
THE LIMITS OF MOTION: SUO MOTU MEETS TAX LAW

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Introduction (What is Suo-Moto)

Suo Moto is a power developed from jurisprudence which has been provided to the judicial branch of our country. It is a term of the Latin language and translates to “on its own motion”. This is an inherent power granted in most countries to the Highest Courts to ensure completion of justice. This is a discretionary power designated to the Apex Court under Article 142 of the Constitution of India¹. The term used in the statutory provision is complete justice. This is typically utilized for cases involving public interests such as environmental cases, human or constitutional rights and cases involving interest of large masses of people. Article 32 also plays a supplementary role and helps the court in exercising such jurisdiction.

Evolution of Suo-Moto and Criticisms

The power of Suo-Moto is intended to be used sparingly and in excruciating circumstances. However, in the year 2024, the cases of Suo-moto jurisdiction were at an all-time high. In an article, it is stated that during the last 20 years 66 cases have been taken up under Suo-moto jurisdiction of the Supreme Court. Out of these 66, the last 5 years, 2019-2024 account for majority of such cases. In 2024 itself, 12 cases were taken up under Suo-moto jurisdiction and the primary reason for this has been since the surge of the pandemic in 2020².

The rise shows there is a possibility of some instances of misuse of power by the Apex court. In the recent years, there has been controversy with respect to judicial activism and overreach. Another issue is regarding the veracity as in Suo-moto cases, the jurisdiction generally comes from letters of the general public and the reports from media and news. The issue with this is regarding the veracity such information that can lead to failure of justice or delays in other cases of utmost importance. There is a major argument which will be demonstrated in this article with a specific provision in the indirect tax regime. This is the separation of powers

¹ Constitution of India, Article 142

² Gauri Kashyap, ‘Gauri Kashyap, ‘Supreme Court Review 2024: Suo moto cases at an all-time high’ (*Supreme Court Observer*, 21 Dec 2024)<<https://www.scobserver.in/journal/supreme-court-review-2024-suo-moto-cases-at-an-alltime-high/>> accessed 25 July 2025

doctrine. In such Suo-moto jurisdiction, the court oversteps from their judicial function and enter the field of the executive. The critical question which this article explores is whether the SC while exercising its Suo-motu jurisdiction, can override statutory provisions which have specifically been made for certain situations. The following sections of this article will examine and analyze the same with respect to section 168-A of the Central Goods and Service Tax Act, 2017³.

Background to The Controversy

Section 168-A was introduced through the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, effective from 31st March 2021. This was invoked during the pandemic period⁴. This provision was put into effect to relax the limitations for taxpayers and the authorities due to the pandemic and non-functioning of the government offices. The provision starts with a non-obstante clause giving it an overriding effect over other provisions of the Act. The provision allows for the government to extend the time limit for certain actions in this act which cannot be completed in the stipulated time due to force majeure. This encompasses emergency situations and natural disasters, and the pandemic is included in such a category. The procedure to extend time is to consult the GST council and publish a notification with respect to such time extension. There were plenty of notifications published during this period to increase validity of e-way bills and the time limit to file GST returns to ensure taxpayers were having an easier way to comply with the provisions of the Act without attracting a penalty.

The primary issue has been the extension of time with respect to time issue of show cause notices by authorities. Section 73 of the Central Goods and Service tax Act provides for the power to the authorities to issue show cause notice. Section 73(10)⁵ specifically provides the time frame to issue a show cause notice. The provision states to issue a show cause notice within three years from the date of furnishing of annual return for the specified financial year. Notification No. 9/2023 – Central Tax (March 31, 2023)⁶ and Notification No. 56/2023 –

³ Central Goods and Service Tax Act, s 168-A

⁴ King Stubb, 'Section 168A of the GST Act: Legal Boundaries of Extending Tax Timelines in Force Majeure Situations' (*King Stubb and Kasiva Advocates and Attorneys*, 7 March 2025)< <https://ksandk.com/tax/section-168agst-legal-boundaries-tax-force-majeure/>) accessed 25 July 2025

⁵ Central Goods and Service Tax Act, s 73(10)

⁶ Central Board of Indirect Taxes and Customs, Notification No 9/2023 – Central Tax (31 March 2023)

Central Tax (December 28, 2023)⁷, extended these deadlines to issue show cause notices. For F.Y. 2017-18 the date was extended to December 31, 2023, for F.Y. 2018-19 the date was extended to April 30, 2024, and for F.Y. 2019-20 the date was extended to August 31, 2024.

*In Re: Cognizance for Extension of Limitation*⁸, The Supreme Court exercised their power of Suo-moto jurisdiction and in light of the pandemic, issued an order regarding the period of limitation. In this case the court stated that the period from March 15, 2020, till February 28, 2022, shall be excluded from the period of limitation as may be prescribed under any general special laws to all judicial or quasi-judicial proceedings. It is important to note, Circular No. 157/13/2021-GST⁹ had been passed with respect to clarification of this extension of limit to GST proceedings. The Circular stated, the Suo-Moto order applies to proceedings like petitions/ applications/ suits/ appeals/ all other proceedings. The circular also stated that though issuing show cause notices are quasijudicial proceedings, the time extension provided by the Court would not cover issuance of show cause notices as it is limited to petitions/applications/reviews etc.

This implies that to all limitation periods, an additional approximate of 2 years is provided due to this order under Suo-moto jurisdiction. The question that arises is whether this order of general exclusion, by powers of Article 142 of the Supreme Court, applies to the time extension to issue show cause notices even after the enactment of section 168-A of Central Goods and Service Tax Act, a specific provision for the same.

Judicial Conflicts & Critical Analysis

This has been a recent topic of controversy. Multiple High Courts have provided judgments with respect to this specific challenge and courts have contradicting views with respect to this challenge. The challenge was regarding whether the notifications would be valid, or the time limitation would be governed by the order of the Supreme Court.

The Madras High court has discussed this issue in detail in *Tata Play Limited v UOI*¹⁰. They have made certain arguments for the notifications to be invalid. Firstly, the notifications were not adding time but curtailing the extension provided by the Supreme Court and thus the same

⁷ Central Board of Indirect Taxes and Customs, Notification No 56/2023 – Central Tax (31 March 2023)

⁸ *In Re: Cognizance for Extension of Limitation*, (2022) 3 SCC

⁹ Central Board of Indirect Taxes and Customs, Circular No. 157/13/2021-GST

¹⁰ *Tata Play Limited v UOI*, Writ Petition Nos. 17184 of 2024 & Batch

would not be allowed. The second aspect the notifications were not issued with recommendations from the GST Council. It was instead done with the GST Implementation Committee (GIC). Thus, the court stated that GIC cannot substitute the GST Council. The third and primary aspect was that the notifications were to be issued only in case of force majeure under section 168-A. However, the court found that the issue was with respect to inefficient administration of the indirect tax authorities and thus the notifications do not fulfil the requirement of force majeure. Lastly the court stated the order of the Supreme Court would prevail over the statutory provision, which was the crux of the judgment for declaring the notifications invalid.

There are slight infirmities in the reasoning of this. It is stated by the court that there was no event of force majeure, but one of administrative inefficiencies and delays. If that is the case, why should an advantage be provided to the department and authorities if the fault stands at their own end. In such a case the benefit should be granted to the taxpayer, and the time limit should be curtailed and not be excluded from issuance of such show cause notices. Another issue was the circular which came before the notifications and yet no reference was made to the same in the judgment.

This part of the circular argument was also skipped by the judgment of Patna High Court in *Barhonia Engicon Private Limited vs UOI*¹¹. The court stated that notifications were merely for abundant caution and the order of the Supreme Court would prevail.

The Telangana High Court has also provided a judgment in line with these prior judgments in *M/s.Brunda Infra Pvt. Limited vs. The Additional Commissioner of Central Tax*¹². This judgment however considered the circular. It stated that an order of the Supreme Court would prevail over a decision of the circular if a judgment is found in contrary to that effect. The reference was made to the case of *CCE v Ratan Melting and Wire Industries*¹³.

Thus, in these judgments court have taken the view that the orders would be applicable to proceedings like issuance of show cause notices. Some have taken a firm stance by declaring the notifications invalid. The others have read it aligning with the notifications and stating they

¹¹ *Barhonia Engicon Private Limited vs UOI*, 2024 SCC OnLine Pat 8366

¹² *M/s.Brunda Infra Pvt. Limited vs. The Additional Commissioner of Central Tax*, 2025 (1) TMI 299

¹³ *CCE v Ratan Melting and Wire Industries*, 2008 SCC OnLine SC 1527

acted as merely caution.

There have been opposing views as well which has led to conflict as to a concrete conclusion regarding this subject matter.

The primary case is the decision of *Graziano Trasmissioni and Ors. v Goods and Services Tax and Ors*¹⁴ by the Allahabad High Court. In this case the court held the notifications to be constitutionally valid as there was application of mind visible from the 47th Meeting of the GST Council which allowed the government to decide upon a date to avoid bunching. Thus, the process of recommendation was completed. The court also stated notifications could not be considered in excess of the power as it was a clear legislative policy keeping in mind the circumstances which arose at the time of the pandemic. The court noted that keeping in mind the Supreme Court order regarding exclusion of time limit, the extension would reach the year 2025. Thus, the court found that order adjudicated by Suo-moto proceedings of the Supreme Court would not be applicable to proceedings like issuance of show cause notice and alike GST proceedings, upholding the validity of the notifications under section 168-A.

The Karnataka High court in the case of *Sahaj Construction vs Union of India*¹⁵ made similar observations with more detailed analysis. The court interpreted the language of the Apex court in their order of Suo-moto proceedings regarding time extension. The court stated that Apex court was considering the proceedings before Courts and Tribunals and this order would not apply to proceedings like issuance of show cause notices, assessments, etc. issued by tax authorities. Thus, the court held that the order would not be applicable to such GST proceedings.

The case of *Faizal Traders Private Limited v. Deputy Commissioner*¹⁶ stated the time which could be extended is at the discretion of the executive and since the same is done in recommendations with the GST Council, it will be a valid extension. The court upheld the validity of the notifications and declaring section 168-A to be a constitutionally valid provision, as the same was implemented into operation due to circumstances which were unavoidable which was the pandemic.

¹⁴ *Graziano Trasmissioni and Ors. v Goods and Services Tax and Ors*, [2024] 163 taxmann.com 126 (Allahabad)

¹⁵ *Sahaj Construction v Union of India*, 2024 SCC OnLine Kar 1008

¹⁶ *Faizal Traders Private Limited v. Deputy Commissioner*, [WP(C) No. 24810 of 2023]

Conclusion

The order of the Supreme Court regarding time extension must be seen with respect to interpretation and language. To what extent was it the intent of the Apex Court to apply this order to even proceedings which are not specific adjudications and not petitions or proceedings before a Court or a Tribunal? This uncertainty has led to this divide between judgments from different regions of the court. The controversy also arises as it is a question of economics of the country than solely on time extension. The courts have generally not interfered with decisions of the executive when the matter is concerned with the executive as held in the case of *R.K. Garg v. Union of India*¹⁷. The court stated that in such cases the courts must interpret such legislation liberally and only in cases of the legislation appearing palpably arbitrary should the provision be struck down or intervened with. This is a principle which has been established within the Indian jurisprudence. The case of *Small Scale Industrial Manufactures Assn. v. Union of India*¹⁸ stated that the courts would not interfere with the decision of the government if the same is based on an expert advice with respect to relevant facts and circumstances and only when the same is arbitrary or constitutionally violative would the court intervene.

There is no doubt that Suo-moto proceedings and an order was required by the Supreme Court in the circumstances of the pandemic. The question and controversy surround the extent to cover proceedings which are not essentially proceedings in Courts and Tribunals, but merely an administrative procedure of issuing show cause notices. The Apex Court has powers to override provisions, but as established, that is only exceptional cases when the provision appears arbitrary on the face of it or done without application of mind.

The Future?

Thus, with all these conflicting judgments it would be interuiging to see how the Supreme Court deals with this question. The case of *M/S HCC-SEW-MEIL-AAG JV v Assistant Commissioner of State Tax*¹⁹ is an SLP filed to answer this question. The case was meant to be heard in March 2025 however the case is presently pending before the Supreme Court. While the judgment awaits, High courts have declined to put a decision on this legal issue.

¹⁷ *R.K. Garg v. Union of India*, (1981) 4 SCC 675

¹⁸ *mall Scale Industrial Manufactures Assn. v. Union of India*, (2021) 8 SCC 511

¹⁹ *M/S HCC-SEW-MEIL-AAG JV v Assistant Commissioner of State Tax*, Petition for Special Leave to Appeal (C) No. 4240/2025

This judgment is not just significant for tax landscape, but it will shape the contours on Suo-moto powers of the Highest Court in the country.