

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION No. 7129 of 2018

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PRATIK SATAYANARAYAN GATTANI

Versus

UNION OF INDIA

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*Appearance :*Mr. HIRAL U MEHTA for Mr. NIPUN P SINGHVI & Mr VISHAL J DAVE, Advocates
for the PETITIONERS

for the RESPONDENT(s) No. 1,2,3,4

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CORAM: HONOURABLE Mr. JUSTICE AKIL KURESHI

and

HONOURABLE Mr. JUSTICE B.N. KARIA5th May 2018**ORAL ORDER** (PER : HONOURABLE Mr. JUSTICE AKIL KURESHI)

Petitioners have challenged the constitutional *vires* of Section 109 of the Central Goods & Services Tax Act, 2017 as also that of the Gujarat Goods & Services Tax Act, 2017 pertaining to constitution of the Central as well as State Appellate Tribunals. Main contention of the petitioners is that the Act envisages constitution of such Tribunals comprising of one Judicial and two Technical members. The petitioners' contention is that this would leave the judicial member in minority. These Tribunals would be called upon to decide

important and complicated questions of interpretation of taxing statutes. The composition of Benches is in violation of the judgment of Supreme Court in case of **Union of India v. R. Gandhi**, reported in [2010] 11 SCC 1. Counsel also relied on a decision of Division Bench of Madras High Court in the case of **S. Manoharan v. Deputy Registrar & Ors.**, reported in 2015 Lab.IC 2580 in which the Court relying on the judgment of Supreme Court in case of R. Gandhi [Supra] held that the larger Bench of Central Administrative Tribunal cannot be formed by including two Administrative members *vice* one Judicial member.

Notice returnable on **2nd July 2018**. Since *vires* of Central legislation are under challenge, let there be notice to the Attorney General also.

[Akil Kureshi, J.]

[B.N Karia, J.]

Prakash