IGST : Although Chapter V of Finance Act of 1994 stood omitted under section 173 of CGST Act, 2007, savings clause provided under section 174(2)(e) will enable continuation of investigation, enquiry, verification etc., that were made/to be made under Chapter V of Finance Act of 1994

• No relief could be sought for interfering with demand cum show cause notices issued by Assistant Commissioner CGST of different districts which were issued under sections 75, 76 and 78 of Finance Act, 1994 in respect of a proceeding initiated under section 73(i) of Finance Act of 1994 for failure on part of petitioners /assessee from paying service tax that were leviable upon them.

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[2018] 98 taxmann.com 281 (Gauhati)

HIGH COURT OF GAUHATI

Laxmi Narayan Sahu

v.

Union of India

ACHINTYA MALLA BUJOR BARUA, J.
CASE NO. WP (C) 2059 OF 2018
OCTOBER 12, 2018

A.K. Gupta *for the Petitioner.*

JUDGMENT

1. Heard Mr. K.N. Choudhury, learned senior counsel for the petitioners. Also heard Mr. S.C. Keyal, learned ASGI for the respondent authorities.

2. In all the writ petitions, the demand-cum- show cause notices of various dates issued by the Assistant Commissioner, Central Goods and Service Tax of the district of Dibrugarh and Guwahati respectively are assailed. The said demand-cum-show cause notices are purportedly issued under Sections 75, 76 and 78 in respect of a proceeding initiated under Section 73(i) of the Finance Act of 1994, for failure on the part of the petitioners from paying the service tax that are leviable upon them. In all the writ petitions, the demand-cum-show cause notices are assailed on the ground that in view of the provisions of Section 173 of the Central Goods and Service Tax Act, 2017 ((for short, CGST Act of 2017), further proceedings that were initiated under Section 73(i) of the Finance Act of 1994 are no longer sustainable.

3. In the circumstance, a common question of law is involved in all the writ petitions, a determination of which would lead to an adjudication of the dispute raised therein, the writ petitions are taken up together for a final consideration.

4. Mr. KN Choudhury, learned Senior counsel for the petitioners raises an issue that Section 173 of the CGST Act of 2017 having omitted chapter V of the Finance Act of 1994, no proceeding initiated under Chapter V can further be continued, in view of the legal implication of a statutory provision being omitted, as laid down by the Supreme Court in its decision in *Messrs Rayala Corporaion (P) Ltd.,* v. *Director of Enforcement*, *New Delhi* reported in *1969 (2) SCC 412* in paragraph Nos. 17 and 18 and in *Kolhapur Canesugar Work Ltd. and Another* – v. *Union of India and Others* reported in [2000] 2 SCC 536in paragraph 37, which was again reiterated in *General Finance Co. and Another* v. *Assistant Commissioner of Income Tax, Punjab* reported in [2002] 7 SCC 1.

5. Mr. SC Keyal, learned Assistant SGI appearing for the respondent authorities on the other hand, raises the contention that the Judgment rendered in *Messrs Rayala Corporaion (P) Ltd* (*supra*) was per-incuriam of the provisions of Section 6 A of the General Clauses Act and that the provisions laid down in the said Judgment had been clarified by a subsequent Judgment of the Supreme Court rendered in *Fibre Board Pvt. Ltd. Bangalore* v. *Commissioner of Income Tax, Bangalore* reported in [2015] 10 SCC 333*,* to the extent that the applicability of Section 6 of the General Clauses Act in respect of an omission of a statute cannot be said to be a ratio *decidendi* at all and it is really in the nature of an *obiter dicta.*

6. Mr. KN Choudhury, learned Senior counsel for the petitioners in order to substantiate the legal effect of an omission of a statute on further maintainability of any proceeding initiated under it relies upon the following provisions as laid down by the Supreme Court in the referred decisions:

(*i*) Paragraph-17 and 18 of *Messrs Rayala Corporation (P) Ltd* (*supra*):

17. Reference was next made to a decision of the Madhya Pradesh High Court in State of Madhya Pradesh v. Hiralal Sutwala(1), but, there again, the accused was sought to be prosecuted for 'an offence punishable under an Act on the repeal of which section 6 of the General Clauses Act had been made applicable. In the case before us, s. 6 of the General Clauses Act cannot obviously apply on the omission of R. 132A of the D.I.Rs. for the two obvious reasons that s. 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a Rule. If s. 6 of the General Clauses Act had been applied no doubt this complaint 'against the two accused for the offence punishable under R. 132A of the D.I.Rs. could have been instituted even after the repeal of that rule.

18.The last case relied upon is 1. K. Gas Plant Manufacturing Co., (Rampur) Ltd. and Others v. The King Emperor(2). In that case, the Federal Court had to deal with the effect of sub-s. (4) of section 1 of the Defence of India Act, 1939 and the Ordinance No. XII of 1946 which were also considered by the Allahabad High Court in the case of Seth Jugmendar Das & Ors. (2). After quoting the amended sub-s. (4) of s. 1 of the Defence of India Act, the Court held :-

"The express insertion of these saving clauses was no doubt due to a belated realisation that the provisions of s. 6 of the General Clauses

Act (X of 1897) apply only to repealed statutes and not to expiring statutes, and that the general rule in regard to the expiration of a temporary statute is that unless it contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate."

The Court cited. with approval the decision in the case of Wicks v. Director of Public Prosecutions(4), and held that, in view s. 1 (4) of the Defence of India Act, 1939, as amended by Ordinance No. XII of 1946, the prosecution for a conviction for an offence committed when the Defence of India Act was in force, was valid even after the Defence of India Act had ceased to be in force. That case is, however, distinguishable from the case (1) A.I.R. 1959 M.P. 93. (2) [1947] F.C.R. 141. (3) A.I.R. 1951 All. 703. (4) (1947) A.C. 362.before us in two respects. In that case, the prosecution had been started before the Defence of India Act ceased to be in force and, secondly, the language introduced in the amended sub-s. (4) of s. 1 of the Act had the effect of making applicable the principles laid down in s. 6 of the General Clauses Act, so that a legal proceeding could be instituted even after the repeal of the Act in respect of an offence committed during the time when the Act was in force. As we have indicated earlier, the notification of the Ministry of Home Affairs omitting R. 132A of the D.I.Rs. did not make any such provision similar to, that contained ms. 6 of the General Clauses Act. Consequently, it is clear that, after the omission of R. 132A of the D.I.Rs., no prosecution could be instituted even in respect of an act which was an offence when that Rule was in force.

(*ii*) paragraph-37 of *Kolhapur Canesugar Works Ltd*. (*supra*):

37.The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is] introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision."

(*iii*) Paragraphs 8 and 9 of *General Finance Co. and Another* (*supra*):

"8.*Though we find the submissions of the learned counsel to be forceful, we are constrained to follow the two decisions of the Constitution Benches of this Court in Messrs Rayala Corporation (P) Ltd. case (supra) and Kolhapur Canesugar Works Ltd. case (supra). This view has held the field for over three decades and reiterated even as late as two years ago. Non-compliance with Section 269SS of the Act attracted prosecution as well as penalty. Omission of the provision regarding prosecution will not affect the levy of penalty. The advantage arising out of application of the ratio of the two decisions resulting in prosecution in cases of non-compliance with Section 269SS of the Act is only transitional affecting a few cases arising prior to 1.4.1989. Such cases may be few and far between. Hence we find this is not an appropriate case for reference to the larger Bench.*

9. Net result of this discussion is that the view taken by the High Court is not consistent with what has been stated by this Court in the two decisions aforesaid and the principle underlying Section 6 of the General Clauses Act as saving the right to initiate proceedings for liabilities incurred during the currency of the Act will not apply to omission of a provision in an Act but only to repeal, omission being different from repeal as held in the aforesaid decisions. In the Income Tax Act, Section 276DDstood omitted from the Act but not repealed and hence, a prosecution could not have been launched or continued by invoking Section 6 of the General Clauses Act after its omission."

7. Mr. SC Keyal, learned Assistant SGI in order to substantiate his contention that an omission of the provisions of a statue do not render any proceeding initiated under it to be not maintainable any further, relies upon the provisions of Section 6 A of the General Clauses Act, which is as under:

"*[6-A. Repeal of Act making textual amendment in Act or Regulation – Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal]*.

8. Mr. Keyal, learned Assistant SGI also relies upon the proposition of law laid down by the Supreme Court in paragraphs 31, 32, 33, 34, and 35 of the decision in *Fibre Board Pvt. Ltd v. Commissioner of Income Tax, Bangalore* reported in *(2015) 10 SCC 333* (supra) which is as under:

"*31. First and foremost, it will be noticed that two reasons were given in Royala corpn. (P) Ltd. for distinguishing the Madhya Pradesh High Court judgment. Ordinarily, both reasons would form the ratio decidendi for the said decision and both reasons would be binding upon us. But we find that once it is held that Section 6 of the General Clauses Act would itself not apply to a rule which is subordinate legislation as it applies only to a Central Act or Regulation, it would be wholly unnecessary to state that on a construction of the word "repeal" in Section 6 of the General Clauses Act, "omissions" made by the legislature would not be included. Assume, on the other hand, that the Constitution Bench had given two reasons for the non-applicability of Section 6 of the General Clauses Act. In such a situation, obviously both reasons would be ratio decidendi and would be binding upon a subsequent Bench. However, once it is found that Section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word "repeal", an "omission" would not be included. We are, therefore,l of the view that the second so-called ratio of the Constitution Bench in Royala Corpn. (P) Ltd. cannot be said to be a ratio decidendi at all and is really in the nature of obiter dicta.*

32. Secondly, we find no reference to Section 6-A of the General Clauses Act in either of these Constitution Bench judgments. Section 6-A read as follows:

"*6-A. Repeal of Act making textual amendment in act or Regulation- Where any Central Act or Regulation made after the commencement of this act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."*

33. A reading of this Section would show that a repeal by an amending Act can be by way of an express omission. This being the case, obviously the word "repeal" in both Section 6 and Section 24 would, therefore, include repeals by express omission. The absence of any reference to Section 6-A, therefore, again undoes the binding effect of these two judgments on an application of the per incuriam principle.

34. Thirdly, an earlier Constitution Bench judgment referred to earlier in this judgment, namely, State of Orissa, v. M.A. Tulloch & Co. has also been missed the Court there stated: (SCR pp. 483-84 : AIR pp. 1294-95, para 21)

"*… Now, it the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principals of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal……..*

12 IN Mamleshwar Prasad v. Kanhaiya Lal, (1975) 2 SCC 232 : (1975) 3 SCR p.834, Krishna Iyer, J., succinctly laid down what is meant by the "per incuriam" principle. He stated: (SCC p. 235, para 7 : SCR p. 837)

"*7. ... We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have sway of binding precendents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam."*

(emphasis supplied)

An interesting applications of the said principle is contained in state of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139 : (1991) 3 SCR 64, where a Division Bench of this Court held that once particular conclusion of a Bench of seven Judges [Synthetics and Chemicals Ltd. v. State of U.P., (1990) 1 SCC 109] was per incuriam – see: the discussion at SCR pp.80, 81 and 91 : SCC pp. 151, 152 and pp.161-162, paras 36 to 42 of the said judgment.

By necessary implication the same intention as that which would attend the case of an express repeal. Where an intention to effect a repeal is attributed to a legislature then the same would, in our opinion, attract the incident of the saving found in Section 6 for the rules of construction embodied in the General Clauses act are, so to speak, the basic assumptions on which statutes are drafted." (emphasis supplied.)

35. The two later Constitution Bench judgment also did not have the benefit of the aforesaid exposition of the law. It is clear that even an implied repeal of a statute would fall within the expression "repeal" in Section 6 of the General Cluases Act. This is for the reason given by the Constitution bench in M.A. Tulloch & Co. that only the form of repeal differs but there is no difference in intent or substance. If even an implied repeal is covered by the expression "repeal", it is clear that repeals may take any form and so long as a statue or part of it is obliterated, such obliteration would be covered by the expression "repeal " in Section 6 of the General Clauses Act."

9. Heard the rival contentions raised by the parties.

The contention of the petitioners that Section 173 of the CGST Act of 2017 having omitted the provisions of Chapter V of the Finance Act of 1994, no proceeding initiated under Chapter V can further be continued, is solely based upon the proposition laid down by the Supreme Court in paragraph 17 of *Rayala Corporaion (P) Ltd* (*supra*), as also paragraph 37 of *Kolhapur Canesugar Works Ltd.* (*supra*). In paragraph 17 of Rayala Corporaion (P) Ltd (supra), it has been held that Section 6 of the General Clauses Act is inapplicable in the case of omission of a statute for two reasons that Section 6 applies only in respect of repeals and not omissions and it applies when the repeal is of a Central Act or Regulation and not that of a Rule. Reliance has also been placed upon paragraph 18 of *Rayala Corporaion (P) Ltd* (*supra*), wherein a conclusion of the Allahabad High Court in the case of Seth Jugmendar Das and Others is referred to the effect that Section 6 of the General Clauses Act applies only to a repealed statute and not to expiring statues and that the general rules with regard to expiry of a temporary statute is that unless it contains some special provisions to the contrary after the temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect.

10. From the aforesaid propositions made in paragraph 17 of *Rayala Corporaion (P) Ltd* (*supra*) it is discernible that Section 6 of the General Clauses Act does not apply to a Rule but applies only to a Central Act or Regulation and secondly, Section 6 itself would apply only to a repeal and not to an omission.

11. In paragraph 37 of the pronouncement in *Kolhapur Canesugar Works Ltd.* (*supra*), it has been held that the normal effect of repealing a statue or deleting a provision is to obliterate it from the statue book as it had never been passed and the statue must be considered as a law that never existed, but an exception is engrafted under Section 6 of the General Clauses Act and, accordingly, if a provision of a statute is unconditionally omitted without a saving clause in favour of the pending provisions, all actions must stop where the omissions finds them and if the final relief had not been granted before the omission went into effect, it cannot be granted afterwards.

12. In this regard, it may be taken note of that in page 958 of the Principles of Statutory Interpretation by Justice GP Singh, it had been provided that the passing observation in *Rayala Corporaion (P) Ltd* (*supra*) and in Kolhapur Canesugar Works Ltd. (supra) that Section 6 of the General Clauses Act only applies to repeals and not to omissions, needs a reconstruction as omission of a provision results in abrogation or obliteration of that provision in the same way as it happens in a repeal.

13. The aforesaid aspect that Section 6 of the General Clauses Act applies only to repeals and not to omissions, and, therefore, in the event, a statute is omitted the pending proceedings initiated under it can no further be proceeded, and that such proposition laid down in *Rayala Corporaion (P) Ltd* (*supra*) and in *Kolhapur Canesugar Works Ltd.* (*supra*) needs a reconstruction was considered by the Supreme Court in *Fibre Board Pvt. Ltd.* (*supra*). In paragraph 29 of the judgment rendered in *Fibre Board Pvt. Ltd.* (*supra*), the aforesaid view expressed in the Principles of Statutory Interpretation by Justice GP Singh was taken note of.

14. In paragraph 30 of *Fibre Board Pvt. Ltd* (*supra*), the Supreme Court considered the aspect that in the event a view contrary to the view taken in *Rayala Corporaion (P) Ltd* (*supra*) and in *Kolhapur Canesugar Works Ltd.* (*supra*) is to be taken, the same ordinarily would have had the

requirement to refer the two judgments to a larger bench, but for the view that was to be taken in the said judgment there was no requirement to refer the two judgments to a larger bench.

15. In paragraph 31 of *Fibre Board Pvt. Ltd* (*supra*) it was held that if Section 6 of the General Clauses Act would not be applicable to a Rule which is a subordinate legislation and it applies only to a Central Act or Regulations, it would also be wholly unnecessary to state that on a construction of the word 'repeal' in Section 6 of the General Clauses Act, 'omission' made by the legislator would not be included. In paragraph 31 of *Fibre Board Pvt. Ltd*. (*supra*) it was also held that both the reasons stated in Rayala Corporaion (P) Ltd (supra) that Section 6 of the General Clauses Act does not apply to a Rule but only apply to a Central Act or Regulation and that Section 6 itself would apply only to a repeal and not to omission would have been considered as a *ratio decidendi,* but once it was found that Section 6 itself would not apply, therefore, it would be superfluous to state that the interpretation of the word 'repeal' would not include an omission. Accordingly, the Supreme Court was of the view that the second reasoning in *Rayala Corporaion (P) Ltd* (*supra*) that Section 6 of the General Clauses Act would apply only to a repeal and not to an omission would not be *ratio decidendi* at all and that it really is in the nature of an obiter dicta.

16. In paragraph 32 of *Fibre Board Pvt. Ltd* (*supra*) the Supreme Court also took note of the provisions of Section 6-A of the General Clauses Act which provides that where any Central Act or Regulation repeals any enactment by which the text of any Central Act or Regulation was amended by an expressed omission, amongst others, than unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

17. Upon such consideration in paragraph 33, it has been provided that the absence of any reference to Section 6-A in *Rayala Corporation (P) Ltd* (*supra*) and in *Kolhapur Canesugar Works Ltd.* (*supra*), undoes the binding effects of the two judgments by the application of the Principles of *per incuriam*.

18. From the propositions laid down in *Fibre Board Pvt. Ltd* (*supra*) it is discernible that the earlier propositions laid down *Rayala Corporaion (P) Ltd* (*supra*) and in *Kolhapur Canesugar Works Ltd.* (*supra*), to the extent that Section 6 of the General Clauses Act applies only in respect of a repeal and not to omission of an enactment is an obiter dicta, which is not binding. Secondly, it also cannot be said that the repeal of an enactment does not include the omission and to that extent, the law that is applicable to the repeal of an enactment would also be applicable to that of an omission and no distinction can be made between the two. Thirdly, the proposition as regards inapplicability of Section 6 of the General Clauses Act in respect of an omission of an enactment resulting in an impermissibility to continue further a proceeding that had been initiated under omitted enactment, merely based upon the proposition laid down in *Rayala Corporaion (P) Ltd* (*supra*) and in *Kolhapur Canesugar Works Ltd.* (*supra*) would also have to be looked from the perspective of the provisions of Section 6-A of the General Clauses Act and to that extent as has held in Fibre Board Pvt. Ltd (supra), the propositions laid down in *Rayala Corporation (P) Ltd* (*supra*) and in *Kolhapur Canesugar Works Ltd.* (*supra*) are per incuriam judgments.

19. From the said point of view, the contention raised by Mr. SC Keyal, learned Assistant SGI that the provisions of Section 6-A of the General Clauses Act enables the further continuance of a proceeding initiated under the omitted enactment also assumes sufficient force. A reading of Section 6-A of the General Clauses Act clearly shows that even if an enactment stands omitted by a subsequent amendment, a proceeding initiated under the omitted enactment on its own does not come to an end upon omission and further continuance cannot be said to be impermissible under the law. A contention has been raised by Mr. KN Choudhury, learned Senior Counsel for the petitioners by relying upon the pronouncement of the Supreme Court in *State of Uttar Pradesh* v. *Ram Chandra Trivedi* reported in [1976] 4 SCC 32 wherein in paragraph 22, it has been held as:

> *It is also to be borne in mind that even in cases where a High Court finds in conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger bench.*

20. Accordingly it is the contention of Mr. KN Choudhury, learned Senior counsel that the pronouncement in Rayala and Kolhapur being a decision by the Constitution Bench would prevail over the pronouncement in FibreBoard Pvt. Ltd.(supra). The said contention of the learned Senior Counsel for the petitioner would have to be looked into from the point of view as to whether the decision rendered in FibreBoard Pvt. Ltd. is a decision which is in conflict with the view expressed in *Rayala Corporation (P) Ltd* (*supra*) and in Kolhapur Canesugar Works Ltd. (supra).

21. To that extent, we take note of paragraph 30 of FibreBoard Pvt. Ltd, wherein the Supreme Court was conscious of the fact that in the event, a conflicting view is to be taken to an earlier pronouncement by a larger bench, it requires a reference to a larger bench. While dealing with the proposition laid down in *Rayala Corporation (P) Ltd* (*supra*) and in Kolhapur *Canesugar Works Ltd.* (*supra*), the Supreme Court was conscious of the aspect of referring the matter to a larger bench, but thought it to be not required in view of what had been laid down in the said decision.

22. Secondly, in *Fibre Board Pvt. Ltd* (*supra*) the Supreme Court took a view that the decisions rendered in *Rayala Corporation (P) Ltd* (*supra*) and in *Kolhapur Canesugar Works Ltd.* (*supra*) are per incuriam to the provisions of Section 6-A of the General Clauses Act. Further in paragraph 31 of FibreBoard Pvt. Ltd., it has been explained that the reason set forth in *Rayala Corporation (P) Ltd* (*supra*) that Section 6 of the General Clauses Act would be applicable only in respect of an appeal and not that of an omission cannot be said to be a ratio decidendi at all and that it really is in the nature of an obiter dicta.

23. From the aforesaid provisions in the *Fibre Board Pvt. Ltd*. (*supra*), it is apparent that the propositions of law laid down in *Rayala Corporation (P) Ltd* (*supra*) and in Kolhapur Canesugar Works Ltd. (supra) had in fact been clarified and therefore it cannot be a pronouncement in conflict that the pronouncement in *Rayala Corporation (P) Ltd* (*supra*) and in Kolhapur Canesugar Works Ltd. (supra).

24. Whenever there is a conflict between the decision by a larger bench and that of a smaller bench, as provided in paragraph 22 of *Ram Chandra Trivedi* (*supra*) a view expressed by the larger bench is to be taken into consideration by ignoring the view taken by the smaller bench. But the said proposition would have to be viewed from a different perspective when the provisions of the smaller bench clarifies the earlier proposition of the larger bench where such clarification by itself cannot lead to a conclusion that there is a conflict between the views expressed by the larger bench and the smaller bench.

25. The Division Bench of the Supreme Court in *Fibre Board Pvt. Ltd*., (*supra*)had deliberated, discussed and explained the proposition laid down in Rayala Corporation (P) Ltd (supra) and in *Kolhapur Canesugar Works Ltd*. (*supra*) and it is not a case where a contrary view had been taken by remaining oblivious to the proposition laid down in *Rayala Corporation (P) Ltd* (*supra*) and in *Kolhapur Canesugar Works Ltd.* (*supra*). The view expressed in *Fibre Board Pvt. Ltd.,* (*supra*) are also views under Article 141 of the Constitution of India and are binding on the High Court.

26. But be that as it may, in the alternative, it is also taken note of that in paragraph 37 of *Kolhapur Canesugar Works Ltd.* (*supra*), upon which the petitioner relies upon to substantiate that in case of the omission of an enactment, further proceeding initiated under the omitted Act is no longer sustainable it has been provided that if a provision of a statute is unconditionally omitted without a saving clause in favour of a pending proceeding,

all actions must stop, where the omission finds them and if the final relief was not granted before the omission went into effect, it cannot be granted afterwards.

27. But in paragraph 37, it was further provided that the operation of repeal or deletion as to the future and the past largely depend upon the savings applicable. It also provided that in a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is entrusted without the savings clause in favour of the pending proceedings, it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue, although a fresh proceeding for the same purpose may be initiated under the new provision.

28. In other words, the proposition laid down in paragraph 37 of *Kolhapur Canesugar Works Ltd*. (*supra*) is that the continuance of a further proceeding under an omitted Act depends upon as to whether a savings clause is provided in the enactment by which the earlier enactment was omitted. In the instant case, it is taken note of that the provisions of Chapter V of the Finance Act of 1994 were omitted by Section 173 of the CGST Act of 2017, where Section 173 is under the heading of 'Amendment of Act 32 of 1994'. Section 174 of the said Act which is under the heading of 'Repeal and Saving' in Sub-Section 1 provides that save and otherwise provided in the Act, on and from the date of commencement, the portion of the Central Act of 1994, the Medicinal and Toilet Preparation (Excise Duties) Act 1955, the Additional Duties of Excise (Goods of Special Importance) Act 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act and the Central Excise Tariff Act, 1985 stood repealed.

29. But Section 174(2) of the CGST Act of 2017 provides that the repeal of the said Acts and the amendment of the Finance Act of 1994 (Act 32 of 1994) to the extent mentioned in Section 174(1) or 173, as the case may be, shall not, amongst others, effect any investigation, enquiry or verification (including scrutiny and audit), assessment proceedings, adjudication or any other legal proceeding or recovery of arrears etc., and all such proceedings may be instituted, continued or enforced as if the Act had not been so amended or repealed.

30. The Constitution Bench of the Supreme Court in *Kolhapur Canesugar Works Ltd.* (*supra*) had also referred and followed the earlier pronouncement of the Constitution Bench in *Rayala Corporation (P) Ltd* (*supra*) and, therefore, the proposition laid down in paragraph 37 of *Kolhapur Canesugar Works Ltd*. (*supra*) can either be a clarification or it can be argued to be in conflict with the pronouncement in paragraph 17 of *Rayala Corporation (P) Ltd* (*supra*). Even if it is taken to be a conflict, but the decision having been rendered by a Bench of equal strength, the proposition that is more appealing is to be taken into consideration. The proposition in paragraph 37 of *Kolhapur Canesugar Works Ltd*. (*supra*) providing that the proceedings under an omitted enactment continues to remain in the event of there being a savings clause in the enactment bringing about such omission appears to be more appealing that the proposition in Rayala Corporation (P) Ltd (supra) providing for a discontinuance of such proceeding.

31. As the provisions of Section 174(2) also is clearly applicable in respect of an omission of the enactment under Section 173, therefore, any such investigation, enquiry, etc., that was instituted, continued or enforced under Chapter V of the Finance Act of 1994, continues to remain in place inspite of such omission of Chapter V of the Finance Act. In other words, Section 174(2)(e) is a savings clause in respect of any investigation, enquiry etc., that was/to be instituted under Chapter V of the Finance Act of 1994. A conjoint reading of Section 173 and 174(2)(e) would show that while bringing an omission to the provision of Chapter V of the Finance Act of 1994, a savings clause for continuing with the proceedings initiated/to be initiated was also duly provided. Existence of the savings clause in respect of omission of Chapter V of the Finance Act of 1994 clearly brings it within the purview of the provisions laid down by the Constitution Bench of the Supreme Court in paragraph 37 of *Kolhapur Canesugar Works Ltd*. (*supra*).

32. As already elucidated hereinabove, paragraph 37 of *Kolhapur Canesugar Works Ltd.* (*supra*) provides that if a statute stood omitted with a savings clause, the savings clause would not render it impermissible for the proceedings initiated/to be initiated under Chapter V of the Finance Act of 1994, which stood omitted by Section 173 of the CGST Act of 2017 to be continued.

33. A conjoint reading of the provisions laid down in paragraph 37 of *Kolhapur Canesugar Works Ltd.* (*supra*) and Section 173 and 174(2)(e) would lead to a conclusion that although Chapter V of the Finance Act of 1994 stood omitted under Section 173, but the savings clause provided under Section 174(2)(e) will enable the continuation of the investigation, enquiry, verification etc., that were made/to be made under Chapter V of the Finance Act of 1994.

34. In view of such conclusion, we find the writ petition to be devoid of any merit and the relief sought for interfering with the demand-cum-show cause notices of various dates issued by the Assistant Commissioner Central Goods and Service Tax of the different districts would have to stand rejected. Accordingly, the writ petitions stand dismissed.

35. Although the claim of the petitioners for interfering with the demand-cum-show cause notices had been refused but it is clarified that the respondents, if desire, may proceed ahead with the said demand-cum-show cause notices, and the same be done strictly in accordance with law, but from the point of view that the demand-cum-show cause notices came into effect from the date of this judgment.

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