UBR LEGAL ADVOCATES

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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:
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Warm Regards
Team Lex Loquitur
UBR LEGAL, ADVOCATES

Matters Argued by us

1. Whether batching of multiple years in one demand order defeating Section 128A amnesty benefits is legally sustainable?

Toshiba Software (India) Pvt. Ltd. v Union of India & Ors. WP No. 6595 of 2024 (T-RES) [Karnataka High Court]

Decision: **No.**

The petitioner is a leading supplier of electronics and software services. A demand of GST (on reverse charge basis) of over Rs.13 crores was confirmed along with interest and penalty on issue relating to secondment of employees. The same was challenged in writ on several grounds.

The Hon'ble Karnataka High Court set aside the order and allowed the writ petition. It held: (i) batching of multiple financial years starting from 2017-2018 to 2022-2023 is not correct; (ii) it would denude the benefit of the amnesty scheme ingrained u/s 128A of the CGST Act, 2017 for the period 2017-2018 to 2019-2020; (iii) directs the assessing officer to pass seperate orders by 28.03.2025 in order to enable the petitioner to avail benefit of the scheme for waiver of interest and penalty; leaving open orders for subsequent years to be challenged again; on merits.

2. Whether post-facto office memorandums can justify recovery of GST budgetary support already granted under judicially set aside order?

Lupin Ltd. v Union of India & Ors.- WP (C) No. 2875/2021 [Jammu & Kashmir High Court]

Decision: No.

The petitioner is a leading pharmaceutical manufacturer. It has a unit in then State of Jammu and Kashmir. It availed benefit of area based exemption under the erstwhile central excise regime. With introduction of GST, the ministry of commerce introduced budgetary support for remainder period by granting refund of CGST. The petitioner applied and was allowed the benefit up to 2023 by order dated 29.05.2018. However, petitioner challenged the said order contending that it was entitled to benefit up to 2027. The Hon'ble Jammu and Kashmir High court set aside such order and directed the authorized officer to pass fresh orders. However, in the meantime, office memorandums came to be issued by the Ministry declaring list of eligible units. Such list held that the petitioner is entitled to benefit up to 2017. Based on such memorandum, recovery of benefits sanctioned was initiated. The same came to be challenged.

The Hon'ble Jammu and Kashmir High Court set aside the office memorandums issued by the Ministry and consequent recovery action. It held: (i) the memorandums fly in the face of the earlier order passed by the Court on 24.09.2020; (ii) once the court directed fresh decision after hearing the petitioner; such exercise not being carried out; the action was illegal; (iii) no reasoned order was passed which could allow the petitioner to know the reason for acceptance or otherwise of his claim; (iv) directs the department to comply with the earlier directions.

Matters Argued by us

3. Whether extension of the time limit for passing order under section 73 (notification no. 56/2023) is legal or not?

NTT Data Business Solutions Pvt. Ltd. v. Union of India – WP No. 2616/2025 [Bombay High Court]

Decision: No.

The petitioner is providing information technology related services. It applied for cancellation of registration. The registration was cancelled. Post that, show cause notice came to be issued and order confirming demand was uploaded on the portal. The petitioner was not aware of the same. Recovery notice (in form DRC-22) came to be issued attaching the bank account. The same was challenged in writ petition.

The High Court admitted the writ petition; issued rule and granted interim relief. It notes that the petitioner contends that the show cause notice and order were never communicated to the petitioner and hence, violation of principles of natural justice. It notes that there is a challenge to notification no.56/2023 which extends the time limit for passing of orders under section 73 of the CGST Act. Relies on the fact that Gauhati High Court has struck down the notification as ultra vires. The same was agreed by Telangana High court though the High court held that the assessments are not time barred. The said order is under challenge before the Hon'ble Supreme Court. Accordingly, case of interim relief is made out.

4. Whether both Central and State authorities pass orders on the same subject matter?

R.K Enterprise v. Union of India & Ors – WP No. 825/2025 [Calcutta High Court]

Decision: No.

The petitioner is engaged in the trading of iron and non-alloy steel products. The State Tax authorities (DRI&E) initiated an investigation against the petitioner, alleging that it availed Input Tax Credit (ITC) fraudulently based on invoices from non-existent suppliers. An order of seizure was issued under Section 67(2) of the WBGST Act. The petitioner was served with a show cause notice (SCN) alleging ITC availed on purchases from fictitious suppliers. The Central GST authorities also, based on intelligence, issued show cause notice for the same period on the same issue. Orders came to be passed by both authorities despite specific submission that it is overlapping. The petitioner challenged the parallel proceedings under Section 6(2)(b) of the CGST/WBGST Act, which prohibits multiple proceedings on the same subject matter by different authorities.

The High Court took note of the fact that the Central and State authorities had passed orders on the same subject matter. Though the period could be different, the subject matter was the same. Hence, having regard to the provisions contained in Section 6(2)(b) of the WBGST/CGST Act 2017, granted stay and directed that no coercive steps be taken against the petitioner pursuant to the orders which are impugned in the writ petition.

5. Whether a show cause notice can be sustained especially after closure of all audit paras by CAG?

ST. Jude Medical India Private Limited v Union of India & Ors.-SCA No. 3380 of 2024 [Gujarat High Court]

Decision: No.

The petitioner is engaged in manufacture and sale of pharmaceutical products. It was audited under section 65 of rhe CGST Act. No discrepancies were noted. However, Comptroller and Auditor General of India (CAG) sought documents relating to the audit of the petitioner. The petitioner replied. The Jurisdictional officer submitted the said documents for closure of the audit. However, in absence of any response from CAG, show cause notice came to be issued. Such show cause notice was challenged in writ petition.

It was contended that CAG does not have jurisdiction to conduct audit of private parties.

The Hon'ble Gujarat High Court, without going into the legal question, disposed off the writ petition in light of affidavit filed by the Respondents. The respondents filed any affidavit producing on record closure report submitted by CAG wherein all the audit paras have been closed.

6. Whether testing the link between the service/product and the intended technical specifications is essential to classify the service as 'business auxiliary service'?

Shipping Corporation of India v. Commissioner, Mumbai – STA No. 87547/2016 [CESTAT, Mumbai]

Decision: Yes.

The appellant is providing ships on charter hire basis for transportation of crude into India. It retained "trade commission" after paying off the charterer from the charter hire charges earned from the customer. It was contended that it was in the nature of discount. However, demand of over 3.8 crores along with interest and equal penalty was confirmed under "business auxiliary" service and under section 66B(44) post the negative list regime. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) proposals in the show cause notice should necessarily be founded on the letter of law and, not on external sources; (ii) the essence of 'business auxiliary service' is the presence of a provider of service between a service/product belonging to one and required by the other; the link between the two intended in the former to ensure that technical lspecification were not amenable to dilution was not tested by the Commissioner; (iii) similarly; whether the appellant is an "intermediary" or not is only relevant for the purposes of POPS Rules and no further; follows it's decision in Sabre Network Case; (iv) agrees that the order is not an adjudication order as it does not address the above issues; follows Bombay High Court and MP High Court decisions; (v) remands matter back for fresh adjudication.

7. Whether CST demand with interest and penalty was sustainable without "C" Forms?

Starlog Enterprises Limited v The State of Maharashtra-VAT Second Appeal No. 308 of 2023 [Maharashtra Sales Tax Tribunal, Mumbai]

Decision: No.

The appellant is engaged in providing cranes on hire. It provided 30 cranes on hire to M/s Essar on "as is where is" basis. It issued sale invoice. However, demand of CST of over Rs. 2 crores was raised, along with interest and penalties, on the ground that the appellant has not produced "C" forms. The appellant contended that there is no question of inter state sale as the cranes were at the respective location at the point of sale. However, the Appellate authority also upheld this order. Hence, appeal.

Hon'ble Maharashtra Sales Tax Tribunal, Mumbai set aside the order and allowed the appeal. It held that original invoices are available with the appellant which have not been considered by the appellate authority. Hence, it remanded the matter back to the appellate authority to consider the invoices, sales agreement, delivery challans etc and other documents which are now available with the appellant to consider their claim of no CST is payable.

8. Whether an SEZ unit can claim refund of CENVAT credit under Rule 5 when service invoices lack category and services are not approved by the Development Commissioner?

Syntel Solutions (India) Pvt. Ltd. v. Commissioner, Pune-III – STA No. 85803/2017 [CESTAT, Mumbai]

Decision: Yes.

The appellant is an SEZ unit. It exports information technology related services. It filed a refund claim of accumulated cenvat credit under Rule 5 of the Cenvat Credit Rules, 2004. It was allowed, albeit partially. Part rejection was on the ground, and upheld by the appellate authority, that the: (i) the input service invoices did not have any category of service mentioned and (ii) the services in question were business support services not covered by the approval granted by the Development commissioner being "authorised services". Hence, appeal.

Hon'ble CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) though the appellant has argued that section 51 of the SEZ Act, 2005 overrides any other provision and refund has to be sanctioned in terms of section 26 read with Rule 31, the said issue need not be decided; (ii) on facts; there is a circular no.83 issued by the ministry of commerce; applicable to all SEZ; which covers "business support services" as authorised services as well; (iii) hence, directs refund of the amount along with interest within 2 months.

Matters Argued by us

9. Whether refund claim under Notification No. 9/2009-ST can be rejected as time-barred due to delayed submission of documents, despite remand by the appellate authority for verification?

Cerner Healthcare Solutions Pvt Ltd v Commissioner - STA No. 20660 of 2022 [CESTAT, Bengaluru]

Decision: No.

The appellant is an SEZ unit engaged in export of services. It filed a refund claim for input services received by it for authorised operations in terms of Notification no.9/2009-ST. The refund claim was partially allowed. It filed appeal before commissioner (appeals). The appellate authority remanded the matter back with direction to produce certain documents in support of the claim. On remand, the adjudicating authority rejected the claim as time barred since said documents were submitted beyond one year. On appeal, this time, Commissioner (appeals) upheld such order. Hence, appeal.

Hon'ble CESTAT, Bengaluru set aside the orders and allowed the appeals. It held: (i) the adjudicating authority did not seek any documents post remand from commissioner (appeals) and hence, claim could not be said to be time barred; (ii) the original claim was filed in time and it was, in fact, partially allowed and hence, submission of documents cannot be said to be time barred; (iii) the claim was not hit by section 11B(EC) of the Central Excise Act as held in several decisions of Tribunal; (iv) the appellant had submitted all documents directed by the appellate authority and hence; claim is allowable on merits; barring a few services which remain unchallenged by the appellant.

10. Whether service tax demand based on 26AS vs. ST-3 mismatch, without work order-wise exemption analysis under Notif. No. 25/2012-ST, is legally sustainable?

Mira Construction v Principal Commissioner of CGST & Central Excise- STA No. 86790 of 2023 [CESTAT, Mumbai]

Decision: No.

The appellant is undertaking construction for Government and Municipal Corporations. It constructed schools, gardens, drains etc. A show cause notice was issued proposing to demand service tax of over Rs.8 crores under "works contract" service based on comparison between TDS data (26AS) and ST-3 returns filed by the appellant. Demand was confirmed along with interest and equivalent penalty was imposed on the appellant. Hence, appeal.

Hon'ble CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the commissioner has confirmed the demand on the basis of best judgment under section 72; which is not correct; (ii) the appellant claimed exemption under serial no. 12, 12(a), 13, 29(h) of Mega Exemption Notification No.25/2012; which has not been examined work order wise by the Commissioner; (iii) the appellant claim that they have subsequent work orders and hence, remands the matter back to the Commissioner to verify each contract for eligibility to exemption.

11. Whether assessee should be allowed to rectified its return filed u/s 39(9) after expiry of the statutory deadline or not?

CBIC v Aberdare Technologies Private Limited & Ors – SLP(Civil) No. 6332 of 2025 [Supreme Court]

Decision: Yes.

The respondent filed GSTR returns within time limit provided under the CGST act. The respondent identified certain errors in the return filed. There was no loss to the exchequer due to such errors. The respondent requested the department to allow the petitioner to rectify such errors. However, the department rejected the request and denied rectification on the grounds that the statutory deadline for such rectifications, as per Section 39(9) of the Act had passed. The respondent challenged such denial before the High Court by writ.

The High Court, relying upon the decision in Star (I) Private Limited - 2024-TIOL-03-HC-MUM-GST and held that if there was no loss to the revenue, and if the corrections could be made without prejudicing the revenue, the taxpayer should be allowed to rectify the returns and directed the department to open the portal for the petitioner rectify such error. Petitioner challenged such order by filing an SLP before the Supreme Court.

The Supreme Court uphold the decision of the High Court and dismissed the SLP. The Supreme Court further directed the defendant to re-examine the provisions/timelines fixed for correcting the bona-fide errors. Time lines should be realist as lapse/defect invariably is realized when input tax credit is denied to the purchaser when benefit of tax paid is denied. Purchaser is not at fault, having paid the tax amount. He suffers because he is denied benefit of tax paid by him. Consequently, he has to make double payment. Human errors and mistakes are normal, and errors are also made by the Revenue. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction. Software limitation itself cannot be a good justification, as software are meant ease compliance and can be configured.

12. Whether the time bound adjudication of SCN issued u/s 11 of the Central Excise Act is fatal or not?

Paras Products V. Commissioner CGST Delhi– W.P.(C) 6235/2023 [Delhi High Court]

Decision: Yes.

The Petitioner were engaged in the sale of footwear and soles. Search was conducted and seized goods from the premises of petitioner firms. On the basis of search and documents seized two SCNs dated 25.10.2011 and 30.12.2014 were issued. Reply was filed by the petitioner against both SCN. OIO was issued against SCN dated 30.12.2014. The Petitioner paid the demanded duty along with interest and penalty. Two separate OIO dated 30.12.2022 and 02.03.2023 was passed against SCN dated 25.10.2011. The Petitioner challenged both the OIOs before the High Court on account of inordinate delay in adjudication of more than 11 years.

The High Court held that statutory proceedings enabling authorities to conclude the proceedings within a stipulated period of time "where it is possible to do so" cannot be countenanced as a license to keep matters unresolved for years. Section 11A(11) of the Central Excise Act also casts a duty upon the authorities to determine the due amount of duty of excise within six months/ two years, where it is possible to do so, from the date of notice. The relevant portion of Section 11A of the Act is pari materia to the corresponding provisions of the Customs Act, the Finance Act and the CGST Act, and thus, the mandate of the said judgement is applicable to the present cases. The Respondents in the impugned OIO have not given any explanation as to why the SCN could not be decided finally for over 11 years. Thus, held that the High Court's judgment in M/S VOS Technologies India Pvt. Ltd. v. The Principal Additional Director General & Anr. (2024) is applicable to the said provision.

13. Whether demand can be raised on the ground of retrospective cancellation of supplier's registration or not?

Solvi Enterprises Vs Additional Commissioner Grade 2 And Anr.-WRIT TAX No. - 1287 of 2024 (Allahabad High Court)

Decision: No.

The petitioner is engaged in sale and purchase of scraps etc. Notice in Form DRC 01 u/s 74 of the UPGST Act was issued denying ITC on account of retrospective cancellation of GSTIN of supplier of the petitioner and reversal of such ITC along with interest and penalty. Petitioner filed reply. Order was passed rejecting the claim of the petitioner. Petitioner filed appeal before the appellate authority. Appellate authority dismissed the appeal and confirmed the demand. Hence, petition.

The High Court held that ITC availed by a taxpayer cannot be denied on the ground of cancellation of the GST registration of the supplier as the supplier was registered at all the time of transaction in question and the GST registration of the supplier was not cancelled retrospectively w.e.f. from the day the supplier got the registration.

14. Whether custom department can invoke expired Bank Guarantee under the IBC Act or not?

ITMA Hotels India Private Limited v The Additional Commissioner of Customs & Ors - WA No. 2183 of 2023 [Kerala High Court]

Decision: No.

The appellant had for the purpose of running a hotel imported various capital goods from abroad under EPCG scheme for the period April 2011 to March 2014. Appellant has furnished 45 bank guarantees for various amounts covering the amount of duty against the EPCG authorizations. In the meantime SCN was issued by Customs department. Appellant due to financial crisis filed an application u/s 7 of IBC code, 2016 before NCLT, Kochi. Application was admitted and NCLT appointed IRP. Resolution plan was submitted which was approved by the CoC and accordingly approved by NCLT. The Customs Department, in the meantime, filed their claim before the resolution professional, who rejected the same. The dues of the Customs Department did not find a place in the resolution plan and finally the resolution plan was approved, and thereby the resolution applicant took charge of the affairs of the appellant. Thereafter, the custom department issued a letter to Bank to encash the Bank Guarantees which were given to SBI. The petitioner challenged the letter by way of writ. The Ld. Single Bench held that the Customs Department had the right to invoke the bank guarantees, even though they had expired. The appellant challenged the order of the Ld. Single Judge by filing an appeal.

The Division Bench held that in the light of the unequivocal stand taken by the Bank in their affidavit dated 17.3.2025, the impugned letter by which the additional commissioner of customs and the deputy/assistant commissioner of customs (respondents 1 and 2) sought to invoke the Bank Guarantees cannot be sustained. The bench held that invocation of the expired Bank Guarantees is not permissible under law and, therefore, the impugned letter has no efficacy of law and is liable to be set aside.

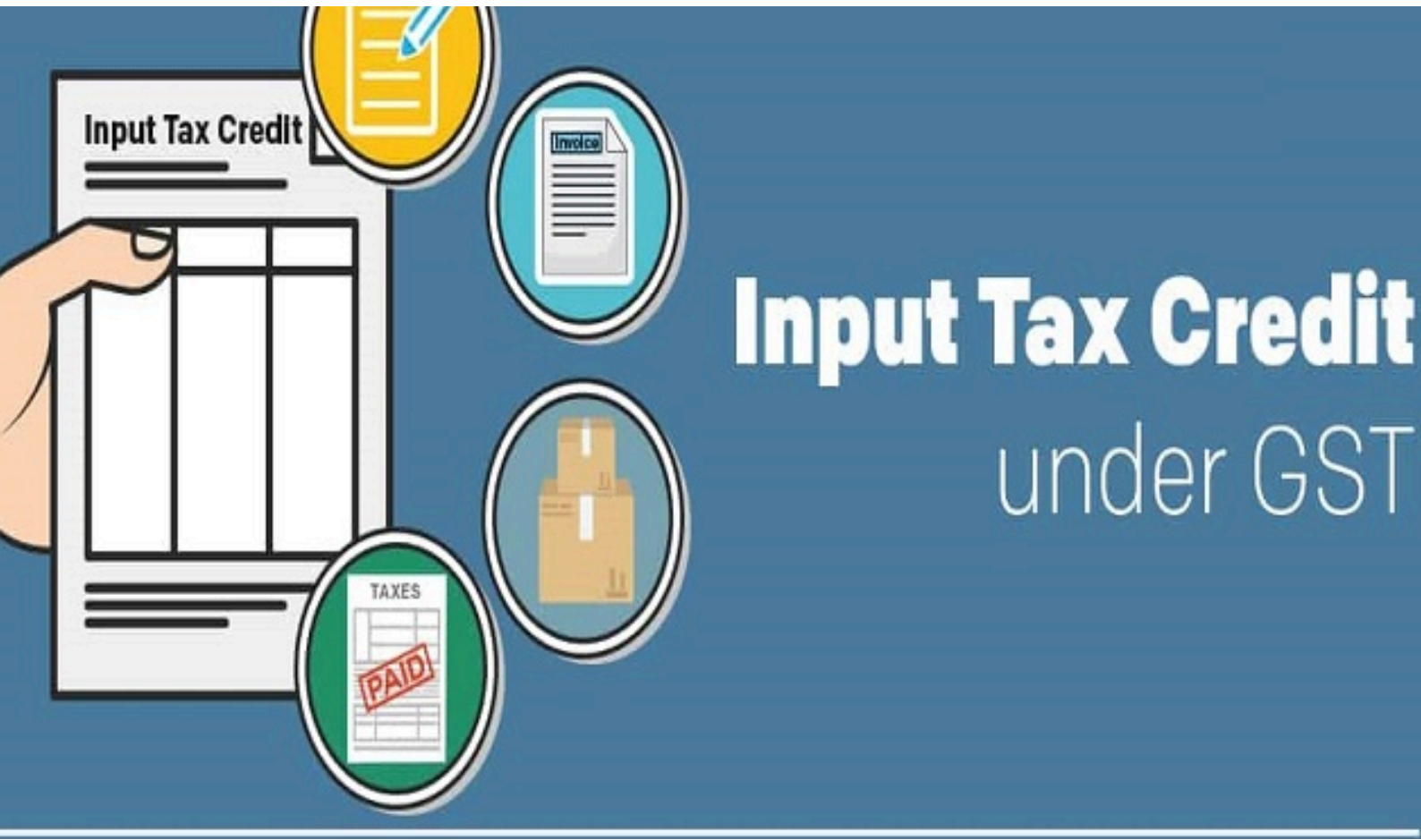
15. Whether the provisions of Rule 36(4) of the CGST Rules is constitutionally valid or not?

High Tech Ecogreen Contractors LLP v The Joint Director, DGGI & Ors – WP(C) No. 4787 of 2024 [Gauhati High Court]

Decision: Yes.

The petitioner is engaged in the business of rendering works contract services. SCN was issued to the petitioner alleging wrong availment of Input Tax Credit (ITC) which is not allowable under the provision of Rule 36(4) of the CGST Rules. Order was passed demanding GST and penalty. Aggrieved by the said order Petitioner filed an appeal before the appellate authority. The said appeal was dismissed being barred by limitation. Aggrieved by the said order the appellant filed a writ before the High Court.

The High Court held that provisions of Rule 36(4) of the CGST Rules, 2017 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. The provision stipulates documentary requirements and conditions for a registered person claiming input tax credit (ITC). Thus, the High Court upheld the constitutional validity of Rule 36(4) of the Central Goods and Services Tax/Assam Goods and Services Tax Rules, 2017.



16. Whether principle of proof beyond reasonable doubt can be made applicable to section 148 of the Income Tax Act or not?

PCIT v. East Delhi Leasing Pvt. Ltd. – ITA No. 61/2025 [Delhi High Court]

Decision: No.

The IT department initiated reassessment proceedings against petitioner by issuing notice u/s 148 of the Act. based on Suspicious Transaction Reports (STRs) indicating significant fund movements in the company's bank accounts. The Assessing Officer (AO) suspected that these transactions represented undisclosed income. The said notice was before ITAT. ITAT subsequently quashed the reassessment, stating that the AO's actions were based on mere suspicion without tangible evidence, and emphasized that suspicion, regardless of its strength, cannot substitute for legal proof. The ITAT referenced principles from criminal law, particularly the standard of "proof beyond reasonable doubt," to support its decision. Aggrieved by such order revenue filed an appeal before High Court.

The High Court held that the principle of 'proof beyond reasonable doubt' cannot be made applicable to Section 148 of the Income Tax Act, 1961 which enables an assessing officer to open an assessment if he has 'reason to believe' that an assessee's income escaped assessment. It is trite that the concept of "proving beyond reasonable doubt" applies "strictu senso" to penal provisions/statutes. It is also trite that in taxing statutes, in particular, section 148 of the Act, the "reason to believe", must be based on objective materials, and on a reasonable view.

The court remitted the matter to the learned ITAT to consider de novo the appeal of the Revenue on merits including any issue/objections which may arise on law after giving sufficient opportunity to both the parties.

17. Whether principle of proof beyond reasonable doubt can be made applicable to section 148 of the Income Tax Act or not?

Punjab National Bank v. ITO – R/SCA No. 11087 of 2022 [Gujarat HC]

Decision: No.

Oriental Bank of Commerce (OBC), Bharuch Branch holding PAN no. AAACO7436M merged with Petitioner Bank w.e.f. 01.04.2020. OBC surrendered the PAN no. and the same was cancelled in 2013. The IT department issued reassessment notice u/s 148 to the petitioner bank for initiating re-assessment proceeding against OBC, despite the fact that it is no longer in existence. Petitioner filed reply. The Assessing Officer (AO) and the National Faceless Assessment Centre (NFAC) issued a reassessment order based on multi-year NMS (Non-filers Monitoring System) data without verifying Petitioner bank's books of accounts. The said order was challenged by the Petitioner bank before High Court.

The High Court held that it is apparent that AO as well as NFAC Center who has passed the impugned order is without application of mind & without considering the fact that the OBC in whose name impugned assessment order is passed, does not exist after 01.04.2020 & therefore, no assessment order could have been passed in the name of the OBC having PAN Number "AAACO7436M". AOwithout taking into consideration the ROI filed by the OBC for A.Y. 2017-18, passed the assessment order u/s143(3) for the said year & has not even bothered to find as to whether the amount of Rs. 393.97 Crore relating to the purchase of time deposits have been duly accounted for or reflected in the return of income of the OBC Bank or not & simply on the basis of the Multi Year MNS Data, accepting the same as a gospel truth, has proceeded to pass impugned assessment order by making high pitch assessment making addition of Rs. 393.97 Crore brushing aside the submissions made by the petitioner-PNB. On the basis of the Multi Year MNS data which is an abstract phenomenon unknown to anyone nor disclosed in the assessment order as to what type of Multi Year MNS Data is made available to the AO, the AO has proceeded to make addition without making any inquiry ignoring the factual submission made by the petitioner-PNB to the effect that the OBC Bank does not exist after 01.04.2020 & therefore, there could not have been any assessment order being passed in the name of the said Bank having PAN "AAACO7436M". The High Court imposed a cost of Rs. 1 crore upon the department to be paid to the petitioner-Bank for passing such high pitched assessment order contrary to the facts available on record.

18. Whether provision of section 40(A) of the Income Tax Act prevail over provisions of section 43B of the Income Tax Act or not?

Sanmar Speciality Chemicals Limited v ACIT – T.C. (A) No. 493 of 2013 [Madras High Court]

Decision: Yes.

The appellant is engaged in sale of speciality chemicals and Biotechnology products. The appellant filed its return of income for AY 2008-09. Appellant received an intimation u/s 143(1) for a provision made towards gratuity fund with LIC. The claim was made as per provision of section 40(A) (7) (b) of the act. The assessment was completed vide order dated 27.12.201o and the AO alleged that though the narration in the schedules to the balance-sheet and profit and loss account stipulated that the amount was towards gratuity, it was only a provision. Hence, the claim was hit by section 43B, which requires certain claims to be allowed only on the basis of actual payment. Therefore, the provision was disallowed and the amount of Rs.31,24,172/- added back to total income.

The Petitioner challenged such addition before CIT(A). CIT(A) allowed the appeal. Revenue challenged the order before ITAT. ITAT allowed the appeal. The appellant challenged the order of ITAT before the High Court.

The High Court held that the Rule that a general provision should yield to specific provision springs from the common understanding that when two directions are given one encompassing a large number of matters in general and another to only some, the latter directions should prevail as being more specific in nature. The bench stated that Had Section 43B also made reference to an approved gratuity fund, a conflict might have arisen. Where Section 40(A)(7)(b) refers specifically to an approved gratuity fund and Section 43B, in generic terms, to a gratuity fund, we see no conflict in applying the provision of Section 40(A)(7)(b) in preference to Section 43B in the case of an approved gratuity fund. The bench found that the provisions of Section 40A(7) would override Section 43B if the assessee in question satisfies the stipulations under clauses (a) and (b) thereof and allowed the appeal.

19. Whether the ITAT was right in law in upholding the order of CIT(A) in allowing excise duty exemption as capital receipt?

PCIT v Greenply Industries Limited – ITA No. 3 of 2023 [Gauhati High Court]

Decision: Yes.

The appellant received excise duty refunds. The appellant classified the same as capital receipt.The appellant filed its return of income electronically on 29.11.2015 for AY 2014-15 showing total income Rs. 49,12,19,250/-. The case of the appellant was selected for scrutiny through CASS. Assessment order was passed u/s 143(3). Appellant challenged the order before the CIT(A). CIT(A) partly allowed the appeal and partly rejected the appeal. Aggrieved by such order of CIT(A) treating excise duty exemption claimed by the appellant as capital receipt from computation of book profit as per the provisions of Section 115-JB of the Income Tax Act, 1961 filed an appeal before ITAT. ITAT allowed the appeal. The revenue aggrieved by such order filed an appeal before the High Court.

The High Court held that excise duty exemption received by appellant from Government of India for setting up two Plywood Unit in the State of Uttaranchal and Himachal Pradesh under new industrial policy to be non-taxable capital receipt. It relied on the decision of Supreme Court in Sahney Steel & Press Works and opines that following aspects are to be examined for the purpose test: (i) if subsidy assists in carrying out trade/business operation or in setting up the business, (ii) incentive/subsidy is given to operate the industrial unit profitably and not for setting it up, and (iii) purpose and object with which the subsidy is extended would determine its character and not its source, timing or mode and manner of quantifying the payment. Also relies on SC judgment in Ponni Sugar & Chemicals as well as J&K HC judgment in Shree Balaji and held that new industrial policy was framed for local employment generation and use of local resources to promote industrialization in the state of Uttaranchal and Himachal Pradesh, thus, excise duty exemption availed by the Assessee is capital receipt and not taxable. It further relied on the decision of the Bombay High Court in Harinagar Sugar Mills and allowed excise duty exemption adjustment in computation of MAT under Section 115JB and held that since the excise duty exemption is considered to be capital receipt, the same cannot be added to arrive at the book profit under Section 115JB.

20. Whether invocation of section 9 and section 11 of A&C Act amounts to parallel proceedings or not?

Fab Tech Works & Constructions Private Limited v Savvology Games Private Limited & Ors – Commr Arb Application No. 419 of 2024 [Bombay High Court]

Decision: No.

A dispute arose between the parties under an Investment Agreement. Applicant filed an application u/s 9 of A&C Act before the Bombay High Court seeking interim relief. The Ld. Single Judge granted interim reliefs including a direction to the respondent to make certain disclosures. Thereafter, applicant invoked arbitration clause. Respondent failed to appoint any arbitrator. Subsequently, the applicant filed an application under Section 11 for the appointment of arbitrator to adjudicate the dispute. Respondent argued that pursuing both Section 9 (interim relief) and Section 11 (arbitrator appointment) amounted to parallel proceedings on the same dispute.

The High Court held that the Section 9 is intended to provide interim relief to safeguard the subject matter of arbitration. On the other hand, Section 11 is limited to the appointment of an arbitrator when there is a dispute regarding the arbitration agreement. The Respondent failed to challenge the Section 9 order in appeal or seek appropriate intervention. Referring to Section 11(6A), the High Court held that its jurisdiction under Section 11 was confined to examining the existence of an arbitration agreement. It held that substantive questions regarding the validity or scope of disputes were matters for the arbitral tribunal to decide under Section 16. Therefore, the mere invocation of Section 9 and Section 11 of the Arbitration and Conciliation Act, 1996 does not amount to parallel proceedings. The High Court referred the disputes to arbitration and appointed the arbitrator.

21. Whether filing a writ petition is an appropriate remedy to seek enforcement of arbitral award or not?

Ramchander v Union of India & Anr – WP(C) No. 2839 of 2020 [Delhi High Court]

Decision: No.

A dispute arose with respect to a Lease Agreement for leasing parcel space in brake vans in train for a period of 3 years. After the expiry of the lease the petitioner sent a request to the Railways for extension of 2 years, but they declined. The petitioner filed a petition under Section 9 and the court allowed the petitioner to operate the lease at the highest bid amount. The petitioner invoked the arbitration clause, and Railways appointed a sole Arbitrator. The Arbitrator passed an award rejecting the claim of the petitioner for refund of Rs.5,54,079/. Aggrieved by this, the petitioner challenged the award under Section 34 of the Act and the court set aside the award but didn't provide any relief to the petitioner in the judgment. Thus, the petitioner filed an application under Section 151 and 152 of CPC rectification/clarification of judgment. But the court rejected the application contending that as the award had been set aside, necessary consequences would follow as per law, and it was not for the court to give directions and to accept the claims of the petitioner. Aggrieved by this, the petitioner filed an appeal under Section 37 of the Act, but the court dismissed the appeal as it was barred by limitation. After this, the petitioner filed a writ petition seeking a direction to the respondents to refund an amount of Rs.5,54,079/- along with interest @ 18 per cent per annum.

The High Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. It is prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure under the enactment and this power under Article 226 needs to be exercised in exceptional rarity, wherein one party is left remediless under the Statute, or a clear 'bad faith' is shown by one of the parties. Accordingly, the High court dismissed the petition as not maintainable.

22. Whether Income Tax dues not included in an approved Resolution Plan under IBC can be claimed later?

Vaibhav Goel & Anr. v. Deputy Commissioner of Income Tax & Anr. – Civil Appeal No. 49 of 2022 (judgment dated 20.03.2025) (SC)

Decision: No.

The Supreme Court held that Income Tax dues other than those falling under an approved Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code (IBC), 2016 stand extinguished. The Court held that after the approval of a Resolution Plan by the National Company Law Tribunal (NCLT), fresh claims, including statutory dues, cannot be heard for the previous periods up to the date of plan approval.

Section 31 of the IBC, 2016 provides that upon approval of a resolution plan by the NCLT, the same becomes binding on the corporate debtor, its creditors (including government authorities), guarantors, and other stakeholders. No additional claims are permitted for pre-approval dues. Here, a new claim of Income Tax demand has been made by the Deputy Commissioner of Income Tax for assessment year 2014-15 after NCLT had sanctioned the Resolution Plan. The Court further placed reliance on its own judgment in the case of Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta & Ors. ((2020) 8 SCC 531) and on the judgment in the case of Ghanashyam Mishra and Sons Pvt. Ltd. through the authorised signatory v. Edelweiss Asset Reconstruction Company Ltd. through the Directors & Ors. ((2021) 9 SCC 657) and overruled NCLT and NCLAT decision, prioritizing the "clean slate" principle, preventing successful resolution applicants from being burdened with unintended liabilities. The finality of the Resolution Plan was maintained, and ensured certainty for applicants by keeping the objective of effective revival of the company.

23. Whether under Section 138 of Negotiable Instruments Act case can be lodged against the ex-director of a company when cause of action arose after the IBC moratorium period was declared?

Vishnoo Mittal vs. M/s Shakti Trading Company – Special Leave Petition (Crl.) No. 1104 of 2022 (judgment dated 17.03.2025) (SC)

Decision: No.

The Supreme Court held that in a situation where the cause of action for an offence of cheque dishonour under section 138 of the NI Act, 1881 arose after the declaration of moratorium period under the IBC, 2016 with respect to the company then the proceedings against the ex-director of the company under section 138 of the NI Act cannot continue against the ex-director of the company.

The Hon'ble Apex Court while setting aside the judgment of the Punjab and Haryana High Court held that when the demand notice was issued to the appellant (director), he was not in charge of the corporate debtor as he was suspended from his position as the director of the corporate debtor as soon as interim resolution professional (IRP) was appointed on 25.07.2018. Therefore, the powers vested with the board of directors were to be exercised by the IRP in accordance with the provisions of IBC. All the bank accounts of the corporate debtor were operating under the instructions of the IRP, hence, it was not possible for the appellant to repay the amount in light of section 17 of the IBC, 2016. The Hon'ble Supreme Court differentiated the facts of the present case with the facts in the case of P. Mohan Raj vs. M/S Shah Brothers Ispat Pvt. Ltd. (2021) 6 SCC 258 on which the Hon'ble High Court had placed its reliance. The Apex Court noted that in P Mohan Raj's case, the cause of action for initiating a cheque dishonour proceedings arose before the imposition of the moratorium, hence the director was not relieved of its liability under the NI Act in P Mohan Raj's case. However, in the present case, the cause of action for initiating the cheque dishonour proceedings arose after the moratorium was imposed.

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