UBR LEGAL ADVOCATES

May 2025 | Issue 50

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 any order can be passed post omission of Rule 96(10) or not?

Sai Vishwas Polymers v Union of India & Ors – WP (MB) No. 103 of 2025 [Uttarakhand 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 an oral concession made by counsel before a Tribunal, without written authorization or unequivocal consent from the petitioner, can bind the petitioner and result in denial of adjudication on issues of law raised under Section 18 of the West Bengal VAT Act?

Hindustan Construction Company Limited v. The State of West Bengal & Ors – WPT T 9 of 2025 [Calcutta High Court]

Decision: No.

The petitioner is undertaking works contracts. It was registered under the West Bengal Value Added Tax Act. For assessment year 2015-2016; best judgment assessment order came to be passed. The petitioner filed an application before the West Bengal Sales Tax Tribunal under section 18; inter alia; challenging the validity of amendment to section 84 read with rule 138 of the Rules. The Tribunal; while upholding the validity of the amendment; relegated the petitioner to pursue appellate remedy. This order of the Tribunal was challenged in writ petition.

The High Court set aside the order impugned and allowed the writ petition. It held: (i) though the Advocate before the Tribunal had agreed to file appeal before appellate authority; there was no written concession given by the petitioner; (ii) even if a concession is given; unless it is unequivocal; it will not bind the party; (iii) the challenge to validity of section 84 being upheld by Division Bench of the High court is not pressed; (iv) the asesssing authority could not have passed a best judgment order when a draft assessment order was prepared and petitioner had filed its submissions; (v) there is no basis or reasoning given for addition of 40% to the contract price and it is a high pitched assessment; (vi) the assessing officer has not appreciated that every assessment year is a different assessment unit and hence, different stands could be taken; (vii) remands the matter back to the assessing officer to pass fresh orders after hearing the petitioner; (viii) directs petitioner to file reply treating the assessment order as show cause notice.

Matters Argued by us

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3. Whether recovery of refund without issuance of a show cause notice under Section 73(1) read with Rule 142 of the CGST Rules, 2017, and without adjudication, is legally sustainable?

Power Engineering (India) Private Limited v Union of India & Ors – WP No. 1718 of 2024 (F) [Bombay High Court, Goa Bench]

Decision: No.

The petitioner is a manufacturer. It is a 100% EOU. It imported raw materials to be used in the manufacture of exported final products without payment of duty under Advance License scheme. It exported the final products on payment of IGST; under claim for refund. The refund was sanctioned. However, a verification was undertaken for alleged violation of Rule 96(10) of the CGST Rules and refund was sought to be recovered along with interest and penalty under section 74 of the Act. A writ petition came to be filed challenging the said recovery action along with the constitutional validity of Rule 96(10) of the Rules.

The High Court at Goa set aside the recovery action and allowed the writ petition. It held: (i) the procedure prescribed under section 73(1); (2) and (9) has not been followed; (ii) no show cause notice under section 73(1) read with Rule 142 of the Rules has been issued not any adjudication order has been passed; therefore; recovery action is illegal; (iii) when the statute provides for a particular thing to be done in a particular manner; it has to be done in that manner only and no other way; (iv) had opportunity been granted to the petitioner; it could have argued that the said rule is not applicable to them; (v) without going into the validity of Rule 96(10) and other issues; allows the writ petition by quashing recovery proceedings and permits revenue to follow procedure prescribed under section 73 in accordance with law.

4. Whether rectification application can be filed when order is passed without considering the reply?

Hindustan Construction Company Limited v Union of India & Ors – WP(C) No. 16514 of 2024 [Delhi High Court]

Decision: Yes.

The petitioner undertakes works contract. For FY 2018-2019, an assessment order came to be passed. A demand of over Rs. 4 crores along with interest and penalty was confirmed. The issue was denial of ITC for suppliers whose registration has been cancelled. It was challenged in writ petition. There was also challenge to validity of Notification No.56/2023 extending the time limit for adjudication under section 73 of the CGST Act.

The High Court disposed off the writ petition. It held: (i) the challenge to the validity of the notification on the ground that there was no recommendation of the GST council or the subsequent ratification was pending before the Hon'ble Supreme Court; the same shall be subject to the outcome of the decision of the Supreme Court; (ii) recently the Punjab and Haryana High Court has disposed off writ petitions on similar lines subject to decision of the Supreme Court on challenge to validity of Notification No.56/2023; (iii) on facts; held that the assessment order had not considered the specific reply filed by the petitioner and hence; permitted the petitioner to file an application for rectification of mistake undue section 161 of the Act; the same shall be accepted without reference to limitation; (iv) the application shall be considered and allowed in light of the reply filed by the petitioner.

5. Whether an assessment passed under the CGST Act, 2017, can be enforced by way of recovery proceedings in the absence of due service or communication of the order to the assessee, as mandated under Section 169 of the Act?

Nexus Shantiniketan Retail Private Limited v Union of India & Ors – WP No. 9868 of 2025 (T-Res) (Karnataka High Court)

Decision: No.

The petitioner operates a mall in Bengaluru. An assessment order dated 23.06.2024 came to be passed. The said order was not served/communicated to the petitioner. The bank account of the petitioner was attached (issuing Form DRC-13) for recovery of over Rs.9 crores. It is then the petitioner became aware of the order. The same was challenged by way of a writ petition.

The High Court allowed the petition directing that the petitioner would file appeal against order which was communicated during the pendency of the writ petition vide email dated 22.04.2025 within a period of four weeks (considering the same as date of communication). Interim stay granted by the High court against recovery from the bank account and the tenants of the petitioner shall remain stayed for a period of further six weeks. The amounts recovered shall be subject to outcome of the appeal.

6. Whether Countervailing Duty (CVD) and Special Additional Duty (SAD) paid post-GST implementation, on imports under an Advance Authorisation Scheme due to non-fulfilment of export obligations, qualify as "CENVAT credit" eligible for refund under Section 11B of the Central Excise Act, 1944 read with Section 142(3) of the CGST Act, 2017?

Spacewood Furnishers Private Limited v Commissioner of CGST & C. Ex., Nagpur – Commissionerate – Excise Appeal No. 85371 of 2021 [CESTAT Mumbai]

Decision: Yes.

The appellant is a manufacturer. It imported machine under advance authorisation scheme for manufacture of final products. Due to cancellation of export orders; it could not fulfill the export obligation and hence; paid CVD/SAD on the imported machine post introduction of GST. It could not avail credit of the same; hence; applied for refund under section 11B of the Central Excise Act read with section 142 of the GST Act. The refund claim was rejected on the ground that: (i) it is customs duty and not cenvat; (ii) the refund claim is not maintainable under section 142 of the Act. Rejection was challenged unsuccessfully in appeal. Hence, appeal before Tribunal.

CESTAT, Mumbai set aside the order and allowed the appeal directing cash refund to the appellant. It held: (i) the appeal is maintainable before Tribunal for any order passed under section 142; follows Larger Bench order in case of Bosch chassis; (ii) the duties paid are CVD/SAD; credit of which is allowed under Rule 3 of the Cenvat Credit Rules; 2004; hence; it is cenvat; (iii) the finding that the amount paid is “arrears of tax” is not correct; (iv) follows decision of New Age Laminators; Clariant Chemicals; and jurisdictional Bombay High Court in Combitic Global; (v) distinguishes Jharkhand High court judgment on facts; (vi) notes that there are contrary rulings of the tribunal on the issue; however; those have not examined the issue in light of the statutory scheme; (vii) notes Supreme Court in Kamlashi Corporation to follow judicial discipline in following jurisdictional High Court.

Matters Argued by us

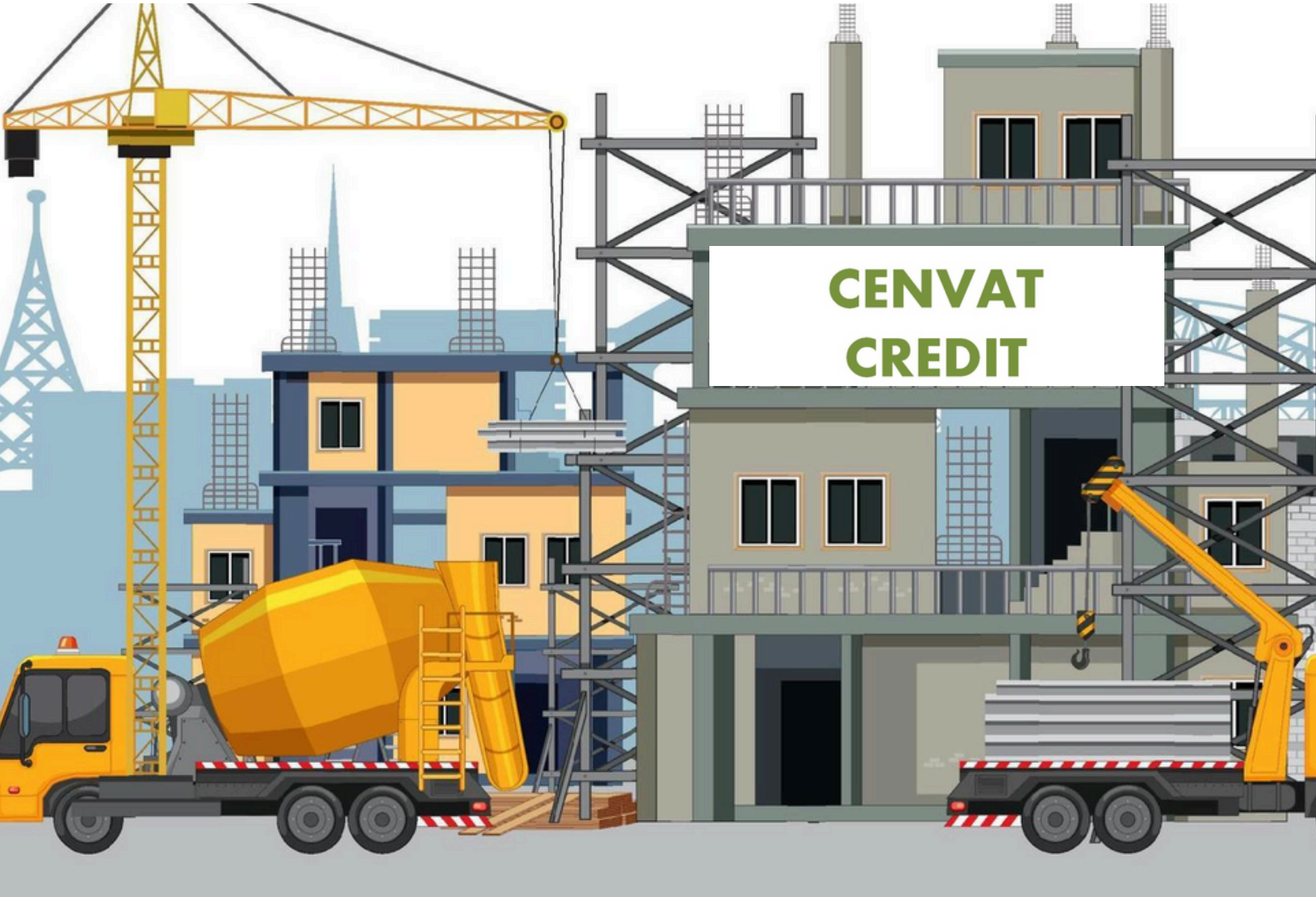
7. Whether the CENVAT credit of input services used for the construction of a factory building is admissible under Rule 2(l) of the Cenvat Credit Rules, 2004 or not?

Kohler India Corporation Limited v CGST & C. Ex., Vadodara – II – Excise Appeal No. 10179 of 2025 [CESTAT Ahmedabad]

Decision: Yes.

The appellant is a leading manufacturer of ceramic and other bathroom fittings. It received certain input services used for construction of factory building and hence; not covered under Rule 2(l) of the Cenvat Credit Rules, 2004. Credit was denied on the ground that there is no excise duty paid on the said building (immovable property). Demands were confirmed. On appeal, CESTAT remanded the matter back to the commissioner for passing an order considering the law has been settled by the High courts. However, yet again, same order is passed relying on decision of Supreme Court in case of Safari Retreats Case. Hence, appeal before CESTAT.

CESTAT, allows the appeal and remands the matter back to the commissioner. It observes that: (i) while the Commissioner agrees with settled legal position under definition of "input service" prior to 2017; however; disallowed credit holding that Safari Retreats is a historic judgment in relation to input tax credit under GST regime; (ii) the commissioner in enthusiasm has not noted whether the provisions of cenvat credit rules and section 17(5) of the CGST Act are pari materia or not; (iii) though there is no requirement of remand; it is necessitated to educate the commissioner that no ruling can be relied upon unless the provisions are pari materia; directs the commissioner to decide the matter in two weeks.



8. Whether doctrine of Unjust Enrichment applies to refund of Bank Guarantee?

Patanjali Foods Limited v Union of India & Ors – Civil Appeal Nos 3833-3835 of 2025 [Supreme Court]

Decision: No.

M.P. Glychem Industries Limited (Company) imported crude degummed soyabean oil of edible grade in bulk at Jamnagar and filed bill of entry on 02.09.2002. The goods were not cleared by the Customs department on the ground that appellant was required to pay higher customs duty on the basis of tariff value fixed for the imported goods in terms of Section 14(2) of the Customs Act, 1962. Aggrieved by such action, the company filed a Special Civil Appeal before Gujarat High Court.

The High Court allowed the appeal and granted interim relief to the effect that for clearance of the goods in question, company should furnish a bank guarantee for the difference of duty of customs under Sections 14(1) and 14(2) of the Customs Act, clarifying that this arrangement would be subject to order of final assessment. The company furnished a Bank Guarantee. Thereafter, the company got merged with the Appellant. The interim stay granted by the High Court was vacated on account of dismissal of the petition on the ground of unjust enrichment.

Against the said order, the appellant filed an appeal before the Supreme Court. While the civil appeals were pending before this Court, the department encashed the bank guarantees and appropriated the sums covered by the bank guarantees. The appellant challenged the order of the High Court and the coercively recovered Bank Guarantee.

The Supreme Court setting aside the High Court order held that the doctrine of unjust enrichment was not applicable, as the recoveries made via encashment of bank guarantees were coercive, disentitling the department to retain the amount as payment towards the customs duty. Section 27 of the Customs Act, which requires a person seeking refund of duty to show that the burden was not passed on to the customer, is not applicable when refund is sought of a wrongly invoked bank guarantee. This is because encashment of bank guarantees by the Customs Department cannot be treated as payment of customs duty. Hence, neither Section 27 nor the doctrine of unjust enrichment is applicable. The Supreme Court directed department to refund the encashed amount within four months with 6% interest.

9. Whether mandatory pre-deposit for filing of an appeal can be made using accumulated ITC from the Electronic Credit Ledger or not?

Union of India & Anr. Vs. Yasho Industries Ltd – SLP (Civil) Diary No. 17547 of 2025 [Supreme Court]

Decision: Yes.

The Respondent is a manufacturer. The Respondent filed an appeal before the appellate authority and paid the mandatory pre-deposit as provide u/s 107(6) of the act via Electronic Credit Ledger using Form DRC 03. The Petitioner did not accept this mode of payment. The Respondent filed a writ before the Gujarat High Court. The High Court held in favor of Respondent. The Petitioner filed an SLP before the Supreme Court. The Supreme Court upheld the decision of the Gujarat High Court and held that pre-deposit under Section 107(6) can indeed be made using ITC, if the law does not explicitly bar it.

In Special Leave Petition (C) Nos. 25437/2023 and 324/2024, the Assessees have preferred the petitions before this Court which have been entertained. When the Revenue has preferred Special Leave Petition (C) D.No.508/2025, reliance has been placed on the fact that the Assessees petitions have been entertained by this Court and therefore on that basis notices were issued in the case of Chief Commissioner of CGST and C.E. and Anr. Vs. M/s. Shiv Crackers. Based on this, the Petitioner sought issuance of notice in its own petition against the Assessee.

The Supreme Court held that the Department i.e. Petitioner cannot rely upon the pendency of SLPs filed by Assessees to justify issuance of notice in its own SLP. The earlier entertained petitions were initiated by Assessees and not by the Department, and that the basis for tagging the present matter with those cases is unsustainable. The Supreme Court also acknowledges the deletion of Rule 96(10) of the CGST Rules in 2024 as pointed out by the respondent. The Supreme Court further did not find any reason to interfere with the High Court's order in R/SCA No. 10504/2023 and hence dismissed the SLP.

10. Whether the department has jurisdiction to levy service tax on the basis of the Income reflected in Form 26AS or not?

Nareshkumar Dashrathbhai Patel v Assistant Commissioner, CGST – R/SCA No. 1008 of 2024 [Gujarat High Court]

Decision: No.

The petitioner is a doctor and is running a clinic. The Petitioner filed its return and did not pay any service tax under a bona-fide belief that services offered by the petitioner in the medical profession fall under category of healthcare services and thereby qualifying for exemption from service tax as per Mega Exemption Notification No.25/2012-ST dated 20.06.2012. However, a show cause notice was issued demanding service tax. Before filing a reply the department passed the order. Hence, the present petition.

The High Court held that it is not in dispute that the medical services offered by the petitioner is exempted as per Exemption Notification No.25/2012 dated 20.06.2012 and therefore, the show cause notice as well as the order-in-original are without jurisdiction. The Respondent has not carried out any further inquiry on the basis of information received from the income tax department in Form 26AS to verify as to whether the petitioner was providing medical services or not which is exempt under Notification No.25/2012. The respondent could not have assumed the jurisdiction under the provisions of the Service Tax Act for levy of service tax for the year 2016-2017. The impugned show cause notice and orders are therefore, quashed and set aside.

11. Whether refund should be credited to the Electronic Cash Ledger of a taxpayer whose business is no longer operational?

Edelweiss Rural & Corporate Services Limited & Anr. v. The Deputy Commissioner of Revenue, Taltala Charge, WBGST & Ors. [WPA 3033 of 2025]- [Calcutta HC]

Decision: Yes.

The petitioner has filed an appeal against the refund/rejection order. The Appeal was allowed by the Appellate Authority, pursuant to which, the Petitioners filed a Refund Application in Form GST RFD-01 before the Deputy Commissioner of Revenue ("the Respondent") and a Refund Sanction Order was issued by the Respondents. While the Order in FORM GST RFD-06 directed the refund to be paid to the Petitioner's Bank Account, the Impugned Order contradictorily stated that the refund would be credited to the Petitioner's Electronic Credit Ledger ("ECrL"). The petitioner challenged such denial before the High Court by writ.

The High Court observed that the Respondent had directed the refund to be paid to the Petitioner's Bank Account on the subsequent application made by the Petitioner; however, in the Impugned Order, there is a direction to credit the refund amount to the Petitioner's ECrL, which appears to be self-contradictory. The Order is passed on the basis that the Petitioner has closed down its business operation and its registration has already been cancelled, and that there is no tax due and payable by the Petitioner. The Hon'ble court held that the respondent ought to reconsider the Impugned Order and take a decision within six weeks after providing an opportunity of hearing to the Petitioner.

12. Whether sale of Goods at Concessional rates alone constitute a sham transaction or not?

Sri Ram Stone Works & Ors v. State of Jharkhand & Anr- W.P. (T) Nos. 5535/2024 [Jharkhand High Court]

Decision: No.

The petitioners are engaged in sale of stone boulders, stone-chips, etc. The Petitioner received notice u/s 61 of JGST Act stating, in substance, inter alia, that Petitioners have sold stone-boulders/stone chips at a price lesser than the prevalent market price and, accordingly, Petitioners were directed to show cause as to why proceeding under Section 73/74 be not initiated against them. Some petitioners filed its reply. Despite such reply being filed, in some cases, subsequent notices in Form GST ASMT-10 were issued. Hence, the present petition.

The High Court held that sale of goods at concessional rates alone does not constitute a sham transaction. Section 61 have been issued to assessees and instead of pointing out discrepancies in the returns filed by assessees, the competent officer has embarked upon an exercise of comparing the price at which assessees have sold their stone-boulders/stone-chips with that of prevalent market price and, thereafter, accordingly, issued notices to assessees asking them to show cause as to why appropriate proceedings for recovery of tax and dues be not initiated against them. The notices issued under Section 61 of the CGST/JGST Act went beyond the provision's scope, as they were based not on discrepancies within the returns, but on a comparison between the Petitioners' sale prices of stone boulders/chips and the prevailing market rates.

13. Whether an auction purchaser is liable to pay the outstanding taxes on vehicles acquired through auction or not?

Arif Khan v State of HP & Ors – CWP No. 1948 of 2024 [Himachal Pradesh High Court]

Decision: Yes.

The Department of Excise and Taxation, during a search and seizure operation related to tax invasion, confiscated several vehicles belonging to M/s Indian Techno Mac Company Ltd. These vehicles, along with other assets, were subsequently auctioned through an auction-cum-tender notice, on the basis of "as is where is", "as is what is" and "whatever there is". The Petitioner was declared as the successful bidder and purchased multiple vehicles. Among them, 10 vehicles were registered in the name of State of Himachal Pradesh. However, when the petitioner applied for transfer of registration in his name he was informed that taxes of the vehicles had been unpaid for the past eight years. He was told that unless the taxes are cleared, the registration certificates of those vehicles could not be transferred in his name. Being aggrieved by this, the petitioner filed the writ petition seeking exemption from all pending taxes related to the vehicles purchased through auction.

The High Court held that an auction Purchaser is liable to pay the outstanding taxes on vehicles acquired through auction. The Court clarified that exemption under Section 14 of the Himachal Pradesh Motor Vehicles Taxation Act, can only be granted if the registered owner or person in control of the vehicle had given prior written intimation that the vehicle would not be used in a public place. In this case, neither the registered owner nor the petitioner had submitted any such intimation. As per the brochure of auction-cum-tender it was for the successful bidder to pay GST, TDS, levies, duties taxes and cesses including registration charges, stamp duty, etc. as were applicable, over and above the approved bid amount. Regarding the plea of equity, the court stated that there is no equity in taxation law and further more equity would only come into play in case there is no law operating in the field. The court remarked that when there is already law operating in the field, equity has to yield before law. For, it is well settled that whenever conflict is between the law and equity, law would prevail. Thus, the court dismissed the writ petition and directed the petitioner to comply with the tax liability and pay the tax due with respect to the vehicle purchased.

14. Whether assessee is permitted to rectify GSTR 3B return on par with Contents of GSTR 1 return?

Om Traders v Union of India – Civil Writ Jurisdiction Case No. 16509 of 2024 [Patna High Court]

Decision: Yes.

The petitioner is two wheeler dealer. The Petitioner filed Form GSTR 1 and Form GSTR 3B for the month of April 2019. In filing GSTR 1, there is no error committed by the petitioner. While filing GSTR 3B, the petitioner inadvertently committed error. Petitioner had submitted application to rectify GSTR 3B on par with the figure mentioned in GSTR 1. The same was rejected and Show Cause Notice was issued. Petitioner filed reply. OIO was passed inter alia demanding CGST and SGST. Hence, the present petition.

The High Court held that in the government, there is no system of rectification of any return once it is filed. However, the assessee had submitted application to rectify GST 3B on par with the GSTR 1 relating to certain total taxable value, total integrated tax, total CGST, total SGST. He had committed error insofar as mentioning total taxable value while submitting GSTR 3B and it is not in accordance with the GSTR 1. Therefore, the assessee is permitted to rectify GSTR 3B on par with contents of GSTR 1.

15. Whether deductions claimed under Section 80-IA/80-IB (for industrial profits in certain categories) and Section 80-HHC (for export profits) could be cumulatively allowed?

Shital Fibers Limited v CIT – Civil Appeal No. 14318 of 2015 [Supreme Court]

Decision: Yes.

The appellant filed a return of Income for the AY 2002-03. The appellant claimed deductions under Section 80-HHC and 80-IA of the Income Tax Act, 1961. A notice u/s 148 was issued. The appellant filed its reply. However, the ACIT rejected the argument of and deductions claimed by the appellant u/s 80IA and 80HHC were disallowed. The appeal was rejected by the CIT(A) and ITAT.

The appellant filed appeal before the Punjab & Haryana High Court. The High Court relied upon its own decision in the case of Friends Casting (P) Ltd. v. Commissioner of Income Tax. The High Court took the view that Sub-section (9) of Section 80-IA bars claim for deduction under any other provision of Chapter VI-A, if deduction under Section 80-IA has been allowed. The High Court did not agree with the view taken by the Bombay High Court.

Aggrieved by the High Court order, the appellant filed an appeal before the Hon'ble Supreme Court. The matter was referred to the Three Judge Bench as there was already a spilt verdict on the same issue in case of Micro Labs Limited Case. Justice Anil R Dave held that Deduction under Section 80-IA must be reduced from gross total income before computing deductions under other provisions like 80-HHC. Whereas Justice Dipak Misra held that Section 80-IA(9) only restricts duplication of deduction benefits; it does not alter the manner of computing other deductions.

The three-judge bench answering a reference upheld the view of the view taken by Justice Misra, stating that assesses do not have to subtract the Section 80-IA deduction before calculating the Section 80-HHC deduction, i.e., both the deductions can be calculated separately and held that deductions under Sections 80-IA/80-IB of the Income Tax Act need not reduce the gross total income before computing deductions under other provisions like Section 80-HH for export profits.

16. Whether the terrace / balcony that is in the form of open to sky or portico / porch area without walls could be added while computing the built-up area for the purpose of determining the eligibility for deduction under Section 80-IB of the Income Tax Act, 1961?

Modi Builders & Realtors (P) Ltd. v ACIT – ITA No. 167 of 2012 [Telangana High Court]

Decision: Yes.

The appellant is a real estate developer, who builds duplex houses/units with a portico (a covered porch) and an open terrace, all enclosed within a compound wall. The appellant filed return for AY 2008-09. The appellant showed a profit of ₹3.16 crore, but claimed the entire amount as tax-free under a special tax deduction (Section 80-IB(10). The AO passed the assessment order and reassessed the total income at Rs. 3.41 crore. The appellant filed an appeal before the CIT(A) and Tribunal. The Tribunal held that area of each residential unit, when including the open terrace and the portico, exceeded 1,500 sq. ft. According to Section 80-IB(10), to qualify for the tax deduction, the built-up area of each unit must not exceed 1,500 sq. ft. Since the units were found to be larger than allowed, the claim for deduction was rejected. Hence, the present appeal.

The High Court relied upon the decision of Gujarat High Court in Amaltas Associates case and held that Open terrace and portico cannot be treated as part of the built up area as defined u/s 80 – IB(14) (a). The built-up area in this case does not exceed 1,500 sq. ft., and therefore the project is eligible for the tax deduction under Section 80-IB(10). Only the areas within the "inner measurements" of a residential unit count as built-up area. Open spaces like terraces and porticos are outside the inner measurement and should be excluded.

17. Whether disallowance u/s 143(1)(a) of the Income Tax Act is allowed when the matter is pending before the Supreme Court?

Raj Kumar Bothra v DCIT – TAXC No. 56 of 2025 [Chhattisgarh High Court]

Decision: No.

The assessee filed return for income for the Assessment Year 2020-21 and paid tax. The assessee received an intimation order, under Section 143(1)(a) of the Act, disallowing a claim for deduction of Rs. 28,21,065/- as delayed deposit of employees' contributions to Employees' State Insurance (ESI) and Employees Provident Fund (EPF). Aggrieved by the same, the assessee challenged the intimation order before the CIT(A) under Section 246A of the Act. Appeal was dismissed and order was challenged before the ITAT. ITAT dismissed the appeal. Hence, present appeal.

The High Court held that an Assessing Officer (AO) cannot apply Section 143(1)(a) of the Income Tax Act, 1961 (the 1961 Act), to disallow a claim where the issue involved, such as the deductibility of employees' contributions to EPF/ESI under Section 36(1)(va), was pending consideration before the Supreme Court in Checkmate Services Pvt. Ltd. v. CIT [(2023) 6 SCC 451]. Also the power under sub-section (1) of Section 143 of the 1961 Act is summary in nature designed to cause adjustment which is apparent from the return whereas power under sub-sections (2) and (3) extends to scrutinizing the return and causing deeper probe to arrive at correct determination of the liability. Allowing the appeal, the Court set aside the prima facie disallowance of impugned contribution towards ESI and EPF under Section 36(1)(va) read with Section 2(24)(x) of the 1961 Act made by the AO under Section 143(1)(a) and consequently set aside the dismissal orders passed by the CIT (Appeals) and ITAT.

18. Whether the Delhi Arbitration Centre could assume jurisdiction over a dispute under Section 18 of the MSMED Act, even though the underlying contract specified Bengaluru as the seat of arbitration?

Harcharan Dass Gupta v Union of India – Civil Appeal No. 6807 of 2025 [Supreme Court]

Decision: Yes.

A tender was issued by ISRO for construction work in New Delhi. The contract included dispute clauses, providing that disputes would be settled by arbitration seated in Bengaluru. The appellant invoked Section 18 of the MSMED Act after a dispute arose, approaching the Delhi Facilitation Council. Upon ISRO's refusal to participate in conciliation, the dispute was referred to arbitration via the Delhi Arbitration Centre, and a sole arbitrator was appointed. ISRO challenged the jurisdiction of the Delhi Arbitration Centre before the Karnataka High Court, arguing that the arbitration seat was contractually fixed at Bengaluru. The High Court allowed the writ, holding that the proceedings in Delhi violated the contract, prompting the Appellant to approach the Supreme Court.

The Supreme Court held that the MSMED Act is a special statute enacted to provide a swift and effective dispute resolution mechanism for MSMEs, and it overrides the Arbitration Act, which is more general in nature. The Supreme Court re-affirmed the decision of the Gujarat High Court in Gujarat State Civil Supplies v. Mahakali Foods and set aside the the Karnataka High Court's interference with MSMED proceedings in Delhi, despite the contract naming Bengaluru as the arbitration seat. The Court clarified that private contractual clauses cannot override the statutory mandate of the MSMED Act. Since the appellant-supplier was registered in Delhi, the Court noted that the Delhi Arbitration Centre had jurisdiction under Section 18(4) of the MSMED Act, regardless of the contract's designation of Bengaluru as the seat of arbitration due to the overriding nature of the MSMED Act.

19. Whether interim relief u/s 9 of Arbitration Act must be sought with reasonable expedition or not?

Ashoka Buildcon Ltd. vs. Maha Active Engineers India Pvt. Ltd. & Anr – Commercial Arbitration Appeal No. 10 of 2024 [Bombay High Court]

Decision: Yes.

The appellant filed the Commercial Arbitration Appeal under Section 37 of the Arbitration and Conciliation Act, challenging a common order dated 15.03.2024 passed by the District Judge, Nashik. By that order, the Court allowed an application under Section 9 of the Act filed by Maha Active Engineers India Private Limited ("MAEIPL") and directed ABL to deposit Rs.63.27 crores in Court. The Court also restrained ABL from dealing with its assets till the commencement of arbitration proceedings and directed it to deposit 20% of the amount received from Maharashtra State Electricity Distribution Company Limited ("MSEDCL"), disclose its assets, and not compromise with MSEDCL without the consent of MAEIPL. The dispute arose out of a contract between MSEDCL and ABL, under which ABL subcontracted certain works to MAEIPL. MAEIPL claims that it completed the work on 31.03.2011. ABL received payments from MSEDCL but did not fully pay MAEIPL. MAEIPL invoked arbitration on 16.12.2019. Meanwhile, ABL secured an award against MSEDCL on 15.02.2020, which MSEDCL partially satisfied through cash deposit and a bank guarantee. MAEIPL again invoked arbitration on 12.01.2024 and filed the Section 9 application. The trial court granted the reliefs. Therefore, the appeal.

The High Court held that an applicant under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Act") must approach the court with reasonable expedition. Delay of several years without adequate explanation is a material factor that militates against the grant of such relief. The relief under Section 9 of the Act is discretionary and must be guided by the settled principles of interim relief, namely the existence of a prima facie case, balance of convenience, and irreparable harm. An appellate court can interfere with the discretionary order of the trial court only if such discretion has been exercised arbitrarily, capriciously, or in ignorance of settled legal principles. The court modified the common order. It directed appellant to deposit Rs. 9.74 crore and furnish bank guarantee for Rs. 14.61 crore within 6 weeks. Therefore, it partly allowed the appeal.

20. Whether Liquidated Damage clause can permit automatic recovery of full amount or actual loss must be proven?

Jammu and Kashmir Economic Reconstruction Agency v Simples Project Limited – OMP (Comm) No. 60/2025 [Delhi High Court]

Decision: Actual Loss.

The impugned award arose from Contract Agreement No. JKUSDIP Srinagar/UT/02 dated 02.04.2013, executed following the respondent's bid on 04.12.2012 and the petitioner's Letter of Acceptance dated 06.03.2018. The contract concerned the "Construction of Multi-Storied Mechanized Parking Facility on MA Road, Srinagar," including a three-year Operation & Maintenance (O&M) period post Defect Liability. While the petitioner claimed the project was to be completed between 06.05.2013 and 05.11.2014 (within 549 days), the respondent asserted the stipulated completion date was 24.02.2015. Ultimately, the project concluded on 30.04.2017 after eight Extensions of Time. The Arbitral Tribunal (AT) rejected the Petitioner's adjustment of Liquidated Damages (LD) from the Respondent's pending bills, holding that such unilateral adjustment was impermissible without adjudication. The AT found that the Petitioner had not filed a counterclaim for the LD amount and ruled that Clauses 8.7 and 14.15(b) of the GCC did not represent a genuine pre-estimate of damages, being part of a standard contract without mutual negotiation. The AT also dismissed the Petitioner's counterclaim for loss of car parking revenue, citing lack of evidence of actual loss. Since the LD claim failed on legal grounds, the AT did not assess whether the delay was attributable to the Respondent. Against the above award, petition filed under section 34 of the Arbitration Act.

The High court held that the law mandates proof of actual loss despite the presence of a Liquidated Damages (LD) clause and does not allow automatic recovery of the entire LD amount upon breach. Therefore, the Petitioner's unilateral adjustment without adjudication was unlawful. The AT rightly held that such unilateral recovery does not obviate the need for proper adjudication of the LD claim. it appeared to be a standard-form clause imposed unilaterally by the Petitioner. The Tribunal's interpretation, though strict, was not perverse—it reasonably demanded proof that Clause 8.7 reflected mutual intent specific to the project. As the Respondent had contested the clause as penal in nature, the AT rightly scrutinized and rejected it. It further opined that the Indian law does not recognise penalties as a measure of damages. The courts have therefore held that LD stipulated in contracts must not be in the nature of penalty but must be in the nature of a genuine pre estimate of damages made by the parties. It also observed that there is no patent illegality committed by the AT in reaching a finding that Petitioner cannot claim loss allegedly suffered by the government exchequer, if any, that may have been proved. The court concluded that the AT rightly held that the Petitioner could not claim both LD for delay and separate compensation for loss of parking revenue, as LD, being a pre-estimate of delay-related losses, would cover all such claims.

21. Whether Limitation Act applies to proceedings for interest on Delayed Payments to Small Scale & Ancillary Industrial Undertakings Act or not?

Transmission Corporation of Andhra Pradesh Limited v Sri Gowri Shankar Cable Industries – Civil Miscellaneous Appeal No. 940 of 2015 [Telangana High Court]

Decision: Yes.

The appellants filed the Civil Miscellaneous Appeals under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the order dated 20.07.2015 passed by the XIV Additional Chief Judge, Hyderabad. By that order, the Judge dismissed the appellants' petitions under Section 34 of the 1996 Act and upheld the arbitral award dated 16.11.2002 issued by the A.P. Industry Facilitation Council. The dispute arose when Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) purchased AAA and ACSR Conductors in 1996 from the Respondent, M/s. Sri Gowri Shankar Cable Industries. Although the Respondent completed the supply, APTRANSCO failed to make timely payments and left several bills unpaid. In 2001, the Respondent approached the Facilitation Council seeking ₹32.63 lakhs with interest. The Council awarded ₹24.14 lakhs with 10% post-award interest. The appellants challenged this award under Section 34, which was dismissed.

The High Court held that the provisions of the Limitation Act, 1963 are applicable to proceedings initiated under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. The Court clarified that the overriding effect under Section 10 of the 1993 Act applies only to the express provisions of that Act and does not exclude the applicability of the Limitation Act in the absence of any express limitation provision under the 1993 Act or the MSMED Act, 2006. Accordingly, the Court held that the Facilitation Council and the XIV Additional Chief Judge had erred in interpreting that the Limitation Act did not apply to the arbitral proceedings under the 1993 Act.

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