

Reserved on 08.05.2019

Delivered on 31.05.2019

Court No. - 5

AFR

Case :- P.I.L. CIVIL No. - 6800 of 2019

Petitioner :- Oudh Bar Asso. High Court, Lko. Thru General Secretary & Anr

Respondent :- U.O.I. Thru Secy. Ministry Of Finance & Ors.

Counsel for Petitioner :- Anand Mani Tripathi, Ashok Kumar Sahu, Rishabh Tripathi

Counsel for Respondent :- C.S.C., A.S.G., Sudhanshu Singh Chauhan

Hon'ble Dr. Devendra Kumar Arora, J.

Hon'ble Alok Mathur, J.

(Delivered by Hon'ble Alok Mathur, J.)

1. The Oudh Bar Association, High Court Lucknow Bench has preferred the instant writ petition filed in public interest by invoking writ jurisdiction under Article 226 of the Constitution of India, seeking for a writ of certiorari quashing the letter/proposal dated 15.03.2019 written by the Addl. Chief Secretary to the Finance Secretary, with regard to constituting the GST Tribunal at Prayagraj. Petitioner *inter-alia* has also sought for a direction to the respondents to constitute/establish the GST Tribunal at Lucknow and further to issue necessary notifications in this regard.

2. It has been submitted that by means of proposal dated 21.02.2019, a decision was taken by the State Government recommending that the State Bench of the GST Tribunal should be constituted at Lucknow. The said proposal dated 21.02.2019 was in response to the request made by the GST Council, New Delhi seeking response from the State Government on the following two questions :

(I) Do you want the State Bench of Tribunal for your State?, if yes, in which City?

(II) Do you want Area Benches also?, if yes, in how many cities?

3. In response to the aforesaid queries by the GST Council, the State Government informed by means of letter dated 21.02.2019, which is quoted below :-

"अवगत कराना है कि भारत सरकार के राजस्व विभाग द्वारा मुख्य सचिव, उ०प्र० को संबोधित पत्र दिनांक 14.08.2018 के द्वारा प्रत्येक राज्य में जी०एस०टी० अधिनियम के अंतर्गत प्राविधानित अपीलीय ट्रिब्यूनल के स्टेट बेंच एवं उनकी एरिया बेंचेज के संबंध में निम्न दो बिन्दुओं पर राज्य का अभिमत दिये जाने की अपेक्षा की गयी है:-

1. Do you want a State Bench of Tribunal for your state? If yes, in which city?

2- Do you want the Area benches also? If yes in how many cities?

2- उत्तर प्रदेश भौगोलिक दृष्टि से काफी बड़ा राज्य है, जिसमें 75 जनपद तथा 18 मण्डल हैं तथा यहां पंजीकृत व्यापारियों की संख्या भी लगभग 14 लाख है। जी०एस०टी० से पूर्व वैट के अंतर्गत अपीलीय ट्रिब्यूनल कार्यरत रही है, जिसका मुख्यालय लखनऊ में है तथा वैट के अंतर्गत गठित ट्रिब्यूनल की कुल 31 बेंच प्रदेश के 16 शहरों में कार्यरत हैं पूर्ववर्ति वैट अधिनियम के अंतर्गत पंजीकृत व्यापारियों की संख्या 7.5 लाख थी, जो जी०एस०टी० के अंतर्गत बढ़कर 14 लाख हो गयी है। वैट के अंतर्गत वर्ष 2016-17 में कुल 7324 अपीलें माननीय ट्रिब्यूनल के समक्ष दाखिल की गयी थी तथा ट्रिब्यूनल की कुल 31 बेंचेज द्वारा वर्ष के दौरान 11,131 अपीलों का निस्तारण किया गया था। इस प्रकार औसतन प्रत्येक बेंच द्वारा एक वर्ष में लगभग 360 अपीलों का निस्तारण किया गया एवं प्रत्येक माह औसतन 30 अपीलों का निस्तारण किया गया है। ट्रिब्यूनल के समक्ष वर्ष 2017-18 में ट्रिब्यूनल द्वारा 15255 अपीलों का निस्तारण किया गया। इस प्रकार प्रत्येक बेंच द्वारा वर्ष में औसतन 492 अपीलों का निस्तारण किया गया और एक बेंच द्वारा प्रति माह औसतन 41 अपीलों का निस्तारण किया गया। जी०एस०टी० के अंतर्गत प्रदेश में पंजीकृत व्यापारियों की संख्या लगभग 14 लाख है तथा जी०एस०टी० काउंसिल में लिये गये निर्णय के अनुसार प्रति वर्ष 5 प्रतिशत व्यापारियों का आडिट किया जाना अपेक्षित है।

इस प्रकार प्रति वर्ष लगभग 70 हजार व्यापारियों का आडिट जी0एस0टी0 के अंतर्गत किया जायेगा और लगभग 30 हजार इकाइयों की जांच / सर्वेक्षण प्रदेश एवं केन्द्र की प्रवर्तन इकाइयों द्वारा की जायेगी। उक्त के अतिरिक्त सचल दल इकाइयों द्वारा भी जिन मामलों में धारा 129 के अंतर्गत कार्यवाही की जाती है, उनकी अपीलें भी ट्रिब्यूनल के समक्ष प्रस्तुत होगी। अभी तक सचल दल इकाइयों द्वारा लगभग एक वर्ष में की गयी कार्यवाहियों के विरुद्ध कुल 1330 अपीलें प्रथम अपीलीय अधिकारियों के समक्ष प्रस्तुत की गयी हैं तथा वर्तमान में ट्रिब्यूनल के कार्यरत न होने के कारण माननीय उच्च न्यायालय के समक्ष लगभग 320 रिट याचिकायें प्रस्तुत की गयी हैं। अतः यदि आडिट एवं प्रवर्तन इकाइयों तथा सचल दल इकाइयों द्वारा पूरे वर्ष के दौरान की गयी कार्यवाहियों में से 10 प्रतिशत मामलों भी अपीलीय ट्रिब्यूनल तक जाते हैं तो भी कम से कम लगभग 12 हजार से 15 हजार अपीलें माननीय ट्रिब्यूनल के समक्ष प्रति वर्ष प्रस्तुत होगी अर्थात् 1000 से 1250 अपीलें प्रति माह दाखिल होंगी। यदि प्रत्येक बेंच द्वारा प्रति माह 50 अपीलों का निस्तारण किया जाये तो औसत 20 बेंच की आवश्यकता होगी। वर्तमान में प्रदेश में वाणिज्य कर विभाग 20 जोन में विभाजित किया गया है, जिसके मुख्यालय 16 शहरों में स्थित हैं। अतः प्रत्येक जोन हेतु एक एरिया बेंच इन 16 शहरों पर स्थापित किया जाना उचित प्रतीत होता है। जहाँ तक स्टेट बेंच का प्रश्न है उसका मुख्यालय लखनऊ रखा जाना उचित होगा एवं उपरोक्त विवरण के अनुसार ट्रिब्यूनल की कुल 20 एरिया बेंचेज इन 16 शहरों में निम्नवत् गठित किया जाना प्रस्तावत है :-

क्र० सं०	जोन का नाम	स्थान
1	नोएडा	नोएडा
2	गाजियाबाद प्रथम	गाजियाबाद
3	गाजियाबाद द्वितीय	गाजियाबाद
4	सहारनपुर	सहारनपुर
5	मेरठ	मेरठ
6	मुरादाबाद	मुरादाबाद
7	बरेली	बरेली
8	लखनऊ प्रथम	लखनऊ
9	लखनऊ द्वितीय	लखनऊ
10	कानपुर प्रथम	कानपुर

11	कानपुर द्वितीय	कानपुर
12	वाराणसी प्रथम	वाराणसी
13	वाराणसी द्वितीय	वाराणसी
14	अलीगढ़	अलीगढ़
15	आगरा	आगरा
16	इटावा	इटावा
17	फैजाबाद	फैजाबाद
18	गोरखपुर	गोरखपुर
19	इलाहाबाद	इलाहाबाद
20	झाँसी	झाँसी

कृपया उपरोक्तानुसार उत्तर प्रदेश राज्य में जी०एस०टी० अधिनियम के अन्तर्गत प्राविधानित अपीलीय ट्रिब्यूनल के स्टेट बेन्च एवं उनकी एरिया बेन्चेज के गठन के संबंध में आवश्यक कार्यवाही कराने की कृपा करें।”

4. A perusal of the aforesaid proposal makes it abundantly clear that the aforesaid Proposal has been made after due application of mind and taking into consideration necessary factors relating to the filing of appeal and their disposal by the various Benches of the VAT Tribunal prior to coming of the GST Tribunal.

5. It has also been stated in the said proposal that the earlier Tribunal was also functioning with its Head Quarter at Lucknow and, therefore considering all the relevant factors, the State Government had requested the GST Council that the State Bench for the State of Uttar Pradesh should be constituted at Lucknow and further recommended constitution of 20 Area Benches in 16 Cities as mentioned therein.

6. It seems that the matter remained pending with the GST Council and no decision was taken for formation of State Bench in the State of Uttar Pradesh and in the meanwhile a Writ Petition came to be filed before this Court at Allahabad in the case of **M/s Torque Pharmaceuticals Pvt. Ltd. Vs. Union of India and 5 Others**, being Civil Writ Petition (Tax) No. 655 of 2018.

7. The Challenge in aforesaid writ petition was the order passed in the appeal of the petitioner which had been dismissed by the Additional Commissioner , Grade-II (Appeal) II, State Tax, Moradabad on 02.04.2018.

8. Against the aforesaid order dated 02.04.2018, the petitioner had a remedy of Appeal under Section 109 of the U.P. GST Act, before the State Bench or Area Bench of the GST Tribunal, but in the light of the fact that the none of the Benches of the Appellate Tribunal had been constituted, he had approached the High Court challenging the order dated 02.04.2018. The petitioner therein had interalia sought a writ of mandamus commanding the respondent nos. 1 and 2 to constitute Regional Bench and State Bench for the State of Uttar Pradesh at the seat of jurisdictional High Court and also such number of Area Benches in the State of Uttar Pradesh as may be recommended by respondent no. 6.

9. This Court while taking cognizance in the aforesaid writ petition by means of order dated 17.04.2018, directed the State to file counter affidavit within a month. The said order dated 17.04.2018, is reproduced herein below :-

"Heard Sri Nishant Mishra, learned counsel for the petitioner, Sri C.B. Tripathi, learned Special Counsel for the respondent-State and Sri Om Prakash Srivastava, learned counsel for the respondent nos.1 and 6.

The petitioner has challenged the penalty proceedings initiated under Section 129(3) of the UPGST Act, 2017.

The contention of the petitioner is that the goods were detained and seized vide order dated 31.01.2018 and 01.02.2018 respectively and thereafter penalty proceeding under Section 129(3) of the Act were initiated and penalty has been imposed. On deposit of tax imposed by the respondent- Mobile Squad Unit, the goods were released. However, the penalty proceeding continued and the penalty order has been passed and the authority has directed to deposit a sum of Rs.8,14,260/- equivalent to the tax. This penalty order dated 7th February, 2018 has been challenged by means of an appeal before the

Additional Commissioner, under Section 107 of the Act. The appeal has been dismissed. Till date, the tribunal has not been constituted, hence the petitioner has no way but to challenge the impugned penalty order by means of present writ petition.

Prima facie arguments advanced appears to have some substance and requires consideration by this Court.

Learned Special Counsel appearing for the State and learned counsel appearing for the respondent nos.1 and 6 may file counter affidavit within a month. Rejoinder affidavit, if any, may be filed within ten days thereafter.

List immediately after expiry of the aforesaid period.

Till further order of this Court, the penalty amount shall not be realised from the petitioner."

10. The State Government filed counter affidavit in the aforesaid writ petition on 19th June, 2018, but in paragraph no. 23 of the said counter affidavit it did not reply to the averments made by the petitioner in paragraph nos. 22 to 26 of the writ petition.

11. When the matter was next listed on 13.02.2019, this Court passed following order :-

"Rejoinder affidavit filed today is taken on record.

In this matter learned counsel for the G.S.T. Council is unable to tell as to whether the Tribunal is constituted or not. Learned standing counsel appearing for the State is also unable to tell as to whether the State has moved in the matter or not.

List this matter on 28th February, 2019. On that date in addition to standing counsel some responsible officers of the State from Lucknow as well as G.S.T. Council will appear in this matter.

A copy of this order may be provided to Sri Om Prakash Srivastava, learned counsel appearing for the GST Council and Sri Nimai Das, learned standing counsel for the State for communication and compliance."

12. On 27.02.2019, a short counter affidavit was filed by the learned Standing Counsel duly sworn by the Joint Commissioner, Commercial Tax/Sales Tax, Head Quarter, Lucknow, who submitted that the letter

dated 14th August, 2018, was received by the Additional Chief Secretary, Government of Uttar Pradesh, Lucknow from the Government of India, Ministry of Finance, Department of Revenue, regarding constitution of the State Bench of the GST Appellate Tribunal. The Commissioner, Commercial Tax by means of letter dated 31.10.2018, sent proposal to the Additional Chief Secretary, Government of Uttar Pradesh for constitution of 20 Area Benches of the Tribunal in 16 Districts including one State Bench at Lucknow.

13. Thereafter, the Additional Chief Secretary, Government of Uttar Pradesh sent recommendation to the Secretary, GST Council, Government of India vide letter dated 21.02.2019 for constitution of 20 Area Benches of the Tribunal in 16 districts including the State Bench at Lucknow.

14. When the matter was taken up on 28.02.2019, following interlocutory order was passed : -

"In response to the order passed by this Court on 13.02.2019 two affidavits have been filed, one by the G.S.T. Council and the other by the State.

On a perusal of the two affidavits it is apparent that promises are being made only in the air. There seems to be no concrete proposal to set up the appellate Tribunal. On the other hand in the affidavit filed by the State it appears that a recommendation has been made by the State to set up a Bench of the Tribunal at Lucknow, which is also not in accordance with the order passed by Hon'ble Supreme Court in the case of Madras Bar Association vs. Union of India and another reported in (2014) 10 SCC 1 which provides that the Tribunal will be set up at the place where the Principal Bench of the High Court is situate. In the present case the principal Bench of the High Court is in Allahabad. This seems to be another dilatory tactics.

On the one hand the right of appeal is not being given to the petitioner, on the other hand the State and the Centre are both very quick to make recoveries from persons, who have orders against them. A litigant cannot be left without a remedy for reasons that the Government is unable to provide forums. In the present case there is not even an

assurance that within next six months, one year or two years it may come up.

In view of this, we direct both the Centre and the State Governments to file better affidavits giving us a cut off date by which they propose to set up the Tribunal.

Learned Standing Counsel also states today that they are likely to give a revised proposal. They may do so within next two weeks.

List this matter after two weeks on 15th March, 2019.

The personal appearance of two Officers, who are present today is exempted unless directed by this Court.

Copy of this order be given to Sri Gyan Prakash, A.S.G.I as well as Sri Nimai Dass, learned Additional Chief Standing Counsel for necessary communication and compliance within 24 hours free of charges."

15. Apart from the fact that the place or Seat of a proposed Tribunal is ordinarily not a justiciable issue, the Writ Court at Allahabad did not decide this issue conclusively, but only made certain observations regarding the decision of the Supreme Court in **Madras Bar Association (supra)** and regarding the principal Seat of Allahabad High Court. No directions were issued by it for establishing the State Bench of the GST at Allahabad. The likelihood of a revised proposal in this regard, as stated by the State Counsel, was noted by the Court and a direction was issued to the Central as well as State Government for filing better affidavits giving cut-off date by which they proposed to set up the Tribunal and the matter was directed to be listed on 15th March, 2019.

16. In the light of the aforesaid directions, an Affidavit was filed by the State Government duly sworn by the Deputy Commissioner, GST, Head Quarter Lucknow on 13.03.2019, wherein they have enclosed a copy of the revised proposal dated 01.03.2019 by the Commissioner, Commercial Tax, U.P., which is quoted herein below :-

"माननीय उच्च न्यायालय, इलाहाबाद द्वारा सर्वश्री टार्क फार्मास्यूटिकल्स प्रा०लि० बनाम यूनियन आफ इण्डिया एवं अन्य, रिट याचिका संख्या-655 / 2018 के वाद में निर्णय दिनांक 28.02.2019 में यह अभिमत व्यक्त किया गया है

कि सर्वश्री मद्रास बार एसोसिएशन बनाम यूनियन आफ इण्डिया एवं अन्य (2014) 10 एस0सी0सी0 पेज नं.-1 के सर्वोच्च न्यायालय के निर्णय के अनुसार ट्रिब्यूनल का गठन वहीं होना चाहिए जहाँ हाईकोर्ट की प्रिन्सिपल बेंच कार्यरत है। राज्य द्वारा जी0एस0टी0 काउंसिल को प्रेषित प्रस्ताव में ट्रिब्यूनल का गठन लखनऊ में करते हुये 20 ऐरिया बेंचेज की संस्तुति की गयी है जिसे माननीय न्यायालय द्वारा उचित नहीं माना गया है (न्यायालय के निर्णय की प्रति संलग्न है)।

माननीय न्यायालय द्वारा दिये गये निर्णय के अनुपालन में उचित होगा कि राज्य की ओर से जी0एस0टी0 काउंसिल को संशोधित प्रस्ताव प्रेषित किया जाय। माननीय न्यायालय द्वारा यह संशोधित प्रस्ताव दो सप्ताह में प्रेषित किये जाने के निर्देश दिये गये हैं। अतः महोदय से अनुरोध है कि स्टेट ट्रिब्यूनल के गठन हेतु जी0एस0टी0 काउंसिल को पूर्व में प्रेषित प्रस्ताव को संशोधित करते हुये स्टेट ट्रिब्यूनल का गठन इलाहाबाद निर्धारित किये जाने की संस्तुति की जाये तथा इलाहाबाद के अतिरिक्त शेष 19 ऐरिया बेंच पूर्व में निर्धारित 15 स्थानों पर गठन की संस्तुति प्रेषित की जाये। उक्त का परीक्षण शासन स्तर पर करते हुये आवश्यक कार्यवाही कराने का कष्ट करें।”

17. On the basis of aforesaid recommendation made by the Commissioner, Commercial Tax, the revised proposal dated 15.03.2019 was sent to the GST Council, which is quoted below :-

“उत्तर प्रदेश राज्य में जी0एस0टी0 अधिनियम के अंतर्गत प्राविधानित अपीलीय ट्रिब्यूनल के स्टेट बेंच एवं उनकी ऐरिया बेंचेज के गठन से संबंधित प्रेषित प्रस्ताव विषयक कृपया अधोहस्ताक्षरी के अर्द्धशासकीय पत्र संख्या-386 / 11-2-19-9 (24) / 19ए दिनांक 05.03.2019 का संदर्भ ग्रहण करने का कष्ट करें।

उल्लेखनीय है कि माननीय उच्च न्यायालय, इलाहाबाद द्वारा सर्वश्री टार्क फार्मास्यूटिकल्स प्रा0लि0 बनाम यूनियन आफ इण्डिया एवं अन्य, रिट याचिका संख्या-655 / 2018 के वाद में निर्णय दिनांक 28.02.2019 में यह अभिमत व्यक्त किया गया है कि सर्वश्री मद्रास बार एसोसिएशन बनाम यूनियन आफ इण्डिया एवं अन्य (2014) 10 एस0सी0सी0 पेज नं.-1 के सर्वोच्च न्यायालय के

निर्णय के अनुसार ट्रिब्यूनल का गठन वहीं होना चाहिए जहाँ हाईकोर्ट की प्रिन्सिपल बेंच कार्यरत है। राज्य द्वारा जी०एस०टी० काउंसिल को प्रेषित प्रस्ताव में ट्रिब्यूनल का गठन लखनऊ में करते हुये 20 एरिया बेंचेज की संस्तुति की गयी है जिसे माननीय न्यायालय द्वारा उचित नहीं माना गया है (न्यायालय के निर्णय की प्रति संलग्न है)।

मा० न्यायालय द्वारा दिये गये निर्णय के दृष्टिगत स्टेट ट्रिब्यूनल के गठन हेतु पूर्व में प्रेषित प्रस्ताव को पुनः संशोधित करते हुये स्टेट ट्रिब्यूनल का गठन मुख्यालय, प्रयागराज (इलाहाबाद) निर्धारित किये जाने तथा प्रयागराज (इलाहाबाद) के अतिरिक्त शेष 04 एरिया बेंचेज का गठन निम्नवत् किया जाना प्रस्तावित है:—

क्र० सं०	जोन का नाम	स्थान
1	गाजियाबाद	गाजियाबाद
2	लखनऊ	लखनऊ
3	वाराणसी	वाराणसी
4	आगरा	आगरा

कृपया उपरोक्तानुसार उत्तर प्रदेश राज्य में जी०एस०टी० अधिनियम के अन्तर्गत प्राविधानित अपीलीय ट्रिब्यूनल के स्टेट बेंच एवं उनकी एरिया बेंचेज के गठन के संबंध में आवश्यक कार्यवाही कराने की कृपा करें। यदि भविष्य में और एरिया बेंचेज की आवश्यकता होगी तो तत्समय प्रस्ताव प्रेषित किया जायेगा।”

18. The earlier proposal dated 21.02.2019 was revised as aforesaid, thereby proposing the State Bench of GST at Allahabad instead of the State Capital at Lucknow, with four area Benches, one each at Ghaziabad, Lucknow, Varanasi and Agra. This, as per the opposite parties, was done in view of the observations/directions of the Court in the order of the High Court at Allahabad dated 28.02.2019.

19. A perusal of the revised proposal sent by the Commissioner to the Additional Chief Secretary, Commercial Tax, Government of U.P., would indicate that the said revised proposal has been sent in pursuance of the order of this Court dated 28.02.2019. In the said proposal it has

been stated that the High Court has directed that in the case of **Madras Bar Association Vs. Union of India, (2014) 10 SCC 1**, Hon'ble Supreme Court has held that the Tribunal should be constituted only at the place where principal Bench of the High Court is situated and as the Principal Bench of the High Court is at Allahabad, the High Court has directed that proposal is to be sent within a period of two weeks and, therefore in the light of the said direction, revised proposal has been forwarded for constitution of the State bench at Allahabad.

20. Sri A.M. Tripathi, learned counsel for the petitioner has submitted that as per Section 109 of the CGST Act, there is a provision for constitution of GST Appellate Tribunal, which shall be constituted by the Government on the recommendation of the GST Council. In Clause-4 of the Section 109 it has also been provided that the Government shall, on the recommendation of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of one Judicial Member, one Technical Members (Center) and one Technical Member (State).

21. It has been submitted that the State Government after taking into account all the factors made its recommendations in accordance with Section 109 of the GST Act for constitution of the GST Tribunal (State Bench) at Lucknow, by means of its letter dated 21.02.2019.

22. It has also been vehemently urged that the revised proposal dated 15.03.2019, sent by the State of U.P. to the GST Council is illegal, arbitrary and on the face of it is erroneous and, therefore, it is liable to be set aside and suitable direction be issued for constitution of the Tribunal at Lucknow.

23. It was submitted that from the perusal of the judgment of the Hon'ble Supreme Court in the case of **Madras Bar Association (supra)**, it is clear that it does not provide for constitution of the Tribunal where the Principal bench of the High Court is situated. He

took us through the judgment of the Apex Court, which also confirms the fact that there is no such direction by the Apex Court for constitution of the Bench at the Principal seat of the High Court. He has also submitted that in the aforesaid judgment, the case of **S.P. Sampath Kumar Vs. Union of India, (1987) 1 SCC 124** has been referred in paragraph 94, but the same is of no consequence with regard to the controversy in question.

24. He has further submitted that a perusal of the interlocutory order of the Allahabad High Court dated 28.02.2019, would indicate that no direction has been given for constitution of the Bench of the Tribunal at Allahabad, it is only an observation and the respondents merely on the observation of the High Court have proceeded to pass a fresh proposal, while infact direction was only with regard to giving a cut-off date by which the State proposed to set up the Tribunal.

25. The respondents have totally misconstrued the essence of the order, which were in fact the observation of the Court, and no direction was given by this Court to formulate a fresh recommendation for constitution of the GST Tribunal at Allahabad instead of at Lucknow.

26. Sri Tripathi, has also placed before us the judgment of Hon'ble Apex Court in the case of **Union of India and Others Vs. Lalit Kumar, Civil Appeal No. 1734 of 2019**, wherein the Apex Court hearing an appeal from the judgment and order of the Uttrakhand High Court whereby the High Court had directed for establishment of permanent Bench of the Armed Forces Tribunal in the State Uttrakhand. The Apex Court while setting aside the judgment of the High Court, observed that :-

"we have considered the matter. We are of the view that the issue with regard to setting up of permanent Bench and Circuit Benches of the Tribunal is not to be the subject matter of consideration by the judicial forum unless facts of the case are so appalling that judicial interference

would be called for. The present, in our considered view is not such a case.

We therefore, allow this appeal; set aside the order of the High Court with direction to the appellant/Union of India to take necessary steps to ensure that the cases pertaining to the State of Uttranchal pending before the Armed Forces Tribunal are heard and disposed of by the Circuit Bench as expeditiously as possible.

With the aforesaid observations the appeal is allowed."

27. Sri Tripathi, has submitted that according to Section 109 of the CGST Act, the decision as to where the Benches of Tribunal have to be constituted is a matter, which purely falls within the domain of the Government, and it is the Government which shall take a decision after considering all the relevant facts and material, and unless there are some extraordinary circumstances, the High Court is denuded of its power from interfering in such matters. It has further been submitted that no such extraordinary circumstances existed in the case at hand.

28. It has been submitted that in the instant case perusal of letter dated 21.02.2019, would indicate that the State Government had taken a very conscious decision by taking into account all the relevant factors including the fact that previous Bench of such Tribunal was constituted at Lucknow as the Head Quarter and the Government Machinery relating to collection of Taxes and revenue are situated at Lucknow, and therefore such decision cannot be faulted on any count. This decision, was not even under challenge in Writ Petition No. 20655 (Tax) of 2018, when the order dated 28.02.2019 was passed. It has not been challenged by any individual before any Court of competent jurisdiction and therefore, ordinarily there was no occasion for the State Government to revisit its earlier letter dated 21.02.2019 and issue a fresh proposal without recording any reasons and recommending

Prayagraj/Allahabad as Head Quarter for constitution of the GST Tribunal as per provision of Section 109 of the CGST Act, contrary to the earlier proposal.

29. Sri Jaideep Narain Mathur, learned Senior Advocate and Sri Dhruv Mathur, Advocate espousing the cause of Oudh Bar Association have firstly urged that observations made by the Division Bench in its interlocutory order dated 28.02.2019 with regard to the fact that the bench of the Tribunal has to be set up at the place where the Principal Bench of the High Court is situated, cannot be supported on the anvil of the decision of the Supreme Court in **Nasiruddin case (supra)** as also the decision in **Madras Bar Association (supra)**. In the present case to presume that the principal Bench of the High Court is at Allahabad, is incorrect and, in any view of the matter, is contrary to the judgment of the Apex Court therefore, the same cannot be relied upon. He has further submitted that the observations made by the co-ordinate Bench of this Court at Allahabad are mere observations and the Court restrained itself from passing any direction to the State Government with regard to the constitution of Bench of the Tribunal and, therefore these observations are neither decisive nor binding.

30. On the strength of the decision rendered in the case of **Nasiruddin Vs. S.T.A. Tribunal, (1975) 2 SCC 671**, Sri Jaideep Narain Mathur has argued that there is no permanent seat of the High Court at Allahabad and seats of High Court at Allahabad and Lucknow can be changed according to the United Provinces (High Courts) Amalgamation Order, 1948 and further submitted that there are two seats of High Court of equal status. The seat of the High Court at Allahabad is just like another seat of High Court at Lucknow. It is erroneous view that the seat of High Court at Allahabad is principal or permanent seat of the High Court.

31. He also submits that the Apex Court in the case of **Madras Bar Association (supra)** also did not consider or hold that the principal

Bench of the Tribunal should be constituted at the place where principal Bench of the High Court is situated. The said observations made by the Division Bench at Allahabad were also not in consonance with the judgment of the Apex Court and to that extent are factually incorrect.

32. It was further argued that the decisions in the case of **S.P. Sampath Kumar (supra)** and **Madras Bar Association (supra)**, provide that "alternative Court/Tribunal shall be established; at every place where there is seat of the High Court" and as, in view of the dictum of the Supreme Court in *Nasiruddin (supra)* there are two seats of Allahabad High Court, none of which is permanent, thus, in the present case it was open for the State Government to constitute GST Tribunal in question at either of the seats of the High Court of Uttar Pradesh i.e. at Allahabad and Lucknow, or at both the places, as per requirement, accordingly, after considering the relevant aspects, it decided to propose the State bench at Lucknow and an area Bench at Allahabad on 21.02.2019, which was a valid exercise of power, beyond the pale of Judicial Review.

33. Sri Anupam Malhotra, learned counsel arguing in support of the petitioner submitted that observations of the Division Bench of the High Court at Allahabad that to establish the Tribunal at Lucknow would not be in accordance with the decision of the **Madras Bar Association (supra)**, are not supported by a reading of the said decision. As the proposal dated 21.02.2019 was not under challenge before the High Court, therefore, the observations are *obiter dicta* and not binding. He further submits that the said order was passed by overlooking the United Provinces (High Courts) Amalgamation Order, 1948 and the decision of Apex Court in the case of **Nasiruddin (supra)** and the view taken by the Division Bench of the High Court at Allahabad that "principal Bench of Allahabad High Court is at Allahabad", is in the teeth of the dictum of the Apex Court. He also submitted that said

observations have been made without any argument, without any reference to any Rule or Law, therefore, it is *sub silentio* and is of "no moment".

34. Learned Standing Counsel on the other hand has submitted that as per provisions of Section 109 of the CGST Act, 2017, which provides for constitution of Appellate Tribunal and benches thereof, recommendations of the GST Council established under Article 279-A of the Constitution of India, Tribunals are to be created so as to entertain appeals against Appellate Authority or Revisional Authority. He submitted that vide letter dated 14.08.2017, opinion was sought by the Revenue Department of the Government of India from the Joint Secretary, Government of U.P. for constitution of special Bench and area benches of the appellate Tribunal and in response thereof the Additional Chief Secretary, Institutional Finance, Tax and Registration, Government of U.P. submitted a proposal vide letter dated 21.02.2019 to the Finance Secretary and Secretary, GST Council, Government of India, New Delhi for establishing State Bench at Lucknow and Area Benches at twenty other cities. Subsequently, in the light of order dated 28.02.2019, passed in **Writ Tax No. 655 of 2018 - M/s Torque Private Ltd. Vs. Union of India and Ors.**, the Commissioner, Trade Tax, U.P. Lucknow wrote a letter dated 01.03.2019 to the Additional Chief Secretary, Trade Tax, U.P. for sending amended proposal for constitution of State Bench of Tribunal at Allahabad. In view of the order dated 28.02.2019, passed in Writ Tax No. 655 of 2018, the amended proposal was sent vide letter dated 15.03.2019, by the Additional Chief Secretary, Institutional Finance, Tax and Registration, Government of U.P. to the Finance Secretary and Secretary, GST Council, Government of India for establishing State Bench at Prayagraj (Allahabad) and Area Benches in four other Cities.

35. In sum and substance, it was admitted that initially the State Government had proposed to set up the State Bench at Lucknow with

area Benches elsewhere including at Allahabad but after the order of the High Court dated 28.02.2019, a fresh proposal was sent for constitution of State Bench of the GST Tribunal at Prayagraj (Allahabad).

36. We are required to judge the validity of the revised proposal dated 15.03.2019, referred herein above.

37. We may now examine as to whether there is any such proposition or direction by the Supreme Court in the case of **Madras Bar Association (supra)** or in **S.P. Sampath Kumar (supra)** that Tribunals should always be established at the 'principal Seat' of the jurisdictional High Court. In the present context, the relevant part of the decision in **Madras Bar Association (supra)** as contained in paragraph 123 thereof is quoted herein below :

"123. We shall first examine the validity of Section 5 of the NTT Act. The basis of challenge to the above provision, has already been narrated by us while dealing with the submissions advanced on behalf of the Petitioners, with reference to the fourth contention. According to the learned Counsel for the Petitioners, Section 5(2) of the NTT Act mandates, that the NTT would ordinarily have its sittings in the National Capital Territory of Delhi. According to the Petitioners, the aforesaid mandate would deprive the litigating Assessee, the convenience of approaching the jurisdictional High Court in the State, to which he belongs. An Assessee may belong to a distant/remote State, in which eventuality, he would not merely have to suffer the hardship of traveling a long distance, but such travel would also entail uncalled for financial expense. Likewise, a litigant Assessee from a far-flung State may find it extremely difficult and inconvenient to identify an Advocate who would represent

him before the NTT, since the same is mandated to be ordinarily located in the National Capital Territory of Delhi. Even though we have expressed the view, that it is open to the Parliament to substitute the appellate jurisdiction vested in the jurisdictional High Courts and constitute courts/tribunals to exercise the said jurisdiction, we are of the view, that while vesting jurisdiction in an alternative court/tribunal, it is imperative for the legislature to ensure, that redress should be available, with the same convenience and expediency, as it was prior to the introduction of the newly created court/tribunal. Thus viewed, the mandate incorporated in Section 5(2) of the NTT Act to the effect that the sittings of the NTT would ordinarily be conducted in the National Capital Territory of Delhi, would render the remedy inefficacious, and thus unacceptable in law. The instant aspect of the matter was considered by this Court with reference to the Administrative Tribunals Act, 1985, in S.P. Sampath Kumar case (supra) and L. Chandra Kumar case (supra), wherein it was held, that permanent benches needed to be established at the seat of every jurisdictional High Court. And if that was not possible, at least a circuit bench required to be established at every place where an aggrieved party could avail of his remedy. The position on the above issue, is no different in the present controversy. For the above reason, Section 5(2) of the NTT Act is in clear breach of the law declared by this Court."

38. On the issue of providing a convenient and expedient redress before the alternative court/tribunal, the Apex Court in **Madras Bar Association (supra)** followed **S.P. Sampath Kumar (supra)**. In **S.P. Sampath Kumar (supra)** the Apex Court in para 8, held as follows :

"8. I may also add that if the Administrative Tribunal is to be an equally effective and efficacious substitution for the High Court on the basis of which alone the impugned Act can be sustained, there must be a permanent or if there is not sufficient work, then a circuit bench of the Administrative Tribunal at every place where there is a seat of the High Court....."

39. On a bare reading of the aforesaid two decisions, we do not find the use of the word "Principal Seat" for establishing a permanent Bench of a Tribunal in either of the two decisions referred above, one of which i.e. **Madras Bar Association (supra)** was referred in the earlier order of this Court dated 28.02.2019. The words used are "Seat of the High Court".

40. The next question to be considered is where is the Seat of the High Court of Judicature at Allahabad, is there one or more than one Seat. In a reported five Judges decision of the Supreme Court of India in the case of **Nasiruddin Vs. State Transport Appellate Tribunal, 1975 SCC (2) 671**, the Hon'ble Apex Court, tracing out the history of the High Court of Judicature at Allahabad, had concluded that there is no permanent seat of the High Court at Allahabad. There are two Seats of the High Court one at Allahabad and another at Lucknow, none of which are permanent, and may be changed in accordance with provisions of the Amalgamation Order, 1948 i.e. at the discretion of the Chief Justice with the approval of the Governor. It is not out of place to mention that prior to the Amalgamation Order, 1948, there was a Chief Court of Oudh at Lucknow which was a deemed High Court, made under Section 219 of the Government of India Act, 1935, therefore the Order of 1948 brought about an amalgamation of the two High Courts into a new High Court i.e. High Court of Judicature at Allahabad. The Amalgamation Order, 1948 in Article 3 provides that the High Court in Allahabad and the Chief Court in Oudh shall constitute one High Court

by the name of the High Court of Judicature at Allahabad. Article 3 of the Amalgamation Order, 1948 is quoted below :-

"As from the appointed day, the High Court in Allahabad and the Chief Court in Oudh shall be amalgamated and shall constitute one High Court by the name of the High Court of Judicature at Allahabad (hereinafter referred to as "the new High Court")."

41. Article 14 of the Amalgamation Order, 1948, makes it clear that the Judges of the High Court shall sit at Allahabad or such other places as the Chief Justice may appoint with the approval of the Governor. It further provides that not less than two judges be nominated, by the Chief Justice to sit at Lucknow in order to exercise jurisdiction and power in respect of cases arising in the area of Oudh territory. Article 14 of the Amalgamation Order, 1948 is reproduced here in below :-

"The new High Court, and the Judges and division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint: Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice otherwise directs, such judges of the new High Court, not less than two in number, as the Chief Justice may from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such area in Oudh as the Chief Justice may direct, the Jurisdiction and power for the time being vested in the new High Court:

Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad."

42. The Hon'ble Apex Court in the case of **Nasiruddin (supra)** held as under :-

"24. Though the Lucknow Bench can exercise jurisdiction under Articles 226, 227 and 228, there is limitation on such jurisdiction as far as the Lucknow Bench is concerned. The Lucknow Bench will have jurisdiction under Article 226 only in cases where the right of the petitioner arose first within the Oudh areas. Where an original order passed outside the Oudh areas has been reversed or modified or confirmed at a place within the Oudh areas it is not the place where the ultimate or the appellate order is passed that will attract jurisdiction of the Lucknow Bench. In most cases where an appeal or revision will lie to the State Government, the order will be made at Lucknow. In all such cases, if it be held that the place where a case can be said to arise is where the ultimate or appellate order is passed by the authority, the Judges at Lucknow would then have jurisdiction even though the controversy originally arose and the original order was made by an authority outside the specified Oudh areas. In all cases a writ petition filed in the High Court would be a case arising at Lucknow. It is on this reasoning that, the High Court strictly confined the jurisdiction of the Lucknow Bench under Article 226 to the right which the petitioner pursues throughout the original proceedings, the appellate proceedings and thereafter in the High Court. The right of the petitioner is; the right which first arose and if the place where the right first arose will be within the Oudh areas then the Lucknow Bench will have jurisdiction.

26. The conclusion as well as the reasoning of the High Court that the permanent seat of the High Court is at Allahabad is not quite sound. The order states that the High Court shall sit as the new High Court and the Judges and Division Bench thereof shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint. The word "or" cannot be read as "and".

If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense. The mere fact that the results of a statute may be unjust does not entitle a court to refuse to give it effect. If there are two different interpretations of the words in an Act, the Court will adopt that which is just, reasonable and

sensible rather than that which is none of those things. If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all; there would be reason why one should not read it according to its ordinary grammatical meaning. Where the words are plain the Court would not make any alteration.

27. The arguments which were presented at the Bar on behalf of the Bar Association at Allahabad as well as the Bar Association at Lucknow suggested that those views can be described to be protagonists of Allahabad or of Lucknow on the one hand and antagonists to Allahabad or Lucknow on the other. The construction is to be dispassionate with out any leaning either in favour or against either of the places mentioned in the Order.

28. The Order describes the High Court as the new High Court. The two High Courts have amalgamated in the new High Court. The seat is at Allahabad or at such other places as may be determined. There is no permanence attached to Allahabad. If that were the intention of the Order, the word "and" instead of the word "or" would have been used. Other places may be determined by the Chief Justice in consultation with the Governor. It is left to prudence of the authorities mentioned as to what other places should be determined. In the normal understanding of the matters, it is left to the discretion of the authorities as to whether the seats at Allahabad as well as at Lucknow will be changed. Both places may continue. Both places may be changed. Lucknow is the seat of the Government Allahabad has also the history that the, High Court was there before the Order. Lucknow has been the principal place of Oudh. The Order aimed at giving status to the Oudh Chief Commissioner's Court as that of the High, Court. It is difficult to foresee the future whether the authorities will change the location to other places but no idea of permanent seat can be read into the Order. One can only say that it is the wish and hope, that both Allahabad and Lucknow will be the two important seats so that history is not wiped out and policy is not changed.

29. The conclusion of the High Court that the first proviso to paragraph 14 of the Order means that the areas in Oudh may be decreased is not the correct construction. The first proviso deals with nomination by the Chief Justice from time to time of not less than two Judges sitting at Lucknow. An argument was advanced on behalf

of the Bar Association at Allahabad that the words "not less than two in number" indicates that the Order did not contemplate the existence of a Division Bench. The words "from time to time" and "not less than two in number" indicate the minimum as two and that more than two Judges may be there. The words "from time to time" suggest not only that Judges may come from Allahabad to Lucknow or vice versa but also that the number may be increased or decreased according to exigencies. The only limitation on the number is that it shall not be less than two.

43. The Hon'ble Apex Court thereafter recorded their conclusion by holding :

37. To sum up, our conclusions are as follows. First, there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the Order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third, the Chief Justice has power under the second proviso to paragraph 14 of the Order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the Order be directed to be heard at Allahabad. Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at

Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place."

44. Thus there are two Seats of the High Court of Judicature at Allahabad, one at Lucknow and the other at Allahabad, none of which is permanent.

45. Now as regards the observations made in the interim order dated 28.02.2019 that the proposal dated 21.02.2019 was not in accordance with the order passed by the Supreme Court in the case of **Madras Bar Association (supra)** according to which the Tribunal should be set up at the Principal Bench of the High Court, which acted as the catalyst for revision of the earlier proposal by the impugned order. As already stated and as is evident from the provisions of the Amalgamation Order, 1948 and decisions of the Supreme Court in the case of **Nasiruddin (supra)**, which is a decision relating to this very High Court, there are two Seats of the High Court of Judicature at Allahabad, therefore, even as per the decision of Apex Court in the case of **Madras Bar Association (supra)** and **S.P. Sampath Kumar (supra)**, the permanent or State Bench of GST Tribunal could be set up at Lucknow as well as Allahabad or at both the places, as the case may be. Lucknow also happens to be the Capital of the State with good infrastructure, transport facilities and is also geographically accessible from various parts of the State and the recital contained in the order of this Court dated 28.02.2019 passed in Writ Petition No. 655 (Tax) of 2018 as it is not borne out from the decision in **Madras Bar Association (supra)** can at best be treated as a tentative observations especially as the proposal of the Government dated 21.02.2019 was not under challenge in the said petition and was not directly and substantively in issue and also as the decision of the Supreme Court in the case of **Madras Bar**

Association (supra) does not refer to the "Principal Seat" but Seat of the High Court which in this case is at Lucknow as well as Allahabad and also as this Court while passing the order dated 28.02.2019 did not notice the binding decision of the Supreme Court on this issue in the case of **Nasiruddin (supra)**. Therefore for this reason also the observations are at best *obiter* and not binding.

46. All the learned Counsels appearing before this Court in the present matter were asked to point out any such observation made in the **Madras Bar Association (supra)** as is referred in order dated 28.02.2019, all the Counsels unanimously submitted that they had all carefully perused the aforesaid judgment but no such observation or finding has been recorded therein. We have also perused the said judgments and agree with the submissions of the counsels.

47. From the perusal of the letter of the Commissioner, Commercial Tax, Lucknow, it is clear that there is no other material which could have created an occasion to re-consider/review its earlier proposal dated 21.02.2019 for constitution of the Bench of the Tribunal at Lucknow, and area Benches at other places including Allahabad except the order passed by the Division Bench of this court at Allahabad on 28.02.2019.

48. In view of the above discussion the basis for the revised proposal dated 15.03.2019 is a misreading and misconstruction of the observations made in the case of **Madras Bar Association (supra)** and also misunderstanding as to the existence of two Seats of the High Court of Judicature at Allahabad, in view of the binding decision of the Supreme Court in the case of **Nasiruddin (supra)**, following the observations made in the earlier order of this Court dated 28.02.2019 passed in Writ Petition No. 655 (Tax) of 2018, therefore, the said revised proposal is not sustainable on facts and in Law.

49. Now the seat where the Tribunal is to be established is an issue which is within the domain of the Executive in terms of Section 109 of

CGST Act ordinarily and is not justiciable in view of the decision of the Supreme Court in the case of **Lalit Kumar (supra)**, wherein it was held that "*that the issue with regard to setting up of permanent Bench and Circuit Benches of the Tribunal is not to be the subject matter of consideration by the judicial forum unless facts of the case are so appalling that judicial interference would be called for.*" There were no exceptional circumstances existing in the case, so far as the proposal dated 21.02.2019 was concerned, which was not even under challenge, therefore the same did not fall for adjudication in Writ Petition No. 655 (TAX) of 2018, on merits. As far we are concerned, we are not concerned with the issue on merits as to where the Benches should be established but we are only concerned with the issue whether the earlier proposal could have been reviewed on account of certain observations made in an interim order and whether on which count the revised proposal is sustainable as a valid exercise of power. The impugned proposal, which has been passed only on account of the order of this Court dated 28.02.2019, the purport and import of which has already been elaborately dealt with hereinabove, cannot be sustained.

50. In the present case, the legislation, namely, GST Act, 2017 has been enacted and has come into force with effect from 01.07.2017. Under the said enactment, various authorities have to be set up, namely, GST Council, and the GST Council was authorised to make recommendations to the Government for constitution of the regional Benches and State Benches.

51. In view of the above discussion, the amended proposal dated 15.03.2019 sent by the Commissioner, Commercial Tax is quashed. Consequently the earlier proposal dated 21.02.2019, which was a reasoned and considered one, shall be acted upon and GST Benches shall be constituted accordingly, expeditiously, say within three months'.

52. We wish to record appreciation to the learned Counsels Sri Jaideep Narain Mathur, learned Senior Advocate, Sri Anupam Mehrotra, Advocate, Sri Dhruv Mathur, Advocate who have appeared before this Court on our request and rendered their valuable assistance.

52. It has also been informed at the Bar that various Tribunals and Forum are not working on account of there being no Presiding Officer and the posts are lying vacant since long causing serious prejudice and difficulties to the litigants.

53. Before parting with the case, we would like to mention that in the preceding paragraph of the judgment, we have mentioned the statement made at the Bar that several Tribunals and forum like Armed Forces Tribunal, Human Rights Commission, Services Tribunal etc. are not functioning properly on account of the posts being vacant since a considerable long time. Needless to observe that the Tribunals are Expert Bodies and apart from being experts, it consists of technical members along with judicial members. Therefore, on account of non-functioning of these Tribunals, the litigants are rushing to this Court adding additional pendency. Furthermore, the litigants are deprived of their right to appeal. It may be added that delay in disposal of cases, not only creates disillusionment amongst the litigants, but also undermines the capability of the system to impart justice in an efficient and effective manner. Therefore, the Chief Secretary of the State is directed to look into the matter and make an earnest endeavour and ensure that the unfilled posts in the Tribunals and other Forums are filled up within a maximum period of twelve weeks. The Chief Secretary, Government of U.P., Lucknow shall file a compliance report after expiry of twelve weeks' before this Court. Registry is directed to list the case before appropriate Bench after twelve weeks' alongwith the compliance report, if any.

54. Let a copy of this order be sent to the Chief Secretary, Government of U.P., Lucknow, forthwith.

55. Writ petition is **allowed**. Parties to bear their own costs.

Order Date :- 31.5.2019

A. Verma