

# CASE ALERT

## M/s. Barkataki Print and Media Services vs. Union of India & Ors. [WP(C)/3585/2024]

The Hon'ble Gauhati High Court in the present case addressed the validity of Notification No. 56/2023-CT dated 28.12.2023 (hereinafter referred to as "Notification No. 56/2023") issued under Section 168A of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"). The tax demands confirmed by the GST Department under Section 73(9) of the CGST Act, beyond the statutory time limit qua the Notification No. 56/2023 were challenged by the taxpayers in the batch of Writ Petitions. The appellants contended that Notification No. 56/2023 was issued without a proper legal basis, violating conditions of Section 168A of the CGST.

The Hon'ble Gauhati High Court held that the Notification No. 56/2023 extending the time limits prescribed under Section 73(10) of the CGST Act for passing orders under Section 73(9) of the CGST Act was ultra vires in the absence of a recommendation by the GST Council, which was a pre-requisite under Section 168A of the Act, and also in the absence of a force majeure.

The Hon'ble High Court allowed the batch of Writ Petitions while making the following observations:

### ***(a) GST Council recommendation is sine qua non***

The Hon'ble Gauhati High Court held that the GST Council's recommendation is sine qua non for exercising the power under Section 168A of the CGST Act. During the COVID-19 pandemic, various tax administrations had requested an extension for the FY 2017-18, 2018-19, and 2019-20. Consequently, the GST Council in its 49th meeting recommended the extension of the time limit under Sub-Section (10) of Section 73 of the CGST Act for the abovementioned FYs by only three months. It was clearly noted by the GST Council that no further extension would be recommended in the interest of taxpayers. This led to the issuance of Notification No. 09/2023-CT on 31.03.2023 (hereinafter referred to as "Notification No. 09/2023"), extending the time limit for passing orders for the FY 2017-18 up to 31.12.2023, for the FY 2018-19 up to 31.03.2024, and for the FY 2019-20 up to 30.06.2024.

The GST Department issued later Notification No. 56/2023 without securing the necessary recommendations from the Council, by mentioning in Notification No. 56/2023 that it was issued by the “Government, on the recommendations of the Council”, resorted to falsehood for extending the time limit for the passing order for the relevant FYs.

The Hon’ble Court observed that wherever the provisions of the CGST Act stipulate that an act is required to be done on the recommendation of the GST Council, the act can be done only when there is a recommendation. Accordingly, the Hon’ble High Court held that observed that the absence of such recommendations directly contravened the statutory framework undermining the cooperative federalism principles that form the foundation of the GST regime, making Notification No. 56/2023 ultra vires.

***b) Non-fulfillment of the force majeure requirement under Section 168A of the CGST Act***

Section 168A of the CGST Act empowers the Government to issue a notification thereby extending the specified time limit in special circumstances if the actions cannot be completed or complied with due to unforeseen, extraordinary circumstances, such as war, epidemics, or natural disasters. However, the Government can extend the time limit specified or prescribed or notified in the Act only in the presence of all the four pre-requisites as mentioned below:

- (i) On the recommendation made by the GST Council;
  - (ii) By issuance of a notification;
  - (iii) In respect of actions which cannot be completed or complied; and
  - (iv) Due to force majeure
- The Hon’ble Court observed that while earlier extensions during the COVID-19 pandemic were justified, the situation had normalized by the time Notification No. 56/2023 was issued. Therefore, there was no *force majeure* event at the time that could legally justify the extension of time limits under Section 168A. The Hon’ble Court emphasized that the concept of *force majeure* must be applied strictly, and the absence of any demonstrable circumstances beyond the Government’s control invalidated the basis for Notification No. 56/2023.

### W&B Comment on the Implications of the Judgment:

**This judgment is a decisive affirmation of the importance of strict compliance with the statutory requirements under Section 168A of the CGST Act. The Hon'ble Gauhati High Court's clear stance on the absence of GST Council recommendations and force majeure highlights the procedural safeguards that must be observed when extending statutory deadlines. For businesses, this judgment serves as a critical precedent for challenging tax orders that were issued under extended timelines based on invalid notifications. Accordingly, the taxpayers should consider reviewing their GST assessments, especially those affected by extended deadlines, and seek legal advice to explore possible remedies based on this judgment as the show cause notices and orders for the FY 2018-19 and 2019-20 issued after the respective due dates may now be considered time-barred. In the cases where the adjudication proceedings under Section 73 are pending at the adjudication stage or appellate stage, the taxpayers may raise the said grounds by the way or additional submission to the reply or appeal, as the case may be. In the cases where only SCN or Order has been issued, such taxpayers may explore the option of challenging the respective SCN or Order before the jurisdictional High Courts. Even though the Hon'ble Gauhati High Court's observations come as a relief to the taxpayer, the Hon'ble Allahabad High Court in *Graziano Trasmissioni* and the Hon'ble Kerala High Court in *Faizal Traders* have held a similar notification - Notification No. 09/2023, issued before Notification No. 56/2023, to be valid. In view of the divergent views of various High Courts, this issue is expected to be raised before the Hon'ble Supreme Court. Moreover, a challenge to this judgment of the Hon'ble Gauhati High Court by the GST Department before the Hon'ble Supreme Court is also expected.**