



	<p><b>Item No.</b> <b>11</b></p> <p><b>September</b> <b>11, 2018</b> <b>dv</b></p>	<p>and at one point in the future, the level of fresh water resources available will become scarce. Plants absorb Carbon Dioxide CO<sub>2</sub> (a greenhouse gas) from the atmosphere and use it to produce food (carbohydrates, fats etc. that make up trees) and in return, it gives Oxygen. Destroying the forests mean CO<sub>2</sub> will remain in the atmosphere and in addition, destroyed vegetation will give off more CO<sub>2</sub> stored in them as they decompose. This will alter the climate of that region. Cool climates may get a lot hotter. With less trees, humans would not be able to survive because the air would be rendered unsuitable for breathing. If anything, people would have to wear gas masks that filter the air. Big cities like Delhi NCR are facing crisis in winters and the condition of other big cities like Kanpur, Agra, Lucknow are not better. Instead of taking corrective measures, the State is issuing new license to wood-based industry without having availability of timber. This will only encourage illegal cutting of trees. Trees are a crucial part of the Carbon cycle, a global process in which carbon dioxide constantly circulates through the atmosphere into organism and back again. Carbon is the second most valuable element to life after water. Anyway, trees take Carbon from the atmosphere through photosynthesis in order to make energy. This carbon is then either transferred into Oxygen and released into the air by respiration or is stored inside the trees until they decompose into the soil. Therefore, absence of trees would result in significantly higher amounts of Carbon dioxide in the air and lower amounts of oxygen. The filthy air would also be full of airborne particles and</p>
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	<p><b>Item No.</b> <b>11</b></p> <p><b>September</b> <b>11, 2018</b> <b>dv</b></p>	<p>promoting wood based industries at the cost of environment. The Notification is contrary to the legislative mandate under the Act.</p> <p>8. Learned Counsel for the State of Uttar Pradesh, supported the stand in the affidavit of the State. He submitted that this Tribunal has no jurisdiction to go into the merits as the 'Trees Act' is not in the Schedule to the National Green Tribunal Act, 2010.</p> <p>9. Question for consideration is whether the Tribunal can go into the question and whether the impugned Notification can be sustained as being consistent with the object of the environment protection and the legislative policy underlying the Trees Protection Act.</p> <p>10. As regards the jurisdiction of this Tribunal, it may be noted that the Tribunal is a special forum for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forest and other natural resources. The National Green Tribunal Act, 2010 has been enacted in the wake of UN Conference on the Human Environment held at Stockholm in June, 1972 to which India is a party and the UN Conference on Environment and Development held at <i>Rio de Janeiro</i> in June, 1992 to which also India is a party. This objective is clearly reflected in the statement of objects and reasons of the Act. The long title of the Act states that the object of establishment of National Green Tribunal is for effective and expeditious disposal of cases relating to environment protection. Once there is a nexus of an issue to the environment protection, it is difficult to understand why this Tribunal will not have a jurisdiction in the matter.</p>
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	<p><b>Item No. 11</b></p> <p><b>September 11, 2018</b> dv</p>	<p>The definition of 'environment' under Section 2(c) of the NGT Act is wide enough to include the issue of cutting of trees. The Schedule to the Act include Forest (Conservation) Act, 1980. The State Act needs to be read with law declared by the Supreme Court in T. N Godavarman vs. U.O.I (1997) 2 SCC 267 and directions issued against cutting of any trees. Thus, cutting of trees is an issue open to be gone into by the Tribunal even if the State Act is not in the Schedule. Reference may also be made to further directions in the said case, including in (2006) 1 SCC 1 laying down procedure required to be followed for diverting any forest for any other purpose.</p> <p>11. As regards the merits, we are unable to find any nexus in the object of encouraging agro forestry to exempting the cutting of all the trees, except few, from the purview of the regulatory regime under the UP Trees Protection Act. It is well known that naturally growing trees cannot be termed as 'agro forestry' which refers to the trees grown by the agriculturists. There may certainly be need to encourage agro forestry and relax regulatory regime for such species. Such species have to be so specified. Omnibus exemption of all species, except few, can hardly be said to be promotion of agro forestry. Reference to the provisions of UP Trees Protection Act shows that no tree is allowed to be felled except a tree which is completely dead or which has fallen without aid of human agency or unless permission is granted in accordance with the provisions of the said Act which has the safeguards of requiring planting of more trees wherever cutting of a tree, becomes necessary for any</p>
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	<p><b>Item No.</b> <b>11</b></p> <p><b>September</b> <b>11, 2018</b> <b>dv</b></p>	<p>valid reason. Even without the Uttar Pradesh Trees Protection Act, 1976 felling of trees indiscriminately is not permitted as it violates Article 21 of the Constitution.</p> <p>12. It is well settled that an exemption provision has to be applied to an exceptional situation. General exemption without creating defined category of exception results in defeating the main statute, by arbitrary exercise of power. The legislative mandate is to provide strict regulatory regime with regard to the subject matter covered by the statute. In fact, the agro forestry is not even shown to be covered by the regulatory regime. The definition of tree under Section 3(xi) of the Act is as follows:</p> <p><i>“3(xi) “tree” means any woody plant whose branches spring from and are supported upon an trunk or body and whose trunk or body is not less than five centimeter in diameter at a height of thirty centimeters from the ground level and is not less than one metre in height from the ground level, and the expressions “timber trees” and “fruit trees” means respectively the trees of the species specified in Schedule I and Schedule III, respectively.”</i></p> <p>13. In any case, the agro forestry could be specifically defined in the exemption granted for the purpose. Omnibus exemption from the Act requiring regulation of cutting of trees, with regard to every species of trees, except few, cannot be held to be advancing the need of environment. The impugned notification does not merely restrict the exemption to agro forestry and goes much beyond.</p> <p>14. Though reference has been made to certain figures to buttress the argument that there is increase in the forest cover, the figures do not support such an argument. The Notification is of October 2017. The same has</p>
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arbitrary exercise of power, adversely impacting the environment.

17. We may note that while issuing the impugned Notification was stayed on 15.12.2017 and the stay has been operative till date.

18. Accordingly, we allow this application and quash the impugned Notification dated 31.10.2017. However, we leave it open to the State of Uttar Pradesh to carry out a proper impact assessment and thereafter grant any exemption after making inventory of all the agro-forestry produces specifying species of agro forestry. This may be consistent with the requirements of Forest Conservation Act as interpreted in *T.N. Godavarman Thirumalpad vs. Union of India & Ors. (supra)*

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11.09.2018