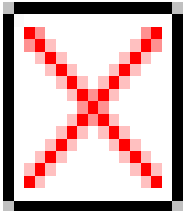


Binding nature of GST Council recommendations

AUGUST 03, 2022

By R K Singh



IN

reply to un - starred question number 203, the Central government informed Rajya Sabha that the recent judgement of Supreme Court in the case of Mohit Minerals - [2022-TIOL-49-SC-GST-LB](#) does not alter the Constitutional mechanism of GST Council. The government added that (i) the recommendations of the Council pertaining to GST laws are implemented through normal legislative process and to that extent the recommendations have only persuasive value (ii) however, the recommendations of the Council with respect to subordinate legislations e.g. those pertaining to rules, notifications and rates are binding on the states and Centre, and (iii) the Supreme Court judgment only augments this process.

2. The purpose of this article is to show that it is only in **de jure** sense that the recommendations of the Council pertaining to subordinate legislation are binding on Centre and the state governments. In the **de facto** sense, it is not so. It was so hinted in passing by this author in an [earlier article](#) but in the wake of the Central government's reply in the Rajya Sabha, it has become necessary to elaborate.

3. It is pertinent to point out that CGST Act, in its section 166 has a provision, similar to the provision which exists in all the taxation statutes. The said self-explanatory section is reproduced below for convenience:

"S. 166- Laying of rules, regulations and notifications

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

(Similar provision exists in section 166 of the GST law of States)

It is thus evident that although (as has been stated by the Central government in Rajya Sabha and held by Supreme Court) Central Government and the state governments are bound to implement the recommendations of the Council with regard to Subordinate legislation (viz. rules, regulations and notifications) and, therefore, will have to make/amend the rules and issue notifications prescribing rates or granting exemptions in accordance with the Council's recommendations, the rules so made/ amended or notifications so issued will have to be laid on the table of the Parliament / state legislatures. If the state legislatures/ parliament agree(s) to make any modifications in the rule(s) so made/ amended or the notifications so issued, as the case may be, or agree(s) that the rule so made/ amended or the notifications so issued should not be made/ amended/ issued, the rule so made/ amended or the notification so issued, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be.

4. The governments in power in the Centre or in the states would obviously have majority support in the Parliament/ respective state legislatures and, therefore, if any of the states had to unwillingly make / amend any rules or issue any notifications as per the recommendations of the Council, it will easily be able to scuttle the same through the respective state legislatures. [Save if the government at the Centre changes soon after the recommendations are made by the Council but before the fulfilment of the statutory requirement of the said s. 166, occasion for such scuttling by Central government will not arise because to begin with no recommendation can be made by GST Council unless the Central government is on board.]

5. Thus, the Central government / Supreme Court is right, but only in **de jure** sense, to hold that the recommendations of the Council with regard to subordinate legislation are binding on the Central/ state governments but **de facto** Central government or any state governments will be able to scuttle those recommendations through Parliament or the respective state assemblies which, as has been acknowledged and held by Supreme Court in the said judgement, are not bound by the recommendations of the Council.

6. It seems that Supreme Court was not expressly sensitized to the requirement of subordinate legislation having to pass the muster of s. 166. As different parties are / may be in power in different states and may not always be **ad idem** to the Council's recommendations with regard to subordinate legislation, the day is not unforeseeable when the dissenting states will resort to the state assembly route enshrined in s. 166 to scuttle such recommendations, thereby throwing the fundamental strength of GST (one nation - one tax) into disarray.

[The author is former Member CESTAT and Sr. Partner, TLC Legal Advocates. The views expressed are strictly personal.]

*(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same.
Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in
the articles being hosted on the site)*