ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

Crossing the line

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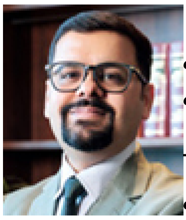

*"**TAXATION** is often a cat and mouse game between the authority and the assessee. The authority spreads the net and seeks to ensnare the assessee who makes every effort to slip away. The game may witness more than one round with fluctuating fortunes."*

These are the words with which the Hon'ble Madras High Court opens its decision in *Guru and Co. v. Union of India,* ***2026-TIOL-854-HC-MAD-GST*** and they set the tone for a judgment that goes well beyond the tax dispute at hand. Underneath the facts of two pulses traders and a dispute over branded rice and dal lies a question that touches the architecture of the entire GST regime: once the GST Council recommends something, how far can the Government go when it turns that recommendation into a notification, and can the Council *"ratify"* what it had never actually approved? The High Court answers both questions, and in doing so draws a boundary line that the government while issuing a notification under Sections 9 or 11 of the CGST Act would do well to keep in view.

1. Background and Facts

The writ petitioners were suppliers of pulses sold under brand names that were never registered under the Trade Marks Act, 1999. Under the original rate notification, Notification No. **1/2017-Central Tax (Rate)** dated 28.06.2017, a 5% levy applied to their goods under Entry No. 25 of Schedule I. Notification No. **2/2017-Central Tax (Rate)**, issued the same day, kept such goods GST-free altogether when sold in a unit container without a registered brand name.

That position shifted over a series of amending notifications. The amended entries brought within the tax net any goods sold under a brand name on which an actionable claim or an **enforceable right** in a court of law existed, unless that right had been voluntarily foregone in the manner set out in an accompanying Annexure. It was this added phrase, **an enforceable right in a court of law,** that eventually triggered show cause notices against the petitioners. They responded by challenging the amending notifications as ultra vires Article 279A of the Constitution, and sought quashing of the notices founded on them.

2. Issue before the High Court

Two questions fell for decision. The first was whether a notification issued by the Central Government under Sections 9 and 11 of the CGST **Act, 2017** can travel beyond what the GST Council actually recommended. The second, closely tied to the first, was whether the GST Council possesses any power to ratify a notification once it has already been issued under either provision.

3. Discussion and Findings of the High Court

The constitutional architecture behind the GST Council

The Court traced the shift GST brought about through the 101st Constitutional Amendment of 2016, which inserted Articles 246A, 269A and 279A into the Constitution. Article 279A created the GST Council and charged it with making recommendations on matters relating to goods and services tax. Whether those recommendations bind the Government had already been examined by the Hon'ble Supreme Court in *UOI v. Mohit Minerals (P.) Ltd. [**2022-TIOL-49-SC-GST-LB**]* which drew a distinction that the Council's recommendations do not bind Parliament or the State legislatures when they enact primary legislation, but they do bind the Government when it exercises its delegated, rule-making power. As the Supreme Court put it:

> *"171.1.3. The Government while exercising its rule-making power under the provisions of the CGST Act and the IGST Act is bound by the recommendations of the GST Council. However, that does not mean that all the recommendations of the GST Council made by virtue of the power Article 279-A(4) are binding on the legislature's power to enact primary legislations."*

Applying the above, the Court in present matter observed that a notification issued under Sections 9 or 11 is, like a rule made under Section 164, a piece of subordinate legislation, and both are required under Section 166 to be laid before Parliament. If the Government's rule-making power is tethered to the Council's recommendation, there is no principled reason its notification-making power under Sections 9 and 11 should not be tethered in exactly the same way.

A notification must follow the recommendation, not outrun it

Reading Sections 9 and 11 alongside Article 279A, the Court observed that while the Council's role is confined to recommending, the power to issue the notification rests with the Central Government. But the statutory language, that the notification must be issued *"on the recommendations"* of the Council, tells its own story. The recommendation has to precede the notification. Having already held that Mohit Minerals binds the Government's rule-making power to the Council's recommendations, the Court applied the same logic to the notification-making power under Sections 9 and 11.

What gives this reasoning its real weight, though, is the Court's assessment of what is at stake. Notifications under Sections 9 and 11 are charging and exempting provisions with pan-India reach, and they sit at the heart of cooperative federalism. The GST Council is a representative, federal body, and the Central Government owes it no separate obligation to consult the States once a Council recommendation exists, which is precisely why the recommendation itself has to be treated as binding. A recommendation is, in the Court's words, a reflection of the combined wisdom of the Centre and the States, and to let the Central Government unilaterally exceed it would be to hollow out the very idea of a uniform, federally negotiated tax. That is also why the Mohit Minerals distinction, non-binding on primary legislation but binding on delegated rule-making, was extended without hesitation to the power of notification.

Testing the notifications against what was actually recommended: the finding of "no recommendation"

Having settled the legal test, the Court turned to the facts and compared the impugned notifications against the record of what the GST Council had actually recommended. The notifications added the phrase "***enforceable right in a court of law***" together with an Annexure prescribing how such a right could be voluntarily given up, and neither addition traced back to anything the Council had recommended.

The Court also drew a comparison with its earlier decision in *Tata Play Ltd. v. UOI - **2025-TIOL-1090-HC-MAD-GST*** where the Government had notified on the strength of a mere subordinate committee's view (the GIC) without any recommendation from the Council itself, and it had been held there that the Government may decline to act on a recommendation, but it cannot act in the absence of one. The present case, the Court said, was similar in substance as it was not a case where the Government disregarded the GST Council's recommendation, but one where the notifications reflected the recommendation and then went **beyond** it, incorporating aspects on which there was, quite simply, no recommendation at all.

On this footing, the Court held that the additions lacked any foundation of recommendation and could not be said to be issued *"on the recommendation"* of the Council as Sections 9 and 11 require. The notifications, both Central and State, were accordingly declared ultra vires the parent statute to the extent they carried the expression *"enforceable right in a court of law."*

Can the GST Council ratify a notification after the fact?

The second issue took the Court into more general territory: whether a body created by statute or the Constitution can retrospectively validate an action it never actually authorised in the first place as Article 279A confers on the GST Council a power to recommend on the matters listed in Article 279A(4) and not the power to "ratify". The Court here noted, it is time settled that private-law doctrine of ratification has no place in the exercise of a statutory power as the statutory authority cannot travel beyond the power conferred and any action without power has no legal validity.

For this, the Court again referred to the Telangana High Court decision in *Brunda Infra (P.) Ltd. v. Additional Commissioner of Central Tax,* **=** ***2025-TIOL-91-HC-TELANGANA-GST*** where the issue was whether the Council could retrospectively bless a recommendation that had actually come from its own in-house law committee rather than from the Council itself. The Division Bench answered no, holding that ratification cannot be equated to recommendation, and that a ratification carried out after a notification has already been issued does not breathe fresh life into it.

Lastly, the Court discussed about what ratification actually means as a legal concept: an approval, by act, word or conduct, of something that was done improperly or without authority in the first instance, captured in the Latin maxim *ratihabitio mandato aequiparatur* i.e., a subsequent ratification is treated as equivalent to a prior authority. The concept, by its very nature, presupposes an invalid act that is being retrospectively validated. The Court's final word on the point was that a body, whether constitutional or statutory, can only exercise powers that have been specifically conferred on it, expressly or by necessary implication, and it has no inherent powers beyond that grant. Since neither the Constitution nor any statute vests the GST Council with such a power, the Court held that the ratification purportedly made by the Council in its 22nd meeting was without jurisdiction.

4. Conclusion

What makes ***Guru and Co.*** worth reading closely is not the outcome for two pulses traders, but its contribution to a body of jurisprudence that is still being built around a genuinely unique institution of our constitutional design, a federal body created under the Constitution, the power, manner and restrictions that govern how it may act within that constitutional setup. The judgment tells that a notification is only as good as the recommendation standing behind it, that going beyond a recommendation is functionally no different from having no recommendation at all, and that once a notification oversteps that boundary, the GST Council cannot fix the problem after the event in the name of ratification. In an era where GST notifications are amended, clarified and re-clarified at a pace few practitioners can keep up with, this judgment is a reminder that the recommendation-notification chain is not a formality but the very source of the Government's authority to act. Whether this reasoning survives appellate scrutiny remains to be seen, but for now, the High Court has given the assessee a real weapon in that perennial cat and mouse game the judgment opens with.

It will also be worth watching whether this ruling hands tax professionals a fresh line of attack to go through every rule, form, circular and notification and test it word by word against what the GST Council actually recommended, and to challenge it on that ground alone wherever the two part ways. Interesting times lie ahead, and only time will tell.

[The author is a practicing Advocate and Co-Founder & Legal Head at RB LawCorp. The views expressed are strictly personal. The author confirms that no AI has been used to generate this content.]