

**APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI**

**1. FPA-PMLA-2780/MUM/2019**

M/s. N. K. Proteins Ltd. ... Appellant

**2. MP-PMLA-10997/MUM/2023 Misc.  
MP-PMLA-10998/MUM/2023 Misc.  
FPA-PMLA-2781/MUM/2019**

Shri Nilesh K. Patel ... Appellant

**3. FPA-PMLA-2782/MUM/2019**

Shri Priyam Patel ... Appellant

**4. FPA-PMLA-2783/MUM/2019**

M/s N. K. Industries Ltd. ... Appellant

Versus

The Deputy Director,  
Directorate of Enforcement, Mumbai ... Respondent

**Advocates/Authorized Representatives who appeared**

For the Appellants : Mr. S. Vasudevan, Advocate  
Mr. Mahendra Singh, Advocate  
Ms. Reeshika Agarwal, Advocate

For the Respondent : Mr. Aditya Singla, Advocate

**CORAM**

**SHRI BALESH KUMAR : MEMBER**  
**SHRI RAJESH MALHOTRA : MEMBER**

**FINAL ORDER**  
**21.05.2026**

This Order disposes of the Appeals Nos. FPA-PMLA-2780/  
MUM/2019 filed by M/s N. K. Proteins Ltd., FPA-PMLA-2781/  
MUM/2019 filed by Shri Nilesh K. Patel, FPA-PMLA-2782/MUM/

2019 filed by Shri Priyam Patel, and FPA-PMLA-2783/MUM/2019 filed by M/s N. K. Industries Ltd. against the Order dated 14.11.2018 (Impugned Order) passed by the Ld. Adjudicating Authority (AA) under the Prevention of Money Laundering Act, 2002 (PMLA) in the Original Application No. 236/2018 (OA) dated 28.06.2018. Cash amounts of Rs. 5,00,000/- & Rs. 12,00,000/- and 42 vehicles & 10 cars were seized for which the OA No. 236/2018 was filed, so as to continue with the seizure and retention. The Impugned Order allowed the retention and freezing.

**2.** Ld. Counsel for the Appellants submitted that in 2013, a FIR No. 216 of 2013 dated 30.09.2013 was registered by Mumbai Police against National Spot Exchange Limited (hereinafter referred as NSEL) and various defaulting parties. Subsequently, an ECIR was registered by the Respondent Directorate against various parties including the Appellants. The Appellant Company M/s. N. K. Proteins Ltd. was incorporated on 27.03.1992 under the Companies Act, 1956. Mr. Nimish K. Patel is the Chairman and Managing Director of the Appellant Company with Mr. Nilesh Patel as its Managing Director. The Appellant Company has been, inter alia, engaged in the business of edible oil refining and marketing of the same in the domestic market. The Appellant's group company, M/s N.K. Industries Limited (hereinafter referred to as 'NKIL) was incorporated on 19.08.1987 under the Companies Act, 1956. Mr. Nimish K. Patel is also the Chairman & Managing Director of NKIL with Mr. Nilesh Patel as its Managing Director. NKIL was, inter alia,

engaged in the business of manufacturing of castor oil and its derivatives. The said FIR was registered based on the complaint filed by Shri Pankaj Ramnaresh Saraf, Director of M/s Vostok Far East Securities Pvt. Ltd., acting for himself and on behalf of similarly placed so called other investors, on grounds that he was allegedly cheated by NSEL by creating a false impression of being a proper spot exchange with correct risk management systems in order to induce him to trade on the spot exchange. He inter alia alleged that the certified warehouses of the NSEL lacked capacity and some of them had no stocks. Thus, it is alleged in FIR that the genuine investors were defrauded of their investments by way of misappropriation of investor's money from the fact that NSEL allowed trading on commodities by sellers, without ensuring goods of appropriate quantity and quality are stored in the Exchange-controlled warehouses which resulted in thousands of investors trading in non-existent goods.

**3.** Ld. Counsel for the Appellants submitted that pursuant to the investigation done by the Mumbai Zonal Office of the ED in ECIR, three Provisional Attachment Orders (hereinafter referred to as 'PAO') being PAO No.13 of 2014 dated 27.08.2014, PAO No.21 of 2014 dated 29.11.2014 and PAO No.03 of 2015 dated 10.03.2015 were issued. Properties worth Rs. 305,52,99,769/- (Rupees Three Hundred Five Crore Fifty-Two Lakhs Ninety-Nine Thousand Seven Hundred Sixty-Nine) belonging to the Appellant, its group Companies and other persons associated with it were provisionally

attached under Section 5 (1) of PMLA. Ld. Counsel for the Appellants submitted that it is the case of the Respondent Directorate in OA No. 236/2018 that on the basis of preliminary investigation and scrutiny of the documents submitted by NSEL, the ED noticed that NSEL had paid Rs. 10,596.49 crores to the Appellant into their settlement account against their commodity i.e. castor seeds, castor oil, and wash cotton oil seed bought through Exchange in T+2 contracts whereas, the Appellant had paid Rs.10,088.91 crores to NSEL into their settlement account against their commodity i.e. castor seeds, castor oil, and wash cotton oil seed bought through Exchange in corresponding T+25 contracts. Further, an amount of Rs.176.77 crores was paid by the Appellant to NSEL towards net purchases for delivery contracts. Thus, as on 31.08.2013, the net liability of the Appellant towards NSEL, as worked out by the ED, was Rs. 330.81 crores. Against the figure of 330.81 crores, as worked out in the table given in OA No. 236/2018, the ED has already attached properties worth Rs. 305.52 crores. Moreover, during investigations a sum of over Rs. 53.38 Crores was also repaid by the Appellant to NSEL in the escrow account maintained by Forward Market Commission (now merged with SEBI) and hence the net assets already under control of authorities is Rs. 305.52 crores as against alleged Proceeds of Crime (PoC) of Rs. 283.43 Crore. The Respondent had alleged under the OA that as per NSEL the total outstanding liability of the Appellant is Rs. 962.79 crores to NSEL on account of settlement of

T+25 contracts, the respondent has therefore considered the entire amount of Rs.962.79 crores to be proceeds of crime generated from alleged bogus Sale transactions.

**4.** Ld. Counsel for the Appellants contended that the Ld. AA had issued the Show Cause Notices (SCNs) without going to the case documents and in a mechanical manner. The SCN dated 30.08.2018 was issued with pre-conceived, prejudiced and predetermined mind ignoring the relevant materials and relying upon extraneous considerations. There was no material before the Adjudicating Authority on the basis of which it could have the reason to believe that any of the Appellants had committed an offence under Section 3 of the Act or were in possession of proceeds of crime. Ld. Counsel further contended that the Impugned Order is non-speaking and has been issued without any application of mind. Moreover, complete set of relied upon documents have not been supplied.

**5.** Ld. Counsel for the Appellants submitted that the Impugned Order has been erroneously passed in the absence of retention order required to be passed by the Respondent Directorate in terms of Section 20 (2) of PMLA. Even while confirming the retention and freezing the properties, the Ld. AA failed to make a finding on the involvement of the properties in the money laundering offence. The Ld. AA merely made a finding that the Appellants were not able to answer why the permission sought by the Respondent Directorate to retain the properties should be denied to it. Ld. Counsel also

contended that the pre-condition of existence of material in possession on the basis of which the reasons to believe were found, being sine qua non for initiating these proceedings, was not there. Ld. Counsel argued that one of the Appellant Shri Priyam Patel was neither an accused in FIR nor an alleged offender of money laundering offence under ECIR. Ld. Counsel further argued that with respect to the OA no Prosecution Complaint has been filed. Moreover, the ED has already attached the properties worth more than the alleged proceeds of crime determined in ECIR. Ld. Counsel also argued that all the vehicles and cars whether commercial and passengers had been purchased on loan and the repayment had been done by the Appellants from the profits generated from the business of the Appellant Company. Ld. Counsel stated that for each vehicle the name of the financier, invoice, registration certificate and the amortization schedule had been furnished. Ld. Counsel therefore prayed for allowing the Appeal.

**6.** Ld. Counsel for the Respondent Directorate submitted that all the Appellants except Mr. Priyam Patel are shown as accused Nos. 40, 43, 44 and 41 respectively in PMLA Case No.4 of 2015 already filed by the Directorate of Enforcement, Mumbai Zonal Office, Mumbai and presently pending before the Special PMLA Court for Greater Mumbai for the offences allegedly committed under Section 3 punishable under Section 4 of PMLA. Ld. Counsel for the Respondent submitted that the Respondent Department in a

connected matter arising from the same ECIR filed complaints viz OC No. 358/2014, OC No. 393/2015 and OC. 430/2015 before the Ld. Adjudicating Authority under section 5(5) of the PMLA against the same Appellants. The Adjudicating Authority confirmed those provisional attachments.

**7.** Ld. Counsel for the Respondent submitted that the record of the proceedings before the Ld. Adjudicating Authority clearly demonstrates due application of mind. As is evident from the noting of the Ld. Adjudicating Authority, a conscious decision was taken after perusing the Original Application (O.A. No. 236/2018) and the documents filed therewith. Having perused the said material, the Ld. Adjudicating Authority formed the requisite belief that the Appellants prima facie appeared to have committed the offence of money laundering. This independent satisfaction is the very bedrock of the jurisdiction conferred under Section 8(1) of PMLA. The "reasons to believe" of the Adjudicating Authority are distinct and independent from those of the Investigating Officer. Ld. Counsel for the Respondent submitted that the Ld. Adjudicating Authority has fully complied with this mandate. The noting in the file, a copy of which has been made available to the Appellants, constitutes the independent "reason to believe" of the Authority. The earlier SCNs were set aside because the Ld. Adjudicating Authority noting referred to an ongoing investigation rather than to an opinion on the commission of an offence. The

fresh noting dated 30.08.2018, however, correctly and specifically records the requisite statutory satisfaction.

**8.** Ld. Counsel for the Respondent submitted that the core of the Appellants' challenge on merits is the contention that the amount of Rs.962.79 crores claimed by NSEL cannot be treated as "proceeds of crime," and that the Directorate of Enforcement has already attached properties worth Rs. 305.52 crores against alleged proceeds of crime of Rs. 283.43 crores from the earlier phase of investigation. On this basis, the Appellants argue that the additional amount of Rs. 631.98 crores represent disputed "NSEL charges" of a purely civil nature, and that the fresh seizures are therefore vexatious. The definition of "proceeds of crime" under Section 2(1)(u) of the PMLA is wide in its terms and includes any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The investigation has unequivocally revealed that the transactions on the NSEL platform were not genuine trades but constituted a well-orchestrated fraud. The finance charges, transaction charges, warehousing and delivery charges, interest, VAT, and other charges claimed by NSEL are not independent civil dues; these are, on the contrary, the very mechanisms through which the fraud was perpetrated and the proceeds thereof were layered. These charges represent the value extracted from the fraudulent scheme and are intrinsically linked to the underlying criminal activity. As clarified by an Explanation added to Section 2 (1) (u) of PMLA, the proceeds

of crime include not only property directly derived from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence. The investigation in the present case is a continuous and evolving process. While the initial phase of investigation identified a net liability of Rs. 330.81 crores and led to the attachment of properties worth Rs. 305.52 crores, further investigation revealed the full magnitude of the fraud. The figure of Rs. 962.79 crores represent the gross liability of the N.K. Proteins Group towards NSEL, which is the direct consequence of the bogus circular trading carried out on the platform.

**9.** Ld. Counsel for the Respondent submitted that the search and seizure operations of 30.05.2018 were a bona fide effort to trace the remaining proceeds of crime, which were suspected to have been laundered into various assets, including the vehicles and cash that are now the subject matter of the present proceedings. The Ld. Adjudicating Authority, by allowing the retention, has correctly facilitated further investigation required to unearth the complete money trail. The principle of proportionality, which the Appellants appear to invoke, was fully respected, since the Directorate did not freeze the entire business operations of the Appellants but only such specific properties as were reasonably suspected to be either proceeds of crime or records relating thereto. In the present case, the freezing orders and the OA are backed by extensive investigation material, including statements of co-

accused and documentary evidence such as the SGS stock audit reports, which together establish a clear nexus between the properties and the alleged crime.

**10.** Ld. Counsel for the Respondent submitted that the Appellants have raised the ground that since no supplementary complaint was filed within 365 days of the Impugned Order, the seized properties must be returned. It is submitted that this ground is both premature and based on a fundamental misinterpretation of the applicable statutory provision. He further submitted that Section 8(3)(a) of the PMLA stipulates that upon confirmation by the Adjudicating Authority, the attachment or retention shall continue during investigation for a period not exceeding ninety days or during the pendency of proceedings relating to any offence under the Act before a court. The Hon'ble Delhi High Court has clarified this very issue, holding that Section 8(3) pertains to the confirmation of an attachment, retention, or freezing order, and that it does not prescribe a time limit for the completion of the investigation itself. The 90-day or 365-day limit is applicable to the duration of the attachment or retention, and not to the investigative process as a whole. Ld. Counsel for the Respondent submitted that the attachment or retention can continue not only for the initial prescribed period but also during the pendency of the proceedings relating to any offence under PMLA before a court. The Prosecution Complaint No. 04 of 2015 filed on 30.03.2015, is already pending before the Special Court, Mumbai, against the main accused and

the Appellants herein. **The Hon'ble Supreme Court in the matter of Union of India v. J. P. Singh, [Criminal Appeal No. 1102 of 2025 Arising out of S.L.P. (Criminal) No. 5706 of 2023]**, followed by the Judgment dated 21.11.2025 of the Hon'ble Delhi High Court in the matter of Deputy Director, Directorate of Enforcement v. Amlendu Pandey (D) through LR, has authoritatively held that for the application of Section 8(3)(a) of the PMLA, it is not necessary that the person affected by the retention order must be named as an accused in the prosecution complaint. It is sufficient that a complaint alleging the commission of an offence under Section 3 of the PMLA is pending before the competent court. Since a prosecution complaint is already pending, the retention of the seized and frozen properties can lawfully continue during the pendency of those proceedings. The absence of a supplementary complaint specifically naming Shri Priyam Patel or referencing the newly seized assets does not automatically invalidate the retention order. The investigation is ongoing, and the Directorate is entitled to the requisite period to complete its investigation and file a supplementary complaint if warranted by the evidence collected.

**11.** Ld. Counsel for the Respondent submitted that the searches were conducted at the residential premises of the Appellant Late Shri Nilesh K Patel, which also constituted the residence of his son, Shri Priyam Patel. The luxurious vehicles, namely a Range Rover and a Mercedes, both registered in the name of Shri Priyam Patel,

were found parked at these very premises. Given the staggering magnitude of the fraud and the close familial nexus between the parties, it was entirely incumbent upon the investigating agency to verify the sources of acquisition of these high-value assets. The seizure and freezing of these assets are an essential and legitimate part of the overall money laundering investigation, aimed at determining whether they represent proceeds of crime that have been laundered through members of the family. Ld. Counsel for the Respondent submitted that one of the Appellant i.e., Shri Priyam Patel, is not an accused in the scheduled offence or in the PMLA Prosecution Complaint, his properties cannot lawfully be seized. It is submitted that this argument is completely misconceived and has been squarely rejected by the Hon'ble Delhi High Court in the case of Amlendu Pandey. Section 17 of PMLA authorises the search of any person who is inter alia in possession of any proceeds of crime or any records relating to money laundering. The Section does not mandate that such a person must be an accused in the predicate offence or in the main PMLA complaint. Possession of tainted property can be entirely independent of the criminal intent of the person in possession, and the property itself, if it constitutes proceeds of crime, renders its possessor, whether a bona fide purchaser or a family member, subject to the provisions of attachment and seizure under the PMLA. Ld. Counsel for the Respondent stated that the investigation is presently at a crucial and sensitive stage and the continued

retention of the seized and frozen property is imperative for its successful completion and for the eventual restitution of the defrauded investors, which remains the overriding aim of the Respondent Directorate. Ld. Counsel therefore prayed to dismiss the Appeals.

**12.** We have considered the rival submissions and the material on record. We observe that the challenge to the Impugned Order is mainly on the following three grounds:

a. Subsequent to the seizure and retention of the aforementioned cash and vehicles having been allowed through the Impugned Order, no prosecution complaint has been filed by the Respondent Directorate and hence, in view of the provisions of Section 8 (3) (a) after the expiry of the stipulated period, the continuation of the retention of the said properties ceases.

b. No scope was left for further seizure and retention of the property after an attachment of properties worth Rs. 305,52,99,769/- vide PAOs No. 13 of 2014 dated 27.08.2014, No. 21 of 2014 dated 29.11.2014 and No. 03 of 2015 dated 10.03.2015 since the alleged PoC was of Rs. 283.43 crores.

c. The seizure and the retention of the aforementioned cash and vehicles cannot be sustained on the grounds that the retention order under Section 20(1) of PMLA to be issued by the Directorate of Enforcement was neither issued nor supplied to the Appellants.

During the course of our examination of the aforementioned three issues, we also intend disposing of other questions raised by the

Appellants in the pleadings made in the Appeals as well as those raised by them during the course of the arguments.

**13.** It is on record that the Prosecution Complaint under PMLA in the same ECIR against the three Appellants M/s N. K. Proteins Ltd., Shri Nilesh K. Patel and M/s N. K. Industries Ltd. among others, was filed on 30.03.2015 in the City Civil Court & Additional Sessions Judge, Greater Bombay, where presently it is still pending as PMLA Case No. 4 of 2015. The seizure was made during the search proceedings under PMLA on 29/30.05.2018. It is thus clear that the search and seizure proceedings occurred after the filing of the Prosecution Complaint under PMLA. Section 8 (1), (2) & (3) of PMLA states the following:

*“(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:*

*Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:*

*Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.*

*(2) The Adjudicating Authority shall, after—*

*(a) considering the reply, if any, to the notice issued under sub-section (1);*

*(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and*

*(c) taking into account all relevant materials placed on record before him,*

*by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:*

*Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.*

*(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such*

*attachment or retention or freezing of the seized or frozen property or record shall—*

*(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and*

*(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;*

*Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.”*

We do not find that the aforementioned statutory provisions require a Prosecution Complaint under PMLA to be filed where there is already pendency of the proceedings relating to any offence under the PMLA before the Court. In the present matter the Impugned Order has arisen out of OA No. 236/2018 dated 28.06.2018. The Prosecution Complaint had already been filed on 30.03.2015 in the same ECIR, which is still pending as on date. Therefore, we cannot accept the argument by the Appellants that the seizure and the retention of the impugned properties could not have survived after the stipulated period.

**14.** An argument has also been raised that no Prosecution Complaint has been filed against the Appellant Shri Priyam Patel. We do find from the copy of the Prosecution Complaint dated 30.03.2015 that Shri Priyam Patel has not been made an accused. We observe from the aforementioned statutory provisions that the requirement is to have filing of Prosecution Complaint within the stipulated period, so as to initiate the proceedings in the Court without the necessity of having it filed against all persons whose properties have been either attached or seized. To support the finding recorded by us, we may refer to the **Judgment of the Hon'ble Supreme Court in the case of Vijay Madanlal Choudhary and Others v. Union of India & Ors. reported in [(2022) SCC Online SC 929]**. Para 65 of the judgment is quoted thus:

*“65. As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money- laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any*

*person as a result of criminal activity relating to a scheduled offence. **The sweep of section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime.** Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under section 3 of the 2002 Act.”*

*(emphasis supplied)*

The aforementioned observations from the Judgment (supra) apply mutatis mutandis to the seizures made under Section 17 of PMLA.

**15.** The Hon’ble Delhi High Court in the Judgment dated 21.11.2025 in the matter of the Deputy Director, Directorate of Enforcement v. Amlendu Pandey (D) through LR [MISC. APPEAL (PMLA) 8/2022] has made the following observations in paragraphs from 37 to 41:

*“37. Section 17 of PMLA does not lay down that the search can be carried out in the premises of that person alone qua whom a complaint has been filed or report had been forwarded to the concerned Magisterial Court. The pre-condition is of 'prior institution of complaint or forwarding of a report under Section 157 Cr.P.C'. There is no mandate that search should also be of the person shown accused in such report or complaint.*

*38. A person may be in possession of proceeds of crime but still may not be accused of any scheduled offence or offence of money laundering. In a given situation, a person can be recipient of proceeds of crime, without having any criminal intent and, therefore, it is not necessary that any such person should be an accused in a prior complaint or report. Thus, search was permissible once the conditions specified under Section 17 of PMLA were satisfied.*

*39. Here, the search was conducted as the concerned officer of ED had 'reason to believe' that money laundering activities were still going on and ED, therefore, decided to conduct search to recover incriminating material. As per Section 17(1)(iii), the premises of any person, who is in possession of any records relating to money laundering, can also be searched.*

*40. Be that as it may, the search is of 09.02.2016 and it was consequent upon a 'complaint' already forwarded to the Court in the year 2011.*

*41. Since the precondition is clearly met, the impugned order is not sustainable.”*

We therefore reject the contention that the seizure and retention of the properties of the Appellant Shri Priyam Patel cannot be sustained as no proceedings under PMLA are pending against him before the Special Court.

**16.** On perusal of the Impugned Order, we find that the Ld. AA was aware that ECIR No. 14/MZO/2013 dated 14.10.2013 was recorded against National Spot Exchange Ltd. (NSEL), Directors,

Key Officials, 25 defaulters & Ors. for investigation under the provisions of PMLA. Yet Ld. AA has allowed the retention and freezing of the properties impugned under OA No. 236/2018. It has been observed in the Impugned Order that an FIR No. 216 of 2013 was lodged by the Economic Offences Wing of Mumbai Police, then FIR includes schedule offences under Sections 120 B, 467 & 471 of the IPC. The allegations were that the genuine investors were defrauded of the investments by way of serious misappropriation from the fact that NSEL had allowed trading on commodities by sellers, without ensuring goods of appropriate quantity and quality stored in the Exchange controlled warehouses which resulted in thousands of investors trading in non-existent goods. The allegations further made stated that forged documents like bogus warehouse receipts and falsified accounts were created thereby committing criminal breach of trust. The Appellant Shri Nilesh Patel in his statements under Section 50 of PMLA admitted that the Appellant M/s N. K. Proteins Ltd. had sold castor seeds, castor oil and wash cotton seed oil through contracts lodged on the NSEL platform without having corresponding physical stock of the same. He also admitted that the sale transactions were only paper transactions. The funds so generated from NSEL were diverted for the purpose of investing in realty estate. It is also mentioned in the Impugned Order that Shri Anjani Sinha, Ex-MD of NSEL stated under Section 50 of PMLA that the Appellant Shri Nilesh Patel used the funds received from the Exchange for settling their bank loan

and other debts. It is categorically mentioned in the Impugned Order in paragraph 3 (vi) that the Assistant Director of ED, the Complainant has recorded in the OA No. 236/2018 the following:

*“During the course of further investigation in the matter, it is noticed that huge transactions are/were being executed through accounts of NK Proteins Private Limited & its group companies. Shri Nilesh Patel and Shri Nimish Patel are the Directors of M/s. NK Proteins Ltd and main controllers of the activities of the group companies. The proceeds of crime totaling to Rs 657.27 crore is yet to be identified in this case. As such considering the diversion of funds received against non-existent stock of commodity by N. K. Proteins Limited from NSEL and use of the same for siphoning off/investments and other purposes, search operations were conducted under the provisions of Sections 17 of the PMLA, 2002, at their business premises & residence of directors under the reasonable belief that they have committed money laundering, or they are in possession of the proceeds of crime involved in money laundering or they are in possession of any record relating to money laundering on 30.05.2018. The details of premises searched are as below.....”*

Thereafter the addresses of the plant of M/s N K Proteins and of the houses of S/Shri Nimish Patel and Nilesh Patel have been

recorded along with the listing of the impugned properties that have been seized. From the perusal of the Impugned Order, it is also obvious that in the OA it has been stated that the seized properties were obtained from the proceeds of crime and the same were being shown as untainted properties. The same were required for conducting further investigations and proceedings under PMLA. We therefore, observe that the contention of the Appellants that the PoC was restricted to Rs. 283.43 crores in the face of the assertions made by the Respondent Directorate cannot be accepted.

**17.** The Appellants have pleaded in the Appeal that the ED however alleges in the current proceedings under OA No. 236/2018 that as per NSEL, the total outstanding liability of the Appellant is Rs. 962.79 crores to NSEL on account of settlement of T+25 contracts. This alleged figure of Rs. 962.79 crores is towards different expenditure components which NSEL claims to be due to it from Appellant on account of various alleged charges like roll-over cost, warehousing charges claimed by NSEL, interest payment to NSEL, penalty amount to NSEL, etc. However, the ED in OA No. 236/2018 has considered the entire alleged claim of Rs. 962.79 crores to be proceeds of crime being generated from alleged bogus sale transactions effected through NSEL only on the basis of claims made by NSEL, who themselves are accused in PMLA Prosecution Complaint Case No. 4/2015. Considering the above, the ED is of the view that out of total proceeds of crime of Rs. 962.79 crores, attachments worth Rs. 305.52 crores have already been made vide

previous PAOs, however proceeds of crime totaling to Rs. 657.27 crores are yet to be identified. We observe that even if the contention of the Appellants is considered, we still find that there remain claims made by the NSEL against the Appellants which have arisen due to the transactions indulged in by the Appellants on the platform of the NSEL. The said transactions are under question in the trial for the scheduled offences, as well as under the pending proceedings for the money laundering offences. The allegations are serious as such transactions were allegedly indulged in, on bogus documents such as warehouse receipts issued without the backing of the actual goods being available in the warehouses. Given the scale of the alleged scam, wherein the objectivity and the veracity of the transactions occurring on a public platform of NSEL are still under investigation, the possibility that the quantum of proceeds of crime was Rs. 962.79 Crores cannot be ruled out without completion of investigations. In this regard, Ld. Counsel for the Respondent in the written submissions filed on 10.03.2026 has reiterated that the investigation is presently at a crucial and sensitive stage and the continued retention of the seized and frozen property is imperative for its successful completion and for the eventual restitution of the defrauded investors, which remains the overriding aim of the Respondent Directorate.

**18.** The Appellants have challenged the Impugned Order for the reasons that the seizure and the retention of the aforementioned cash and vehicles cannot be sustained on the grounds that the

retention order under Section 20(1) of PMLA to be issued by the Directorate of Enforcement was neither issued nor supplied to the Appellants. Ld. Counsel for the Appellant cited the Judgment of the Hon'ble Delhi High Court in the matter of Directorate of Enforcement through Assistant Director, Delhi v. Rajesh Kumar Agarwal in MISC. APPEAL (PMLA) 03/2023.

**19.** This Tribunal vide the **Final Order dated 02.04.2026 in Appeals Nos. FPA-PMLA-4454/CHN/2022 FPA-PMLA-6566/CHN/2023 FPA-PMLA-4199/CHN/2021 FPA-PMLA-6569/CHN/2023 FPA-PMLA-5829/CHN/2023 FPA-PMLA-5830/CHN/2023 FPA-PMLA-5831/CHN/2023 FPA-PMLA-5832/CHN/2023 FPA-PMLA-5833/CHN/2023 FPA-PMLA-5834/CHN/2023** has made certain observations relating to Section 20 of PMLA. We cite the relevant paragraphs of the Final Order dated 02.04.2026:

**“Legal Issues on Section 20 of the Act of 2002:**

28. *The challenge to the order on the Original Application under Section 17(4) of the Act has been made for non-compliance of Section 20(2) of the Act of 2002.*

29. *The learned counsel for the appellants submitted that the compliance of Section 20(1) and (2) is mandatory after the compliance of Section 17(4). In absence of an order under Section 20(1) for retention of the property under seizure or continuance of frozen property, the action of the respondents is de hors to the provisions of the Act of 2002. To support the argument, learned counsel made reference of the judgment in the case of **Rajesh Kumar Agarwal** (supra).*

30. A serious contest to the aforesaid argument was made by the counsel for the respondents. In the light of the aforesaid, we need to examine the legal issues and would refer to the relevant paras of the judgment of the Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra) and Section 8,17,18 and 20 of the Act of 2002 to analyze the framework of the legislation and its interpretation by Delhi High Court.

31. According to the counsel for the respondents, legislature has not enacted two overlapping provisions for one action. He referred the relevant paras of the judgment in the case of **Rajesh Kumar Agarwal** (supra) and submitted that the judgment aforesaid is per incuriam, because it has gone against the statutory provision, thus, should not be applied. The counsel for the appellants made a serious contest on the aforesaid and accordingly we would be taking up the issue in reference to the rival submissions and for that even to examine the provisions and the judgment of Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra).

32. The learned counsel for the respondents submitted that in the case of **Rajesh Kumar Agarwal** (supra), the Hon'ble High Court has rewritten the provision while giving interpretation to Section 8(3) and 17(4) of the Act of 2002. It may have been due to lack of proper assistance to the Hon'ble High Court. The judgment of Delhi High Court (supra) is even in conflict with the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra). The learned counsel for the respondents first made reference of Para 55 of the judgment which is reproduced hereunder:

“55. It is here that the Appellant sets up a two-pronged challenge:

(a). The Appellant would contend that Sections 17(4) and 20 operate differently since the provision of Section 17(4) comes into play when the Appellant would decide to immediately retain the property, for which purpose he makes an application under the said provision and thereby seek an adjudication by the learned AA in this regard; meaning thereby that the Appellant can make an application for "Retention" of property, in respect of which the learned AA can pass an order under Section 8(3) and thereby retain the same. The concomitant to the same would be that the Respondent can directly seek an adjudication under Section 8(3) for "Retention" of seized goods/ property without resort to the provisions of Section 20 of the PMLA.

(b). The second challenge is more factual in nature, and wherein the Appellant would contend that, in the facts of the present matter, since the adjudication process was completed before the period of 180 days, there was no need to resort to Section 20 of the PMLA”.

Learned counsel for the respondents submitted that para quoted above refers to correct interpretation of the provisions. He thereupon made a reference of para 58 of the judgment, wherein Sections 8(3), 17 and 18 have been referred as it exist but from Para 59 onwards, many words under the statutory provisions were substituted by Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra) making part of Section 8(3) and 17(4) to be redundant and for that reason, the judgment is to be treated per incuriam. It is also in conflict to the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra).

33. The argument aforesaid needs to be analysed after appreciation of the rival submissions and accordingly we may at the first instance refer to Sections 8,17 and 20 and are quoted hereunder:

**“8. Adjudication.--** (1) *On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:*

*Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:*

*Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.*

(2) *The Adjudicating Authority shall, after—*

*(a) considering the reply, if any, to the notice issued under sub-section (1);*

*(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and*

*(c) taking into account all relevant materials placed on record before him,*

*by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:*

*Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.*

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, **(Emphasis added)**

whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

*Explanation.- For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.*

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

*Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.*

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money

laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

*Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:*

*Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.*

**17. Search and seizure.**-(1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person-

*(i) has committed any act which constitutes money-laundering, or*

*(ii) is in possession of any proceeds of crime involved in money-laundering, or*

*(iii) is in possession of any records relating to money-laundering, or*

*(iv) is in possession of any property related to crime*

*then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to-*

*(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;*

*(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;*

*(c) seize any record or property found as a result of such search;*

*(d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;*

*(e) make a note or an inventory of such record or property;*

*(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:*

*(1A) Where it is not practicable to seize such record or property, the officer authorized under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.*

*Provided that if, any time before its confiscation under sub-section (5) of sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a*

*frozen property, the officer authorized under sub-section (1) may seize such property.*

*(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.*

*(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:*

*Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.*

*(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A), shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority”.*

**20. Retention of property.**-*(1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.*

*(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of*

*freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.*

*(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.*

*(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is prima facie involved in money-laundering and the property is required for the purposes of adjudication under section 8.*

*(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, Special Court shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.*

*(6) Where an order releasing the property has been made by the Special Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of receipt of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act”.*

*The learned counsel for the respondents referred Para 59 to 62, 64 to 74 and 76 of the judgment in the case of **Rajesh Agarwal** (supra) to allege rewriting of the statutory provision by the High Court and otherwise in conflict to the judgment of the Apex Court. We may accordingly quote*

Para 59 to 62, 64 to 74 and 76 of the judgment in the case of **Rajesh Agarwal** (supra) and are quoted thus:

*“59. In its plain terms, the Section deals with the circumstance where the learned AA is to "confirm" the "retention of property". It cannot be read in a manner such as to translate into the order of Retention itself, which, in our opinion, is the subject matter of [Section 20](#).*

*60. Therefore, on a plain reading, it is manifest that the power under Section 8(3), being one for confirming any retention, there needs to be, in the first instance, an order for such retention, which can be confirmed under Section 8(3).*

*61. The other aspect is that, the power of confirmation, once exercised, would entitle the retention of the seized or frozen property for a period beyond 180 days and up to 365 days. The provision, therefore, is clearly not exercisable for the purpose of retention of the property for the period of 180 days, as is sought to be contended.*

*62. If we were to accept the contention of the Appellant, it would mean that any property so seized, upon the making of an application under Section 17(4), would, on the basis of an order passed by the learned AA, be able to be retained from the date of seizure for a period of 365 days (during investigation).*

*64. We take note of the fact that both Sections 17 and 20 form an intrinsic and integral part of the said Chapter. Both Sections have been reproduced earlier and are not being reproduced again.*

*65. Section 17(1) provides for the officer authorised in that behalf, on the basis of information in his possession, formulating a reason to believe, in respect of any person regarding the various aspects related to money laundering as set out therein, either by himself or by authorising an officer subordinate to him, to seize any record or property and under Section 17(2), immediately after so doing, forward a copy of the reasons so recorded for the purpose of seizing, along with the material in his possession to the*

learned AA, who shall keep the same, for the period as prescribed.

66. Interestingly, Section 17(2) does not state that the material that is being sent to the learned AA is for the purpose of making any adjudication. It would appear that, it is the intent of the legislature, that the learned AA should have access to all relevant material for the purpose of adjudication. However, the fact that Section 8 is clearly for the purpose of adjudication and also the fact that Section 17 is completely silent on the aspect of adjudication, makes it apparent that Section 17, in fact, does not contemplate a procedure where immediately after a seizure or freezing being effected, the adjudicatory powers of the learned AA could be resorted to. In the succeeding paragraphs, relating to Section 20, this aspect will be further elaborated upon.

67. Section 17(4) of the PMLA, which has been reproduced in the preceding paragraphs of this judgement, is what is sought to be relied upon by the Appellant to contend that the same allows the Appellant to file an application “.... requesting for retention of such record or property seized...” before the learned AA and upon the filing of such an application, the learned AA, without having an order of retention under Section 20(1) can proceed to pass an order permitting the retention of the same.

68. We are of the view that the same is clearly against the plain reading of the Statute itself. Section 17(4) cannot confer upon Section 8(3), a power to pass an order of Retention. Section 8(3) is confined to the confirmation of an order of retention. Surely, one cannot contend that the authority which is statutorily conferred the power to “confirm” an order can also pass the order. That is precisely what will be the case in the event that the contentions of the Appellant were to be accepted.

69. Moving now to an examination of Section 20 of the PMLA, the provisions of which have already been extracted herein above. The opening lines of Section 20(1) of the PMLA, “Where any property has been seized under section 17...” and the words, “from the day on which such property was seized”, taken together, to our mind, clearly establish that Section 20 comes into play from the day of any seizure and will have to be applied for any retention of seized

goods upto a period of 180 days. Put simplistically, post the action of seizing or freezing under Section 17, the baton would be handed over to the provisions of Section 20.

70. Further, this provision also clearly indicates that the said retention is to be for the purpose of adjudication under Section 8; meaning thereby that the retention is for the purpose of the exercise of the power of adjudication by the learned AA under Section 8, which, as indicated earlier, is to be exercised for the purpose of “confirmation” of retention. A plain reading of Sections 20 (1) and (2) leads us to firmly opine that the provisions of Section 20(1) will necessarily have to be brought into play, before the adjudication under Section 8, since the said retention can only be for the purposes of an “adjudication” under Section 8.

71. Section 20(1) makes it evident that the authorised officer would, under it, pass an order for retention.

72. Section 20(2) clarifies that an Order for Retention is to be passed under Section 20(1) and further reiterates that the Order under Section 20(1) is for the purposes of adjudication under Section 8.

73. The provisions of Section 20(1) apply for the period from the day of seizure for a period upto 180 days. This is further clarified by the provisions of Section 20(3), which provides that in the event that the learned AA does not permit the retention or continuation of freezing, the goods would be returned.

74. Section 20(2) mandates that the copy of the order of retention passed under Section 20(1), along with the material in his possession, MISC. APPEAL (PMLA) 03/2023 Page 24 of 41 is to be sent to the learned AA, once again, for the purposes of adjudication under Section 8.

76. A plain reading of this provision makes it evident that the learned AA exercises power only in respect of the retention of the seized property beyond the period of 180 days, meaning thereby that the power to retain the seized goods for a period of 180 days, was never conferred upon the learned AA”.

34. The learned counsel for the respondents referred to Section 8(3) of the Act to indicate that High Court has virtually rewritten the provision in regard to the retention of the property under seizure. To examine the issue, we may quote relevant part of Section 8(3) at the cost of repetition and is quoted thus;

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing,..... or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect...

The relevant part of Section 8(3) in regard to the seized or frozen property has been quoted leaving the part which is for provisional attachment of the property. It is to demonstrate that after an exercise under Section 8 (2), if the property is found to be involved in money laundering, the Adjudicating Authority is given power for an order in writing for retention of the property seized or frozen under Section 17 and 18 of the Act. It is not to confirm the retention and, therefore, the learned counsel has made much emphasis on the relevant part of the provision of Section 8(3) which has been rewritten by the High Court substituting the power of the Adjudicating Authority from “retention” to “confirm the retention”.

35. The learned counsel for the respondents further submitted that the finding of the Delhi High Court in reference to Section 17 of the Act of 2002 is even in conflict to the judgment of the three judges’ bench of the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra). Para 84 of the said judgment is referred and quoted thus:

“84. As noticed earlier, in terms of Section 17(2) of the 2002 Act immediately after the search and seizure, the Authority

conducting the search is obliged to forward a copy of the reasons recorded and materials in his possession to the Adjudicating Authority in a sealed envelope. This sealed envelope is required to be preserved for period as specified under the Rules framed in that regard so that it is not tempered with in any manner and to ensure fairness of the procedure including accountability of the Authority. Not only that in terms of Section 17(4) of the 2002 Act the Authority seizing the record or property is obliged to submit an application before the Adjudicating Authority within a period of thirty days therefrom for the retention of the said record and Adjudicating Authority in turn gives opportunity to be heard by issuing show cause notice to the person concerned before passing order of retention of record or property, as the case may be, under the 2002 Act and the Rules framed therefor. The Authorities carrying out search and seizure is also made accountable by providing for punishment under Section 62 of the 2002 Act for vexatious search and giving false information. All these inbuilt safeguards prevent arbitrary exercise or misuse of power by the authorities appointed under the 2002 Act”.

36. The Apex Court has given framework of Section 17 of the Act of 2002 and the power of the Adjudicating Authority along with the procedure before passing the order of retention of the property or record or its continuation. The Apex Court has categorically held that Section 17(4) postulates an application before the Adjudicating Authority within a period of thirty days for retention of the record. The Adjudicating Authority, after giving an opportunity of hearing, pass an order of retention of the property seized or frozen, as the case may be. The judgment of the Delhi High Court (supra) from Para 59 onwards is in conflict with the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra), thus should not be applied. The learned counsel for the respondents made specific reference to Paras 59 and 60 of the judgment in the case of **Rajesh Agarwal** (supra) and for ready reference, those paras are quoted hereunder again:

“59. In its plain terms, the Section deals with the circumstance where the learned AA is to "confirm" the "retention of property". It cannot be read in a manner such as to translate into the order of Retention itself, which, in our opinion, is the subject matter of [Section 20](#).

60. Therefore, on a plain reading, it is manifest that the power under Section 8(3), being one for confirming any retention, there needs to be, in the first instance, an order for such retention, which can be confirmed under Section 8(3).

37. It is submitted that the finding in Paras 59 and 60 is not only contrary to the statutory provisions but even to the judgment of the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra). In fact, the Delhi High Court ignored the word “or” used under Section 8(3) to separate two parts of the provisions, one regarding confirmation of provisional attachment of the property under Section 5(1) of the Act of 2002 and the other for retention of the property or record seized or frozen under Section 17 or 18 of the Act of 2002. The word “or” has to be given meaning. It is submitted that the word “and” is used as conjunction and “or” for disjunction. In this regard, reference of the judgment of the Apex Court in the case of **Commissioner, Customs, Central Excise and Service Tax, Patna Vs. Shapoorji Pallonji and Company Pvt. Ltd. and Ors.** reported in (2024) 3 SCC 358 was given. Paras 31 and 32 of the said judgment are quoted hereunder:

“31. Having noticed some of the precedents in the field of interpretation of statutes, we now move on to a little bit of English grammar. The word "or" as well as the word "and" is a conjunction; and it is well known that a conjunction is used to join words, phrases, or clauses. On how the conjunctions "or" and "and" are to be read, guidance could be drawn from authoritative texts and judicial decisions. As per Justice G.P. Singh's Principles of Statutory

*Interpretation, the word "or" is normally disjunctive while the word "and" is normally conjunctive. In English law, the position is clear as crystal, as explained by Lord Scrutton in Green v. Premier Glynrhonwy Slate Co. Ltd., that one does not read "or" as "and" in a statute unless one is obliged, because "or" does not generally mean "and" and "and" does not generally mean "or".*

*32. When the meaning of the provision in question is clear and unambiguous by the usage of "or" in Clause 2(s), there remains no force in the submission of Ms Bagchi that "or" should be interpreted as "and". In our opinion, the word "or" employed in Clause 2(s) manifests the legislative intent of prescribing an alternative. Going by the golden rule of interpretation that words should be read in their ordinary, natural, and grammatical meaning, the word "or" in Clause 2(s) clearly appears to us to have been used to reflect the ordinary and normal sense, that is, to denote an alternative, giving a choice; and, we cannot assign it a different meaning unless it leads to vagueness or makes Clause 2(s) absolutely unworkable".*

*Paras quoted above make it clear that the word "or" is normally disjunctive while the word "and" is normally conjunctive. The word "or" used under Section 8(3) is to separate two actions, one is for confirmation of the provisional attachment of the property under Section 5(1) of the Act of 2002 and the other is for retention of seized and frozen property under Section 17 and 18 of the Act of 2002. The Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra) changed the word "retention" to "confirm the retention" going beyond its jurisdiction and according to the counsel for the respondents, it ignored the word "or" between two actions.*

*38. The learned counsel for the respondents further submitted that even if the word "or" is taken to be used as conjunction, then also Section 8(3) cannot postulate confirmation of retention of the property seized under*

section 17 and 18. The “confirmation of retention” would pre-suppose retention of the property or the record under Section 17 or 18. The specific reference of Section 17 and 18 has been given under Section 8(3) of the Act. Section 17(4) of the Act is for submitting an application to the Adjudicating Authority to seek retention and an order for it is to be passed by the Adjudicating Authority under Section 8(3) of the Act. As per the judgment of the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra) in para 84 quoted above, it has been ruled that the competent authority would be under an obligation to send the application to the Adjudicating Authority under Section 17(4) within a period of thirty days from the date of seizure to seek retention of the property or record. It is not to confirm the retention of record or property. The judgment of Delhi High Court (supra) virtually nullifies the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra) and even Section 17(4) for sending the application to seek retention or continuance of the frozen or seized property or record. It is not only offending the provisions of statute but also the judgment of the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra).

39. The learned counsel for the respondents further submitted that even if reference of Section 20 is taken, it does not make any reference to seek confirmation of retention of the order passed therein; rather, perusal of Section 20(4) reveals that the power of Adjudicating Authority under Section 8(3) is for authorizing the retention or continuance of the freezing of such property beyond a period specified under Section 20(1). The entire provision of Section 20 does not speak about “confirmation of retention” of property or record by the Adjudicating Authority. Thus, the import of the word “confirm” under Section 8(3) for

retention of seized or frozen property in the case of **Rajesh Kumar Agarwal** (supra) is not only contrary to the provisions of the Act but also changing the complexion of the entire provision and otherwise stand contrary to the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra).

40. Moving to Paras 61 and 62 of the judgment of the Delhi High Court, the learned counsel for the respondents again referred to substitution of the provisions of law. In Para 61, the Delhi High Court has laid down that once the power of confirmation is exercised, it would entitle retention of the seized or frozen property for a period beyond 180 days and upto 360 days. The provision of Section 8(3), therefore, would be exercisable for the purpose of retention of the property for a period beyond 180 days, meaning thereby the power of Adjudicating Authority for retention of the property or record is not exercisable for a period of 180 days. No such arrangement or provision to that effect exists in any of the provisions of the Act of 2002. The Delhi High Court has virtually re-written the provisions, having no jurisdiction to do so and accordingly counsel for the respondents laid much emphasis to analyse each issue carefully. It is in view of the fact that Para 61 of the judgment is even in conflict with the statutory provisions of Section 20 which also does not provide that power of Adjudicating Authority for retention to be exercised after a period of 180 days. Para 61 of the judgment (supra) is quoted hereunder again for ready reference:

61. The other aspect is that, the power of confirmation, once exercised, would entitle the retention of the seized or frozen property for a period beyond 180 days and up to 365 days. The provision, therefore, is clearly not exercisable for the purpose of retention of the property for the period of 180 days, as is sought to be contended.

*The para quoted above has reframed the provisions of the Act of 2002.*

41. *Reference of Para 66 of judgment of the Delhi High Court was also given. It is again in conflict with the view expressed by the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary** (supra). Para 84 of the said judgment has been quoted earlier. According to the Delhi High Court, Section 17 of the Act of 2002 is completely silent on adjudication and does not provide a procedure to allow Adjudicating Authority to exercise the power immediately after a seizure and freezing being effected. Relevant portion of the said para is quoted hereunder at the cost of repetition:*

*“66. ....However, the fact that Section 8 is clearly for the purpose of adjudication and also the fact that Section 17 is completely silent on the aspect of adjudication, makes it apparent that Section 17, in fact, does not contemplate a procedure where immediately after a seizure or freezing being effected, the adjudicatory powers of the learned AA could be resorted to. In the succeeding paragraphs, relating to Section 20, this aspect will be further elaborated upon”.*

*The finding recorded aforesaid is de hors to Section 17(4) of the Act of 2002. The learned counsel for the respondents submitted that Section 17(4) requires an application to the Adjudicating Authority within thirty days to seek retention of the freezing or seized record. It thus remains immediately after seizure or freezing of the property. The Delhi High Court has recorded the finding contrary to Section 17(4) of the Act. The Apex Court in the case of **Vijay Madanlal Choudhary** (supra) has otherwise reiterated the provision with a finding that it provides a complete procedure and safeguard. The judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra) in para 84 not only refers to the application under Section 17(4)*

*within thirty days but it is to seek retention of the seized or frozen property by the Adjudicating Authority. It is by applying the procedure of giving an opportunity of hearing to the parties by issuing a show cause notice before passing an order of retention. The finding recorded in Para 66 is in conflict to the judgment of three judges' Bench of the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra). It is otherwise de hors to Section 8(3) of the Act of 2002, which provides for adjudication of an application under Section 17 and 18 of the Act, while according to the High Court in the case of **Rajesh Agarwal** (supra), Section 17 is silent for adjudication. The finding has been recorded by reading only one provision, while it was required to be read along with Section 8(3) of the Act of 2002.*

42. *The counsel for the respondents further made a reference of Para 68 of judgment of the Delhi High Court where again, analogy drawn in the earlier paras of the judgment in the case of **Rajesh Kumar Agarwal** (supra) has been reiterated. It is held that the power of Adjudicating Authority under Section 8(3) is only for "confirmation of retention". The word "confirm" under Section 8(3) has been used in a case of provisional attachment of the property and not for seized or frozen property as the word "or" has been used between the two different actions governed by different provisions, one under Section 5(1) for provisional attachment of the property and the other under Section 17 and 18 to seek retention of seized or frozen property.*

43. *It is with the further submission that if Section 17(4) does not provide for adjudication of the application sent to the Adjudicating Authority, then such an application under Section 8(3) would remain for the sake of it, while the Apex*

Court in the case of **Vijay Madanlal Choudhary** (supra) has categorically held it to be for the purpose of adjudication for retention of seized and frozen property. According to the counsel for the respondents, the finding of the Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra) is in conflict to the judgment of three judges' bench of the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra) thus would not be binding on any of the court.

44. The finding in Para 68 of judgment of the Delhi High Court is similar to what has been referred in earlier paras. In Para 68 of the judgment (supra), the power of the Adjudicating Authority for retention of seized and frozen property has been taken away which is not only opposed to the statutory provision but make it redundant. According to the counsel for the respondents, it is otherwise contrary to the judgment of the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra). Part of the Para 68 of the judgment of Delhi High Court in the case of **Rajesh Agarwal** (supra) is quoted hereunder:

“68. ....Section 17(4) cannot confer upon Section 8(3), a power to pass an order of Retention. Section 8(3) is confined to the confirmation of an order of retention. Surely, one cannot contend that the authority which is statutorily conferred the power to “confirm” an order can also pass the order”.

The provision of Section 8(3) gives power to the Adjudicating Authority for retention of seized and frozen property, which has been taken away by the finding that it is only for confirmation and cannot be for retention. The finding in the para quoted above is opposed to the finding recorded by the three judges' bench of the Supreme Court in the case of

**Vijay Madanlal Choudhary** (supra) and the statutory provision.

45. The counsel for the respondents gave specific reference to Paras 69 to 70 and 76 of the judgment of the Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra) which made certain part of Section 8(3) to be redundant, though the Delhi High Court lacks competence to nullify the statutory provisions. It cannot even re-write or substitute the word inserted by the legislature with intent.

46. The Delhi High Court in the case (supra) has otherwise reframed Section 8(3) for the power of the Adjudicating Authority for retention of seized or frozen property only after 180 days of the retention by the authorized officer of the ED under Section 20(1) whereas Section 8(3) does not provide exercise of power by the Adjudicating Authority after 180 days of the retention. Para 76 of the judgment of the Delhi High Court is quoted hereunder for ready reference:

“76. A plain reading of this provision makes it evident that the learned AA exercises power only in respect of the retention of the seized property beyond the period of 180 days, meaning thereby that the power to retain the seized goods for a period of 180 days, was never conferred upon the learned AA”.

47. The counsel for the respondents submitted that in Para 76, the Delhi High Court has virtually re-written the provision of Section 8(3) and even Section 20(1) of the Act of 2002. If both the provisions are read together, it does not provide that the Adjudicating Authority would exercise the power for retention of seized or frozen property beyond a period of 180 days. The power of Adjudicating Authority has been kept limited for retention of the seized or frozen property beyond a period of 180 days. The finding is clearly

*dehors the statutory provisions and virtually re-writing the statute despite the fact that High Court is not having legislative competence. The learned counsel for the respondents accordingly prayed for recording of the finding in reference to detailed arguments referred to above. It is also in regard to the quoted paras of the Delhi High Court.*

48. *The learned counsel for the respondents further submitted that the power under two provisions i.e. Section 17 and 20 are separate and are not overlapping. The complete mechanism under Section 8 on submission of the application under Section 17(4) has been given while Delhi High Court made emphasis on the mechanism given under Section 20 to be complete in all respects. If Section 20 provides complete procedure and mechanism after retention of seized or frozen property, then what would be the consequence of the mechanism provided under Section 8?. Two provisions could not have been taken in conflict and, therefore, harmonious interpretation was required to be given. It otherwise makes last part of Section 8 to be redundant. It is for the reason that the power of retention of the Adjudicating Authority has been taken away in Para 68 of the judgment and is made for confirmation of retention, while Section 17 and 18 provides for an application within thirty days to seek retention from the Adjudicating Authority.*

49. *The learned counsel submitted that the High Court failed to mark word “or” between two different actions under Section 8(3) of the Act vis-à-vis the power of the Adjudicating Authority. The learned counsel for the respondents gave the legal framework of the provisions which is also relevant. According to him, after an order of seizure or freezing, the competent officer would at the first instance comply Section 17(1) or 17(1A) of the Act of 2002.*

*It should be followed by an original application under Section 17(4) within 30 days and once an application under Section 17(4) is sent to seek retention of the property under seizure or continuance of the frozen property, the Adjudicating Authority would exercise its power of adjudication conferred under Section 8(3) of the Act of 2002. It would either pass an order for retention or continuance of the seized or frozen property or to deny it. The final word for retention of seized property or continuance of frozen property is exercised by the Adjudicating Authority which has been taken away by the High Court, giving this power of retention under Section 20 of the Act to the officer authorized without realizing that power of the Adjudicating Authority under Section 8(3) could not have been made redundant while giving interpretation. It otherwise goes in conflict with the judgment of the Apex Court in the case of **Vijay Madanlal Choudary** (supra).*

50. According to the counsel for the respondents, second part of action can be under Section 20 of the Act of 2002 which, according to him, is an alternative action provided by the legislature under their wisdom. It was submitted that if the Department chooses to take an action under Section 20(1) and 20(2), then such an action permits them to pass an order for retention of the property. Such an action by authorized officer would be on the basis of the material which may form “reasons to believe” to be recorded in writing and to be sent for adjudication under Section 8 (3) of the Act of 2002 but an order of retention passed by the authorized officer would be only for a period of 180 days from the date of seizure or freezing, subject to the order of Adjudicating Authority.

51. The learned counsel for the respondents submitted that there cannot be two overlapping provisions for one

action. The legislature did not intend to make Section 20 of the Act to be mandatory; rather, seizure in the hands of the authorized officer “may” be required in a given case where it is necessary to retain a property till completion of investigation, etc. The period of such retention is kept limited to 180 days. However, according to the respondents, the power of retention of seized or frozen property has been given by Delhi High Court in the case of **Rajesh Agarwal** (supra) only to the authorized officer contrary to Section 8(3) of the Act.

52. According to the counsel for the respondents, there cannot be overlapping provisions for one and same action which may have serious consequences and even affect the person from his legal rights under Article 300A of the Constitution because as per the judgment in the case of **Rajesh Kumar Agarwal** (supra), the action under Section 20 is mandatory and till such action is taken, the Adjudicating Authority cannot pass an order under Section 8(3) of the Act. Section 20(1) does not mandate action to be immediate while it is given under Section 17(4) in view of mandate for an application within thirty days to seek retention. Action under Section 20(1) can be within 180 days from the date of seizure in a given case. The property, in that case would remain under seizure or frozen till then whereas on an application under Section 17(4) within 30 days, the Adjudicating Authority may decide the application within another 60 days or 80 days or so on to allow retention of the seized property or continuance of the frozen property or deny it. If the order is yet to be passed under Section 20(1) mandatorily, which can be even later than the period given above i.e. 60 days or 80 days or so on, it would be of no consequence in view of the fact that the order may have been passed by the Adjudicating Authority

by that time and otherwise affect the constitutional and legal rights of the person on account of delay. The substance of the argument of the learned counsel for the respondents was that judgment of the Delhi High Court may not be applied. The reference of the judgment of the Apex Court has been given to show that the High Court or the Courts have no jurisdiction to rewrite or substitute the words in the statutory provisions as they have no legislative competence. It is also for the reason that the judgment in the case of **Rajesh Kumar Agarwal** (supra) is in conflict with the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra).

53. The serious contest to the argument raised by the counsel for the respondents was made. The learned counsel for the appellants submitted that the judgment of the Delhi High Court in the case (supra) is not per incuriam; rather, it has given plain interpretation of the provisions relevant to the case. A prayer was made to reject the argument raised by the counsel for the respondents against the application of the judgment of Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra).

54. We have considered the rival submissions of the parties and before we make analysis of the arguments, it would be gainful to refer the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra). Para 84 of the said judgment has been quoted in the previous para where the Hon'ble Apex Court has made analysis of the provisions of Section 17(2) and 17(4) of the Act of 2002. It is with the conclusion that as per Section 17(4), the application is to be sent to the Adjudicating Authority within a period of thirty days of seizure or frozen property for the retention of the record or the property and the Adjudicating Authority in turn, gives an opportunity of hearing to the parties by

issuing a show cause notice before passing an order of retention of record or property. The para aforesaid clarifies the jurisdiction of the Adjudicating Authority which is not for “confirmation of the retention” but to pass the order of “retention” itself. The judgment of Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra) is in conflict with the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra). We have perused the judgment of the Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra) and find that proper assistance seems to have not been provided to the High Court, otherwise the Apex Court has dealt with the issue in reference to the powers of the Adjudicating Authority and the procedure to be applied under Section 17(2) and 17(4) of the Act of 2002. The judgment of the Delhi High Court in the case of **Rajesh Kumar Agarwal** (supra) is in conflict with the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra) thus cannot hold field. The counsel for the appellants made a contest but could not clarify as to how the judgment of Delhi High Court can stand in conflict with the judgment of the Supreme Court in the case of **Vijay Madanlal Choudhary** (supra). Thus, argument made by the counsel for the respondents holds field. We may now refer to the judgment on the issue of per incuriam and before that the powers of the court to substitute the word in the statute or change the complexion of the provisions.

55. We may refer the judgments where the powers of the courts have been analyzed. The judgment of Supreme Court in the case of **Lifestyle Equities C.V. and Ors. Vs. Amazon Technologies Inc reported in Special Leave to Appeal (C) No. 19767 of 2025** has been cited. Relevant paras are quoted hereunder: -

“58 . Over and above, we should bear in mind the following well-known Rule of interpretation of the statute reiterated by this Court in the case of *Union of India v. Deoki Nandan Agarwal*, reported in MANU/SC/0013/1992 : 1991:INSC:219 : 1992 Supp (1) SCC 323: It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the Legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the Legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the Constitutional harmony and comity of instrumentalities”.

Another judgment of Supreme Court is in the case of **Union of India (UOI) and Ors. Vs. Deoki Nandan Aggarwal reported in Civil Appeal No. 3674 of 1988.** Relevant paras are quoted hereunder: -

“14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years" in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should

be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide *P.K. Unni v. Nirmala Industries* MANU/SC/0631/1990: [1990] 1 SCR 482; *Mangilal v. Suganchand Rathi* [1965] 5 SCR 239; *Sri Ram Ram Narain Medhi v. The State of Bombay* MANU/SC/0132/1958: [1959] SCR 489; *Smt. Hira Devi and Ors. v. District Board, Shahjahanpur* MANU/SC/0021/1952: [1952]1SCR1122; *Nalinkhya Bysack v. Shyam Sunder Haldar and Ors.* MANU/SC/0076/1953: [1953]4SCR533; *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha* MANU/SC/0369/1979: (1980) ILLJ137SC; *S. Narayanaswami v. G. Pannerselvam and Ors.* MANU/SC/0362/1972: [1973]1SCR172; *N.S. Vardachari v. G. Vasantha Pai and Anr.* MANU/SC/0364/1972: [1973]1SCR886; *Union of India v. Sankal Chand Himatlal Sheth and Anr.* MANU/SC/0065/1977: [1978]1SCR423 and *Commissioner of Sales Tax, U.P. v. Auriaya Chamber of Commerce, Allahabad* MANU/SC/0411/1986: [1987]167ITR458(SC). Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts some times in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power”.

56. The learned counsel for the respondents further referred to the judgment of the Apex Court in the case of **Manish Kumar Vs. Union of India** (Writ Petition (C) No.26 of 2020) reported in (2021) 5 SCC 1. The relevant para 236 of the said judgment is quoted hereunder:

“326. Further, the appeal to invoke the principle of reading down the proviso is untenable. In his judgment for the majority Sawant, J. in [Delhi Transport Corpn. v. D.T.C. Mazdoor Congress](#)<sup>104</sup> held as follows:

“255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It

is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible — one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from 104 (1991) Suppl.(1) SCC 600 its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so.”

In the judgments aforesaid, substitution or rewriting of the words in the statutes has not been accepted; rather, it has been held to be without jurisdiction. The judgments aforesaid have been referred to at the first instance because this Tribunal should be slow to render any judgment of the High Court to be *per incuriam* unless a case is made out.

57. The learned counsel for the respondents has raised the issue of *per incuriam* by referring and citing other judgments. For the aforesaid, the judgment of the Supreme Court in the case of **M.P. Rural Road Development Authority and Ors. Vs. L.G. Chaudhary Engineers and Ors.** (Civil Appeal No. 974 of 2012 - Arising out of SLP (C)

No. 907/2011) has been cited. Relevant Paras are quoted hereunder:

“33. Lord Greene, Master of Rolls formulated the principles on the basis of which a decision can be said to have been rendered '**per incuriam**'. The principles are: 23-03-2026. Where the court has construed a statute or a rule having the force of a statute its decision stands on the same footing as any other decision on a question of law, but where the court is satisfied that an earlier decision was given in ignorance of the terms of a statute or a rule having the force of a statute the position is very different. It cannot, in our opinion, be right to say that in such a case the court is entitled to disregard the statutory provision and is bound to follow a decision of its own given when that provision was not present to its mind. Cases of this description are examples of decisions given *per incuriam*.”

34. The decision in *Young (supra)* was subsequently approved by the House of Lords in *Young v. Bristol Aeroplane Company, Ltd.* reported in 1946 AC 163 at page 169 of the report.

35. Lord Viscount Simon in the House of Lords expressed His Lordship's agreement with the views expressed by the Lord Greene, the Master of Rolls in the Court of Appeal on the principle of *per incuriam* (see the speech of Lord Viscount Simon at page 169 of the report).

36. Those principles have been followed by the Constitution Bench of this Court in ***The Bengal Immunity Company Ltd. v. The State of Bihar and Ors.*** reported in **MANU/SC/0083/1955 : 1955 (2) SCR 603** (See the discussion in pages 622 and 623 of the report)”.

58. The same principle has been reiterated by **Lord Evershed, Master of Rolls, in *Morelle Ld. v. Wakeling and Anr. (1955) 2 QB 379*** at page 406. The principle has been stated as follows:

“ ...As a general rule the only cases in which decisions should be held to have been given *per incuriam* are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding

on the court concerned; so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong...”

59. In the case of **State of Uttar Pradesh and Anr. v. Synthetics and Chemicals Ltd. and Anr. reported in MANU/SC/0616/1991 : (1991) 4 SCC 139**, the Apex Court held the doctrine of '**per incuriam**' in practice means '**per ignoratium**' and noted that English Courts have developed this principle in relaxation of the rule of stare decisis and referred to the decision in the case of **Bristol Aeroplane Company Ltd.** (supra). The Hon'ble Apex Court also made it clear that the same principle has been approved and adopted by the Supreme Court while interpreting Article 141 of the Constitution (see para 41).

60. In the case of **Municipal Corporation of Delhi v. Gurnam Kaur reported in MANU/SC/0323/1988 : (1989) 1 SCC 101**, a three- Judge Bench of the Apex Court explained the principle of per incuriam very elaborately in paragraph 11 at page 110 of the report and in explaining the principle of per incuriam, the learned Judges held:

“...A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute..”.

61. We may further refer to the judgment of the Apex Court in the case of **Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Ors.** reported in (2003) 6 SCC 659. Paras 18 to 25 of the judgment are quoted hereunder for ready reference:

“18. As regards the field of operation of amended provision, it is to be noted that the language of amended provision is clear.

19. *It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse.) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner courts cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See Stock v. Frank Jones (Tipton) Ltd. Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in Vickers Sons and Maxim Ltd. v. Evans, quoted in Jumma Masjid v. Kodimaniandra Deviah.)*

20. *The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid. Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them. (See Lenigh Valley Coal Co. v. Yansavagels,) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama.*

21. *In D.R. Venkatachalam v. Dy. Transport Commr. it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat*

*fitted. They are not entitled to usurp legislative function under the disguise of interpretation.*

*22. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See CST v. Popular Trading Co.22) The legislative casus omissus cannot be supplied by judicial interpretative process*

*23. Two principles of construction and the other in regard to reading the statute as a whole - appear to one relating to casus omissus be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in Artemiou v. Procopiou (All ER p. 544 I), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction Per Lord Reid in Luke v. IRC where at AC p. 577 (All ER p. 664 1) he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges."*

*24. It is then true that,*

*"when the words of a law extend not to an inconvenience rarely happening, but do to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt*

*" But," on the other hand,*

*"it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom (see Fenton v. Hampton)*

*A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislatores, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute casus omissus et oblivioni datus dispositioni juris communis relinquitur; "a casus omissus," observed Buller, J. in Jones v. Smart "can in no case be supplied by a court of law, for that would be to make laws".*

*25. The golden rule for construing wills, statutes, and in fact, all written instruments has been thus stated:*

*"The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (see Grey v. Pearson 22).*

*The latter part of this "golden rule" must, however, be applied with much caution. "If", remarked Jervis, C.J.,*

*"the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied. where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (see Abley v. Dale, ER p. 525)".*

*The Apex Court in the judgment (supra) has ruled the jurisdiction of the court while giving interpretation to the*

statutory provisions. It clarified limited jurisdiction of the court while giving interpretation of the provisions and if the judgment of the Delhi High Court is applied on the aforesaid and otherwise clarified by the counsel for the respondents, it goes against the principles set by the Supreme Court in the judgment (supra).

62. To analyze the issue, we would be taking the arguments in reference to relevant provision considered by the Delhi High Court in the case (supra). It would be at the cost of repetition, Section 8(3) of the Act of 2002 is quoted hereunder:

**8. Adjudication.—**

(1) to (2).....

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

*Explanation.* For the purpose of computing the period of three hundred and sixty five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded”.

Section 8 is titled for “Adjudication”. Sub-section (3) quoted above make a reference of sub-section (2) where the Adjudicating Authority can decide that the property is involved in money laundering and in that case the power conferred under Section 8(3) is two fold, one is to pass an order in writing to “confirm” the provisional attachment of the property made under sub-section (1) of Section 5 “or” (second part divided by use of words “or”) to order in writing for “retention” of the property or record seized or frozen under Section 17 or Section 18.

63. There is a deliberate deviation of the powers of Adjudicating Authority for two distinct and different action, one in regard to the provisional attachment of the property and another for retention of seized or frozen property. According to the counsel for the respondents, the High Court was not having competence to substitute the power of the Adjudicating Authority from “retention” to “confirmation” of retention of the property seized or frozen under Section 17 and 18.

64. It is stated that when the word “confirmation” for seizure and freezing of the property has not been used either under Section 8(3) or Section 17 or 18 and even under Section 20(1) and (2) of the Act, how such a power can be conferred by the High Court. The consequences are otherwise said to be serious because ultimate power of retention of the property under seizure or continuance of the property frozen has been conferred to the Adjudicating Authority. It has been diverted to the authorized officer of the ED with confirmation of such an order by the Adjudicating Authority. It is nothing but rewriting of Section 8(3) of the Act for retention of seized or frozen property to that of “confirmation”.

65. The learned counsel for the respondents submitted that there exists substitution of the powers of the Adjudicating Authority by the High Court under Section 8(3). It is by diverting the jurisdiction of the Adjudicating Authority from “retention” of the seized or frozen property to “confirmation” and giving power of retention to the authorized officer making Section 8(3) to be redundant to that extent and makes the judgment to be per incuriam to the Statute and thus cannot be applied. It otherwise remains in conflict to the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary** (supra).

66. The counsel for the respondents further referred to the concluding part of the judgment in the case (supra) and even Para 87 and other paras where it has been held that if Section 17(4) is taken for the purpose of retention of seized or frozen property, then, according to the High Court, it was nothing but a short cut without providing statutory safeguards. The counsel for the respondents submitted that provision of Section 17 coupled with Section 8 has been ignored by the High Court because required safeguards have been provided even under Section 17 coupled with Section 8 of the Act. It has been clearly ruled by the Apex Court in Para 84 of the judgment in the case of **Vijay Madanlal Choudhary** (supra). If an overlapping action after Section 17 is to be resorted to by taking the action under Section 20, it may not only delay the proceedings but would be an overlapping action which may affect even the person whose property is seized or frozen because original application under Section 17(4) is to be filed within 30 days and according to the High Court in the judgment (supra) it should be followed by an order under Section 20(1) where order for retention can be passed within a period to remain in operation for 180 days and according to the Delhi High

*Court, the Adjudicating Authority would thereupon pass the order to continue seizure or freezing beyond a period of 180 days. It would affect the person whose property is seized or frozen. If the application under Section 17(4) is considered by the Adjudicating Authority immediately, it can pass an order either to allow retention of seized or frozen property or to deny which would be delayed with simultaneous or overlapping action under Section 20(1) and (2) going against the constitutional mandate and otherwise the High Court has taken away the effect of Section 17(4) in Para 87 of the judgment in the case of **Rajesh Kumar Agarwal** (supra) while it is settled law of the land that immediately after seizure or freezing, the original application has to be sent to the Adjudicating Authority within 30 days to seek retention. It is so held by the Apex Court in Para 84 of the judgment in the case of **Vijay Madanlal Choudhary** (supra).”*

We therefore reject the challenge on this ground as well.

**20.** The Appellants have also alleged that the Impugned Order has been issued without application of mind since the Ld. AA did not have reasons to believe to issue SCN under Section 8 (1) of the PMLA. However, in the pleadings made in paragraph II (iv) of the Grounds of Appeal, the Appellants have themselves stated that the Adjudicating Authority has noted the following:

*“I have gone through the contents of the original application and other relied upon documents carefully and I have reasons to believe that the defendants prima facie appear to have committed offence of Money Laundering under Section 3 of PMLA.”*

We note that the Ld. Counsel for the Respondent has contended that the Ld. Adjudicating Authority has fully complied with this mandate. Ld. Counsel stated that noting in the file, a copy of which has been made available to the Appellants (Annexure 11 in Appeal), constitutes the independent "reason to believe" of the Authority. It is not required to be a detailed judgment at the stage of issuing a notice; the belief at that stage is necessarily a prima facie one, based on the material on record, which in the present case included extensive investigation by the Directorate of Enforcement linking the Appellants to the NSEL fraud. The Appellants' attempt to equate this noting with the earlier defective noting that was set aside by the Hon'ble High Court is misplaced. The earlier SCNs were set aside because the Adjudicating Authority's noting referred to an ongoing investigation rather than to an opinion on the commission of an offence. The fresh noting dated 30.08.2018, however, correctly and specifically records the requisite statutory satisfaction. On perusal of the Impugned Order, we find that the Ld. AA has after inviting the replies from the Appellants and having considered the same arrived at the conclusion to allow the retention of the seized properties. Moreover, a person can be said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise. If the material in hand has no nexus with the belief or there is no material or tangible information for the formation of belief then in such a case the reasonable belief may be vitiated. It is open to examine the question whether the

reason for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. So, if there are reasonable grounds to believe, whether those grounds are adequate or not, is not a matter for the court to look into.

**21.** On perusal of the Impugned Order, we take note of paragraph 2 of the Order, wherein the Ld. AA has recorded the following:

*“I had gone through the original application and other documents received with it and I had reasons to believe that respondents prima facie appears to have committed an offence of money laundering u/s 3 of PMLA. Notice were issued to all the respondents asking them to file their written reply which are received and will be discussed hereinafter.”*

In this regard, the following observations made in the Judgement dated 20.06.2014 of the **Hon’ble Bombay High Court in Writ Petition (L) No. 1575 of 2014 (2014) [06 BOM CK 0022] in the matter of Brizo Reality Company Pvt. Ltd. Vs. Aditya Birla Finance Ltd** are of relevance:

*“7. The contention that the show cause notice does not state that the Adjudicating Authority has reason to believe that the petitioner has committed an offence u/s 3 of the Act or is in possession of proceeds of crime is not well founded. The notice has, for all practical purposes, adopted, incorporated the complaint in toto. The notice, fairly read, indicates that the Adjudicating Authority, on the basis of the material in the complaint had reason to believe that the ingredients necessary*

*for the attachment order existed. So read, it follows that the Adjudicating Authority stated in the show cause notice that he had reason to believe that there existed the factors necessary to serve the notice. The reasons, in turn, stand incorporated in the notice from the complaint. It is apparent that the notice has been issued based on the reasons to be found in the complaint and the documents which have been expressly referred to in the contention. The complaint itself expressly sets out the reason to believe. If, on the basis of the facts disclosed in the enclosures, the Adjudicating Authority had formed the opinion that there was no reason to believe the existence of the factors mentioned in section 8, he would not have issued the show cause notice. That he did indicates that he had reason to believe the existence of the said factors. In the facts and circumstances of the case this is sufficient compliance.*

In view of the aforementioned, we are unable to agree with the contention of the Appellants that the Impugned Order was issued with non-application of mind and without reasons to believe.

**22.** The Appellants have also argued that the Ld. AA has allowed the retention merely because of the following observations:

*“However, none of the Respondents have been able to answer why the permission sought by ED should not be allowed to them. They have pleaded that the property seized/frozen are acquired from explain sources of income and don’t represent the proceeds of crime. However, the absence of any specific reason for denying the permission for retention to the applicant,*

*there seems to be no option, but to allow the retention of the properties recovered and seized during the search.”*

On reading of the Impugned Order, it is clear that the Ld. AA has not only perused the OA and the relied upon documents, but also duly considered the replies of the Appellants (herein) before arriving at the conclusion to allow the retention of the seized properties. We observe that the Appellants have brought out gross incomes for the Assessment Years from 2010-11 to 2018-19. The Appellants have then asserted that the loans taken for the purchase of the vehicles were repaid from such gross incomes. In this regard, the Appellants have cited documents like commercial invoice, registration certificate, amortization schedule, which they placed as convenience chart before the Ld. AA. In the matter where serious allegations about money laundering of significant amount have been made and three original complaints relating to attachment of properties of the same persons, both legal and natural, (except Shri Priyam Patel) have been filed and confirmed, the off-shoot in the form of subsequent seizure of cash and vehicles required detailed explanations from the Appellants about the source of such seized assets. We find that the Appellants have failed to discharge the burden of proof as required under Section 24 of PMLA. We therefore, even reject this argument of the Appellants to challenge the Impugned Order.

**23.** In view of the aforementioned discussions and analysis, we dismiss the Appeals Nos. FPA-PMLA-2780/MUM/2019 filed by M/s N. K. Proteins Ltd., FPA-PMLA-2781/MUM/2019 filed by Shri Nilesh K. Patel, FPA-PMLA-2782/MUM/ 2019 filed by Shri Priyam Patel, and FPA-PMLA-2783/MUM/2019 filed by M/s N. K. Industries Ltd. Applications pending, if any, are disposed of accordingly.

**(Rajesh Malhotra)**  
**Member**

**(Balesh Kumar)**  
**Member**

**New Delhi**  
**21<sup>st</sup> May, 2026**  
'AK'