Reserved on : 21.04.2026
Pronounced on : 13.07.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No. 3157 OF 2026 (T-RES)

C/W

WRIT PETITION No. 4331 OF 2026 (T-RES),

WRIT PETITION No. 100634 OF 2026 (T-RES),

WRIT PETITION No. 100636 OF 2026 (T-RES),

WRIT PETITION No. 100637 OF 2026 (T-RES),

WRIT PETITION No. 100638 OF 2026 (T-RES),

WRIT PETITION No. 100657 OF 2026 (T-RES),

WRIT PETITION No. 200402 OF 2026 (T-RES)

IN WRIT PETITION No. 3157 OF 2026

BETWEEN:

M/S DHARIWAL INDUSTRIES PVT. LTD.,
COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS OFFICE LOCATED AT,
GROUND FLOOR, SURVEY NO. 333,

BOMMASANDRA INDUSTRIAL AREA,
BENGALURU – 560 099.
REPRESENTED BY ITS
AUTHORISED SIGNATORY.

... PETITIONER

(BY SRI G. SHIVADASS, SENIOR ADVOCATE A/W
SRI PRASHANTH SHIVADASS, SRI RISHAB.J, SRI SAMPATH KELUDEPPA MUTTHALAGERI & MS. SNEHA SURESH, ADVOCATES)

AND:

1 . UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
NO. 137, NORTH BLOCK,
NEW DELHI 110 001.

2 . CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS,
THROUGH THE DIRECTOR,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
CENTRAL REVENUE BUILDINGS,
L.P. ESTATE, ITO,
NEW DELHI - 110 002.

... RESPONDENTS

(BY SRI N.VENKATARAMAN, ADDITIONAL SOLICITOR GENERAL OF INDIA A/W
SRI ARAVIND V. CHAVAN, SENIOR STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE CONSTITUTION DOES NOT EMPOWER THE UNION GOVERNMENT TO PROMULGATE A LAW TO LEVY HEALTH SECURITY

SE NATIONAL SECURITY CESS ON THE PRESUMED/DEEMED MANUFACTURE AND CONSEQUENTLY THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 ARE UNCONSTITUTIONAL; B. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES ARTICLES 14 AND 19(1)(G) OF THE CONSTITUTION OF INDIA FOR BEING UNREASONABLE, ARBITRARY AND VAGUE; C. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRAVIRES TO THE CONSTITUTION OF INDIA, WHEN THE LEVY IS BASED ON ASSUMPTION OF QUANTITY MANUFACTURED INSTEAD OF ACTUAL QUANTITY MANUFACTURED; D. TO ISSUE A WRIT OF CERTIORARI TO QUASHING THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025, NOTIFICATION NO. S.O. 6153(E) DATED 31.12.2025 AND NOTIFICATION NO.1 /2026- HSNS CESS DATED 01.01.2026, PUBLISHED BY RESPONDENT NO.1 PRODUCED HEREIN AND ANNEXED AS ANNEXURE 'A' , 'B' AND 'C' RESPECTIVELY AS BEING ULTRA-VIRES ARTICLE 14 AND 19(1)(g) OF CONSTITUTION OF INDIA.

IN WRIT PETITION No. 4331 OF 2026

BETWEEN:

M/S. SHIVAM INDUSTRIES,
HAVING OFFICE AT
SHED NO. 2, KHATA NO.2,
SY NO.8, BEDERBOMMENAHALLI,
BHEEMASAMUDRA, CHITRADURGA,
KARNATAKA – 577 520.
REP. PARTNERSHIP ACT.

... PETITIONER

(BY SRI G.SHIVADASS, SENIOR ADVOCATE A/W
SRI PRASHANTH SHIVADASS, SRI RISHAB.J,
SRI SAMPATH KELUDEPPA MUTTHALAGERI &
MS. SNEHA SURESH, ADVOCATES)

AND:

1 . UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF FINANCE,
(DEPARTMENT OF REVENUE),
NO. 137, NORTH BLOCK,
NEW DELHI 110 001.

2 . CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS,
THROUGH THE DIRECTOR,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
CENTRAL REVENUE BUILDINGS,
L.P. ESTATE, ITO, NEW DELHI-110 002

... RESPONDENTS

(BY SRI N VENKATARAMAN, ADDITIONAL SOLICITOR GENERAL OF INDIA A/W SRI ARAVIND V CHAVAN, SENIOR STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE CONSTITUTION DOES NOT EMPOWER THE UNION GOVERNMENT TO PROMULGATE A LAW TO LEVY HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE PRESUMED/DEEMED MANUFACTURE AND CONSEQUENTLY THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 ARE UNCONSTITUTIONAL.; B. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE

CAPACITY BASED PRODUCTION IS ULTRA-VIRES ARTICLES 14 AND 19(1)(G) OF THE CONSTITUTION OF INDIA FOR BEING UNREASONABLE, ARBITRARY AND VAGUE; C. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRAVIRES TO THE CONSTITUTION OF INDIA, WHEN THE LEVY IS BASED ON ASSUMPTION OF QUANTITY MANUFACTURED INSTEAD OF ACTUAL QUANTITY MANUFACTURED; D. QUASH THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025, NOTIFICATION NO. S.O 6153(E) DATED 31.12.2025, NOTIFICATION NO.1 /2026-HSNS CESS DATED 01.01.2026 AND NOTIFICATION NO.2 /2026-HSNS CESS DATED 30.01.2026, PUBLISHED BY RESPONDENT NO.1 PRODUCED HEREIN AND ANNEXED AS ANNEXURE -B, C AND D RESPECTIVELY AS BEING ULTRA-VIRES ARTICLE 14 AND 19(1)(G) OF CONSTITUTION OF INDIA.

IN WRIT PETITION No. 100634 OF 2026

BETWEEN:

M/S. SHRI TIRUPATI INDUSTRIES,
PARTNERSHIP FIRM,
HAVING ITS OFFICE LOCATED AT.
SURVEY NO. 61/2A,
RAYANAL GRAM PANCHAYAT,
DEVARAGUDIHAL, KARIYAMMA DEVI TEMPLE,
DHARWAD 580 024.
REP. BY ITS PARTNER
SHRI BHARADEAJPRASAD N. SINGH,
AGED ABOUT 64 YEARS.

... PETITIONER

(BY SRI G. SHIVADASS, SENIOR ADVOCATE A/W
SRI TARIKAR PRAVEEN, SRI PRASHANTH SHIVADASS,
SRI RISHAB.J, SRI SAMPATH KELUDEPPA MUTTHALAGERI &

MS. SNEHA SURESH, ADVOCATES)

AND:

1 . UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE,
NO. 137, NORTH BLOCK,
NEW DELHI – 110 001.

2 . CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS,
THROUGH THE DIRECTOR,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
CENTRAL REVENUE BUILDINGS,
L P ESTATE, ITO, NEW DELHI – 110 002.

... RESPONDENTS

(BY SRI N.VENKATARAMAN, ADDITIONAL SOLICITOR GENERAL OF INDIA A/W
SRI ARAVIND V. CHAVAN, SENIOR STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE CONSTITUTION DOES NOT EMPOWER THE UNION GOVERNMENT TO PROMULGATE A LAW TO LEVY HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE PRESUMED/DEEMED MANUFACTURE AND CONSEQUENTLY THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 ARE UNCONSTITUTIONAL; B. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES ARTICLES 14 AND 19(1)(G) OF THE CONSTITUTION OF INDIA FOR BEING UNREASONABLE, ARBITRARY AND VAGUE; C. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE HEALTH

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IN WRIT PETITION No. 100636 OF 2026

BETWEEN:

M/S. SHASHHI SHEKHAR ENTERPRISES,
SOLE PROPRIETORSHIP FIRM,
HAVING ITS OFFICE LOCATED AT
NO.D-60, INDUSTRIAL ESTATE,
GAMANAGATTI, DHARWAD – 580 025.
REPRESENTED BY ITS PARTNER,
SRI DHARMENDRA TRIPATHI,
AGED ABOUT 52 YEARS.

... PETITIONER

(BY SRI G.SHIVADASS, SENIOR ADVOCATE A/W
SRI TARIKAR PRAVEEN, SRI PRASHANTH SHIVADASS,
SRI RISHAB.J, SRI SAMPATH KELUDEPPA MUTTHALAGERI &
MS. SNEHA SURESH, ADVOCATES)

AND:

1 . UNION OF INDIA,
THROUGH THE SECRETARY,

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
NO. 137, NORTH BLOCK,
NEW DELHI – 110 001.

2 . CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS,
THROUGH THE DIRECTOR,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
CENTRAL REVENUE BUILDINGS,
L.P.ESTATE, ITO, NEW DELHI – 110 002.

... RESPONDENTS

(BY SRI N.VENKATARAMAN, ADDITIONAL SOLICITOR GENERAL OF INDIA A/W
SRI ARAVIND V.CHAVAN, SENIOR STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE CONSTITUTION DOES NOT EMPOWER THE UNION GOVERNMENT TO PROMULGATE A LAW TO LEVY HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE PRESUMED/DEEMED MANUFACTURE AND CONSEQUENTLY THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 ARE UNCONSTITUTIONAL; B. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES ARTICLES 14 AND 19(1)(g) OF THE CONSTITUTION OF INDIA FOR BEING UNREASONABLE, ARBITRARY AND VAGUE; C. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRAVIRES TO THE CONSTITUTION OF INDIA, WHEN THE LEVY IS BASED ON

ASSUMPTION OF QUANTITY MANUFACTURED INSTEAD OF ACTUAL QUANTITY MANUFACTURED; D. TO ISSUE A WRIT OF CERTIORARI TO QUASHING THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025, NOTIFICATION DATED 16-12-2025 AT ANNEXURE-A, NOTIFICATION NO. S.O. 6153(E) DATED 31.12.2025 AT ANNEXURE-B AND NOTIFICATION NO.1 /2026-HSNS CESS DATED 01.01.2026 AT ANNEXURE-C, PUBLISHED BY RESPONDENT NO.1 AS BEING ULTRA-VIRES ARTICLE 14 AND 19(1)(g) OF CONSTITUTION OF INDIA.

IN WRIT PETITION No. 100637 OF 2026

BETWEEN:

M/S.RAJ POUCHES,
PARTNERSHIP FIRM,
HAVING ITS OFFICE LOCATED AT
R.S.NO. 165, M.N.DOSHI COMPLEX,
ROOM NO.1, NEAR NIPANI BUS STAND,
TAL. NIPANI, BELAGAVI – 591 237,
REPRESENTED BY ITS
AUTHORISED SIGNATORY,
SRI BHARTVEERSINGH H. DEORA,
AGED ABOUT 45 YEARS.

... PETITIONER

(BY SRI G.SHIVADASS, SENIOR ADVOCATE A/W
SRI TARIKAR PRAVEEN, SRI PRASHANTH SHIVADASS,
SRI RISHAB.J, SRI SAMPATH KELUDEPPA MUTTHALAGERI &
MS. SNEHA SURESH, ADVOCATES)

AND:

1 . UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
NO. 137, NORTH BLOCK,

NEW DELHI – 110 001.

2 . CENTRAL BOARD OF INDIRECT TAXES
AND CUSTOMS,
THROUGH THE DIRECTOR,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
CENTRAL REVENUE BUILDINGS,
L.P.ESTATE, ITO, NEW DELHI – 110 002.

... RESPONDENTS

(BY SRI N.VENKATARAMAN, ADDITIONAL SOLICITOR GENERAL OF INDIA A/W
SRI ARAVIND V.CHAVAN, SENIOR STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE CONSTITUTION DOES NOT EMPOWER THE UNION GOVERNMENT TO PROMULGATE A LAW TO LEVY HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE PRESUMED/DEEMED MANUFACTURE AND CONSEQUENTLY THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 ARE UNCONSTITUTIONAL; B. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES ARTICLES 14 AND 19(1)(g) OF THE CONSTITUTION OF INDIA FOR BEING UNREASONABLE, ARBITRARY AND VAGUE; C. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES TO THE CONSTITUTION OF INDIA, WHEN THE LEVY IS BASED ON ASSUMPTION OF QUANTITY MANUFACTURED INSTEAD OF ACTUAL QUANTITY MANUFACTURED; D. TO ISSUE A WRIT OF CERTIORARI TO QUASH THE HEALTH SECURITY SE NATIONAL SECURITY CESS

ACT, 2025, NOTIFICATION DATED 16-12-2025 AT ANNEXURE-A, NOTIFICATION NO. S.O. 6153(E) DATED 31.12.2025 AT ANNEXURE-B AND NOTIFICATION NO.1 /2026-HSNS CESS DATED 01.01.2026 AT ANNEXURE-C, PUBLISHED BY RESPONDENT NO.1 AS BEING ULTRA-VIRES ARTICLE 14 AND 19(1)(h) OF CONSTITUTION OF INDIA.

IN WRIT PETITION No. 100638 OF 2026

BETWEEN:

M/S.V.K.PACKERS,
HAVING OFFICE AT
BIROBA MANDIR, 37/2,
BIROBA MAL, YARNAL ROAD,
TALUKA NIPPANI,
BELAGAVI – 591 237.
MR. VARUN KUMAR, PARTNER,
AGED ABOUT 41 YEARS.

... PETITIONER

(BY SRI G.SHIVADASS, SENIOR ADVOCATE A/W
SRI TARIKAR PRAVEEN, SRI PRASHANTH SHIVADASS,
SRI RISHAB.J, SRI SAMPATH KELUDEPPA MUTTHALAGERI &
MS. SNEHA SURESH, ADVOCATES)

AND:

1 . UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
NO.137, NORTH BLOCK,
NEW DELHI – 110 001.

2 . CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS,
THROUGH THE DIRECTOR,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
CENTRAL REVENUE BUILDINGS,
L.P.ESTATE, ITO, NEW DELHI – 110 002.

... RESPONDENTS

(BY SRI N.VENKATARAMAN, ADDITIONAL SOLICITOR GENERAL OF INDIA A/W
SRI ARAVIND V CHAVAN, SENIOR STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE CONSTITUTION DOES NOT EMPOWER THE UNION GOVERNMENT TO PROMULGATE A LAW TO LEVY HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE PRESUMED/DEEMED MANUFACTURE AND CONSEQUENTLY THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 ARE UNCONSTITUTIONAL; B. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES ARTICLES 14 AND 19(1)(g) OF THE CONSTITUTION OF INDIA FOR BEING UNREASONABLE, ARBITRARY AND VAGUE; C. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES TO THE CONSTITUTION OF INDIA, WHEN THE LEVY IS BASED ON ASSUMPTION OF QUANTITY MANUFACTURED INSTEAD OF ACTUAL QUANTITY MANUFACTURED; D. TO ISSUE A WRIT OF CERTIORARI TO QUASHING THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025, NOTIFICATION DATED 16-12-2025 AT ANNEXURE-A, NOTIFICATION NO. S.O. 6153(E) DATED 31.12.2025

AT ANNEXURE-B AND NOTIFICATION NO.1 /2026-HSNS CESS DATED 01.01.2026 AT ANNEXURE-C, PUBLISHED BY RESPONDENT NO.1 AS BEING ULTRA-VIRES ARTICLE 14 AND 19(1)(g) OF CONSTITUTION OF INDIA.

IN WRIT PETITION No. 100657 OF 2026

BETWEEN:

M/S. GHODAWAT FRESHENERS LLP,
HAVING OFFICE AT
KOTAGONDHUNSHI POST ADARGUNCHI,
KUNDAGOL CROSS, BANGALORE ROAD,
HUBBALLI – 580 029.
REPRESENTED BY ITS
AUTHORISED SIGNATORY,
ATUL MAHADEV SHINDE,
AGED ABOUT 55 YEARS,
RESIDING AT GULMOHAR COLONY,
MSEB ROAD, VIKAS NAGAR,
ICHALKARANJI – 416 117,
MAHARASHTRA.

... PETITIONER

(BY SRI G.SHIVADASS, SENIOR ADVOCATE A/W
SRI TARIKAR PRAVEEN, SRI PRASHANTH SHIVADASS,
SRI RISHAB.J, SRI SAMPATH KELUDEPPA MUTTHALAGERI &
MS. SNEHA SURESH, ADVOCATES)

AND:

1 . UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF FINANCE
(DEPARTMENTOF REVENUE),
NO.137, NORTH BLOCK,
NEW DELHI – 110 001.

2 . CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS,
THROUGH THE DIRECTOR,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
CENTRAL REVENUE BUILDINGS,
L.P.ESTATE, ITO, NEW DELHI – 110 002.

... RESPONDENTS

(BY SRI N.VENKATARAMAN, ADDITIONAL SOLICITOR GENERAL OF INDIA A/W
SRI ARAVIND V. CHAVAN, SENIOR STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE CONSTITUTION DOES NOT EMPOWER THE UNION GOVERNMENT TO PROMULGATE A LAW TO LEVY HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE PRESUMED/DEEMED MANUFACTURE AND CONSEQUENTLY THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 ARE UNCONSTITUTIONAL; B. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES ARTICLES 14 AND 19(1)(g) OF THE CONSTITUTION OF INDIA FOR BEING UNREASONABLE, ARBITRARY AND VAGUE; C. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRAVIRES TO THE CONSTITUTION OF INDIA, WHEN THE LEVY IS BASED ON ASSUMPTION OF QUANTITY MANUFACTURED INSTEAD OF ACTUAL QUANTITY MANUFACTURED; D. TO ISSUE A WRIT OF CERTIORARI TO QUASHING THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025, NOTIFICATION DATED 16-12-2025 AT ANNEXURE-A, NOTIFICATION NO. S.O. 6153(E) DATED 31.12.2025 AT ANNEXURE-B AND NOTIFICATION NO.1 /2026-HSNS CESS

DATED 01.01.2026 AT ANNEXURE-C, PUBLISHED BY RESPONDENT NO.1 AS BEING ULTRA-VIRES ARTICLE 14 AND 19(1)(g) OF CONSTITUTION OF INDIA.

IN WRIT PETITION No. 200402 OF 2026

BETWEEN:

M/S.R.K.PAN MASALA PVT. LTD.,
HAVING OFFICE AT
PLOT NO.35 AND 36,
INDUSTRIAL ESTATE, NOUBAD,
BIDAR – 585 402.
REPRESENTED BY ITS
AUTHORISED SIGNATORY,
SHRI. MAHANT LAL YADAV,
DIRECTOR,
AGED ABOUT 56 YEARS.

... PETITIONER

(BY SRI G.SHIVADASS, SENIOR ADVOCATE A/W
SRI SIDDALING REDDY PATIL, SRI PRASHANTH SHIVADASS,
SRI RISHAB.J, SRI SAMPATH KELUDEPPA MUTTHALAGERI &
MS. SNEHA SURESH, ADVOCATES)

AND:

1 . UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
NO.137, NORTH BLOCK,
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2 . CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS,
THROUGH THE DIRECTOR,

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE),
CENTRAL REVENUE BUILDINGS,
L.P. ESTATE, ITO, NEW DELHI – 110 002.

... RESPONDENTS

(BY SRI N. VENKATARAMAN, ADDITIONAL SOLICITOR GENERAL OF INDIA A/W
SRI ARAVIND V. CHAVAN, SENIOR STANDING COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING A. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE CONSTITUTION DOES NOT EMPOWER THE UNION GOVERNMENT TO PROMULGATE A LAW TO LEVY HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE PRESUMED/DEEMED MANUFACTURE AND CONSEQUENTLY THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RULES, 2026 ARE UNCONSTITUTIONAL; B. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT LEVYING HEALTH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA-VIRES ARTICLES 14 AND 19(1)(g) OF THE CONSTITUTION OF INDIA FOR BEING UNREASONABLE, ARBITRARY VAGUE; C. TO ISSUE A WRIT IN THE NATURE OF MANDAMUS DECLARING THAT THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025 AND THE HEALTH SECURITY SE NATIONAL SECURITY CESS RUES, 2026 LEVYING HEATH SECURITY SE NATIONAL SECURITY CESS ON THE CAPACITY BASED PRODUCTION IS ULTRA VIRUS TO THE CONSTITUTION OF INDIA, WHEN THE LEVY IS BASED ON ASSUMPTION OF QUANTITY MANUFACTURED INSTEAD OF ACTUAL QUANTITY MANUFACTURED; D. TO ISSUE A WRIT OF CERTIORARI TO QUASHING THE HEALTH SECURITY SE NATIONAL SECURITY CESS ACT, 2025, NOTIFICATION NO. S.O. 6153(E) DATED 31.12.2025 AND NOTIFICATION NO.1 /2026- HSNS CESS DATED 01.01.2026, PUBLISHED BY RESPONDENT NO.1 PRODUCED HEREIN AND ANNEXED AS ANNEXURE A, B AND C RESPECTIVELY AS BEING ULTRA-VIRES ARTICLE 14 AND 19(1)(g) OF CONSTITUTION OF INDIA.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.04.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Conglomeration of these cases raise a solitary challenge viz., the constitutional validity of the Health Security se National Security Cess Act, 2025 (hereinafter referred to as 'the Act' for short), a legislation enacted by the Parliament to provide for levy and collection of cess for specific and identified purposes. The ancillary challenge is to the Rules so notified viz., Health Security se National Security Cess Rules, 2026 (hereinafter referred to as 'the Rules' for short). A further challenge is raised to notifications issued, in furtherance of the Act and the Rules. A common ground of challenge is that they are *ultra vires* to the provisions of the Constitution of India.

2. Facts, in brief, germane are as follows: -

2.1. The petitioners, in all these cases, are business entities, engaged in the manufacture and supply of Pan Masala, falling under

Customs Tariff Item No.2106 90 20. The processed Pan Masala is packed in pouches by using pouch packing machines and sold by these entities at Retail Sales Price. Prior to the enactment of the impugned Act and Rules, the taxation regime in the Nation underwent a paradigm shift through the, 122nd Amendment Bill, 2014 that was placed before the Lok Sabha, for amending the Constitution of India, wherein various indirect taxes, Central and State surcharges and cesses, so far as they relate to goods and services in the course of Inter-State and Intra-State transactions were sought to be subsumed under one single levy called the "Goods and Services Tax" (hereinafter referred to as 'GST' for short). The said Bill is passed, and the Constitution (One Hundred and First Amendment) Act, 2016 comes into force with effect from 16-09-2016. Through the amendment, Article 246A comes to be inserted in the Constitution of India which empowers the Parliament and the State Legislatures to make laws with respect to Goods and Service Tax imposed by the Union or the State.

2.2. By the same Constitutional Amendment, Article 279A also comes to be inserted, providing for the constitution of a

Council called the Goods and Services Tax Council (hereinafter referred to as 'the GST Council' for short). Article 279A empowers the GST Council to make recommendations to the Union or the State with respect to taxes, cesses and surcharges levied by the Union or the State Government. For the purpose of levy and collection of GST on Inter-State trade and commerce, Article 269A comes to be introduced in terms of the aforesaid Constitutional Amendment, which states that, GST can be levied and collected only by the Government of India and apportioned between the Union and States, in the manner as may be provided by the Parliament, on the recommendation of the GST Council. Entry 84 of List I of the Seventh Schedule to the Constitution of India, also comes to be substituted by the said Amendment. Thus, begins the GST regime.

2.3. In furtherance of the Constitutional Amendment as noted hereinabove, the Parliament enacts Central Goods and Services Act, 2017 (hereinafter referred to as 'the CGST Act') with effect from 01-07-2017 and the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as 'the IGST Act') which provide for the levy and collection of taxes on all Inter-State supply of goods and services, or both, by the Central Government. In terms of the aforesaid two Acts, CGST and IGST is leviable on goods or services or both, as may be notified by the Government of India, on the recommendations of the GST Council. Consequently, upon coming into force of the CGST and IGST Acts, a tax was levied on goods falling under the Customs Tariff Heading 2106 90 20 (i.e. Pan Masala) in terms of Schedule IV of the notifications dated 28-06-2017, which provide for the rate of levy of Integrated and Central Taxes. In terms of the said notification, Pan Masala was subject to Integrated Tax, at the rate of 28%.

2.4. When things stood thus, in the year 2025, the Parliament enacts the impugned Act for the purpose of augmenting resources to meet expenditure on national security and public health, by levying a cess on the machines installed or other processes are undertaken, by which goods specified under the Act are manufactured or produced. The Act comes into force on 01-02-2026, in terms of the impugned Notification dated 31-12-2025. Thereafter, another impugned Notification is issued on

01-02-2026, notifying the impugned Rules, which are enacted in furtherance of the Act. The impugned Rules bring about the procedure for declaration, quantification, collection and payment of cess. On notification of the impugned Act and the Rules, the petitioners/manufacturers and distributors of Pan Masala or the makers of pouches for the purpose of distribution of Pan Masala stand at the doors of this Court challenging the constitutional validity of the Act and Rules and the Notifications issued in furtherance of the Act and the Rules, on plethora of grounds.

3. Heard Sri G. Shivadass, learned senior counsel appearing for the petitioners and Sri N. Venkataraman, learned Additional Solicitor General of India appearing for the respondents.

SUBMISSIONS:

PETITIONERS:

4.1. The learned senior counsel Sri G. Shivadass appearing for the petitioners, in all these cases, would vehemently contend that the impugned Act and the Rules promulgated for the purpose of levy of Health Security se National Security Cess is beyond the power conferred under the Constitution of India. He would take this Court through the relevant Articles of the Constitution of India to demonstrate that once these very goods are subject to tax as obtaining under Articles 246A and 279A invoking the power under Article 271 is directly contrary to Article 246A. It is his submission that surcharge in terms of Article 271 can only be levied in addition to existing duties and taxes levied under Article 269 and Article 270 and is not applicable to GST levied under Article 246A. Further, the learned senior counsel submits that there is no other duty or tax on Pan Masala which could be increased by borrowing the power under Article 271. The only tax applicable in respect of Pan Masala at present is the GST and the same is specifically excluded under Article 271. Apart from the Constitutional validity, the learned senior counsel submits that cess cannot be levied on deemed production. At best it can be on the production.

4.2. In the case at hand, the learned senior counsel submits that the Central Government wants the cess to be levied on the number of machines one possesses and the number of pouches they produce. He would submit that such a regime of cess cannot have any refuge in law. The learned senior counsel would seek holding of the Act and the Rules so enacted for levy of cess to be unconstitutional and all other consequential acts as illegal and contrary to law.

THE REVENUE:

5.1. *Per contra*, the learned Additional Solicitor General of India, Sri N. Venkataraman, appearing for the revenue, would vehemently contend that, the petitions are wholly misconceived, as the impugned Act is a constitutionally valid, lawfully enacted piece of fiscal legislation supported by the Parliament's plenary legislative power. It is enacted in public interest and is directed at regulating a sector notorious for tax evasion and has adverse public health consequences. The learned Additional Solicitor General would submit that, Pan Masala is a commodity that stands in a class of its own, as it has severe adverse public health consequences and is one of the most evasion-prone commodity sectors in India. Therefore, the twin imperatives, public health and revenue protection, form the constitutional and policy foundation of the impugned Act. Therefore, the Government addressing the evasion through Pan Masala Packing Machines has enacted the impugned enactment and the Rules.

5.2. The learned Additional Solicitor General submits that, after the introduction of GST in 2017, Pan Masala was brought under GST Compensation Cess at ad-valorem rates. Despite high applicable tax rates, revenue collected from the Pan Masala sector had consistently fallen far below the reasonable estimates of the sector's productive capacity, which was clearly indicative of large-scale continuing evasion. The impugned Act addresses this revenue leakage at its root by moving the taxable event from the transaction, which is capable of being suppressed, to machine ownership, which cannot be suppressed. The learned Additional Solicitor General would submit that the cess now imposed through the impugned Act, is not a GST or called a Tax. Therefore, Article 246A does not apply. It is also not a surcharge. Therefore, Article 271 will not apply and the GST Council has no jurisdiction over the Cess.

5.3. The mandate of the GST Council is confined to making of recommendations to the imposition of GST. The impugned cess is not a tax on supply of goods and services and therefore, it falls beyond the purview of the GST Council. The learned Additional Solicitor General would emphasize that levy is on machine ownership and not on production or deemed production. He would amplify the submission that it is a policy preference that capacity-based approach becomes necessary due to the documented failure of transaction-based taxation. He would submit that the Act addresses both failure modes that the regime hitherto projected and there is revenue certainty, if it is based upon the machines that they own. The Act does not brood any arbitrariness, as the classification is based on clear intelligible differentia of fiscal legislation. He would submit that, certain procedures that are found in the Act or the Rules and the Notifications so issued all would become valid in the light of Constitutional validity of the Act and the Rules not being found to be in violation of the provisions of the Constitution.

5.4. Summing up, the learned Additional Solicitor General would submit that the impugned Act is a valid exercise in Parliament's plenary power under Article 246(1) read with Entry 97 in List-I of the Seventh Schedule to the Constitution of India. Article 246A is not applicable as cess is not a GST. Therefore, it cannot be said to be in violation of Articles 14 or 19(1)(g) of the Constitution of India and the Rules framed under the Act are valid. Equity would be that the Pan Masala industry having negative externalities on public health, documented for over a decade and the product being directly linked to real cancer and tax evasion, the Act must be held to be a valid piece of legislation.

REJOINDER OF THE PETITIONER:

6. The learned senior counsel for the petitioners would vehemently refute the submissions of the learned Additional Solicitor General by contending that, it is unheard of that, to plug leakage or a tax evasion in a particular sector, an Act is promulgated. It cannot be that to plug leakage in one enactment, another enactment should be brought in, notwithstanding it being taxed in those regimes. The learned senior counsel submits that the

effect of such taxation can be tabulated, and it is not that the petitioners are not being taxed. They are now taxed under two regimes, by the surcharge and by the GST, now totaling to the tune of 48%. Therefore, it cannot be said that the machines that they possess could become the subject matter of cess. On these grounds, he would seek the prayers that are sought in the petitions.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the issue that falls for consideration is,

"Whether the impugned Act and the Rules or the Notifications made in furtherance of the impugned Act and the Rules would fall foul of certain tenets of the Constitution of India?"

CONSIDERATION:

8. The afore-narrated facts, dates, link in the chain of events, in enactment of the impugned legislations, are all a matter of record. However, even then, they would require an amplified

iteration. To consider the said issue, it is necessary to notice certain Articles of the Constitution of India. Articles 246, 246A, 248, 254, 266, 269A, 270, 271, 279A and Entries 84 and 97 of List - I to the Seventh Schedule to the Constitution, read as follows:

> "**246. Subject-matter of laws made by Parliament and by the Legislatures of States.—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").**
>
> (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
>
> **(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.**
>
> **246-A. Special provision with respect to goods and services tax.—(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.**
>
> **(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply**

of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of Article 279-A, take effect from the date recommended by the Goods and Services Tax Council.

…. …. ….

248. Residuary powers of legislation.—**(1) Subject to Article 246-A, Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.**

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

…. …. ….

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

…. …. ….

266. Consolidated Funds and public accounts of India and of the States.—(1) Subject to the provisions of Article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

…. …. ….

269-A. Levy and collection of goods and services tax in course of inter-State trade or commerce.—(1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

***Explanation*.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.**

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under Article 246-A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under Article 246-A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

270. Taxes levied and distributed between the Union and the States.—(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in Articles 268, 269 and 269-A, respectively, surcharge on taxes and duties referred to in Article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

(1-A) The tax collected by the Union under clause (1) of Article 246-A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1-B) The tax levied and collected by the Union under clause (2) of Article 246-A and Article 269-A, which has been used for payment of the tax levied by the Union under clause (1) of Article 246-A, and the amount apportioned to the Union under clause (1) of Article 269-A, shall also be distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds of any such tax or duty in any financial year shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax or duty is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed in the manner provided in clause (3).

(3) In this article, "prescribed" means,—

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

271. Surcharge on certain duties and taxes for purposes of the Union.—Notwithstanding anything in Articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles except the goods and services tax under Article 246-A, by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

....

279-A. Goods and Services Tax Council.—(1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(*a*)	the Union Finance Minister	...	Chairperson;
(*b*)	the Union Minister of State in charge of Revenue or Finance	...	Member;
(*c*)	the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government	...	Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (*c*) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(*a*) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(*b*) the goods and services that may be subjected to, or exempted from the goods and services tax;

(*c*) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under Article 269-A and the principles that govern the place of supply;

(*d*) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(*e*) the rates including floor rates with bands of goods and services tax;

(*f*) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(*g*) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(*h*) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

…. …. ….

SEVENTH SCHEDULE

[Article 246]

LIST I — UNION LIST

…. …. ….

84. Duties of excise on the following goods manufactured or produced in India, namely:—

(*a*) petroleum crude;

(*b*) high speed diesel;

(*c*) motor spirit (commonly known as petrol);

(*d*) natural gas;

(*e*) aviation turbine fuel; and

(*f*) tobacco and tobacco products.

…. …. ….

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

Article 246 of the Constitution deals with the powers of, the Parliament to enact laws under the Union List, and by the State Legislature under the State List and by both the Parliament or the State Legislatures under the Concurrent list. Entry 84 of List I to the Seventh Schedule, provides for the duties of excise on various goods manufactured in India as sated in the entry, which also includes tobacco and tobacco products. Entry 97 provides for the Residuary List and authorizes the Central Government to impose tax on matters not covered in List II or List III.

9. Article 246A was not in the Constitution till it comes to be inserted in the year 2016. Therefore, a little history to Article 246A is necessary to be noticed. A bill was tabled before the Parliament; the Constitution 122nd Amendment Bill, 2014 which was introduced in the Lok Sabha to usher an amendment to the Constitution, whereby indirect taxes, Central and State taxes, surcharges and cesses, so far as they relate to the supply of goods and services to be brought under one regime, the Goods and Services Tax. The aforesaid bill was passed in the Parliament and the Constitution (One Hundred and First Amendment) Act, 2016 comes into force

with effect from 16-09-2016, whereby the afore-quoted Article 246A was inserted, empowering the Parliament and the Legislatures of every State, subject to Clause-2 therein, to make laws with respect to goods and services tax imposed by the Union or by the States.

10. By the same Amendment comes Article 279A *supra*, which provides for constitution of a Council called the Goods and Services Tax Council, with the specific constitutional duty of making recommendations to the Union or the State Governments with respect to taxes, cesses, surcharges levied by the Union or the State Governments.

11. Article 269A which also comes to be inserted was with regard to appropriation of tax so collected. In furtherance of the constitutional amendment, the Central Goods and Services Act, 2017 comes into effect from 01-07-2017. Certain provisions of the CGST Act are necessary to be noticed. Sections 9 and 11 of the CGST Act reads as follows:

"**9. Levy and collection.—(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption, on the value determined under Section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.**

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic

commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

... ...

11. Power to grant exemption from tax.—(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

> *Explanation*.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both."

Section 9 of the CGST Act provides for levy of tax on all intra-State supply of goods and services at the rates that may be notified by the Government on the recommendation of the GST Council. Section 11 of the CGST Act empowers the Government to exempt, by notification, either absolutely or subject to such conditions as may be specified therein, goods or services or both from the whole or any part of the tax leviable thereon, on the recommendation of the GST Council.

12. With respect to Inter-State supply of goods, a separate enactment comes about, the IGST Act. On coming into force of the CGST and IGST Act, GST is levied upon Pan Masala under Section 9 of the CGST Act and Section 5 of the IGST Act, as it was coming under the Customs Tariff Heading 2106 90 20, as obtaining under the Schedule IV of the Notifications dated 28-06-2017, which provide for the rate of levy of Integrated and Central Taxes. These are admitted facts. The fly in the ointment, now emerges.

13. The Parliament enacts the impugned Act i.e., the "**Health Security se National Security Cess Act, 2025**" and the Rules in 2026. Certain provisions of the said Act and the Rules are germane to be noticed.

13.1. Sections 2, 3, 4, 5, 7 and Schedules I and II to the Act read as follows:

> "**2. Definitions**.—In this Act, unless the context otherwise requires,—
>
> … … …
>
> (e) "cess" means the Health Security se National Security Cess levied under Section 4;
>
> … … …
>
> **(g) "machine" for the purposes of manufacture or production of the specified goods includes all types of Form, Fill and Seal Machines and Profile Pouch Making Machines, by whatever name called, whether vertical or horizontal, with or without collar, single track or multi-track, and any other type of packing machine used for packing of the specified goods in pouches, tins or other containers;**
>
> (h) "manufacture" includes—
>
> (i) any process incidental or ancillary to the completion of the specified goods; and
>
> (ii) the process of packing or repacking of such goods in a pouch or tin or other container or labelling or re-labelling thereof including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render

the specified goods marketable to the consumer, whether or not such process is the only process undertaken;

... ...

(j) "pan masala" means goods falling under tariff item 2106 90 20 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);

... ...

(p) "specified goods" means the goods as specified in Schedule I to this Act or such other goods as the Central Government may, by notification, specify;

... ...

3. Taxable person.—(1) For the purposes of this Act, "taxable person" means any person who owns, possesses, operates, manages, or is otherwise in control of the machine or undertakes any process by which specified goods are manufactured or produced, whether directly or through job-workers, employees, hired labour, or through any other person acting on his behalf under any arrangement.

(2) A person shall be treated as a taxable person under this section irrespective of whether he has opted for, or is availing of, any composition scheme, concessional levy, or any other alternate scheme of taxation applicable to the specified goods, under any law for the time being in force.

(3) For the purposes of this section,—

(*a*) the ownership, possession, or control over the machine or processes shall be sufficient to constitute a person as a taxable person, irrespective of the actual quantity manufactured;

(*b*) where a machine or process, is owned, possessed, leased, hired or otherwise placed at the disposal of one or more persons manufacturing or producing the specified goods, every such person shall be regarded as a taxable person; and (*c*) where the production or manufacture of the specified goods are divided into stages or processes carried out by different persons, such person undertaking the final process that results in the completion or rendering of the specified goods marketable, shall be deemed to be the taxable person.

… … …

4. Levy and collection of cess.—(1) There shall be levied and collected a cess, to be called Health Security *se* National Security Cess, from every taxable person, on the machines installed or other processes undertaken by him for the manufacture or production of the specified goods referred to in Schedule I, at the amount specified in Schedule II and computed in the manner provided in Section 5.

(2) The cess leviable under sub-section (1) shall be in addition to any other duties or taxes chargeable on the specified goods under any law for the time being in force.

(3) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt any taxable person or a class of taxable persons, unconditionally or subject to such conditions, from the whole or any part of the cess leviable under this section for such period as may be specified in the said notification.

5. Manner of computation of cess.—(1) The cess referred to in Section 4 shall be computed in accordance with the provisions of this section based on the relevant process, speed of the machine or capacity of other processes and the weight of the specified goods packed in pouch, tin or other container, as the case may be, as declared by the taxable person and, where applicable, as verified or calibrated by the proper officer under Section 9, and on the amount specified in Schedule II for such combination of process, speed or capacity and weight.

(2) Where the specified goods are manufactured or produced wholly or partly with the aid of a machine, the

cess shall be levied and collected from the taxable person—

(*a*) with reference to the maximum rated speed of the machine measured in number of pouches, tins or containers per minute;

(*b*) for the corresponding weight of the specified goods packed in a pouch, tin or container;

(*c*) at the monthly amount of cess specified in column (4) in Table 1 of Schedule II against such rated speed and weight provided therein.

(3) The cess payable under Section 4 shall be the aggregate of cess calculated under sub-section (2) for each of the machines installed in a factory of the taxable person and where such taxable person owns, possesses, leases or otherwise controls machines installed in more than one factory, the cess shall be computed separately for each such factory.

(4) Where the specified goods are manufactured or produced by a taxable person wholly by manual process without the aid of a machine, the cess shall be levied and collected from the taxable person for each factory at the monthly amount specified in column (4) in Table 2 of Schedule II, irrespective ofthe capacity of such manual process or the weight of the specified goods packed in a pouch, tin or container.

(5) For the purposes of sub-section (4), a taxable person shall be deemed to be engaged in the manufacture or production of the specified goods wholly by manual process without the aid of a machine only where no machine capable of performing, assisting, or completing any part of the process of manufacture or production of the specified goods is installed in the factory of the taxable person.

(6) The cess determined under sub-section (2) or sub-section (4) shall be payable for each month or part thereof and shall be subject to such abatement or other conditions, as may be prescribed.

(7) Where any machine or manual process unit remains inoperative for a continuous period of fifteen days or more, the cess computed under this section shall, subject to such conditions, as may be prescribed, be abated proportionately for the period of such non-operation.

... ...

7. Purpose of levy of cess.—(1) The cess shall be levied for the purposes of meeting expenditure on the national security of India and for public health.

(2) The proceeds of the cess levied under Section 4 shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the cess for the purposes specified in sub-section (1), as it may consider necessary.

(3) For the purposes of utilisation of the cess, the Central Government may specify such activities, schemes and programmes for national security or, as the case may be, for public health, as may be prescribed.

... ...

9. Declaration to be filed by taxable person.—(1) Every taxable person shall, in respect of machine installed or process undertaken in such factory, furnish a self-declaration in such form, manner and within such time, as may be prescribed, containing the particulars of the machines installed or processes undertaken for the manufacture or production of the specified goods, together with the parameters relevant for computation of the cess, including the maximum rated speed, weight of packing, nature of packing and such other technical or operational particulars, as may be prescribed.

(2) Where any parameter relevant for the computation of the cess undergoes any change, the taxable person shall furnish a fresh self-declaration under sub-section (1) within such time, form and manner, as may be prescribed.

(3) In case of installation, addition or commencement of operation of any machine or process, the taxable person shall furnish the self-declaration referred to in sub-section (2) within fifteen days of such installation, addition or commencement.

(4) The declaration in sub-section (1) shall be subject to calibration, verification and confirmation by the proper officer, with the approval of an officer not below the rank of Joint Commissioner, in such form, manner and within such time, as may be prescribed and the parameters so verified and confirmed shall be considered for the computation of cess under Section 5.

(5) No calibration, verification or confirmation under sub-section (4) shall be made by the proper officer without giving the taxable person a reasonable opportunity of being heard.

(6) Every taxable person shall comply with such oversight, monitoring or verification mechanisms, whether technological, operational or audit-based, as may be prescribed, to ensure the integrity and accuracy of reporting in relation to the manufacture or production of the specified goods.

... ...

SCHEDULE I

[See Sections 2(o) and (p) and 4(1)]

Sl. No.	**Chapter/Heading/Sub-heading/Tariff item**	**Description of Goods**
(1)	**(2)**	**(3)**
1.	**2106 90 20**	**Pan masala**
2.	Any other goods which may be notified	

Explanation.—(1) In this Schedule, reference to a "tariff item", "heading", "sub-heading" and "Chapter", wherever they occur, shall mean respectively a tariff item, heading, sub-heading and Chapter in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), the section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this Schedule.

SCHEDULE II

[See Sections 2(o), 4(1), 5 and 6]

TABLE 1

Applicable to wholly or partly machine-based process

Sl. No.	Number of pouches or tins or containers per minute (Maximum rated speed of machine)	Weight of the specified goods per pouch or tin or container	Amount of cess per month per machine (rupees in lakhs)
(1)	**(2)**	**(3)**	**(4)**
1.	**Up to 500**	**Up to 2.5 grams**	**101.00**
		Above 2.5 grams but up to 10 grams	**364.00**
		Above 10 grams	**849.00**
2.	501 to 1000	Up to 2.5 grams	202.00
		Above 2.5 grams but up to 10 grams	728.00
		Above 10 grams	1698.00
3.	1001 to 1500	Up to 2.5 grams	303.00
		Above 2.5 grams but up to 10 grams	1092.00

		Above 10 grams	2547
4.	Above 1500	Up to 2.5 grams	101 x S/450
		Above 2.5 grams but up to 10 grams	364 x S/450
		Above 10 grams	849 x S/450

... ...

Notes.—(1) For the purposes of this Schedule, in Table 1 in column (4) of the table above, the term "S" represents maximum rated capacity of a machine.

(2) For the purposes of this Schedule, where a packing machine contains multiple tracks or multiple packing lines and, in addition to packing the specified goods in pouches, performs any supplementary processes such as moulding, shaping or otherwise giving a definite form to the pouches for brand distinction or for prevention of counterfeiting, two such tracks or lines shall be deemed to constitute one individual packing machine for the purpose of calculating the cess liability.

(3) The number of packing machines to be taken into account for computation of the cess specified in this Schedule shall be determined in accordance with the rules prescribed by the Central Government.—"

Section 2(j) of the Act, defines "Pan Masala" to mean goods falling under Tariff Item 2106 90 20 of the First Schedule to the Customs Tariff Act, 1975. Section 2(p) defines 'specified goods' to mean the goods specified in Schedule I to the Act or such other goods as the Central Government may, by notification, specify. Section 3(1) of the Act defines a "taxable person" and brings within its ambit any person who owns, possesses, operates, manages or is otherwise in control of a machine, or undertakes any process resulting in the manufacture or production of specified goods. Section 4 of the Act empowers the concerned authorities under the Act to levy and collect cess from every "taxable person", on the machines installed for the manufacture or production of the specified goods. The cess so levied is called the "Health Security Cess and National Security Cess". The specified goods are those enumerated in Schedule I to the Act, while the amounts of cess leviable are specified in Schedule II to the Act. Section 5 provides for the manner of computation of the cess. Section 5(7) of the Act provides for abatement of cess, if the machine remains inoperative for a continuous period of fifteen days or more. "Pan Masala" bearing Customs Tariff Item No. 2106 90 20 is specified as a good in Schedule I to the Act. In terms of Serial No. 1 in Table I of Schedule II to the Act, the same amount of cess is levied on all machines having a production capacity of up to 500 pouches, tins or containers, per minute. The only classification is on the basis of the weight of the specified goods, per pouch, tin or container. Likewise, under Table I of Schedule II to the Act, the same amount of cess is also levied on machines having higher production capacities of 501 - 1000, 1001 - 1500 and above 1500 pouches, per minute, in terms of the amounts specified against the respective production capacities.

13.2. Certain provisions of the Rules that are impugned, are also germane to be noticed. The impugned Rules come into effect on 01-01-2026. Rules 9, 11, 12, 15 and 16 read as follows:

"CHAPTER III
DECLARATION

9. Declaration to be filed by registered person.—(1) **Every registered person shall file a declaration as required under Section 9 of the Act in FORM HSNS DEC-01 on the Portal within seven days of the grant of registration.**

(2) In case of any change in the parameters relevant for the computation of cess, or in case of installation, addition or commencement of any machine or process, the registered person shall file a fresh declaration within fifteen days of such change.

… … …

11. Confirmation of declaration.—(1) In case no discrepancy is found in the declaration filed under Rule 9, the proper officer shall pass an order within a period of fifteen days from the date of verification under Rule 10, confirming the declaration and determining the computation of the cess payable in accordance with Sections 5 and 9 of the Act.

(2) Where the proper officer finds any discrepancy in the declaration furnished under Rule 9 that affects the computation of cess payable by the registered person, he shall intimate such

discrepancy to the registered person and shall pass an order confirming the computation of the cess payable under Sections 5 and 9 of the Act within a period not later than thirty days from the date of verification under Rule 10, after giving the registered person a reasonable opportunity of being heard.

(3) No fresh declaration shall be filed under sub-rule (2) of Rule 9 until an order of confirmation has been passed by the proper officer under this rule.

(4) The registered person shall be liable to pay the cess so determined for the period subsequent to the passing of the order under sub-rule (2) and shall also be liable to pay the differential amount of cess, if any, along with interest, for the period commencing from—

(*a*) the date of installation of the machine or the start of the manual process unit, where the declaration is filed under sub-rule (1) of Rule 9; or

(*b*) the date of change in any parameter relevant for the computation of cess, or the date of installation, addition, or commencement of any machine or process, as the case may be, where the declaration is filed under sub-rule (2) of Rule 9,

till the date of actual payment of such differential amount.

CHAPTER IV
PAYMENT OF CESS AND RETURNS

12. Cess payable to be calculated.— (1) The cess payable for a particular month shall be calculated as per the amount of cess per machine or manual process unit specified in Schedule II of the Act:

Provided that in the case of a newly registered person, the cess payable for the first month shall be calculated on a pro-rata basis, having regard to the total number of days in that month and the number of days commencing from the date of installation of the machine or the start of the manual process unit, as the case may be, and such cess shall be paid within five days of such installation or start……

… … …

CHAPTER V

CESS ABATEMENT AND COMPUTATION

15. Conditions for abatement.—(1) The abatement under sub-section (7) of Section 5 of the Act shall be available when the following conditions are satisfied, namely:—

(*a*) the registered person intimates the proper officer at least three working days before the non-operation of an installed machine or manual process unit for any continuous period of fifteen days or more, requesting the sealing of the machine or closure of manual process unit, as the case may be;

(*b*) the packing machine or manual process unit is sealed by the proper officer within three working days from the date of receipt of intimation in such a manner that it cannot be operated;

(*c*) no manufacturing activity for the specified goods is undertaken on the said machine or by the manual process unit, as the case may be, during the period of sealing.

(2) Any registered person eligible for abatement under sub-rule (1), shall claim such abatement by submitting an application to the proper officer on or before the 20th day of the month succeeding the period for which the abatement is claimed.

(3) The proper officer shall, upon verification of the claim submitted under sub-rule (2), issue an order, within fifteen days of the submission of such application, allowing the abatement of the cess liability for each month covered by the period of non-operation of the machines or manual unit, which shall be adjusted against the cess liability payable for the month immediately following the month in which such order is issued:

Provided that no order rejecting the claim of abatement, either in whole or in part, shall be passed unless the registered person has been given a reasonable opportunity of being heard.

Explanation.— For the purposes of this rule, "installed machine" refers to an operational machine that has become nonoperative during the period of abatement.

16. Quantification of abatement amount.—The amount of abatement for a month shall be calculated using the following formula:

A = (C/N) x D

Where:

A = Amount of Abatement claimed

C = Total Cess liability for the machine for the month

N = Total number of days in the month

D = Total number of continuous days the machine was inoperative in the month……."

(Emphasis supplied at each instance)

Rules 9 and 11 of Chapter III of the Rules, deal with the declarations to be given by the assessee. Chapter IV of the Rules deals with the abatement of cess and its computation. Rule 15 provides for the conditions under which, abatement of cess under Section 5(7) of the Act can be availed. The formula for computation of the abatement is provided under Rule 16. As per Rule 15(a), abatement is allowed only in cases where the manufacturing activity is suspended continuously, for a minimum period of fifteen days.

14. The validity of imposition of cess, in terms of the impugned Act and Rules, is required to be considered now.

15. Insofar as the present petitioners are concerned, with effect from 01-04-2023 to 31-03-2026, GST is levied at 28% ad-valorem and compensation cess at 32% of the MRP. From 01-02-2026 onwards, GST is said to have been increased to 40% of the MRP minus the deductions. It is not in dispute that the present produce of the petitioners is subjected to higher rate of tax under GST on the actual quantities of Pan Masala supplied by them.

16. Section 4 of the Act imposes levy on machines installed or other processes undertaken by them for the manufacture or production of specified goods referred to in Schedule-I at the rates specified in Schedule-II which is computed in the manner provided under Section 5. Therefore, the levy is not on the product but on the machines used for the purpose of the product and the capacity that the machine would generate. The petitioners have placed a

computation table showing that, what this Act has now proposed to levy is far beyond the total MRP of the product. The computation table reads as follows:

COMPUTATION TABLE

SL. No.	WP No.	Per Minute	Pouches for 8 hours	Pouches for 25 days	MRP per pouch	CESS as per HSNSC Act	GST as per Rule 31D	Total GST	Total tax	Total MRP
		a	b= a*60*8	c=b*25	d	e	f=(4*40%/(100+40)	g=c*f	h=e+g	i=c*d
1	WP/3157/2026	65	31,200	7,80,000	4	1,01,00,000	1.14	8,91,429	1,09,91,429	31,20,000
2	WP/100657/2026	96	46,080	11,52,000	4	1,01,00,000	1.14	13,16,571	1,14,16,571	46,08,000
3	WP/100657/2026	106	50,880	12,72,000	4	1,01,00,000	1.14	14,53,714	1,15,53,714	50,88,000
4	WP/100634/2026 WP/100636/2026	150	72,000	18,00,000	4	1,01,00,000	1.14	20,57,143	1,21,57,143	72,00,000
5	WP/100637/2026	182	87,360	21,84,000	4	1,01,00,000	1.14	24,96,000	1,25,96,000	87,36,000
6	WP/100637/2026	224	1,07,520	26,88,000	4	1,01,00,000	1.14	30,72,000	1,31,72,000	1,07,52,000
7	WP/3157/2026	250	1,20,000	30,00,000	4	1,01,00,000	1.14	34,28,571	1,35,28,571	1,20,00,000
8		300	1,44,000	36,00,000	4	1,01,00,000	1.14	41,14,286	1,42,14,286	1,44,00,000
9		400	1,92,000	48,00,000	4	1,01,00,000	1.14	54,85,714	1,55,85,714	1,92,00,000
10		500	2,40,000	60,00,000	4	1,01,00,000	1.14	68,57,143	1,69,57,143	2,40,00,000

From the illustrations in the afore-quoted table, it can be seen that, if a machine per minute produces 65 pouches and runs for 8 hours, it would produce 31,200 pouches and for 25 days it would produce 7,80,000 pouches. Cess on the said manufacturer under the Act *qua* the machines used for such purposes is ₹1,01,00,000/-. The GST is 1.14%. All these factors put together, the total tax would come to ₹1,09,91,429/-, whereas the total MRP for 31,200 pouches would be only ₹31,200,00/-. Therefore, the levy of cess on the machinery has led to grave discrepancy. This discrepancy borders upon arbitrariness as obtaining under Article 14 of the Constitution of India.

17. Further, if the impugned Rules are noticed, Rule 15(a) of the Rules permits abatement only where the manufacturing activity remains suspended continuously for a period of fifteen days. The Rule fails to take into account suspension of manufacturing for periods shorter than fifteen days, which may occur due to various reasons, including breakdown of machinery, non-availability of raw materials or labour, factory maintenance, and the like. Such circumstances may not necessarily continue beyond fifteen days. However, even in such cases, the petitioners are still liable to pay cess, thereby incurring further losses in addition to those already suffered on account of the suspension of manufacturing activity. The Rule, therefore, operates arbitrarily and is violative of Article 14 of the Constitution of India. The contention of the learned Additional Solicitor General that, the prescription of a minimum threshold of fifteen continuous days for grant of abatement, is a deliberate anti-evasion policy, intended to eliminate bogus claims for shorter

periods, and that only a period of suspension extending to fifteen continuous days establishes the genuineness of the claim, cannot be accepted. Such a contention fails to account for cases of genuine hardship faced by assessees, for whom the Rules provide no alternative remedy. Further, the prescription of a minimum period of fifteen days, proceeds solely on the presumption that assesses are likely to indulge in tax evasion. Administrative difficulties in preventing tax evasion cannot, by themselves, justify the prescription of such an arbitrary threshold under the Rules.

18. It is a settled principle of law that arbitrariness, as obtaining under Article 14 of the Constitution of India, is attracted, as the Act imposes a restriction by demanding cess on the deemed production and not on actual production. If one has a machinery that can produce 500 pouches per minute, it is the same cess even if the said machine produces 250 pouches per minute. Further, even if the machinery produces 100 pouches per minute it is the same cess, as Schedule II of the Act clearly indicates that all the manufacturers who produce up to 500 pouches per minute are required to pay similar duty. This would clearly mean that, a

manufacturer of Pan Masala having installed a machine which is capable of producing 100 pouches per minute and a manufacturer who has installed a machine capacity of producing 500 pouches per minute are required to discharge payment of the same cess. Therefore, there is no rationale in imposition of cess in the said manner. The petitioners have installed certain machinery. For illustration purposes, the details and production capacities of the petitioners in the five batches of writ petitions are as under:

Sl. No.	Writ Petition No.	Petitioner	Maximum Capacity per minute	Number of Machines
1.	WP/100657/2026	M/s Ghodawat Fresheners LLP	96-106	44
2.	WP/3157/2026	M/s Dhariwal Industries	250	20
			65	1
3.	WP/100634/2026	M/s Shri Tirupati Industries	150	9
4.	WP/100636/2020	M/s Shashi Shekar Enterprises	150	7
5.	WP/100637/226	M/s Raj Pouches	182-224	8

From the afore-quoted table it is evident that, the petitioners are operating with machines having different maximum capacity and in most of the cases the production capacity would fall less than 500 pouches per minute. In no machine the capacity per minute is 500 pouches. But, the cess demanded now is on the machinery presuming that it would be a machinery which would produce 500 pouches per minute. Therefore, it becomes violative of Article 14 of the Constitution of India.

19. The Apex Court, in a plethora of cases, has laid down the circumstances in which taxing statutes would be held to be violative of Article 14 of the Constitution of India.

19.1. Right from **KUNNATHAT THATEHUNNI MOOPIL NAIR v. STATE OF KERALA**[1], the Apex Court has emphasised that, taxation statutes are not immune from applicability of Article 14 of the Constitution of India. Lack of reasonable classification would create inequality and would be violative of Article 14 of the Constitution. The Apex Court has held as follows:

"…. …. ….

> **7.** The most important question that arises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Article 265 of the Constitution is a complete answer to the attack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. Article 265 imposes a limitation on the taxing power of the State insofar as it provides that the State shall not levy or collect a tax, except by authority of law, that is

[1] **1960 SCC OnLine SC 7**

to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Article 13 of the Constitution. One of such conditions envisaged by Article 13(2) is that the legislature shall not make any law which takes away or abridges the equality clause in Article 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Article 14 of the Constitution, it must be struck down as unconstitutional. For the purpose of these cases, we shall assume that the State Legislature had the necessary competence to enact the law, though the petitioners have seriously challenged such a competence. The guarantee of equal protection of the laws must extend even to taxing statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes a similar burden on everyone with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. **But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing**

statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Article 14 of the Constitution.

8. It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the petitioners, has no reference to income, either actual or potential, from the property sought to be taxed. Hence, it may be rightly remarked that the Act obliges every person who holds land to pay the tax at the flat rate prescribed, whether or not he makes any income out of the property, or whether or not the property is capable of yielding any income. The Act, in terms, claims to be "a general revenue settlement of the State" (Section 3). Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert. The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand**. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions**

of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in Article 14 of the Constitution. Furthermore, Section 7 of the Act, quoted above, particularly the latter part, which vests the Government with the power wholly or partially to exempt any land from the provisions of the Act, is clearly discriminatory in its effect and, therefore, infringes Article 14 of the Constitution. The Act does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by Section 7. This Court has examined the cases decided by it with reference to the provisions of Article 14 of the Constitution, in the case of *Shri Ram Krishna Dalmia* v. *Shri Justice S.R. Tendolkar* [(1959) SCR p. 279] . S.R. Das, C.J., speaking for the Court has deduced a number of propositions from those decisions. The present case is within the mischief of the third proposition laid down at pp. 299 and 300 of the Report, the relevant portion of which is in these terms:

> "**A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the**

> **discrimination is inherent in the statute itself". (p. 299 of the Report).**

The observations quoted above from the unanimous judgment of this Court apply with full force to the provisions of the Act. It has, therefore, to be struck down as unconstitutional. There is no question of severability arising in this case, because both the charging sections, Section 4 and Section 7, authorising the Government to grant exemptions from the provisions of the Act, are the main provisions of the Statute, which has to be declared unconstitutional.

9. The provisions of the Act are unconstitutional viewed from the angle of the provisions of Article 19(1)(*f*) of the Constitution, also. Apart from the provisions of Sections 4 and 7 discussed above, with reference to the test under Article 14 of the Constitution, we find that Section 5-A is also equally objectionable because it imposes unreasonable restrictions on the rights to hold property, safeguarded by Article 19(1)(*f*) of the Constitution. Section 5-A declares that the Government is competent to make a provisional assessment of the basic tax payable by the holder of unsurveyed land. Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character. Again, the Act does not impose an obligation on the Government to undertake survey proceedings within any prescribed or ascertainable period, with the result that a landholder may be subjected to repeated annual provisional assessments on more or less conjectural basis and liable to pay the tax thus assessed. Though the Act was passed about five years ago, we were informed at the Bar that survey proceedings had not even commenced. The Act thus proposes to impose a liability on landholders to pay a tax which is not to be levied on a judicial basis, because (*1*) the procedure to be adopted does not require a notice to be given to the proposed assessee; (*2*) there is no procedure for rectification of mistakes committed by the Assessing Authority; (*3*) there is no procedure prescribed for obtaining the opinion of a superior civil court on questions of law, as is generally found in all taxing statutes, and (*4*) no duty is cast upon the Assessing Authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment."

19.2. The Apex Court later in **STATE OF KERALA v. HAJI K.KUTTY NAHA**[2], has held as follows:

"…. …. ….

4. The principles which have been expounded by this Court in determining whether there has been denial of equal protection of the laws are also well settled : see Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar [(1959) SCS 279] . It is true that in the application of the principles, the Courts, in view of the inherent complexity of fiscal legislation admit a larger discretion to the Legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the doctrine of equality. The power of the Legislature to classify is, it is said, of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways : Khandige Sham Bhat v. Agricultural Income Tax Officer [(1963) 3 SCR 809] .

5. But in enacting the Kerala Buildings Tax Act no attempt at any rational classification is made by the Legislature. As already observed, the Legislature has not taken into

[2] **1968 SCC OnLine SC 122**

consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. **Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality.** This Court in a recent judgment has decided that the levy of tax in exercise of the power under Entry 49 List II of the Seventh Schedule in respect of factory buildings in a municipal area based on floor area was illegal : *New Manek Chowk Spinning and Weaving Mills Co. Ltd.* v. *Municipal Corporation of the City of Ahmedabad* [(1967) 2 SCR 679] . The Court held in that case that the method of adopting a flat rate for a floor area for determining the annual value adopted by the Corporation of Ahmedabad in exercise of the powers conferred upon it by the Bombay Provincial Municipal Corporation Act 49 of 1949 was against the provisions of the Act and the Rules made thereunder as well as all recognised principles of valuation for the purpose of taxation. If levy of tax in a municipal district based on floor area in respect of a factory building violates Article 14 of the Constitution when the tax is sought to be levied by the Municipal Corporation, we see no reason to uphold the tax imposed under the impugned Act when the State, in exercise of legislative authority conferred by Entry 49 List II Schedule VII, imposes liability to tax buildings solely on floor area. The *vice* of the Act in the present case is more pronounced than it was in *New Manek Chowk Spinning & Weaving Mills case* [(1967) 2 SCR 679] . In that case the Rules under which the tax was sought to be levied on the basis of floor area were restricted in their operation to factory buildings within the Corporation limits of Ahmedabad, whereas Act 19 of 1961 which is challenged in the present case applies to the whole State of Kerala in respect of buildings completed on or after March 2, 1961, whatever may be the nature or class of the building, the use to which it is put, materials used in its construction and the extent of profitable user to which the building may be put, its cost and its economic rental. **It is unnecessary in the circumstances to consider whether imposition of a tax only on buildings constructed**

> **after March 2, 1961, and exempting buildings completed before that date may not violate Article 14 of the Constitution**."

The Apex Court holds that when tax on dissimilar transactions or persons are imposed with a uniform tax rate, the same would result in discrimination and such imposition would be in violation of Article 14 of the Constitution of India.

19.3. A nine Judges Bench of the Apex Court reiterates the above position of law in the case of **JINDAL STAINLESS STEEL LIMITED v. STAE OF HARYANA**[3], and holds as follows:

"…. …. ….

> **122.** We may at this stage deal with yet another contention urged on behalf of the assessees who argued that while Article 304(a) forbids discriminatory fiscal legislation in respect of goods coming from another state there was no provision which prevented the States from levying discriminatory taxes within its territorial limits. The argument was that the absence of any provision against discriminatory taxation within a State must be understood to mean that taxes would generally be restrictions and unless the States take recourse to Article 304(b) they cannot levy such taxes upon trade and commerce within their territorial limits. The argument is, in our view, more in despair than substantial. It is true that Part XIII does not in terms forbid the levy of discriminatory taxes on goods produced within the States but the fact that there is no such prohibition does not necessarily mean that if such discriminatory taxation does indeed take place the same is constitutionally permissible. **Whether or not there is hostile**

[3] **(2017) 12 SCC 1**

> **discrimination between goods from one part of the State and those from another part is a matter which will have to be judged on a case-to-case basis and on the touchstone of Article 14.** Having said that we need to remind ourselves that Part XIII of the Constitution was aimed at addressing the mischief arising from fiscal and other barriers which the Princely States had imposed and which gravely impeded free trade and commerce. The Constituent Assembly Debates show that Framers of the Constitution were concerned with the removal of such barriers. Discrimination intra-State in terms of levy of taxes was never considered to be a challenge for presumably the Constituent Assembly never considered the same to be a real possibility necessitating a specific provision prohibiting levy of discriminatory intra-State taxes."

19.4. Later the Apex Court in **CIT v. PEPSI FOODS LTD**.[4], holds that a taxing statute may contravene Article 14 of the Constitution of India, if it seeks to impose upon the same class of property, persons, or transactions a burden that results in manifest inequality. The Apex Court, while analyzing the law on the challenge to a taxing statute as being violative of Article 14, observes as follows:

"…. …. ….

> **16. It is settled law that challenges to tax statutes made under Article 14 of the Constitution of India can be on grounds relatable to discrimination as well as grounds relatable to manifest arbitrariness. These grounds may be procedural or substantive in nature.** Thus, in *Suraj Mall Mohta & Co.* v. *A.V. Visvanatha Sastri* [*Suraj Mall Mohta &*

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[4] **(2021) 7 SCC 413**

Co. v. *A.V. Visvanatha Sastri*, (1955) 1 SCR 448 : AIR 1954 SC 545] , this Court struck down Section 5(4) of the Taxation on Income (Investigation Commission) Act, 1947 on the ground that the procedure prescribed was substantially more prejudicial and more drastic to the assessee than the procedure contained in the Income Tax Act, 1922. Section 5(4) of the aforesaid Act was thus struck down as a piece of discriminatory legislation offending against the provisions of Article 14 of the Constitution of India.

17. Instances of taxation statutes being struck down on substantive grounds which had alleged discrimination can be found in the five-Judge decision of this Court in *Kunnathat Thatehunni Moopil Nair* v. *State of Kerala* [*Kunnathat Thatehunni Moopil Nair* v. *State of Kerala*, (1961) 3 SCR 77 : AIR 1961 SC 552] , in which a uniform tax called "basic tax" levied under the provisions of the Travancore Cochin Land Tax Act, 1955 was held to be discriminatory as it treated unequals equally. The Court held : (SCR pp. 91-92 : AIR p. 558, para 8)

> "*8*. … **Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert. The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be**

> **sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in Article 14 of the Constitution.”**

18. Likewise, in *Union of India* v. *A. Sanyasi Rao* [*Union of India* v. *A. Sanyasi Rao*, (1996) 3 SCC 465] , this Court struck down Section 44-AC of the Income Tax Act as being discriminatory when only particular trades were singled out for discriminatory treatment, reliefs under Sections 28 to 43-C of the Income Tax Act being denied only to such trades. **This was done as the denial of such relief had no nexus to the object sought to be achieved by the legislation and resulted in unfairness, arbitrariness and denial of equality of treatment** (*see* para 22).

19. The other facet of Article 14 has been recently resurrected by a five-Judge Bench judgment in *Shayara Bano* v. *Union of India* [*Shayara Bano* v. *Union of India*, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] as follows : (SCC p. 99, para 101)

> “*101*. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated **that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without**

> **adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14**."

20. Judged by both these parameters, there can be no doubt that the third proviso to Section 254(2-A) of the Income Tax Act, introduced by the Finance Act, 2008, would be both arbitrary and discriminatory and, therefore, liable to be struck down as offending Article 14 of the Constitution of India. **First and foremost, as has correctly been held in the impugned judgment, unequals are treated equally in that no differentiation is made by the third proviso between the assessees who are responsible for delaying the proceedings and assessees who are not so responsible.** This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to Section 254(2-A) of the Income Tax Act, making it clear that a stay order may be extended up to a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee. We have already seen as to how, as correctly held by *Narang Overseas* [*Narang Overseas (P) Ltd.* v. *Income Tax Appellate Tribunal*, 2007 SCC OnLine Bom 671 : (2007) 295 ITR 22] , the second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to Section 254(2-A) of the Income Tax Act in its previous *avatar*. Ordinarily, the Appellate Tribunal, *where possible*, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay of the impugned order before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned.

21. The object sought to be achieved by the third proviso to Section 254(2-A) of the Income Tax Act is without doubt the speedy disposal of appeals before the Appellate Tribunal in cases in which a stay has been granted in favour of the assessee. But such object cannot itself be discriminatory or arbitrary, as has been felicitously held in *Nagpur Improvement Trust* v. *Vithal Rao* [*Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500 : (1973) 3 SCR 39] as follows : (SCC p. 506, para 26 : SCR p. 47)

> "*26*. **It is now well settled that the State can make a reasonable classification for the purpose of legislation. It is equally well settled that the classification in order to be reasonable must satisfy two tests : (*i*) the classification must be founded on intelligible differentia, and (*ii*) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. In this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved**."

22. Since the object of the third proviso to Section 254(2-A) of the Income Tax Act is the automatic vacation of a stay that has been granted on the completion of 365 days, **whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory, in the sense pointed out above, is liable to be struck down as violating Article 14 of the Constitution of India.** Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the Revenue would ensue even if the Revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.

25. Likewise, the judgment in *Janardhana Rao* [*M. Janardhana Rao* v. *CIT*, (2005) 2 SCC 324] , which held that a right of appeal is neither a natural nor inherent right but has to be regulated in accordance with the law in force at the relevant time, the conditions of the appellate provision having to be strictly fulfilled, is also a judgment which has no reference to the constitutional validity of an appeal provision being assailed. In point of fact, this Court's judgment in *Mardia Chemicals* [*Mardia Chemicals Ltd.* v. *Union of India*, (2004) 4 SCC 311] comes nearer home when the constitutional validity of a condition for the exercise of the right of appeal is assailed. This was felicitously put by this Court as follows : (*Mardia Chemicals case* [*Mardia Chemicals Ltd.* v. *Union of India*, (2004) 4 SCC 311] , SCC pp. 352-53, paras 60-61)

> "*60*. The requirement of pre-deposit of any amount at the first instance of proceedings is not to be found in any of the decisions cited on behalf of the respondent. All these cases relate to appeals. The amount of deposit of 75% of the demand, at the initial proceeding itself sounds unreasonable and oppressive, more particularly when the secured assets/the management thereof along with the right to transfer such interest has been taken over by the secured creditor or in some cases property is also sold. Requirement of deposit of such a heavy amount on the basis of a one-sided claim alone, cannot be said to be a reasonable condition at the first instance itself before start of adjudication of the dispute. Merely giving power to the Tribunal to waive or reduce the amount, does not cure the inherent infirmity leaning one-sidedly in favour of the party, who, so far has alone been the party to decide the amount and the fact of default and classifying the dues as NPAs without participation/association of the borrower in the process. Such an onerous and oppressive condition should not be left operative in expectation of reasonable exercise of discretion by the authority concerned. Placed in a situation as indicated above, where it may not be possible for the borrower to raise any amount to make the deposit, his secured assets having already been taken possession of or sold, such a rider to approach the Tribunal at the first instance of proceedings, captioned as appeal, renders the remedy illusory and nugatory.
>
> *61*. In *Seth Nand Lal* [*Seth Nand Lal* v. *State of Haryana*, 1980 Supp SCC 574] while considering the question of validity of pre-deposit before availing the right of appeal the Court held : (SCC p. 590, para 22)
>
> '[R]ight of appeal is a creature of the statute and while granting the right the legislature can impose conditions for the exercise of such right *so long as the conditions are not so*

onerous as to amount to unreasonable restrictions rendering the right almost illusory.' "

(emphasis in original and supplied)

This Court ultimately struck down Section 17(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") holding that in the circumstances mentioned, the deposit of 75% of the amount claimed as a precondition to the hearing of an "appeal" before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act was onerous, oppressive, unreasonable, arbitrary and hence violative of Article 14 of the Constitution of India.

26. The learned ASG then relied upon judgments which indicate that **when Article 14 of the Constitution of India is applied to tax legislation, greater freedom in the joints must be allowed by the Court in adjudging the constitutional validity of the same.** For this purpose, he relied upon *State of M.P.* v. *Bhopal Sugar Industries Ltd.* [*State of M.P.* v. *Bhopal Sugar Industries Ltd.*, (1964) 6 SCR 846 : AIR 1964 SC 1179] In this case, the judgment of this Court held **that if the statute discloses a permissible policy of taxation, the courts will uphold it. If, however, the tax was imposed deliberately with the object of differentiating between persons similarly circumstanced, such tax would be liable to be struck down.**

27. We have already seen how unequals have been treated equally so far as assessees who are responsible for delaying appellate proceedings and those who are not so responsible, resulting in a violation of Article 14 of the Constitution of India. Also, the expression "permissible" policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down, as has been found in para 20 above.

28. The other judgment relied upon by the learned ASG is the judgment in *N. Venugopala Ravi Varma Rajah* v. *Union of*

> *India* [*N. Venugopala Ravi Varma Rajah* v. *Union of India*, (1969) 1 SCC 681] , SCC para 14. This judgment speaks of a larger play in the joints to legislative discretion in the matter of classification being granted when such legislation is a tax legislation. **The caveat applied in this paragraph is that a taxing statute may contravene Article 14 of the Constitution of India if it seeks to impose upon the same class of property, persons, etc. something which leads to obvious inequality.** It is this caveat that has been applied to the third proviso to Section 254(2-A) of the Income Tax Act."

(Emphasis supplied at each instance)

20. If the law laid down by the Apex Court in the afore-quoted judgments is pitted against the impugned legislations, particularly the aforesaid disparity in the manner of calculation of cess under the Act, this Court has no option but to hold the impugned Act and the Rules to be discriminatory and violative of Article 14 of the Constitution of India.

21. The learned additional Solicitor General has contended that the production capacity and the documents placed before the Court by the petitioners are all prior to 01-02-2026 i.e., the date on which the Rules under the impugned Act came into force and that the machineries of all the persons are now changed and the sale of machineries below 500 capacity is not even available in the market.

The said submission is only in justification of the Act. The subsequent sale of machines on the increased capacity and purchase of new machines with higher capacity, by some of the petitioners, cannot be viewed as a ground to levy cess, as every machinery will have to come under scrutiny. Therefore, the Act ought to have been drawn on some other rationale and not from the fact that machines have to produce 500 pouches per minute. Therefore, the justification of the revenue in the considered view of the Court is unacceptable.

22. The petitioners have strenuously contended that the Parliament lacks the legislative competence to enact the impugned Act and the Rules. Several submissions are also made by the learned Additional Solicitor General that the impugned cess is not a GST. Article 246A of the Constitution provides for the imposition of GST. The taxable event in terms of the impugned Act being the ownership or possession of the installed machine and not on the supply of goods and services which is a taxable event under the GST, Article 246A is not applicable. The impugned cess is also not a surcharge as obtaining under Article 271. This is also accepted, as

the Constitution itself indicates that a surcharge cannot be imposed upon goods and services that are already taxed in terms of Article 246A. Further, Article 246(1) of the Constitution confers exclusive legislative power upon the Parliament to make laws with respect to matters enumerated in List I of the Seventh Schedule. Entry 97 of List I vests the Parliament with the residuary power to legislate on any matter not enumerated in List II or List III, including the power to impose any tax not mentioned in either of those Lists. Therefore, the contention of the petitioners that Parliament lacked the legislative competence to enact the impugned legislations is without merit and deserves to be rejected. While upholding the power of the Union of India to bring in a legislation for the imposition of tax, surcharge or cess, the matter that it is bought in and its execution is found to be in violation of Article 14 of the Constitution. This results in the obliteration of the Act and the Rules holding them to be failing the tenets of Article 14. However, liberty is reserved to the Union to bring in the enactment, bearing in mind the observations made in the course of the order.

23. For the aforesaid reasons, the following:

<u>O R D E R</u>

(i) Writ Petition Nos.3157 of 2026, 4331 of 2026, 100634 of 2026, 100636 of 2026, 100637 of 2026, 100638 of 2026 and 100657 of 2026, are **allowed in part.**

(ii) The power of the Union Government to promulgate a law to levy cess is upheld. The manner in which the Act and the Rules levy the cess is held to be unreasonable and vague, as it is based on assumption of quantity manufactured instead of actual quantity manufactured, failing the tenets of Article 14 of the Constitution of India and to that extent, the Act is held to be unconstitutional. Consequently, the Rules are also held to be unconstitutional. Sequentially, the notifications dated 16-12-2025, 31-12-2025, 01-01-2026 and 30-01-2026 stand obliterated.

(iii) Holding the Act, the Rules and the notifications issued to be contrary to law, will not come in the way of the revenue to promulgate the law, bearing in mind the observations made in the course of the order.

(iv) In view of the memo filed for withdrawal in W.P.No.200402 of 2026, the petition is disposed as withdrawn.

Pending applications, if any, also stand disposed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:BR