UBR LEGAL ADVOCATES

June 2025 | Issue 51

LEX LOQUITUR

A NEWSLETTER SUMMARIZING LATEST COURT RULINGS

CONTENT

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:
ubrlegal@yahoo.in.

Warm Regards
Team Lex Loquitur
UBR LEGAL, ADVOCATES

Matters Argued by us

1. Whether Rule 96(10) is constitutionally can be pressed in to service after its omission?

Praspack Polymers v Union of India & Ors – R/SCA No. 19435 of 2023 [Gujarat high Court]

Decision: **No.**

The petitioner is a manufacturer and exporter of gold jewellery. It imported gold under the advance authorisation scheme. It exported the final product under claim for refund of IGST. Refund was sanctioned. A show cause notice came to be issued proposing recovery of refund alleging violation of Rule 96(10) of CGST Rules. Reply was filed. However, order came to be passed directing recovery of refund along with interest and penalties thereof. Such order came to be challenged in writ petition.

The High Court set aside the order and allowed the petition. It held: (i) rule 96(10) has been held to be ultra vires by the Kerala High Court; hence; need not be again declared as such; (ii) Rule 96(10) has been omitted with effect from 08.10.2024 without any saving provision; hence; all actions must stop; (iii) the rule has not been reintroduced; hence; there is no power for the officer to pass order once the rule stood omitted from the statute book; (iv) section 6 of the General Clauses Act would not save the rule; (v) relies on judgment of the Supreme Court in Kolhapur Cane Sugar and set aside the demand.

2. Whether the department can initiate recovery proceedings pending appeal and even after payment of more than 10% of disputed tax or not?

DBL Nidagatta Mysore Highways Private Limited v Union of India & Ors – WP No. 23405 of 2023 [T-Res] [Karnataka High Court]

Decision: No.

The petitioner is joint venture undertaking works contact for State of Karnataka. A notice came to be issued denying input tax credit. A reply was filed. However, demand came to be confirmed. The petitioner deposited the entire tax of over Rs.14 crores and filed appeal. The appeal was pending. However, the Revenue sought to invoke section 75(12) of the Act and demanded interest from the petitioner. An attachment notice (in Form DRC-13) came to be issued to the banker seeking to create a lien for a sum of over Rs.2 crores as interest. It was challenged in writ petition.

The Karnataka High Court set aside the attachment and allowed the writ petition. It held: (i) indisputably, an appeal has been filed and in terms of section 107, on payment of 10%, there is a stay; (ii) the petitioner has paid the entire demand amount subject to outcome of the appeal; (iii) hence, attachment is incorrect and would yield subject to outcome of the appeal.

Matters Argued by us

3. Whether GST is applicable on transfer/assignment of leasehold rights in the MIDC property or not?

B Sorabji v Union of India & Ors – WP N0. 6041 of 2025 [Bombay High Court]

Decision: Stay.

The petitioner assigned long term lease hold rights in land owned by MIDC, along with building thereon, to the assignee. The compensation received was sought to be taxed @18% by the GST authorities as supply of service. Demand of over Rs.3 crores along with interest was confirmed and equivalent penalty was imposed. Hence, writ petition came to be filed.

The Bombay High Court admitted the petition on the ground it is an important issue to be addressed by the court and granted stay from recovery. It noted that the Division Bench of the Gujarat High court has already held that assignment of long term lease is a transaction in land and hence, out of the scope of levy of GST and no contrary ruling has been shown. It noted that in similar petitions, the court had stayed adjudication of show cause notices as well.

4. Whether department can issue a consolidated notice for multiple assessment years or not?

Tata Projects Limited, Assam v Union of India & Ors – WP(C) No. 2922 of 2025 [Gauhati High Court]

Decision: Stay.

The petitioner is undertaking works contracts for the Govt of Assam. A consolidated notice was issued for financial year 2018-2019, 2019-2020 and 2020-2021, inter alia, denying input tax credit on the ground of mismatch. The petitioner replied. However, demand of over Rs.14 crores along with interest and penalties. Appeal was filed. However, the same also was rejected. Hence, writ petition came to be filed.

The Gauhati High Court admits the writ petition and grants stay from recovery considering the issue relating to consolidated notice and order for several financial years is not permissible under section 74 of the GST Act and the amount of deposit already made at appellate stage.

5. Whether Rule 96(10) is constitutionally valid or not?

Sri Sai Vishwas Polymers v Union of India & Ors – Writ Tax No. 412 of 2025 [Allahabad High Court]

Decision: Stay.

The petitioner is a manufacturer and exporter of gold jewellery. It imported gold under the advance authorisation scheme. It exported the final product under claim for refund of IGST. Refund was sanctioned. A show cause notice came to be issued proposing recovery of refund alleging violation of Rule 96(10) of CGST Rules. Reply was filed. However, order came to be passed directing recovery of refund along with interest and penalties thereof. Such order came to be challenged in writ petition.

The Allahabad High Court stayed the operation of the order. It held: (i) prima facie; Rule 96(10) has been omitted with effect from 08.10.2024 without any saving provision; hence; no order could have been passed after omission of the rule; (ii) though the rule has been omitted before it has been struck down as ultra vires by the Kerala High Court; it could not have been acted upon post omission; (iii) relies on recent decision of the Uttrakhand High Court and grants stay of operation of the impugned order.

Matters Argued by us

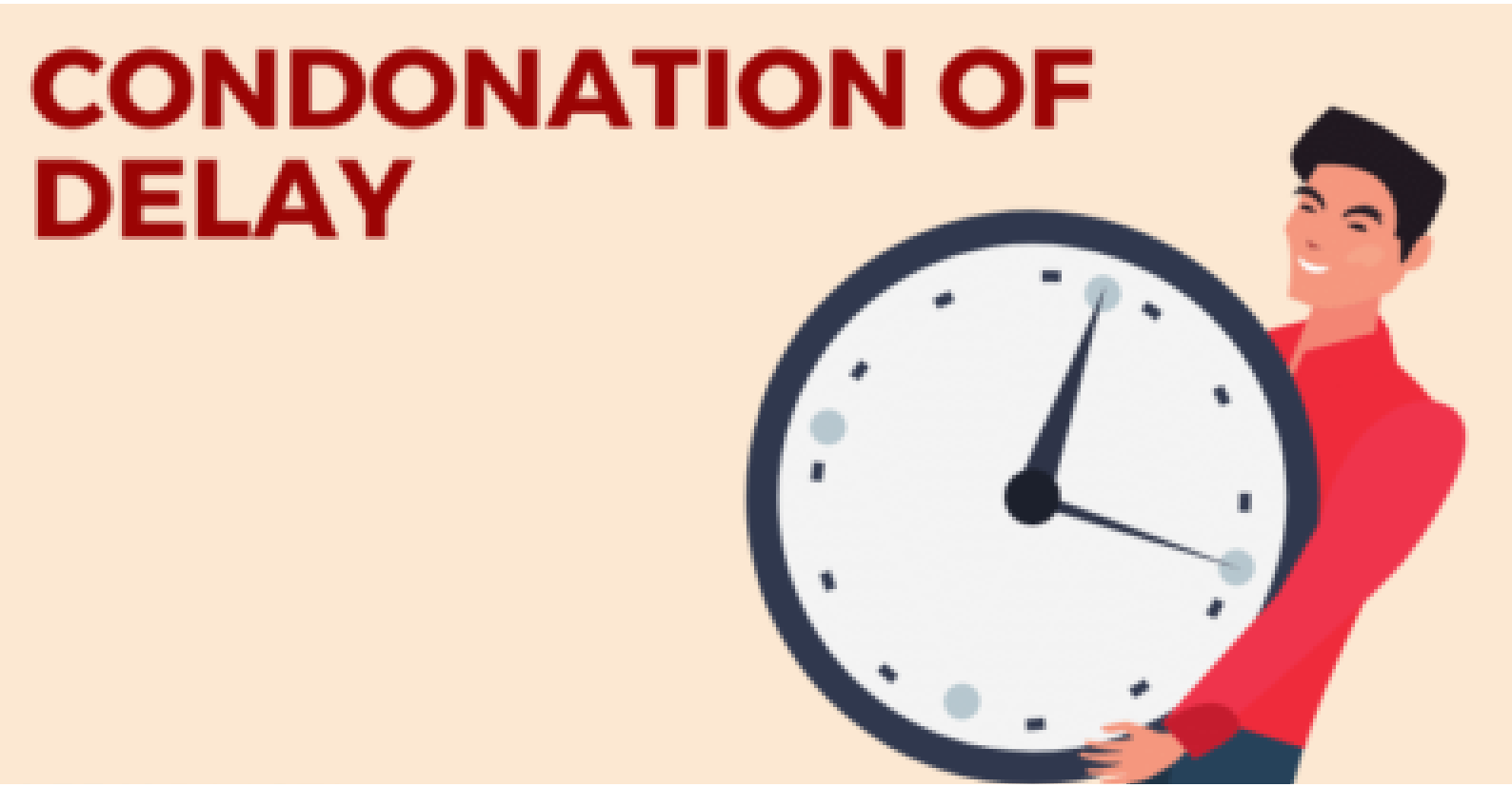
6. Whether the delay of 374 days in filing the appeal before the ITAT, caused due to the illness of the appellant and the demise of her chartered accountant, constitutes "sufficient cause" for condonation under Section 253(5) of the Income Tax Act, 1961 or not?

Deepali Dilip Dhumale v ITO – ITA No. 48/PUN/2025 [Pune ITAT]

Decision: Yes.

The appellant is a lady. She filed return declaring income of about Rs. 5 lakhs. However, a notice was issued under section 148 of the Income Tax Act. Assessment order came to be passed for FY 2017-2018 under section 143 of the Income Tax Act. A demand of over Rs.8.81 crores was confirmed on the ground that there are unexplained cash deposits. The appellant filed appeal before CIT(A). However, the same was dismissed on the ground of delay in filing the appeal. Hence, appeal before ITAT.

ITAT, Pune set aside the order passed by the CIT(A) and allowed the appeal. It held: (i) there is a delay of 374 days in filing appeal before ITAT as well, which needs to be condoned; (ii) the affidavit filed by the appellant and medical certificate shows that she was unwell and her chartered accountant was unwell and he passed away; (iii) substantial justice should prevail over technicalities; (iv) relies on judgment of the Supreme Court in Esha Bhattacharjee Case and Bombay High Court in EBR case; (v) holds that the CIT(A) had the bank statement before him which has not been examined to show that there are no such cash deposits; (vi) remands the matter back to CIT(A) for denovo adjudication after hearing the appellant.



7. Whether the services provided by an Indian subsidiary entity to its foreign principal entity located outside India would amount to "intermediary" services or not?

Sundyne Pumps and Compressors India Pvt. Ltd.vs. Union of India - WP No. 15228 of 2023 [Bombay High Court]

Decision: Yes.

The petitioner had filed two refund application for the period April 2020 to March 2021 and April 2021 to June 2021 claiming refund of the unutilized ITC under Section 54(3) of Central Goods and Services Act, 2017 read with Rule 89 (4) of Central Goods and Services Rules, 2017 for making zero rated supplies. The same was allowed and refund was granted. The above two applications were never challenged by the State and have attained finality. Similarly, petitioner filed another two refund application for the periodJuly to September 2021 and October to December 2021 Refund application was rejected by the Original Authority and the appellate authority. The said refund application was rejected on the ground that the Petitioner did not qualify the conditions of export of services by invoking clause (v) of Section 2(6) IGST Act, which defines "Export of Service". Hence, the petition.

The High Court held that the department has completely lost sight of the fact that the agreement clearly provides that the assessee is an independent contractor and that neither the assessee nor its officers, directors, employees or sub-contractor are servants, agents or employees of the recipient of services. The assessee does not carry on business of supply of goods or services or both on behalf of another (foreign recipient). The assessee provides design and engineering services to its customers on principal-to-principal basis by employing its own manpower and other resources. Therefore, the petitioner is not an 'intermediary". Therefore, the assessee is eligible for refund of unutilized ITC on account of zero-rated supplies in terms of Section 54 of the CGST Act and the same shall be granted to them along with statutory interest under Section 56 of the CGST Act.

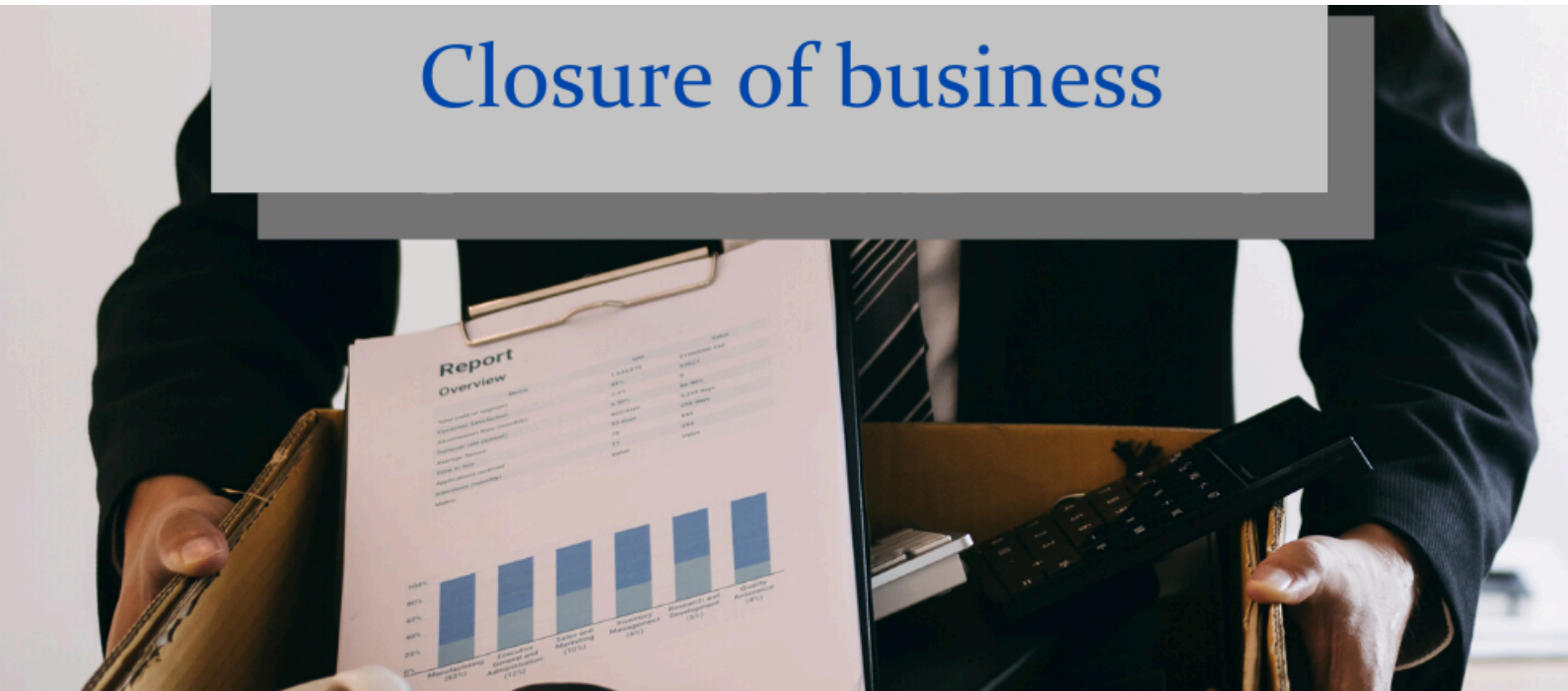
8. Whether the assessee is entitled to refund of unutilized ITC on closure of business or not?

SICPA India Private Limited and Another v. Union of India and Others - WP(C) No.54 of 2023 [Sikkim High Court]

Decision: Yes.

The petitioner are engaged in the business of manufacturing security inks and solutions with GST registration in the State of Sikkim. The assessees in January, 2019, decided to discontinue its operation in the State of Sikkim, pursuant to which the assessees sold all the machineries and manufacturing facilities from April, 2019 to March, 2020. At the time of sale of assets, the assessees had appropriately reversed the ITC as per the applicable provisions under the GST law. The petitioner filed refund application claiming unutilized ITC on account of closure of business. The refund application was rejected by the original authority. Hence, the petition.

The High Court held that there is no express prohibition in Section 49(6) read with Section 54 and 54(3) of the CGST Act, for claiming a refund of ITC on closure of unit. Although, Section 54(3) of the CGST Act deals only with two circumstances where refunds can be made, however the statute also does not provide for retention of tax without the authority of law. Therefore, the assessee is entitled to the refund of unutilized ITC claimed on the closure of business.



9. Whether custom department is bound by DGFT's classification of Capital goods under EPCG scheme or not?

Adyar Gate Hotel Limited v Commissioner of Customs – CMA No 71 & 131 of 2025 [Madras High Court]

Decision: Yes.

The appellant is a hotel. It had imported light and light fittings on 25.05.1999. It was issued a license under the Export Promotion Capital Goods (EPCG) Scheme, claiming benefit of reduced rate of import duty in terms of Notification No.28/97-Cus dated 01.04.1997. At the time of import, the assessee was denied the benefit of concessional duty as the goods did not constitute capital goods. Order was passed wherein authority took the view that notwithstanding the classification of the goods under the EPCG license, the assessee was not entitled to the concessional rate, referring, inter alia, to Notification Nos.122/93, 28/97 & 29/97.

The High court held that in order to obviate instances where officers of the Customs Department take stands at variance with the DGFT, the CBEC has issued a Circular in 2002 (26.09.2022) making it clear that such divergent views should not be taken and that when duty reduction or exemption had been granted by the DGFT or DG(Tourism), the Customs Department will align with such stand. The aforesaid Circular of the Board is binding upon the officers of all Commissionerate's of the Department. In such an event, it is not open to the Customs Department to dispute classification of the goods imported and the view taken by the Department is diametrically opposed to the license and the 2002 Circular. Therefore, the customs department bound by DGFT's classification of capital goods under EPCG scheme.

10. Whether a show cause notice demanding Export Obligation Discharge Certificates (EODCs) can be sustained when issued after an inordinate delay of 17 years from the date of import, even though no statutory time limit is prescribed under Section 143 of the Customs Act, 1962?

Chemplast Sanmar Ltd. v. Deputy Commissioner of Customs (Export) & Anr – W.P. No. 22298 of 2022 [Madras High Court]

Decision: No.

The petitioner, a manufacturer and exporter of specialty chemicals, imported goods under Advance Licences between 1998 and 2000 without payment or on concessional payment of customs duty, upon executing bonds under Notification No. 30/1997-Customs. In 2019, the first respondent issued a Bond Enforcement cum Demand Notice demanding production of EODCs for 24 such licences after a delay of 17 years. The petitioner replied, enclosing EODCs for 13 licences and questioning the maintainability of the notice due to inordinate delay. A second notice followed in 2021, reopening proceedings after 22 years. Pursuant to these proceedings, the final order-in-original dated 24.05.2022 was passed by the Deputy Commissioner of Customs, enforcing bond obligations despite the partial compliance and objections raised by the petitioner. The petitioner challenged this order before the High Court, arguing that it was unsustainable due to the inordinate lapse of time and that the delay had prejudiced their ability to produce all relevant documentation.

The High Court allowed Writ Petition and quashed the impugned order, holding: (i) Although Section 143 of the Customs Act does not prescribe a time limit, notices must be issued within a reasonable period; (ii) A 17-year delay in issuing a show cause notice is inordinate and arbitrary, particularly where the petitioner fulfilled its obligations long ago; (iii) Due to the lapse of time, the petitioner could produce only 13 out of 24 EODCs, a circumstance not attributable to wilful default; (iv) CBIC Circulars applying Rule 226A of Central Excise Rules also set a benchmark of 5 years for record retention.

11. Whether ad tax can be imposed on educational institutions for putting up non-commercial signages on their property or not?

B. S. Gupta v The Commissioner & Anr – WP No. 46688 of 2017 (LB-BMP) [Karanataka High Court]

Decision: No.

The petitioner is a registered educational institution engaged in imparting education through its college. Gupta Education Trust is a charitable trust and is offering PU courses in Commerce and Science, and degree courses in B.Com and B.BA disciplines and a PG course in M.Com. The building where this institution runs the courses is used for educational purposes, and no commercial activities are undertaken in the said building. Notice was issued to the petitioner levying advertisement tax. The petitioner challenged such notice before high court stating that it is a charitable and non-commercial institution, not engaged in any form of commercial advertising as contemplated under the relevant taxing provisions. Therefore, the same is ultra vires the statutory act.

The High Court held that the signage and boards displayed by the petitioner/institution are fixed on the property owned and possessed by the petitioner/institution and these hoardings are meant purely for institutional identification and providing directions to students, parents and staff devoid of any promotional or commercial messaging encouraging profit oriented activity. Such signage lacks the essential character of an advertisement as defined under Rule 2A(1) of the BBMP Advertisement Bye-laws 2006. Therefore, in absence of any commercial or promotional content, the said signage cannot be subjected to advertisement tax under Section 134 of the Act. Therefore, the high court set aside an advertisement tax demand notice issued by the Bruhat Bengaluru Mahanagara Palike (BBMP) to an educational institution for displaying non-commercial signage and boards on its own property.

12. Whether the High Court has jurisdiction over an appeal from CESTAT on taxability including point of limitation u/s 35G of the Central Excise Act or not?

Commissioner of Service Tax Delhi II v Shyam Spectra Private Limited – SERTA No. 5 of 2025 [Delhi High Court]

Decision: No.

The respondent is providing internet services. The appellant conducted an audit on the records of the respondent. Based on audit a show cause notice was issued. Respondent filed its detailed reply. The appellant vide order in original confirmed the demand of service tax along with interest and penalty. The respondent challenged the order before CESTAT. CESTAT set aside the order and held that Show Cause Notice issued to respondent by the appellant was barred by limitation. Hence, the appeal.

The respondent contended the maintainability of the Department's appeal on the ground that issue of taxability (i.e. whether Respondent is entitled to exemption from service tax under a 2004 Notification) would arise in this matter and, therefore, the appeal would lie under Section 35L to the Supreme Court.

The Department however contended that the CESTAT had merely adjudicated the question of limitation and had not gone into the merits, thus the appeal against the impugned order would lie before the High Court.

The High Court held that the expression used "determination of any question in relation to rate of duty or value for the purpose of assessment" used in Section 35L gives a broad expanse to the appellate jurisdiction of the Supreme Court in respect of question relating to rate of tax or value for the purpose of assessment. If the impugned order relates to several issues but when one of the questions raised relates to rate of tax or valuation, the appeal is maintainable before the Supreme Court and no appeal lies before the High Court under Section 35G. The High Court also referred to the decision in Commissioner of CGST and Central Excise Delhi South v. M/s Spicejet Ltd – SERTA No. 2 of 2024 and held that an appeal from CESTAT under the Central Excise Act 1944 involving the issue of taxability will lie before the Supreme Court under Section 35L.

13. Whether the amount of subsidy received by the Assessee from RBI under a Scheme can be treated as 'interest' as defined under Section 2(7) of the Income Tax Act or not?

Bank of India v DCIT – ITA No. 425 of 2023 [Bombay High Court]

Decision: No.

The appellant is a public sector bank. The appellant filed return of income for the year 1992-93. In the said return Assessee did not include the interest subsidy of Rs.12,93,55,596/- as chargeable interest received by it from the Reserve Bank of India (RBI) on the ground that the said subsidy does not fall within Section 4 of the Interest Tax Act, 1974. The case of the Assessee was selected for assessment under Section 8 of the Act. The Assessor computed assessable chargeable interest at Rs.705,64,57,822/-. Being aggrieved by the said order the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) affirmed the order passed by Assessing Officer and dismissed the appeal preferred by the Assessee. Thereafter the Assessee filed an appeal before the Income Tax Appellate Tribunal (the Tribunal) which was dismissed. Hence, the appeal.

The Hon'ble High Court held that no loan or advance was given by the assessee to the RBI. Therefore, any amount received by the assessee from the RBI in the form of a subsidy or compensation for loss on interest by whatever name it may be called, would not convert the amount received by the assessee from the RBI to interest, as defined under Section 2(7) of the Act. Thus, the amount of subsidy received by the Assessee from RBI cannot be treated as 'interest' chargeable under Section 4 of Income Tax Act.

14. Whether sales tax incentive under government scheme for industrial promotion is capital receipt or not?

Bajaj Auto Limited v DCIT – ITA No. 505 of 2023 [Bombay High Court]

Decision: Yes.

The appellant is engaged in the manufacture and sale of two-wheelers & three-wheelers. The Government of Maharashtra introduced the scheme on 4 May 1983, under which an option for sales tax exemption or deferral of sales tax for a period of five years was available. The Assessee obtained an eligibility certificate for sales-tax exemption for a period of three years commencing from 1 February, 1986. During the process of assessment proceedings, Assessee claimed that the amount of sales tax incentives should be regarded as capital receipt not liable to tax since the said incentive was received for the promotion of industries in backwards areas. The claim of the appellant was rejected by the AO, CIT(A) as well as ITAT. Hence the appeal.

The High Court held that the incentives/subsidy granted by the State Government under both the 1979 as well as 1983 Schemes were for the purpose of setting up of new industrial units. The incentive/subsidy was not granted for the purpose of enabling the Assessees to run the business more profitably. After applying the "purpose test" it is clear that the incentive provided to the Assessee under both the Schemes was for promoting setting up of new industrial units in developing areas of the State. The incentive was aimed at promoting industrialization in the State. It further held that even if actual payment/grant of the incentive is linked to production or sale activity after completion of construction of the industrial unit, the receipt of the incentive would still be on the capital account so long as the purpose of the grant of the incentive is to promote industrialisation. Hence, the sales tax incentive under a government scheme for industrial promotion is a capital receipt, not taxable.

15. Whether provisions of DTAA prevails over section 260AA of the Income Tax Act for TDS on payments to non-residents without PAN or not?

CIT (International Taxation and Transfer Pricing) v Adani Wilmar Limited – R/Tax Appeal Nos. 514-523 of 2024 [Gujarat High Court]

Decision: Yes.

The respondent deducted TDS at the rate mentioned in DTAA treaty between India and respective countries or as per the rate mentioned in the Income Tax Act,1961 whichever is more beneficial to the assessee and even in the cases where recipient of the payments who are non-resident parties and did not furnish PAN. The appellant therefore by invoking section 206AA of the Act held the assessee liable for obligation to deduct TDS at higher rate on payment made to non-residents, who did not have PAN, at the rate of 20%. CIT(Appeals) held that the assessee is not liable to deduct the tax at a higher rate in view of the provisions of section 90(2) of the Income Tax Act. Being aggrieved, the Revenue preferred appeals before the Tribunal. The Tribunal has upheld the decision of CIT(Appeals) by dismissing the appeals filed by the Revenue. Hence, the appeal.

The High Court referred to the case of Commissioner of Income Tax (International Taxation) Pune v. Serum Institute of India Ltd. (Income Tax Appeal No. 548 of 2016) and held that the assessee has deducted the tax at source on payment made to non-residents on account of royalty and/or fees for technical services at the rates prescribed in respective DTAAs between India and respective countries of non-residents and such rate of tax being lower than rate of 20% as provided under section 206AA of the Income Tax Act, CIT (Appeals) and the Tribunal have rightly arrived at concurrent findings to the effect that as per section 90(2) of the Act, the provisions of DTAA would override the provisions of the Domestic Act where the provisions of the DTAA are more beneficial to the assessee. Therefore, DTAA (Double Taxation Avoidance Agreement) prevails over Section 206AA of Income Tax Act for TDS on payments to non-residents without PAN.

16. Whether, in a criminal case, the Income Tax Department can claim possession of stolen property seized by the police from the accused by issuing a notice under Section 132A of the Income Tax Act, 1961?

Shravan Kumar Pathak v State of MP – Criminal Revision No. 2186 of 2022 [Madhya Pradesh High Court]

Decision: No.

The petitioner had filed a complaint regarding a theft of ₹3 crores in cash and 4 kgs of gold from his house. The stolen property was recovered by the police from the accused persons. The petitioner applied for the release of the seized property, but the Income Tax Department objected, claiming it might be unaccounted wealth, citing an ongoing inquiry under Section 132A of the Income Tax Act. The Trial Court rejected the application, citing the pending Income Tax inquiry under Section 132A of the Income Tax Act. Hence, the revision application.

The High Court held that the Income Tax Department may initiate separate tax proceedings but cannot claim possession of the seized property in a criminal case before the Court decides on ownership. Stolen property recovered by the police in a criminal investigation cannot be requisitioned under Section 132A unless ownership is first determined by the Court. The Trial Court erred in relying solely on the objections of the Income Tax Department without evaluating the petitioner's documentary proof of ownership.

17. Whether the Railways can legally deny compensation for additional work executed by a contractor, when such work was carried out with the knowledge, consent, or tacit approval of Railway authorities through their conduct, even in the absence of formal written instructions?

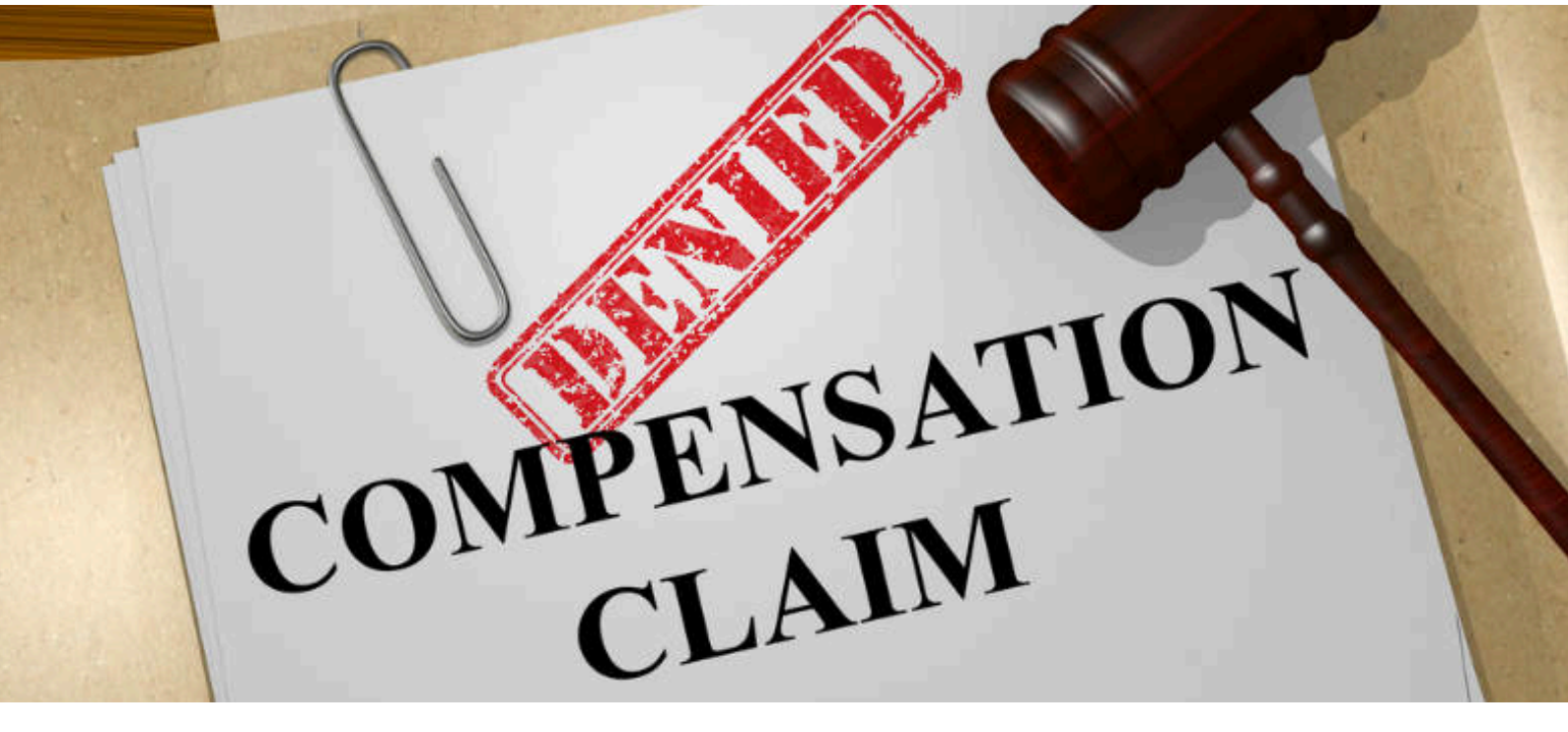
Union of India v PLR HC RBR JV – Commercial Arbitration Petition No. 51 of 2024 [Bombay High Court]

Decision: No.

The Petitioner entered into a contract with railways for railway construction work between Wardha and Nanded. The contract, valued at approximately ₹124.96 crores, required completion by May 23, 2020, with provisions for a performance bank guarantee and security deposit of ₹6.24 crores each. The Contractor completed assigned work worth ₹108.73 crores under six RA Bills, all cleared by the Railways. Due to delays caused by land acquisition issues and the Covid-19 lockdown, the Contractor sought extensions under Clauses 17-A(ii) and 17-A(iii) of the GCC. The Railways, without dispute, granted an extension until December 31, 2020, without penalty and accepted price variation. Work continued under the extended period, with a joint measurement on June 22, 2020, and the seventh RA Bill raised for ₹138.78 crores on July 13, 2020. However, the Railways withheld payment, claiming the excess work fell under "restricted quantities. The eighth RA Bill, valued at Rs. 8.22 crores, based on a joint measurement on March 16, 2021, was neither prepared nor approved. The total value of work performed was Rs. 147 crores, while the Railways paid only Rs. 124.95 crores. Disputes arose after a change in Railways' personnel in January 2021, leading to allegations of inadequate manpower and work deficiencies. The contractor claimed inability to continue due to non-payment and lockdown restrictions, resulting in arbitration.

The Arbitral Tribunal held that the Railways had not alleged that the excess work was unauthorized or unapproved. In fact, previous RA Bills included payments for similar extra work. Given that the additional work was executed, jointly measured, approved, and not objected to at the relevant time, the Tribunal held that the Contractor's claim for the excess work was justified and must be honoured. The Railways challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996. Hence, the petition.

The High Court upheld the decision of the arbitral tribunal and held as: (i) the Tribunal's findings were supported by documentary evidence, including measurement books and RA Bills, showing Railways' approval and supervision of the work; (ii) the Railways' failure to file a counter-claim weakened its overpayment allegations; (iii) the Railways' conduct, including joint measurements and prior extensions under Clauses 17-A(ii) and 17-A(iii), indicated consensual acceptance of extra work, and denying payment would result in unjust enrichment; (iv) the Covid-19 lockdown and labour migration justified delays, and the Railways' failure to provide drawings further supported the contractor's position; (v) Clause 45 of the GCC was satisfied by the initial joint measurement, and the Railways' failure to conduct unilateral measurements undermined its case; (vi) Article 299 was inapplicable as a valid contract existed, executed through a formal tender process. The Court imposed costs of Rs. 2.5 lakhs and directed the release of deposited amounts to the contractor within four weeks.



18. Whether the Micro and Small Enterprises Facilitation Council, acting as an arbitral tribunal under the MSME Act, 2006, can pass an award after the timeline stipulated in Section 29-A of the Arbitration and Conciliation Act, 1996, and whether alleged procedural irregularities justifies setting aside the award?

Board of Major Port Authority for the Syama Prasad Mukherjee Port, Kolkata v. Marinecraft Engineers Private Limited – A.P.-COM No. 296 of 2024 [Calcutta High Court]

Decision: No.

The Petitioner entered into a works contract with Respondent, for port-related work. Disputes arose over unpaid dues, illegal deductions, and interest claims, leading the respondent to initiate proceedings under Section 18 of the MSME Development Act, 2006. Conciliation under Section 18(2) failed due to the petitioner's non-participation, prompting arbitration under Section 18(3). The West Bengal MSME Council passed an arbitral award, granting the respondent's claims along with interest at three times the RBI bank rate, compounded monthly, under Section 16 of the 2006 Act, calculated 45 days from the invoice date until realization. The Council rejected some claims and relied on evidence, including invoices, tender documents, completion certificates, and the petitioner's letters, notably one dated September 24, 2019, admitting most claims except CENVAT and interest. The Petitioner aggrieved by such order filed a petition before high court under section 34 of the Arbitration and Conciliation Act, 1996

The High Court held as under: (i) Section 29-A of the 1996 Act, mandating a 12-month timeline for arbitration, does not apply to proceedings under the 2006 Act, as Section 18(5) of the 2006 Act provides a directory 90-day timeline without terminating the Council's mandate, per Porel Dass v. West Bengal Power Development Corporation (2024 SCC OnLine Cal 8927); (ii) the petitioner was given ample opportunity to argue on merits, as evidenced by minutes from June 6, 2018, to May 12, 2021, showing arguments on jurisdiction and merits, with adjournments granted for fairness; (iii) GC-1 and GC-2 Forms certified work completion, and the GC-3 Form, a "No Dues Certificate," was not required due to disputed dues; (iv) the Council independently adjudicated claims based on evidence, not conciliation concessions, and only delegated arithmetic interest calculations to a CA, not adjudication, distinguishing Usha Martin v. Eastern Gases (2022 SCC OnLine Cal 3342); (v) works contracts fall within the 2006 Act's scope for MSME units, per Hindustan Petroleum v. Bengal State MSME Facilitation Council (2023 SCC OnLine Cal 1700). The Court also dismissed a challenge to the Council's May 12, 2021, jurisdiction order as non-maintainable under Sections 34 and 37 of the 1996 Act. The petition was dismissed without costs, with a four-week stay granted, allowing the respondent to withdraw deposited amounts post-stay if no appeal is filed.

19. Whether a Resolution Professional's notice providing less than seven days for submitting information under Section 99(4) of the Insolvency and Bankruptcy Code, 2016, be deemed valid or not?

Comandur Parthhasarathy v. Laitt Kumar Dang – Company Appeal (AT) (CH) (Ins.) No. 429 of 2024 [Chennai NCLAT]

Decision: No.

An application under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) was filed against the appellant, a personal guarantor, to initiate an insolvency resolution process. The Resolution Professional (RP) issued a notice under Section 99(4) requesting information from the appellant, but allowed only two days for submission. Subsequently, the RP submitted a report, and the application was admitted by the Adjudicating Authority. The appellant challenged the notice, arguing that it violated Section 99(5), which mandates a seven-day period for furnishing requested information.

NCLAT Chennai, held that Section 99(4) of the IBC empowers the RP to seek further information or explanation from the debtor, creditor, or any other person deemed relevant. However, Section 99(5) explicitly mandates that the person from whom such information is sought must be given seven days to comply. The tribunal found that the RP's notice, which provided only two days, failed to adhere to this mandatory requirement. The subsequent reminder letter issued on 09.07.2024 could not rectify the initial notice's deficiency, as it lacked independent legal standing to fulfill the conditions of Section 99(5). The tribunal further clarified that the principle of substantial compliance could not be invoked, as the seven-day period is a statutory obligation designed to ensure fairness and allow the RP to verify the report's veracity. The reliance on Surendra B. Jiwrajka was deemed inapplicable, as it pertained to proceedings under Section 100, not Section 99(4) and (5). Consequently, the tribunal quashed the impugned order dated 21.10.2024 and remitted the matter to the Adjudicating Authority, directing it to provide the appellant seven days from the receipt of certified copies of the order to furnish the required information.

OUR OFFICES

Mumbai

Chambers: 806, 8th Floor "D" Square,
Opp. Goklibai School, Dada Bhai Road
Vile Parle (West), Mumbai - 400056
T: +91 22 26113635 / 26101358
M: +91 98208 75305

New Delhi

Chambers: A1/18, Basement,
Safdarjung Enclave,
New Delhi - 110029
T: +91 11 45730565

Ahmedabad

Chambers: A/609, The Capital,
Science City Road, Off. S.G Highway,
Ahmedabad- 380060
T: +91 79 4892 8571

Bengaluru

Chambers: 116, Level I,
Prestige Center Point,
Cunningham Road,
Bengaluru - 560052
T: +91 80 41557146

Vapi

Chambers: 88, Dimple Estate,
Near Suraj Kiran Building,
Off Teethal, Valsad - 391001
M: +91 98208 75305

Chennai

Chambers: 6F, Metro Towers, 64,
Poonamallee High Road, Chennai
600 084

E: ubrlegal@yahoo.in
b_raichandani@yahoo.com
W: www.ubrlegal.com