UBR LEGAL ADVOCATES

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LEX LOQUITUR

A NEWSLETTER SUMMARIZING LATEST COURT RULINGS

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Preface

Dear Reader,

Courts "rule". They actually do. Significance, application and implication of such rulings needs to be understood and appreciated.

Lex Loquitur is an endeavor to bring to you the latest rulings from the Courts and various other judicial fora. We intend to cull out the ratio of some important rulings and summarize them for your ready reference, with our observations/ comments, if any.

We trust you will find it an interesting read.

We would, however, look forward to your feedback/comments. Do write to us at:
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Warm Regards
Team Lex Loquitur
UBR LEGAL, ADVOCATES

Matters Argued by us

1. Whether non-granting of opportunity of personal hearing is in violation of principal of natural justice or not?

Tvl Pvk Construction v Union of India & Ors – WP (MD) No. 3728 of 2025 [Madras High Court]

Decision: Yes.

The petitioner is undertaking construction of buildings. A notice was issued proposing demand on the ground of mismatch and short reporting of turnover for financial year 2017-2018. The petitioner sought adjournment on ground of ill health of the proprietor. However, order confirming demand of tax along with interest and penalty came to be passed. A rectification application under section 161 of CGST was filed. It was allowed. However, for subsequent financial years; the same officer rejected the rectification on the ground that submission of fresh documents cannot be a ground for rectification. Demands of over Rs.40 crores were confirmed. Hence, petitions came to be filed challenging such demands and rectification orders.

The Madras High Court at Madurai set aside the orders and allowed the writ petitions. It held: (i) the orders were passed in violation of principles of natural justice as request for adjournment was not considered; (ii) rejects revenues contention on the ground of alternate remedy; (iii) directs petitioner to file reply in one week and directs the adjudicating authority to reconsider the claim and pass orders in three weeks.

2. Whether GST is leviable on BOT projects or not?

CG Tollway v Union of India & Ors – D.B. Civil Writ Petition No. 9656 of 2024 [Rajasthan High Court]

Decision: No.

The petitioner is a Special Purpose Vehicle (SPV) formed for execution of roads in the State of Rajasthan. The project was awarded by National Highways Authorities of India (NHAI) on Built, Operate & Transfer (BOT) Model. Under the BOT contract, SPV constructs and maintains the road during concession period and SPV is given toll collection right to recover the cost so incurred. Toll is exempt from GST. However, the authorities confirmed demand of GST of over Rs.150 crores on the ground that the petitioner had provided "works contract" service to NHAI. Such demand was challenged in writ petition.

The petitioner contended that no supply, let alone, construction supply is provided to NHAI as Highway is constructed on its own account. The petitioner having not provided any construction services is not entitled to any claim of ITC under GST, GST charged by the EPC Contractor. Charging GST would lead to double taxation.

The Rajasthan High Court disposed off the petition with direction to file appeal in 15 days with the appellate authority. The appellate authority was directed to decide the appeal in 3 months. The High Court notes that the CBIC vide circular dated 17.06.2021 had clarified that no GST is leviable on BOT projects. The High court also notes that in similar SPV at Gujarat and Karnataka, similar objections have been dropped by the authorities. Thus, directs the appellate authority to consider the same and pass orders.

Matters Argued by us

3. Whether services of teaching provided by the appellant to Malaysian students who would be eventually employed by Malaysian Government amounts to export of service or not?

Karnataka Lingayat Education (KLE) Society v Commissioner of Central Excise and Service Tax, Belgaum – Service Tax Appeal No. 21237 of 2017 [CESTAT Bangalore]

Decision: Yes.

The appellant is an education society. It is a registered charitable trust. It entered into an agreement with University of Malaysia (funded by the Government of Malaysia) for teaching students medicine; who would be eventually employed with the Malaysian Government. The appellant earned foreign exchange. However, show cause notice was issued demanding service tax under taxable head of "business support service" and denying the benefit of export of service. Demand of over Rs.15 crores, along with interest and equivalent penalty, was confirmed on this count. Separate demands were confirmed under "manpower recruitment agency" service and "renting of immovable property" service. Hence, appeal.

CESTAT, Bangalore set aside the demand and allowed the appeals with consequential relief. It held: (i) the appellant has satisfied all conditions under Rule 6A of Place of Provision of Service Rules, 2012; (ii) as per the agreement; the "recipient" of service is in Malaysia; though the "user" of the service may be in Belgavi, India; (iii) the dean of Malaysian University is not the recipient of the service; (iv) rejects Revenues argument that the place of provision of service is in India; (v) follows decision in the case of Vodafone and Verizon; (vi) mere providing list of suitable candidates does not amount to providing "manpower recruitment agency" service; (vii) the commissioner has not considered the fact that service tax was already paid under renting service and demand has been confirmed again; (viii) once demand is set aside; no penalty can sustain.

4. Whether providing investment advisory services to group entities located outside India amounts to export of services in terms of Rule 6A of the Place of Provision of Service Rules, 2012 or not?

Tata Asset Management Limited v. Commissioner of Central Excise & Service Tax & CGST, Mumbai South – Service Tax Appeal No. 86137 of 2022 [CESTAT Mumbai]

Decision: Yes.

The appellant is providing investment advisory services to group entities located outside India. It received payment in convertible foreign exchange. It claimed benefit of export of services in terms of Rule 6A of the Place of Provision of Service Rules, 2012. However, the department proposed demand of service tax on the ground that the services are provided in India and the appellant being an "intermediary" is liable to pay service tax in terms of Rule 9. Demand of over Rs3.5 crores, along with interest, was confirmed and equivalent penalty was imposed. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) as per the agreement, there was no tri-patriate arrangement; the appellant was providing only advisory services; (ii) the appellant was not an intermediary as clarified by CBIC Circular dated 20.09.2021; (iii) follows decision of Tribunal in the case of Greater Pacific and Verizon affirmed by Hon'ble Supreme Court.

5. Whether providing testing services to a foreign entity located outside India amounts to export of services in terms of Rule 6A of the Place of Provision of Service Rules, 2012 or not?

Getz Pharma Research Private Limited v Commissioner of Service Tax – VII – Service Tax Appeal No. 85284 to 85287 of 2017 [CESTAT Mumbai]

Decision: **Yes.**

The appellant is providing testing services to a foreign entity. It received payment in convertible foreign exchange. It claimed refund of input/input services used for export of services under Rule 5 of the Cenvat Credit Rules. Refund was sanctioned. However, department filed appeal before appellate authority claiming it was not an export of service. The commissioner (appeals) allowed the department appeal. Hence, appeal by the assessee.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) if the activity was not export of service; there should have been a demand of tax which has not been done; (ii) the applicability of Rule 9 was never a case in the show cause notice or finding of the lower authority; (iii) reliance placed by the Revenue on the decision of Sai Life Sciences is distinguishable; (iv) A right relating to intellectual property is not a provision for incentivizing innovation but is very much for securing property in the manner peculiar to each national jurisdiction. It is not policy but a prescription in law and the vestment of such right must meet the test of law. A right that is not registered in India cannot be deemed to have come into existence in the territory of India. Hence, cannot be said to be covered by Rule 9; (v) the appellate authority has not examined the applicability of Rule 4; hence; the matter is remanded.

6. Whether services provided by the appellant to foreign principal amounts to export of services or not?

ATA Freigtline (India) Private Limited v. The Principal Commissioner of CGST & C. Ex., Pune – I – Service Tax Appeal No. 86405 of 2021 [CESTAT Mumbai]

Decision: Yes.

The appellant is providing logistics and transportation services. It entered into an agreement with foreign principal. It received payment in convertible foreign exchange. However, revenue sought to deny benefit of "export of services" on the ground that the place of provision of service is in India as per Rule 4 of the Place of Provision of Services Rules, 2012. Demand of service tax of over Rs.4.8 crores along with interest and equivalent penalty was confirmed. Hence, appeal.

CESTAT, Mumbai set aside the demand and allowed the appeal. It followed the order passed by CESTAT for earlier period in appellants own case; wherein; it was held that: (i) Rule 4 of POPS is not applicable; (ii) the artificial bifurcation of Services upto loading of cargo at the port and post that by the department is not correct; (iii) "service" as defined under section 65B(44) has to be provided to "another person" i.e. other than service recipient and unless the same is established; Revenue cannot levy service tax.

7. Whether amendment to section 85 reducing the time limit to file appeal would be applicable on order passed before 28.05.2012 or not?

Mumbai Port Trust v Commissioner of Service Tax – I – Service Tax Appeal No. 86017 of 2017 [CESTAT, Mumbai]

Decision: No.

The appellant is the Mumbai Port Trust. A demand of service tax under "port" services was confirmed for providing terminal facilities to Central and Western Railways. On appeal, the Commissioner (appeals) dismissed the appeal on the ground that it was belated beyond condonation. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the order was passed on 18.05.2012 and served on 04.06.2012; therefore; amendment to section 85; with effect from 28.05.2012; reducing the time limit for filing appeal from 3 months to 2 months could not apply; (ii) in terms of section 9 of the General Clauses Act, the date on which order is received has to be excluded for purpose of calculating limitation; hence; the appeal was within the prescribed time limit of 3 months; (iii) hence, appeal is allowed with direction to commissioner (appeals) to decide the issue on merits.

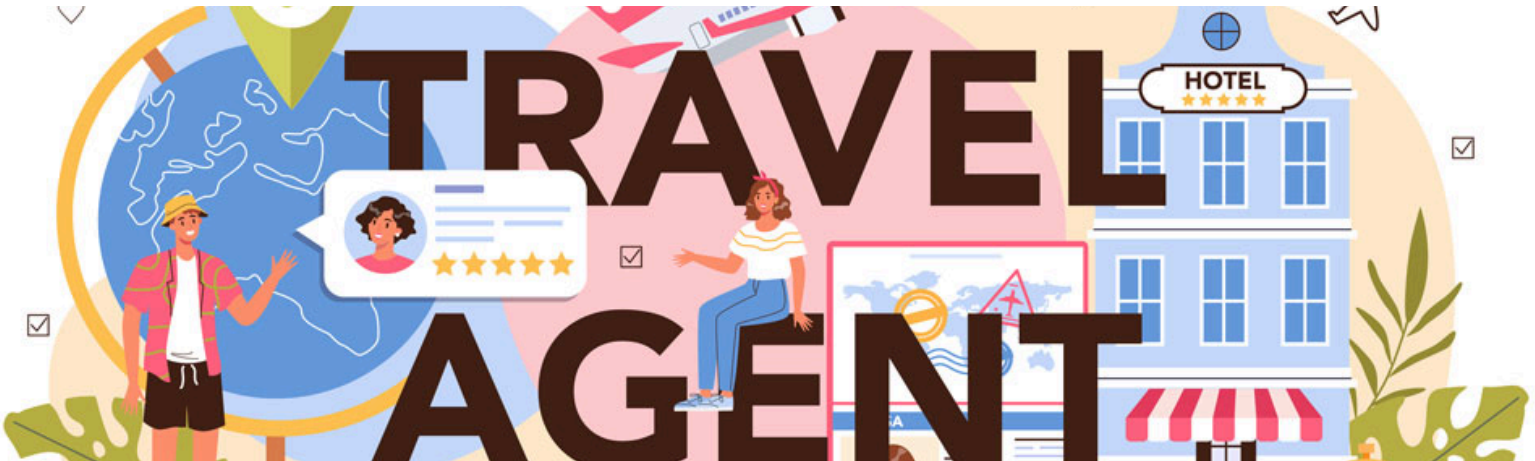
8. Whether air travel agent service and insurance services provided by the appellant are excluded from the definition of input service post 01.04.2011 or not?

Syntel Private Limited v Commissioner of CGST & C. Ex., Mumbai East – Service Tax Appeal No. 87715 of 2018 [CESTAT Mumbai]

Decision: No.

The appellant is engaged in providing information technology software services. It receives various input services and avails Cenvat credit. It exports output services and accordingly, sought refund of accumulated input tax credit. The same was denied. On appeal, the commissioner (appeals) partly allowed the claim but rejected refund on "air travel agent" service and "insurance" service on the ground these are excluded from "input services" post 01.04.2011. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the on-site services required the personnel and hence, air travel agent was related to output service business; (ii) the group insurance policy for the employees covers risk for travel to on site abroad and hence, it is related to output service business; (iii) what is excluded from the definition post 01.04.2011 is services meant for personal consumption of the employees; (iv) follows decision of Karnataka High court in Micro Labs case.



9. Whether the provisions of BNSS/CrPC on rights of arrested persons applicable to GST & Customs Act or not?

Radhika Agarwal v Union of India & Ors – WP (Crl) No. 336 of 2018 [Supreme Court]

Decision: Yes.

A batch of petitions were filed challenging the arrest powers under section 104 of the Customs Act, 1962 and Section 69 of CGST Act, 2017. The controversy stemmed from the Supreme Court's 2011 decision in Om Prakash v. Union of India (2011) 14 SCC 1, which held offences under the Customs Act and Central Excise Act, 1944 as non-cognizable and bailable, requiring a warrant for arrest. Post this ruling, the legislature amended the Customs Act in 2012, 2013, and 2019 and incorporated similar classifications in the CGST Act, making certain offences cognisable and non-bailable (e.g., tax evasion exceeding INR 50 lakh)

The Larger Bench held as under:

a.Legality of Arrest Powers under GST and Customs Law
The arrest powers under section 104 of the Customs Act and Section 69 of CGST Act are constitutionally valid and officers can arrest individuals without a warrant in cases where the tax evasion or fraudulent credit exceeds Rs. 5 crore (under GST) and Rs. 50 Lakhs (under customs for prohibited goods). However, the arrest must be based on credible materials and must comply with constitutional safeguards.

b.Constitutional validity of section 69 (Power to Arrest) and Section 70 (Power to Summons) under GST laws
Article 246A grants Parliament the authority to legislate on GST including ancillary powers such as arrest and summons. Section 69 and Section 70 of the CGST Act do not violate constitutional principles and fall within the doctrine of 'pith and substance'.

c.Safeguards against Misuse of Arrest Powers
The officers must document explicit and credible reasons for arrest. Arrested individuals must be informed in writing about the reasons for their arrest. The arrested person has the right to meet an advocate during interrogation though only within visual but not hearing distance. Custom officers despite not being police officers must maintain records similar to case diaries.

d.Scope of Judicial Review
The court should intervene only in cases of manifest arbitrariness, mala-fide intent, or statutory non-compliance. The sufficiency of material or officer's subjective satisfaction is not reviewable at the investigation stage.

e.Precondition for arrest
Arrest can proceed if there is sufficient certainty of a non-bailable offence under section 132 provided reasons are recorded. No mandatory assessment order is required before initiating arrest.

f.Anticipatory Bail
A taxpayer can seek Anticipatory Bail under section 438 and section 439 of the CrPC based on reasonable apprehension of arrest, even without an FIR.

g.Coercive Recovery of Taxes during Investigation
The tax recovery requires adjudication and cannot be forced during investigation. Section 79 of CGST Act allows recovery only after a 3-month period from an adjudication order. The Voluntary payments under section 74(5) are permissible only in respect of fraud but the same must not be coerced.

10. Whether the department can issue a consolidated Show Cause Notice for multiple financial years or not?

Joint Commissioner (Intelligence & Enforcement) Vs Lakshmi Mobile Accessories- W.A. No. 258 of 2025[Kerala High Court]

Decision: No.

A single SCN was issued to the Respondent for six different financial years. Such SCN was challenged before the High Court, arguing that combining multiple years into one notice was procedurally incorrect, limiting their ability to respond effectively and potentially violating statutory time limits for adjudication.

The Single Judge of the High Court held that issuing a single notice for multiple years could prejudice the assessee, particularly concerning the statutory time limits for adjudication associated with each financial year. The Court emphasized that Section 74 requires separate assessments for each financial year and that combining them into one notice is not mandated by law. Consequently, the court directed the tax authorities to issue separate show-cause notices for each financial year and to ensure compliance with procedural safeguards to uphold the assesse's rights. The said order was challenged by way of a writ appeal.

The Division Bench upheld the decision of the Ld. Single Judge. They emphasized that issuing a consolidated show-cause notice covering multiple financial years could prejudice the assessee. The court noted that such a practice might limit the assessee's ability to respond effectively and could affect the statutory time limits for adjudication associated with each financial year.

11. Whether Service Tax is leviable on Distributor of Lottery Tickets or not?

Union of India & Others Vs Future Gaming Solutions Pvt. Ltd. & Another Etc.-Civil Appeal Nos. 4289-4290 of 2013[Supreme Court]

Decision: No.

The respondents are private companies, engaged in the business of the sale of lottery tickets organised by the Sikkim Government. The respondent accordingly into agreement with the government. Notice was issued to the respondent. Respondent challenged notice as well as the constitutional validity of clause (zzzzn) of section 65(105) of the Finance Act, 1994 as inserted vide Finance Act, 2010 before Sikkim High Court.

Sikkim High Court held that service tax on lottery distribution was unconstitutional, as it fell under the head "betting and gambling," being a state subject (Entry 62, List II of the Constitution). Accordingly, it struck down clause (zzzzn) of Section 65(105) of the Finance Act, 1994 being ultra vires the constitution. The revenue challenged the said order before the Supreme Court.

Supreme Court upheld the decision of Sikkim High Court and held that clause (zzzzn) of the Section 65(105) of the Finance Act, 1994 as inserted by the Finance Act, 2010. The relationship between the lottery distributor (respondent) and the State of Sikkim was principal-principal and not principal to agency. Since there is no agency in the relationship, the Respondents(distributors) were not liable to pay service tax, as they are not rendering any service to the State Government.

12. Whether Input tax credit can be reduced retrospectively or not?

State of Punjab & Ors. Vs Trishala Alloys Pvt. Ltd.-Civil Appeal No. 2212 of 2024 [SC]

Decision: Yes.

The Respondent is a manufacturer dealing in iron and steel goods. The State government reduced the tax rate on iron and steel goods from 4.5 percent to 2.5 percent. As a result, businesses that had purchased iron and steel at the earlier higher rate were only allowed ITC at the reduced rate when selling those goods after the tax cut. The rule was effective from 01.02.2014 although the enabling provision under the Punjab VAT Act was brought into effect only on April 1, 2014. The Respondent challenged the Rule 21(8) being violative of the Punjab VAT Act before the Punjab & Haryana High Court.

The P&H High Court held that on the date of introduction of Rule 21(8), there was no provision in the Punjab VAT Act that empowered the State to limit the ITC on goods already purchased before the rate reduction. The enabling amendment to Section 13(1) of the Punjab VAT Act came into effect only on April 1, 2014. Therefore, Rule 21(8) could not be applied before that date and accordingly declared the rule unconstitutional. The order was challenged by the revenue by way of an appeal before the Supreme Court.

The Supreme Court upheld the decision of the Punjab & Haryana High Court and held Rule 21(8) of the Punjab Value Added Tax Rules, 2005, which was notified on 25.01.2014, could not be applied to transactions before 01.04.2014, as the enabling amendment to Section 13 of the parent statute, the Punjab Value Added Tax Act, 2005, was effective from that date. The Court observed that taxable persons who had stock in trade as of January 25, 2014, or February 1, 2014 (the date from which Rule 21(8) was effective), had already paid tax at a higher rate when purchasing those goods. These goods were intended for use as inputs in manufacturing taxable goods. If Rule 21(8) were applied retrospectively, reducing the ITC to match the lower tax rate introduced later, it would cause serious financial loss to the taxable persons. Since ITC is a right accrued at the time of purchase, it cannot be reduced retroactively without clear statutory authorization. The Court held that Rule 21(8) could only apply to transactions occurring on or after April 1, 2014, when the amended provision allowed the State to restrict ITC.

13. Whether Rule 36(4) of the CGST Rules, 2017 is constitutionally valid or not?

High Tech Ecogreen Contractors LLP v The Joint Director, DGGI, Guwahati Zonal Unit - WP(C) No. 4787 of 2024 [Gauhati High Court]

Decision: Yes.

Petitioner is engaged in rendering works contract services. SCN was issued on ground of wrong availment of Input Tax Credit (ITC) which is not allowable under the provision of Rule 36(4) of the CGST Rules. Petitioner filed reply. Order was passed demanding GST. Appeal was filed before CIT(A). Appeal was dismissed on ground of being time barred. The petitioner challenged such order before the High Court challenging the constitutional validity of Rule 36(4).

The High Court upheld the constitutional validity of Rule 36(4) of CGST/AGST Act, 2017. The provision stipulates documentary requirements and conditions for a registered person claiming input tax credit (ITC). The provision was enacted based on powers derived from Section 16 of the CGST Act and the general rule-making powers under Section 164, not from the unenforced Section 43A. It observed that Rule 36 is not relatable to Section 43A, rather, Rule is relatable to Section 16 of the CGST Act only.

14. Whether Charitable Trust's registration u/s 12AA to be decided on proposed activities or actual activities?

CIT, Exemption v International Health Care Education and Research institute – SLP (Civil) Diary No. 19528 of 2018 [Supreme Court]

Decision: Proposed Activities.

Petitioner is a trust engaged in charitable activities. The petitioner applied for registration u/s 12AA of the IT Act. CIT(Exemptions) rejected the application. Petitioner challenged the order before ITAT. ITAT set aside the commissioner order and directed that to grant registration u/s 12AA to the petitioner. Appeal was filed before Rajasthan High Court. The High Court upheld the ITAT decision and held that non-commencement of activities is not a valid reason to reject registration. Petition was challenged before Supreme Court.

The Supreme Court upheld the decision of High Court and held that when a charitable trust applies under Section 12-AA of the Income Tax Act ("Act") for income tax exemptions (under Sections 10 and 11), the tax authorities should decide on the registration based on the charity's "proposed activities" than its actual activities, as stated in the Ananda Social case. The Court, however, clarified that mere registration under Section 12-AA would not entitle a charitable trust to claim exemption under Sections 10 and 11 respectively of the Act, 1961, and the authorities can decline the grant of exemption if the materials produced by the trust do not seem convincing for grant of exemption.

15. Whether penalty u/s 271AAA of the Act can be levied if undisclosed income is admitted, explained and paid even with delay or not?

K Krishnamurthy v DCIT – Appeal No. 2411 of 2025 [Supreme Court]

Decision: No.

A search and seizure operation were carried out at the appellant's premises and as a result, the appellant disclosed an income of a certain amount. Notice u/s 142(1) of the act was issued to the Appellant calling for return of income for Assessment Year ('AY') 2011-2012. Appellant filed its return of Income. Assessment order was passed. Order imposing penalty u/s 271AAA was passed for AY 2011-12. Another order imposing penalty u/s 271AAA was passed for AY 2010-11. Appeal was filed for AY 2010-11 and AY 2011-12. CIT(A) allowed the appeal for AY 2010-11 and rejected appeal for AY 2011-12. The rejection order of CIT(A) was challenged before ITAT. ITAT rejected the appellant's appeal again on the ground of non-compliance with Section 271AAA(2) of the Act 1961. Appellant filed an appeal before High Court u/s 260A. High Court rejected the appeal and appeal was filed before the Supreme Court.

The Supreme Court held that no penalty u/s 271AAA can be levied when the undisclosed Income is admitted, explained and paid by the appellant even after a delay. The appellant had admitted Rs.2,27,65,580 as income for assessment 2011-12 during the search and had complied with the aforesaid conditions, no penalty is leviable. However, with respect to a certain amount, the Court said that the same income was not admitted under the head income from other sources during the search. The Court opined that the expression 'found in the course of search' does not merely mean documents found in the assessee's premises. In view of this, the Court disposed of the appeal with a direction to the appellant to pay a penalty at the rate of 10% only with respect to the aforesaid amount.

16. Whether ITAT can overstep its authority by deciding the case on merits when it had already concluded appeal is not maintainable?

The Board of Control of Cricket in India v ACIT – Income Tax Appeal No. 1041 of 2012 [Bombay High Court]

Decision: No.

Appellant is a society established under the Tamil Nadu Societies Registration Act. The Memorandum of Association of the appellant was amended on 01 June 2006 and 21 August 2007. However, such changes were not intimated to the Tax Authorities who had granted registration under Section 12A of the IT Act, 1961. Director of Income-tax (Exemptions) (DIT) wrote to the BCCI that since the BCCI had modified its objects and no intimation of such modification was sent to the Director of Income-tax (Exemptions) Mumbai (second Respondent), it is clear that the registration granted to BCCI u/s.12A of the Income-tax Act, 1961 does not survive from the date on which the objects were changed i.e. 01.06.2006. Against such order/communication appeal was filed by the appellant before ITAT.

ITAT held that the impugned communication/order did not amount to either cancellation or withdrawal of registration under Section 12A of the IT Act, 1961. On this basis, the ITAT held that the BCCI's Appeal was not maintainable under Section 253 of the IT Act, 1961. After recording the above conclusion in the impugned order, the ITAT addressed the merits of the communication/order and virtually held that the DIT's view in that communication/order was correct. The appellant challenged the order before the High Court.

The High Court held that ITAT cannot overstep its authority by deciding on merits when it has already concluded an appeal was not maintainable. ITAT after having upheld the Revenue's contention [whether rightly or wrongly] exceeded its jurisdiction in examining the impugned communication/order on its merits and recording observations tending to uphold the impugned communication/order on its merits.

17. Whether seconded employees could create a permanent establishment for a foreign entity in India or not?

PCIT v Samsung Electronics Co Ltd – ITA No. 1029 of 2018 [Delhi High Court]

Decision: No.

Samsung India Electronics Private Limited (SEIL) is a Wholly Owned Subsidiary of Petitioner. Petitioner had seconded employees to SEIL. The department had issued reassessment notices under Section 148 to SEIL, deeming that seconded employee continue to work for the benefit of the petitioner thereby creating a Fixed Place i.e. Permanent Establishment (PE) in India. The petitioner challenged the order before ITAT. ITAT held that Department failed to establish that the seconded employees were engaged for carrying on any activity pertaining to the business of Samsung Korea. It also found that the seconded employees were engaged in assisting SIEL in its business in India. The said order was challenged before High Court.

The High Court upheld the decision of the ITAT and held that SIEL, a wholly owned subsidiary of South Korea-based Samsung Electronics Co. is not its 'Permanent Establishment' (PE) in India, hence not exigible to tax here. The secondment of employees by Samsung Korea was merely with the objective of facilitating the activities of SIEL, not its own.

18. When does the limitation period for appointment of arbitrator begins?

Alliance Enterprise v Andhra Pradesh State Fiber Net Ltd (APSFL) - Arb A No. 48 of 2023 [Andhra Pradesh High Court]

Decision: The applicant entered into a work contract agreement relating to commissioning and maintenance of last mile optical fiber connectivity in certain government offices with Respondent. As per the Applicant, several work orders were executed by it, however, payment was not made to the Applicant to the tune of Rs. 12, 26, 63,520/-. The Respondent terminated the contract. Upon failure of the parties to amicably resolve their disputes, the Applicant invoked the arbitration clause of the contract by virtue of its letter dated 17.10.2022.

The High Court held that the limitation period for filing an application seeking appointment of arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996, commences only after a notice invoking arbitration has been issued by one of the parties and there has been either a failure or refusal on the part of the opposite party to make an appointment as per the procedure agreed upon between the parties. Relying on the Supreme Court's judgment in Arif Azim Co. Ltd. v. Aptech Ltd., the court emphasized that the limitation for filing an arbitration application is distinct from the limitation for raising substantive claims. The period of limitation of three years, for the purposes of a Section 11(6) application would begin from the date of failure or refusal by the other party to comply with the requirements mentioned in notice invoking arbitration. In this case, since the arbitration notice was issued on 17.10.2022, and the application for appointment was filed on 31.08.2023, it was well within the three-year limitation period under Article 137 of the Limitation Act, 1963.

19. Can Courts interfere with arbitral findings?

Kolkata Metropolitan Development Authority v. South City Projects (Kolkata) & Anr. - APO/205/2023 with AP/351/2020 IA No. GA/1/2023 [Calcutta High Court]

Decision: No.

Appellant invited bid for the development of residential-cum-office complexes at two separate locations. Respondents had submitted their bid as a consortium and were declared the selected bidder. A Memorandum of Understanding (MoU) was entered into by the consortium with the appellant. As per MOU the appellant and the bidder (consortium) were to form a Joint Venture Company (JVCO). Both appellant as well as consortium was required to contribute equally to the paid-up share capital of JVCO. Within 30 days of incorporation of the JVCO, the appellant was required to execute a development agreement in favour of JVCO granting it the right to develop the two sites. Within 30 days from execution of the development agreement the appellant was required to deliver possession of the sites to the JVCO. The dispute, however, has arisen at the stage when the appellant was required to execute the development agreement which was delayed. Respondent invoked arbitration clause seeking refund of the deposited amount. The arbitral tribunal granted refund to respondent. Such order was challenged before High Court u/s 34 of the A&C Act.

The High Court upheld the ruling of the arbitrator and held that findings of the Arbitrator based on material cannot be interfered within the limited scope of proceedings under section 37 of the Arbitration and Conciliation Act, 1996. The court observed that contractual remedies do not override other legal rights unless explicitly stated. It rejected KMDA's argument that it had no obligation to create rights in favor of the claimants, affirming that the tribunal's factual findings were based on evidence. The Court also reiterated that referral courts cannot conduct inquiries into whether claims are time-barred, reinforcing the principle of minimal judicial interference in arbitration.

20. Whether under Article 226 of the Constitution of India, the High Court can interdict the personal insolvency proceedings initiated against the guarantor under Section 95 of the IBC, 2016 by holding that the liability has been waived as a debtor?

Bank of Baroda vs. Farooq Ali Khan & Ors. – Civil Appeal No. 2759/2025 (SC)

Decision: No.

In the present case the jurisdiction of the High Court was invoked against the order of the Adjudicating Authority dated 16.02.2024 appointing a resolution professional and directing him to examine the application under Section 95 and file a report under Section 99 of the IBC. The Respondent No. 1 herein was a promoter and director of the corporate debtor. The corporate debtor had taken various loans from the Appellant and Respondent no. 3 and 4 which are a consortium of banks. Respondent no. 1 entered into a deed of guarantee for securing these loans on 10.07.2014. Due to payment defaults by the corporate debtor, the appellant issued a demand notice dated 11.08.2020 and invoked deed of personal guarantee against Respondent No. 1 and other guarantors to pay an amount of Rs.244 crores. However, vide letter dated 14.12.2020, the Respondent No. 1 and other guarantors offered Rs.25 crores as full and final settlement. The appellant filed an application before the NCLT under Section 95(1) of the IBC read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 to initiate personal insolvency proceedings against Respondent No. 1. The NCLT vide order dated 16.02.2024, appointed a resolution professional and directed him to examine the application and submit his report as provided in Section 99 of the IBC for approval or rejection of the application. The Respondent No. 1 filed a writ petition under Article 226 before the Karnataka High Court, contending that the liability as personal guarantor stood waived and discharged. The writ was allowed and the order of the NCLT was quashed. The Appellant has impugned the order of the Karnataka High Court.

The Supreme Court while setting aside the order held that the resolution professional performs a facilitative role of collating information, as provided under Section 99 of the IBC, in which the resolution professional examines the application, determines whether the debt has been repaid, and submits a report to the Adjudicating Authority recommending the admission or rejection of the application. It is after the submission of this report that the adjudicating authority's function commence under Section 100. It was held that the statutory scheme was rightly followed by the NCLT. It was further held that the High Court incorrectly exercised its writ jurisdiction as: first, it precluded the statutory mechanism and procedure under the IBC from taking its course, and second, to do so, the High Court arrived at a finding regarding the existence of the debt, which is a mixed question of fact and law and is within the domain of the NCLT under Section 100. Reliance was placed on its own judgment in the case of Dilip B. Jiwrajka v. Union of India (2024) 5 SCC 435 and Mohammed Enterprises (Tanzania) Ltd v. Farooq Ali Khan 2025 SCC OnLine SC 23. When statutory tribunals are constituted to adjudicate and determine certain questions of law and fact, the High Courts do not substitute themselves as the decision-making authority while exercising judicial review.

21. Whether the adjudicating authority can override Committee of Creditor's (COC) majority decision on extension of CIRP period at instance of minority dissenting creditor?

Edelweiss Asset Reconstruction Company vs. Chirag Rajendrakumar Shah (RP of Usha India Ltd.) (Company Appeal (AT) (Insolvency) No. 242 of 2023 with Company Appeal (AT) (Insolvency) No. 243 of 2023) – NCLAT Delhi

Decision: No.

In the present case, Usha India Ltd. (corporate debtor) was undergoing the CIRP which had commenced vide order dated 05.10.2023. The Resolution Professional (RP) published Form-G thrice but no resolution plan could be received. On 23.08.2024, in 19th Meeting of the COC, an agenda was put for exclusion of 60 days of CIRP period, which was voted and was approved with more than 95% vote share. In pursuance of the resolution, the RP filed an application seeking exclusion of 60 days. Further, Edelweiss Asset Reconstruction Company (the appellant herein) filed an application for liquidation of the corporate debtor. The application of the appellant was dismissed by the NCLT. The appellant has a voting share of 0.17% in the COC. The appellant preferred the present appeal against the order of the NCLT.

NCLAT, Delhi while dismissing the appeal, held that when 95.01% Members of the COC, after considering all aspects have passed the resolution for extension of period of 60 days, we are of the view that at the instance of a dissenting Financial Creditor, who has only 0.17% vote share, the said decision, could not have been overturned by the Adjudicating Authority. A dissenting Financial Creditor, who has security of one property is more interested in liquidation, but that cannot be a ground to direct the liquidation of CD, when 95.01% of COC decides to seek extension. Further, the Hon'ble NCLAT while dismissing the appeal also placed reliance on the judgment of the Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. and Anr. vs. Union of India and Ors. – (2019) 4 SCC 17 wherein it was held that liquidation should be the last resort and liquidation is the corporate death of the corporate debtor.

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