 310 and 311 of 2024.

2. From the orders dated 26.02.2026 and 27.02.2026, it is apparent that the issue relating to maintainability of the instant appeals under Section 35G of the Central Excise Act, 1944 (1 of 1944) has been heard at length. The question/issue on which hearing has taken place is as follows:-

> *"Whether the right to appeal before the High Court still exists under Section 35G of the Central Excise Act, 1944 after its omission by National Tax Tribunal Act, 2005 (Act No.49 of 2005) (hereinafter referred to as 'the NTTA') with effect from 28.12.2005 and what shall be the effect of the judgment, namely, Madras Bar Association Vs. The Union of India and Others [(2014) 10 SCC 1], decided by Constitution Bench of Hon'ble Supreme Court making National Tax Tribunal Act, 2005 ultra vires."*

3. Miscellaneous Appeal Nos.376 of 2019 and Miscellaneous Appeal No.55 of 2024 have been filed by the Commissioner of Central Excise and Service Tax, Patna, under Section 35G of the Central Excise Act, 1944 (1 of 1944).

4. In both these appeals respondents appeared

through Vakalatnama. Mr. D.V. Pathy, learned Senior Counsel, appearing on behalf of the respondents has raised the preliminary objection that after omission of Section 35G of the Central Excise Act, 1944 by virtue of National Tax Tribunal Act, 2005 (Act No.49 of 2005) with effect from 28.12.2005, provision for right to appeal has been omitted. Therefore, the present appeals which have been filed under Section 35G by the appellant, the Commissioner of Central Excise and Service Tax/Central Excise, are not maintainable. Learned Senior Counsel submits in support of his contention that National Tax Tribunal Act 2005 (49 of 2005) came into effect since 28.12.2005, due to which the provision for right to appeal before the High Court has been omitted and if on any subsequent date it has been decided by Hon'ble Supreme Court of India in case of **Madras Bar Association Vs. The Union of India** reported in **(2014) 10 SCC 1** that National Tax Tribunal Act, 2005 became *ultra vires* and unconstitutional in its entirety cannot automatically revive the provisions laid down under Section 35G of the Central Excise Act, 1944.

5. In support of his argument, learned Senior Counsel for the respondents submits and relied on the decision made by Hon'ble Division Bench of this Court dated

18.07.2019 in Tax Case No.2 of 2010 (**Prabhat Jarda Factory India Vs. Commissioner of Central Excise Patna** in which it has been acknowledged that provision of Section 35H of the Central Excise Act, 1944 (1 of 1944) stands deleted. The Hon'ble Division Bench observed that the aforesaid issue came up for consideration before the larger Bench of the Tribunal in the case of **Larsen & Toubro Ltd. Vs. Commissioner of Income Tax, Chennai** reported in **2006 TSTR 321**. The Division Bench restrained itself to proceed further granting liberty to the then petitioner to take recourse to such remedy that may be available to him in law for espousing the grievances in the light of the provisions settled by the larger Bench. He submits that it is true that in the Constitution Bench decision in the case of **Madras Bar Association Vs. The Union of India** (supra), it has been held that Sections 5, 6, 7, 8 and 13 of the National Tax Tribunal Act have been declared as illegal and unconstitutional on the basis of parameters laid down by the decision of Constitution Bench of this Court and on the basis of recognized constitutional conventions referable to the constitutions framed on the Westminster model. He further submits that parliament has power to enact legislation and to vest adjudicatory provisions earlier vested in the High Court

with an alternative Court/Tribunal. Exercise of such power by parliament would not *per se* violative of the basic structure of the Constitution. But he submits that in spite of declaration of the National Tax Tribunal Act illegal and unconstitutional, there cannot be an automatic revival of the deleted provisions of the Central Excise Act, 1944 (Act No.1 of 1944) and, therefore, he submits that the present miscellaneous appeals are not maintainable and, hence, the appeals should be rejected and may not be entertained.

6. Learned Senior Counsel/Additional Solicitor General appearing on behalf of the appellants submits that the contention made by the respondents on the point of maintainability of the present miscellaneous appeals is not sustainable in the eye of law. He submits that it is true that Section 35G and many other provisions of the Central Excise Act as well as of the Customs Act, 1962 were omitted by virtue of enactment of the National Tax Tribunal Act with effect from 28.12.2005, but after decision made by the Constitution Bench of Hon'ble Supreme Court in the case of **Madras Bar Association Vs. The Union of India** (supra) declaring the National Tax Tribunal Act *ultra vires*, illegal and unconstitutional, the provisions of law, which were omitted by

the said National Tax Tribunal Act are revived automatically and, as such, Section 35G and any other provisions shall exist and restored to its original statute and there cannot be any vacuum. In this regard, he submits that the concept of doctrine of revival/survival has to be taken into consideration, which has been discussed by Constitution Bench of Hon'ble Supreme Court of India in the case of **Property Owner Association and Other Vs. The State of Maharashtra and Others** reported in **AIR Online 2024 (SC) 772 :: (2024) 18 SCC 1**. In this case, this issue as to whether Article 31C of the Constitution (as upheld in **Kesavanand Bharti's case** {1973 (4) SCC 225 : (AIR 1973 SC 1461)] survives in the constitution after the amendment of the provision by the 42nd Amendment was struck down by Hon'ble Supreme Court in **Minerva Mills Ltd. and Others Vs. Union of India and Others** reported in **(1980) 3 SCC 625: 1980 SCC Online SC 213.** He submits that Hon'ble Supreme Court of India in the said judgment has concluded that if any amended text is invalidated, the only valid expression of legislative intent is revival of the original text. He further submits that if a Court were to find that even the original text could not be given illegal effect because it had been repealed, it would result in third outcome, i.e., a legal vacuum, which was

neither intended by the legislature that indicated the original text nor by the legislature who adopted the amended text. In this way, the third outcome would fail to give effect to either legislative intent despite there being no constitutional fault in the original provision. He also submits that if a Court were to not only invalidate the newly inserted text, but also held that the old text stands repealed, it would lead to absurd outcome or render the statute wholly unworkable. The practical effect of such an outcome would be that a judicial decision invalidating an unconstitutional amendment would also inadvertently nullify a valid and constitutional provision, which the legislature would never have repealed without proving a replacement. He further submits that at the time of deciding the case of **Madras Bar Association Vs. The Union of India** (supra), the Constitution Bench of the Hon'ble Supreme Court of India have categorically discussed and held that appeal is a creature of statute and cannot be done away by statute. The question posed here is completely different and the answer to that question is fundamental to our jurisprudence: that a jurisdiction to decide substantial questions of law vests under our constitution, only with the High Courts and the Supreme Court, and cannot be vested in any other body as a core constitutional value would be

impaired thereby. He submits that in the light of the discussion, which he is arguing on the basis of the Constitution Bench judgments of **Madras Bar Association** (supra) as well as **Property Owners Association** (supra) that once the National Tax Tribunal Act is declared unconstitutional, then the jurisdiction of the High Court to decide substantial question of law shall automatically revived and in this view of the matter, the preliminary objection raised by the learned Senior Counsel for the respondent is not sustainable in the eye of law.

7. In the light of the submissions made by the parties, more particularly with a view to answer the issue framed by us about maintainability of the present appeals, it is necessary to place the relevant paragraphs of the said judgments on which parties have relied. Paragraphs 133 to 139 and paragraphs 169 to 175 of **Madras Bar Association** (supra) states as follows:

> *"**133.** Sections 5, 6, 7, 8 and 13 of the NTT Act have been held by us (to the extent indicated hereinabove) to be illegal and unconstitutional on the basis of the parameters laid down by decisions of the Constitution Benches of this Court and on the basis of recognised constitutional conventions referable to the constitutions*

framed on the Westminster model. In the absence of the aforesaid provisions which have been held to be unconstitutional, the remaining provisions have been rendered otiose and worthless, and as such, the provisions of the NTT Act, as a whole, are hereby set aside.

134. (i) *Parliament has the power to enact legislation and to vest adjudicatory functions earlier vested in the High Court with an alternative court/tribunal. Exercise of such power by Parliament would not per se violate the "basic structure" of the Constitution.*

135. (ii) *Recognised constitutional conventions pertaining to the Westminster model do not debar the legislating authority from enacting legislation to vest adjudicatory functions earlier vested in a superior court with an alternative court/tribunal. Exercise of such power by Parliament would per se not violate any constitutional convention.*

136. (iii) *The "basic structure" of the Constitution will stand violated if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure that the newly created court/tribunal conforms with the salient characteristics and standards of the*

court sought to be substituted.

137. (iv) *Constitutional conventions pertaining to the Constitutions styled on the Westminster model will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced are not incorporated in the court/tribunal sought to be created.*

138. (v) *The prayer made in Writ Petition (C) No. 621 of 2007 is declined. Company Secretaries are held ineligible for representing a party to an appeal before NTT.*

139. (vi) *Examined on the touchstone of Conclusions (iii) and (iv) (contained in paras 136 and 137, above) Sections 5, 6, 7, 8 and 13 of the NTT Act (to the extent indicated hereinabove), are held to be unconstitutional. Since the aforesaid provisions constitute the edifice of the NTT Act, and without these provisions the remaining provisions are rendered ineffective and inconsequential, the entire enactment is declared unconstitutional.*

169. *It is obvious, that substantial questions of law which relate to taxation would also involve many areas of civil and criminal law, for example Hindu*

Joint Family Law, partnership, sale of goods, contracts, Mohammedan Law, Company Law, Law relating to Trusts and Societies, Transfer of Property, Law relating to Intellectual Property, Interpretation of Statutes and sections dealing with prosecution for offences. It is therefore not correct to say that taxation, being a specialized subject, can be dealt with by a tribunal. All substantial questions of law have under our constitutional scheme to be decided by the superior courts and the superior courts alone. Indeed, one of the objects for enacting the National Tax Tribunals Act, as stated by the Minister on the floor of the House, is that the National Tax Tribunal can lay down the law for the whole of India which then would bind all other authorities and tribunals. This is a direct encroachment on the High Courts' power under Article 227 to decide substantial questions of law which would bind all tribunals vide East India Commercial Co. Ltd. V. Collector of Customs [(1963) 3 SCR 338 : AIR 1962 SC 1893] .

170. *In fact, it is a little surprising that the National Tax Tribunal is interposed between the appellate Tribunal and the Supreme Court for the very good*

reason that ultimately it will only be the Supreme Court that will declare the law to be followed in future. As the appellate tribunal is already a second appellate court, it would be wholly unnecessary to have a National Tax Tribunal decide substantial questions of law in case of conflicting decisions of High Courts and Appellate Tribunals as these would ultimately be decided by the Supreme Court itself, which decision would under Article 141 be binding on all tax authorities and tribunals. Secondly, in all tax matters, the State is invariably a party and the High Court is ideally situated to decide substantial questions of law which arise between the State and private persons, being constitutionally completely independent of executive control. The same cannot be said of tribunals which, as L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L & S) 577] states, will have to be under a nodal ministry as tribunals are not under the supervisory jurisdiction of the High Courts.

171. *Indeed, other constitutions which are based on the Westminster model, like the British North America Act which governs Canada have held likewise. In Attorney General (Quebec) v. Farrah [(1978) 2 SCR*

638 : (1978) 86 DLR (3d) 161 (Can SC)] a transport tribunal was given appellate jurisdiction over the Quebec Transport Commission. The tribunal performed no function other than deciding questions of law. Since this function was ultimately performed only by superior courts, the impugned section was held to be unconstitutional. This judgment was followed in Residential Tenancies Act of Ontario, In re [(1981) 1 SCR 714 : 123 DLR (3d) 554 (Can SC)]. This judgment went further, and struck down the Residential Tenancy Act which established a tribunal to require landlords and tenants to comply with the obligations imposed under the Act. The court held:

"The Court of Appeal delivered a careful and scholarly unanimous judgment in which each of these questions was answered in the negative. The Court concluded it was not within the legislative authority of Ontario to empower the Residential Tenancy Commission to make eviction orders and compliance orders as provided in the Residential Tenancies Act, 1979. The importance of the issue is reflected in the fact that five Judges of the Court, including the Chief Justice and Associate Chief Justice, sat on the appeal."

It then went on to enunciate a three steps test with which we are not directly concerned. The Court finally concluded:

"Implicit throughout the argument advanced on behalf of the Attorney General of Ontario is the assumption that the Court system is too cumbersome, too expensive and therefore unable to respond properly to the social needs which the Residential Tenancies Act, 1979 is intended to meet. All statutes respond to social needs. The Courts are unfamiliar with equity and the concept of fairness, justice, convenience, reasonableness. Since the enactment in 1976 of the legislation assuring 'security of tenure' the Country Court Judges of Ontario have been dealing with matters arising out of that legislation, apparently with reasonable dispatch, as both landlords and tenants in the present proceedings have spoken clearly against transfer of jurisdiction in respect of eviction and compliance orders from the Courts to a special commission. It is perhaps also of interest that there is no suggestion in the material filed with us that the Law Reforms Commission favoured removal from the Courts of the historic functions performed for over 100 years by the Courts.

I am neither unaware of, nor

unsympathetic to, the arguments advanced in support of a view that Section 96 should not be interpreted so as to thwart or unduly restrict the future growth of provincial administrative tribunals. Yet, however worthy the policy objectives, must be recognised that we, as a Court, are not given the freedom to choose whether the problem is such that provincial, rather than federal, authority should deal with it. We must seek to give effect to the Constitution as we understand it and with due regard for the manner in which it has been judicially interpreted in the past. If the impugned power is violative of Section 96 it must be struck down."

172. *In Hinds v. R. [1977 AC 195 : (1976) 2 WLR 366 : (1976) 1 All ER 353 (PC)] , the Privy Council had to decide a matter under the Jamaican Constitution. A Gun Court Act, 1974 was passed by the Jamaican Parliament in which it set up various courts. A question similar to the question posed in the instant case was decided thus: (AC pp. 213A-214C)*

"... All constitutions on the Westminster model deal under separate Chapter headings with the legislature, the executive and the judicature. The Chapter dealing with the judicature invariably contains provisions

dealing with the method of appointment and security of tenure of the members of the judiciary which are designed to assure to them a degree of independence from the other two branches of Government. It may, as in the case of Constitution of Ceylon, contain nothing more. To the extent to which the Constitution itself is silent as to the distribution of the plenitude of judicial power between various courts it is implicit that it shall continue to be distributed between and exercised by the courts that were already in existence when the new Constitution came into force; but the legislature, in the exercise of its power to make laws for the 'peace, order and good Government' of the State, may provide for the establishment of new courts and for the transfer to them of the whole or part of the jurisdiction previously exercisable by an existing court. What, however, is implicit in the very structure of a Constitution on the Westminster model is that judicial power, however it be distributed from time to time between various courts, is to continue to be vested in persons appointed to hold judicial office in the manner and on the terms laid down in the Chapter dealing with the judicature, even though this is not expressly stated in the constitution (Liyanage v. R.

[Liyanage v. R., (1967) 1 AC 259 : (1966) 2 WLR 682 : (1966) 1 All ER 650 (PC)] , AC pp. 287-88 : All ER p. 658).

The more recent constitutions on the Westminster model, unlike their earlier prototypes, include a Chapter dealing with fundamental rights and freedoms. The provisions of this Chapter form part of the substantive law of the State and until amended by whatever special procedure is laid down in the Constitution for this purpose, impose a fetter upon the exercise by the legislature, the executive and the judiciary of the plenitude of their respective powers. The remaining Chapters of the constitutions are primarily concerned not with the legislature, the executive and the judicature as abstractions, but with the persons who shall be entitled collectively or individually to exercise the plenitude of legislative, executive or judicial power—their qualifications for legislative, executive or judicial office, the methods of selecting them, their tenure of office, the procedure to be followed where powers are conferred upon a class of persons acting collectively and the majorities required for the exercise of these powers. Thus, where a constitution on the Westminster model speaks of a particular 'court' already in existence when

the Constitution comes into force, it uses this expression as a collective description of all those individual Judges who, whether sitting alone or with other Judges or with a jury, are entitled to exercise the jurisdiction exercised by that court before the Constitution came into force. Any express provision in the Constitution for the appointment or security of tenure of Judges of that court will apply to all individual Judges subsequently appointed to exercise an analogous jurisdiction, whatever other name may be given to the 'court' in which they sit (Attorney General for Ontario. Attorney General for Canada [1925 AC 750 (PC)]).

Where, under a constitution on the Westminster model, a law is made by Parliament which purports to confer jurisdiction upon a court described by a new name, the question whether the law conflicts with the provisions of the Constitution dealing with the exercise of the judicial power does not depend upon the label (in the instant case 'The Gun Court') which Parliament attaches to the Judges when exercising the jurisdiction conferred on them by the law whose constitutionality is impugned. It is the substance of the law that must be regarded, not the form. What is the

nature of the jurisdiction to be exercised by the Judges who are to compose the court to which the new label is attached? Does the method of their appointment and the security of their tenure conform to the requirements of the Constitution applicable to Judges who, at the time the Constitution came into force, exercised jurisdiction of that nature? (Attorney General for Australia v. R. [1957 AC 288 : (1957) 2 WLR 607 : (1957) 2 All ER 45 (PC)] , AC pp. 309-10).”

173. *Ultimately, a majority of the court found that the provisions of the 1974 Act, in so far as they provide for the establishment of a full court division of the Gun Court consisting of three resident Magistrates were unconstitutional.*

174. *It was also argued by the learned Attorney General that the High Courts' jurisdiction under Section 260-A of the Income Tax Act and other similar tax laws could be taken away by ordinary law and such sections could be deleted. If that is so surely the jurisdiction vested in the High Court by the said section can be transferred to another body.*

175. *It is well settled that an appeal is a creature of statute and can be done away by statute. The question posed here is completely different and the answer to that*

question is fundamental to our jurisprudence: that a jurisdiction to decide substantial questions of law vests under our constitution, only with the High Courts and the Supreme Court, and cannot be vested in any other body as a core constitutional value would be impaired thereby."

8. Similarly, paragraph 31, 57, 58 and 65 of **Property Owners Association** (supra) states as follows:

*"**31.** In view of the above, the scope of this judgment can be tied down to determining two issues:*

***31.1.** (a) Article 31-C: Whether Article 31-C (as upheld in **Kesavananda Bharati [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225])** survives in the Constitution after the amendment to the provision by the Forty-second Amendment was struck down by this Court in **Minerva Mills [Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625]**; and*

***31.2.** (b) Article 39(b): Whether the interpretation of Article 39(b) adopted by Krishna Iyer, J. in **Ranganatha Reddy [State of Karnataka v. Ranganatha Reddy, (1977) 4 SCC 471]** and followed in **Sanjeev Coke [Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd., (1983) 1 SCC 147]** must be reconsidered. Whether the*

phrase "material resources of the community" in Article 39(b) can be interpreted to include resources that are owned privately and not by the State.

57. *Mr R. Venkatramani, learned Attorney General for India and Mr Tushar Mehta, learned Solicitor General of India, representing the respondents, countered the above understanding. Their position was supported by Mr Rakesh Dwivedi and Mr Gopal Sankaranarayanan, learned Senior Counsel appearing for the interveners. Their arguments may be briefly summarised as follows:*

57.1. *When an amendment is set aside, the entire legal effect of the amendment is invalidated and thus the text preceding the amendment will be restored. There are no distinct steps of erasure and insertion. All the stages of the Forty-second Amendment stand cumulatively negated by the decision in* ***Minerva Mills [Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625]*** *;*

57.2. *When exercising basic structure scrutiny, this Court grounds its reasoning in the relationship between the unamended provision and the amended provision and the impact of the amendment has on the Constitution. If the Court finds an*

amendment impermissible and invalidates it, the position as it stood prior to the amendment must stand revived for the basic structure theory to have effect. If the invalidation of an amendment by the Court led to some third result, where the insertion was invalidated but the erased text did not revive, this would not result in a return to the unamended Constitution but some third contemplated result which may itself violate the basic structure. Thus, the revival of the unamended constitutional provision is the approach consistent with the theoretical foundation of basic structure review;

57.3. *The decision of a Constitution Bench of this Court in* ***Supreme Court Advocates-on-Record Assn. v. Union of India [Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1]*** *squarely covers the present scenario and holds that when a constitutional amendment is struck down, the position that existed prior to the amendment stands revived;*

57.4. *This Court in the decisions in* ***Bhim Singhji v. Union of India [Bhim Singhji v. Union of India, (1981) 1 SCC 166]*** *,* ***Sanjeev Coke [Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd., (1983) 1 SCC 147]*** *and* ***Basantibai Khetan***

[State of Maharashtra v. Basantibai Mohanlal Khetan, (1986) 2 SCC 516] *has repeatedly held that Article 31-C as it stood prior to the Forty-second Amendment is operative; and*

57.5. *If the words struck down by* ***Minerva Mills [Minerva Mills Ltd.v. Union of India, (1980) 3 SCC 625]*** *relating to clauses (b) and (c) of Article 39 were omitted by judicial fiat from Article 31-C, the entire provision would be unworkable despite this precise text of Article 31-C having been upheld by thirteen Judges in* ***Kesavananda Bharati [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225]*** *and the constitutional validity of the provision having been reaffirmed in* ***Waman Rao [Waman Rao v. Union of India, (1980) 3 SCC 587]*** *.*

58. *Before delving further into our analysis, we may briefly advert to the decisions relied on by the respondents where this Court has applied Article 31-C after the decision in* ***Minerva Mills [Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625]*** *. If these decisions provide a cogent answer as to the status of Article 31-C after* ***Minerva Mills [Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625]*** *, our inquiry need not go any further.*

65. *It is also pertinent to refer to the approach of the two-Judge Bench of this Court in* ***Basantibai Khetan [State of Maharashtra v. Basantibai Mohanlal Khetan, (1986) 2 SCC 516]*** *. In that case, special leave petitions were filed against the judgment* ***[Basantibai Fakirchand Khetan v. State of Maharashtra, 1983 SCC OnLine Bom 256]*** *of the High Court of Judicature at Bombay invalidating certain provisions of the MHADA Act which permitted the acquisition of private property. It was contended that the provisions of the legislation which set out the basis for determining compensation were violative of Articles 14 and 19 of the Constitution. In invalidating these provisions, the High Court held that the impugned provisions were not protected by Article 31-C of the Constitution and were violative of Article 14. However, when the matter was heard by a Division Bench of this Court, E.S. Venkataramiah, J. (as the learned Chief Justice then was) held that the law would be entitled to immunity under Article 31-C. The learned Judge observed: (SCC pp. 530 & 532, paras 13-14)*

"13. Even granting for purposes of argument that sub-sections (3) and (4) of Section 44 are violative of Article 14 of the Constitution, we are of the view

that the said provisions receive the protection of Article 31-C of the Constitution. ... Let us proceed on the basis that after ***Kesavananda Bharati v. State of Kerala [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225]*** *and* ***Minerva Mills Ltd. v. Union of India [Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625]*** *, Article 31-C reads as:*

*'****39-C. Saving of laws giving effect to certain directive principles****.— Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19.'*

Clause (b) of Article 39 of the Constitution which is relevant for our purpose states that the State shall, in particular, direct its policy towards securing that the ownership and control of material resources of the community are so distributed as best to subserve common good. ...

14. ... The High Court erred in taking a very narrow view of the objects of the Act and the functions of the Authority

> *under it. We are satisfied that the Act is brought into force to implement the directive principle contained in Article 39(b) and hence even if there is any infraction of Article 14 it is cured by Article 31-C which is clearly attracted to the case.""*

9. We conclude that it is true that Section 35G of the Central Excise Act, 1944 (Act No. 1 of 1944) and Section 130 of the Customs Act, 1962 (Act No. 52 of 1962) were omitted by virtue of the provisions introduced through the National Tax Tribunal Act, 2005. However, it is equally true that in **Madras Bar Association v. Union of India** (supra), the constitutional validity of the National Tax Tribunal Act, 2005 was challenged before the Hon'ble Supreme Court, and the entire enactment was declared unconstitutional.

10. Upon going through the provisions of Section 35G of the Central Excise Act, 1944 and Section 130 of the Customs Act, 1962, the jurisdiction to decide substantial questions of law vested in the High Court about which the Constitution Bench of Hon'ble Supreme Court has said so that it is well settled principle that an appeal is a creature of statute and can be done away by statue. The question posed here is completely different and the answer to that question is fundamental to our jurisprudence that a jurisdiction to decide

substantial questions of law vested in our constitution only in the High Courts and the Supreme Court and cannot be vested in any other body as a core constitutional value would be impaired thereby. We, upon going through the Constitution Bench decisions, are of the firm view that if we shall accept the contention of the respondents, then it shall mean that a legal vacuum shall be developed and as discussed in the judgment of **Property Owners Association** (supra) that the practical effect of such an outcome would be that a judicial decision invalidating an unconstitutional amendment would also inadvertently nullify a valid and constitutional provision, which the legislature would never have repealed without providing a replacement.

11. Hence, in the light of the discussions made above, we reached on the conclusion that after decision of Hon'ble Supreme Court of India in **Madras Bar Association case** (supra), the National Text Tribunal Act has become unconstitutional. The earlier provision mentioned in Section 35G of the Central Excise Act, 1944, Section 130 of the Customs Act, 1962 (52 of 1962) as well as any other provisions of law which were omitted by the said National Text Tribunal Act shall automatically revived and there is no need of further

legislative or judicial direction for the same and in result the objection as raised here in the present batch of appeals by learned Senior Counsel for the respondents are rejected as not sustainable in the eye of law.

12. In result, the present appeals shall be listed under the heading ‘For Hearing Under Order 41 Rule 11 of the CPC.

13. It is made clear that the issues involved in the batch of appeals are common, i.e., whether appeals are maintainable or not? But when it has been decided that the present appeals are maintainable then in that case it is necessary that all appeals be heard separately on its own merit.

14. Hence, Office is directed to detach these appeals and list all appeals separately on 06.04.2026 under the heading ‘For Hearing under Order 41 Rule 11 CPC’.

(Dr. Anshuman, J)

Bibek Chaudhuri, J: I Agree.

Mkr./- **(Bibek Chaudhuri, J)**

AFR/NAFR	NAFR
CAV DATE	27.02.2026
Uploading Date	18.03.2026
Transmission Date	