UBR LEGAL ADVOCATES

APRIL 2026 | ISSUE 61

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

2

1. Whether reassessment proceedings under Sections 148/148A of the Income-tax Act are invalid if initiated by the Jurisdictional Assessing Officer instead of through the faceless mechanism?

Aristo Pharmaceuticals Private Limited & Ors. v. Union of India & Ors. – Diary No. 32669/2025 [Supreme Court]

Decision: Remanded.

The present batch of appeals arose from reassessment proceedings initiated under Sections 147 to 151 of the Income-tax Act post amendments by the Finance Act, 2021. Various High Courts had taken divergent views on whether notices issued under Section 148 and orders passed under Section 148A(d) by the Jurisdictional Assessing Officer (JAO), instead of through the faceless mechanism prescribed under Section 151A and the e-Assessment Scheme, were valid. Certain High Courts had quashed such proceedings holding that only faceless authorities could exercise such powers. Aggrieved thereby; the Revenue preferred appeals before the Supreme Court. During the pendency of the appeals; Parliament enacted the Finance Act, 2026 introducing Section 147A with retrospective effect from 01.04.2021 clarifying that the term "Assessing Officer" for the purposes of Sections 148 and 148A shall mean an officer other than the faceless assessment units.

The Supreme Court held that (i) divergent views of High Courts necessitated reconsideration in light of subsequent legislative amendments; (ii) by insertion of Section 147A with retrospective effect; the statutory position regarding authority of the Assessing Officer stands clarified; (iii) since High Courts had quashed proceedings primarily on jurisdictional ground (JAO vs faceless mechanism); the very basis of such judgments stands altered; (iv) assessees must be granted opportunity to challenge validity and retrospectivity of the amended provisions; (v) all contentions including constitutional validity of Section 147A are kept open; (vi) matters remitted to respective High Courts for fresh adjudication; (vii) liberty granted to assessees to amend pleadings to challenge amendments; (viii) interim protection granted by directing stay on reassessment proceedings during pendency before High Courts; (ix) Supreme Court has not expressed any opinion on merits of controversy; (x) High Courts directed to dispose matters expeditiously.

2. Whether refund claim can be denied and appeal dismissed as time-barred when original order is void ab initio and not uploaded on portal?

K Line India Pvt. Ltd. v. Union of India & Ors. WP (L) NO. 36200 OF 2023-[Bombay HC]

Decision: No.

The petitioner is providing services to SEZ units. It amounts to zero rated supply in terms of section 16 of the IGST Act. It applied for refund claims. Refund claim was rejected. The order was served physically but not uploaded on the portal. The petitioner filed appeals belatedly. The appellate authority dismissed the appeal as time barred; holding it did not have power to condone delay of 38 months. Hence; petitions came to be filed.

The Bombay High Court allowed the petitions. It held: (i) the order in original was void ab initio as it was issued in violation of principles of Rule 92 of the CGST Rules; (ii) no deficiency memo or show cause notice or personal hearing was issued to the petitioner before rejecting the claim; (iii) order was not uploaded on the portal as required by the Rules; (iv) dismissal of the appeal on ground of delay would not come in way to substantiative justice; when original order is non est; (v) a pedantic view cannot be taken; follows its earlier decision in Knowledge Capital services; (vi) the department itself entertained subsequent application by issuing deficiency memo; (vii) directs department to process the application without reference to impugned orders.

Matters Argued by us

3. Whether a show cause notice based on incorrect foundational facts and vague allegations is sustainable in law?

Abbott Healthcare Pvt. Ltd. v. Union of India & Ors.- CWP No. 4495-2024 (O & M) [Punjab and Haryana HC]

Decision: No.

The petitioner is a leading pharmaceutical global company. It was served with a show cause notice proposing to demand GST of over Rs.80 crores for ITC mismatch and RCM liability on the ground that CAG has conducted audit of the petitioner company for various financial years. The said show cause notices were challenged by way of a writ petition.

The Punjab and Haryana High Court quashed and set aside the said show cause notice. It held: (i) the CAG; filed affidavit in reply; stating that it did not conduct audit of the petitioner company and State agreed; hence; the foundational aspect of the show cause notice itself was wrong; (ii) copy of such purported audit report was also not served/attached; (iii) the show cause notice was vague and 'non specific' intelligible allegations; (iv) it does not fulfil its purpose of putting the petitioner to notice of the intent of the department; (v) refers to section 73(3) to hold that every notice must contains "details"; which; the impugned notice does not.

4. Whether blocking of ITC under Rule 86A can continue beyond one year and be made subject to verification or cancellation of registration?

NZS Traders Pvt. Ltd. v. Union of India & Ors.- WP No 4815 OF 2024-[Bombay HC]

Decision: No.

The petitioner is a trader. It was alleged that it had received only invoices; without actual receipt of goods (alleged fake ITC). Hence, its ITC ledger came to be blocked. It made a representation; however; to no avail. Hence; petition came to be filed.

The Bombay High Court set aside the attachment and allowed the petition. It held: (i) Rule 86A(3); by operation of law; mandates that blocking cannot be continued beyond a period of one year; hence; the petitioner is not even required to approach the court for the same; (ii) rejects plea of the respondent that unblocking should be subject to verification of ITC and cancellation of registration of the petitioner; (iii) follows its earlier view in Seya Industries; (iv) keeps contention open on merits to be decided based on show cause notice; if any; issued by the Respondents.

5. Whether assessment proceedings are time-barred where final assessment order is not passed within the time prescribed under Section 144C(13) of Income Tax Act?

Benteler Automotive India Pvt. Ltd. v. Union of India & Ors, Writ Petition No. 10391 OF 2022-[Bombay HC]

Decision: Yes.

The petitioner is part of a foreign MNC. It filed return of income for AY 2016-2017. The case was transferred to the transfer pricing officer. A draft assessment order dated 28.11.2019 came to be passed. The petitioner appeared before the DRP: It passed an order dated 22.02.2021 in terms of Section 144C(5) of the Act, directing adjustment and addition of over Rs7.93 crores. directions were issued by the DRP. The assessing officer did not pass order within time provided for final assessment. Hence; petition was filed claiming that proceedings are time barred.

The Bombay High Court held that assessment was time barred and allowed the writ petition. It held: (i) section 143C(13) of the Income Tax Act requires final assessment order to be passed within 30 days of the month in which DRP passes order; admittedly; it was not done in the present case; (ii) follows its earlier decision in Shell India case; (iii) holds that the proceedings are time barred; hence, no order can be passed today; (iv) allows petitioner to withdraw the protective appeal filed before CIT(A).

Matters Argued by us

6. Whether issuance of consolidated show cause notice and order for multiple financial years is permissible under GST law?

SPK and Co. & Ors. v. Union of India & Ors. - W.P.(MD)No.5396/2026 -[Madras High Court]

Decision: No.

The petitioner is a trader. It was served with a show cause notice proposing denial of input tax credit for a consolidated period from 2018-2019 to 2021-2022. The petitioner replied stating that this was illegal. However, the GST officer passed order relying upon circular issued by CBIC on 15.09.2025. Hence; petition came to be filed.
The Madras High Court (Madurai Bench) set aside the order and allowed the petitions. It held: (i) a consolidated show cause and order is impermissible; (ii) the High Court has already ruled in R.A. and Co. case; which has not been challenged by the Revenue before the Supreme Court; (iii) therefore; reliance placed on CBIC circular is incorrect in law; (v) set aside the order and remand the matter back to issue fresh show cause notice for each period within three weeks.

7. Whether refund of accumulated ITC can be denied on the ground of non-submission of FIRC?

Interactive Brokers Software Services Pvt. Ltd. v. Union of India & Ors.- WP No. 4543 of 2025 -[Bombay HC]

Decision: No.

The petitioner is an exporter. It filed a claim for refund of accumulated input tax credit (ITC) under Rule 89 of the CGST Rules read with section 54 of the CGST Act. The application came to be rejected on the ground of non-submission of FIRC. Hence, petition came to be filed.

The Bombay High Court set aside the order and allowed the writ petition. It held: (i) the FIRC were submitted by the petitioner; which were not considered by the authority; (ii) there is a statement on oath that FIRC were covering all export invoices in question; (iii) accordingly; directs the authority to consider and process the claim in three months.

Matters Argued by us

8. Whether rectification under Section 161 of the CGST Act can be used to supply reasons and cure defects in an adjudication order?

Humble Plastics Pvt. Ltd. v. Union of India & Ors.-SCA No. 909 of 2026- [Gujarat HC]

Decision: No.

The petitioner is a trader in plastics. It purchases and sells goods. The GST authorities alleged that it had not received the goods; hence; not eligible to claim input tax credit. A detailed reply was filed. Without considering the same; order confirming demand of over Rs.6 crores; along with interest and penalty; was passed. It filed a writ petition. During the pendency; the department passed rectification order under section 161 of the CGST Act supplanting reasons for the order and dealing with grounds urged in the reply.

The Gujarat High Court set aside the order and allowed the writ petition. It held: (i) the scope of section 161 provides for rectification only; being limited; cannot be invoked to supplant reasons; (ii) faced with this; counsel for the department agreed to withhold such orders and pass fresh order in original; (iii) accordingly; directs to hear the petitioner and pass fresh orders after considering the reply filed by the petitioner.

9. Whether order can be passed before date fixed for hearing?

Rajkala Enterprises Pvt. Ltd. v. Union of India & Ors.- WP No. 1955 OF 2024- [Bombay HC]

Decision: No.

The petitioner is a trader. It availed input tax credit. The revenue contended that credit was beyond the time limit specified under section 16(4) of the CGST Act. An order confirming demand of over Rs.4.8 crores came to be passed; without hearing the petitioner. Hence; petition came to be filed.

The Bombay High Court set aside the order and allowed the petition. It held: (i) the show cause notice called the petitioner to appear on 22.04.2023; however; order came to be passed on 31.03.2023; even before that date; (ii) there was violation of principles of natural justice as the petitioner did not have option to file reply and appear; (iii) accordingly; matter is remanded; keeping all issues open; (iv) bank attachments pursuant to the said order are also set aside.

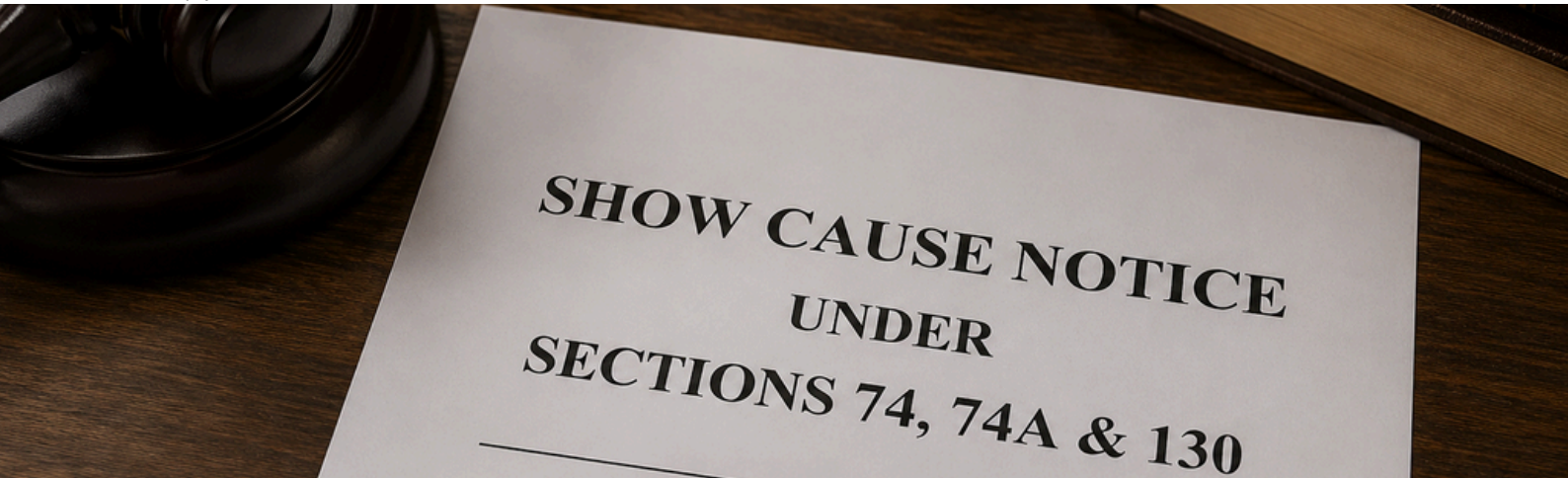
10. Whether a consolidated show cause notice invoking Sections 74, 74A and 130 for multiple financial years is legally sustainable?

R.R. Metal Industries v. Union of India & Ors.- WP No. 8787 of 2026- [Telangana High Court]

Decision: Stay Granted.

The petitioner is a manufacturer of metal products. DGGI visited its premieres and seized certain stock. It was alleged that it had received invoices without goods. It was issued a show cause notice proposing demand of GST for financial years 2022-2023 to 2025-2026 under section 74 and 74A of the CGST Act; along with a proposal to confiscate the goods under section 130 of the Act. The show cause notice was challenged in a writ petition.

The Telangana High Court stayed the show cause notice. It held: (i) prima facie a consolidated notice issued under section 74; section 74A and Section 130 cannot be issued; (ii) It notes that the Delhi High Court is re-examining its view taken in Ambica Trading; post direction from Supreme Court in Aparana Collection; (iii) challenge to notice as it is contrary to law and facts; hence; directs the Department to file affidavit in reply on the said issues.



Matters Argued by us

11. Whether a consolidated show cause notice under Sections 73/74 of the CGST Act can be issued for multiple financial years by clubbing periods?

CD Safety and Security Services LLP v Union of India & Ors – WP No. 3388 of 2026 [Bombay High Court]

Decision: Referred to Larger Bench.

The petitioners challenged issuance of consolidated show cause notices under Sections 73/74 of the CGST Act covering multiple financial years by clubbing different periods. It was contended that GST scheme is return-based and period-specific; limitation under Sections 73(10) and 74(10) applies year-wise; and therefore issuance of composite notices is without jurisdiction. Reliance was placed on earlier Bombay High Court decision in Milroc Good Earth Developers and other High Court rulings taking similar view. The Revenue contended that there is no statutory bar on issuing consolidated notices; limitation applies to passing of orders and not issuance of notice; and composite notices are administratively justified in cases involving interconnected transactions. Hence; petitions before High Court.

The Bombay High Court held that: (i) provisions of Sections 73 and 74 do not expressly prohibit issuance of consolidated show cause notices for multiple periods; (ii) use of expression "any period" and "such periods" indicates legislative intent permitting coverage of multiple tax periods; (iii) limitation under Sections 73(10)/74(10) pertains to passing of orders and does not restrict issuance of show cause notice; (iv) statutory scheme does not mandate separate notices for each financial year; (v) earlier decision in Milroc requires reconsideration in light of contrary views including Delhi High Court in Mathur Polymers; (vi) GST being evolving law; issue involves substantial questions requiring authoritative determination; (vii) conflict between High Court decisions necessitates clarity; (viii) accordingly; questions framed and matter referred to Larger Bench for final adjudication while interim orders to continue.

12. Whether show cause notice can be issued based on an omitted provision (Rule 96(10) of CGST Rules)?

A.G. Industries v. Union Of India and Ors.- Writ Tax No. 1904 of 2026- [Allahabad HC]

Decision: Notice Stayed.

The petitioner is a manufacturer exporter. It filed refund of IGST on exports. It was sanctioned. Rule 96(10) came to be omitted from 08.10.2024. Yet, relying on omitted Rule, show cause notice dated 13.02.2026 was issued proposing recovery of IGST. Such show cause notice was challenged in writ petition.

The Allahabad High Court stays the show cause notice. It notes that notice has been issued based on omitted rule. It notes that similar challenge to the rule is pending before the said High Court. Directs Revenue to file a reply.

13. Whether services provided to overseas group entity qualify as export of services or "intermediary services" leading to denial of refund?

Ships India Pvt. Ltd. v. Union of India & Ors.- WP No. 1534 OF 2025- [Bombay HC]

Decision: Matter remanded.

The petitioner is providing ship management and sea farer recruitment services to its group entity located outside India. It claimed that the services are exported in terms of section 2(6) of the IGST Act. It claimed refund of accumulated input tax credit under section 54 of the CGST Act read with Rule 89 of the Rules. Refund was rejected holding that the petitioner is an "intermediary" under section 13(8)(b) of the Act. Appeal was also rejected. Hence; petition was filed.

The Bombay High Court set aside the order and allowed the petition. It held: (i) in the petitioners own case; under the service tax regime; it has been held that the petitioner is not an "intermediary"; (ii) similar issue has been decided in Sundyne Pumps and Vistex Asia case; (ii) in that case the High Court examined the agreement and held that the Indian subsidiary was not an "agent"; (iii) refer to K C overseas case affirmed by Supreme Court; (iv) accordingly; remands the matter back to the appellate authority to examine the issue again.

14. Whether GST registration can be cancelled without reasons and bank attachment under Section 83 can continue beyond the statutory period?

Tex Fab India v. Union of India & Ors.- WP No. 1118 of 2025-[Bombay HC]

Decision: No.

The petitioner is a trader. During investigation; the GST authorities alleged that it had availed Input Tax credit (ITC) without receipt of goods. Accordingly; its bank account came to be attached under section 83 of the Finance Act. Its GST registration also came to be cancelled under section 29 of the GST act on the ground that the registration was obtained based on alleged fraud. Hence, petition came to be filed.
The Bombay High Court set aside the orders and allowed the petition. It held: (i) GST registration was cancelled without assigning any reasons and issuing unreasoned notice; (ii) follows its earlier judgments in Makesburry India and G B Traders; (iii) in so far as attachment is concerned; it lapses as per provision of section 83(2) of the Act as one year had lapsed; directs Bank to unfreeze the account; (iv) grants liberty to revenue to issue fresh show cause notice within 15 days if any reason survives.

15. Whether "track assembly" and related components are classifiable as parts of seats under CTH 9401 or as parts/accessories of motor vehicles under CTH 8708?

Shiroki Automobiles India Pvt. Ltd. v. Commissioner of Customs Appeal No. 50629 OF 2025-[CESTAT New Delhi]

Decision: CTH 9401 (Parts of seats).

The appellant is an importer. It imported "track assembly" as part of car seats to be sold to seat manufacturers. It claimed classification under chapter heading 9401 9000 as part of seat. The customs department sought to classify under chapter 8708 9900 as part/accessory of motor vehicle. A demand of over Rs.16 crores was confirmed. Hence; appeal.

CESTAT, Delhi set aside the order and allowed the appeal. It held: (i) the order of the commissioner was contemptuous and passed in gross violation of judicial discipline; (ii) it did not follow decision of Ahmedabad Bench of the Tribunal; which was affirmed by Supreme Court; in appellants own case; (iii) followsdecision in Kamlaskhi Finance and others to hold that lower authorities are bound by decisions of Higher authorities; (iv) independently; holds that track assembly is integral part of a car seat and hence; merits classification under 9401; (v) follows decision of Chennai Bench in case of Daebu Automotive seat; (vi) distinguishes judgment of the Supreme Court in Insulation Electrical case.

16. Whether "Sharbat Rooh Afza" is classifiable as a "fruit drink" taxable at concessional rate or as an unclassified item taxable under the residuary entry?

Hamdard (Wakf) Laboratories v. Commissioner, Commercial Tax, U.P. – Civil Appeal Nos. 2557-2578 of 2026 [Supreme Court]

Decision: Fruit Drink.

The appellant is engaged in manufacture and sale of "Sharbat Rooh Afza", a non-alcoholic beverage concentrate containing approximately 10% fruit juice along with sugar syrup and herbal extracts. The appellant classified the product as "fruit drink" under Entry 103 of Schedule II of the UPVAT Act and discharged VAT at 4%. The department classified the product under the residuary entry taxable at 12.5% on the ground that it is a "non-fruit syrup" and does not qualify as fruit drink. The said view was upheld by the authorities, Tribunal and High Court. Hence; appeal before Supreme Court.

The Supreme Court held: i) in absence of statutory definition; classification must be based on common parlance and commercial understanding; (ii) regulatory classification under food laws is not determinative for fiscal classification; (iii) Revenue failed to discharge burden of proving that product falls under residuary entry; (iv) essential character test must be applied; and fruit content imparts beverage identity whereas sugar acts merely as carrier/preservative; (v) Entry 103 is inclusive and wide; and does not prescribe minimum fruit content; hence restrictive interpretation impermissible; (vi) "sharbat" is recognised as fruit-based beverage preparation and nomenclature is not decisive; (vii) where product reasonably fits within specific entry; residuary entry cannot be invoked; (viii) consistent classification in other States supports commercial understanding; (ix) in case of ambiguity; interpretation favourable to assessee must be adopted; (x) accordingly; product held classifiable as fruit drink taxable at 4% and contrary view set aside.

17. Whether benefit of exemption under Advance Licence (DEEC Scheme) is available if the licence has expired on the date of clearance of goods from bonded warehouse?

Bangalore Mono Filaments Pvt. Ltd. v. Commissioner of Customs (Exports), Chennai – Civil Appeal No. 877 of 2010 [Supreme Court]

Decision: No.

The appellant imported HDPE granules and warehoused the goods. Subsequently; it obtained an Advance Licence under the DEEC Scheme which was valid till 18.11.2000. The appellant filed Ex-Bond Bill of Entry for clearance of goods on 08.12.2000, i.e., after expiry of licence. The appellant claimed exemption under Customs Notification No. 31/1997. The same was denied on the ground that licence had expired on date of clearance. The High Court upheld denial. Hence; appeal before Supreme Court.

The Supreme Court held that: (i) under Section 15 of the Customs Act; rate of duty and applicable conditions are determined on date of clearance of warehoused goods; (ii) liability to pay duty arises upon clearance from warehouse and not at time of import or warehousing; (iii) exemption notification requires valid license at time of clearance; (iv) expression "clearance" refers to actual removal of goods from warehouse; (v) on date of clearance; Advance License had expired; hence benefit not available; (vi) reliance placed on Pratibha Processors to hold that relevant date is date of clearance; (vii) entitlement to exemption must exist on date when duty is assessed; (viii) subsequent or prior validity of license is irrelevant;

18. Whether Section 16(2)(c) of the CGST Act denying Input Tax Credit to purchaser due to default of supplier in payment of tax is unconstitutional or liable to be read down?

Maruti Enterprise v. Union of India & Ors. – Special Civil Application No. 18080 of 2023 & batch [Gujarat High Court]

Decision: No.

The petitioners challenged the constitutional validity of Section 16(2)(c) of the CGST Act contending that denial of Input Tax Credit (ITC) to a bona fide purchaser on account of supplier's failure to deposit tax is arbitrary and violative of Articles 14, 19(1)(g), 265 and 300A of the Constitution. It was argued that purchaser has no control over supplier's compliance; and that the provision leads to double taxation and imposes impossible conditions. Reliance was placed on decisions under VAT regime where similar provisions were read down. Hence; petition before High Court.

The Gujarat High Court held that: (i) ITC is not a vested right but a statutory concession subject to conditions; (ii) Section 16(2)(c) clearly mandates that tax must be actually paid to Government; and provision is unambiguous; (iii) GST is a destination-based tax system involving inter-State credit mechanism; hence strict compliance is necessary to prevent revenue loss; (iv) permitting ITC without actual payment would lead to fiscal imbalance as States would be required to transfer revenue not received; (v) scheme of GST including Sections 16, 41, 53 and Rule 37A provides a complete mechanism for reversal and re-availment of ITC upon payment by supplier; (vi) purchaser is not permanently deprived of ITC; credit can be re-availed once tax is deposited; (vii) doctrine of "impossibility" not applicable as statute places conditional entitlement and burden under Section 155 lies on claimant; (viii) VAT judgments such as On Quest are distinguishable due to materially different statutory framework; (ix) hardship or practical difficulty cannot be ground to strike down a fiscal provision; (x) accordingly; Section 16(2)(c) held constitutionally valid and petition dismissed.

19. Whether GST authorities can attach bank account of a legal heir for recovery of dues of a deceased person without determining liability under Section 93 of the CGST Act?

Navin Vishwanathan v. State of Maharashtra & Ors. – Writ Petition No. 8709 of 2025 [Bombay High Court]

Decision: No.

The petitioner is a proprietor carrying on business under the name "M/s. Oriental Facility". His deceased father was also carrying on business under the same trade name with a separate GST registration. Post demise of the father; demand of approximately Rs. 4.15 crores was raised against the father's proprietorship. The department initially attached the bank accounts of the deceased; which were subsequently released. Thereafter; the department issued notice under Section 79 read with Section 93 of the CGST Act and directly attached the petitioner's bank account on the premise that he had continued the business of his father. No show cause notice was issued to the petitioner; nor any proceedings determining his liability under Section 93 were undertaken. Hence; petition.

The Bombay High Court quashed the attachment and allowed the petition. It held: (i) under GST; each registration is a distinct taxable person; and mere similarity of trade name does not establish continuity of business; (ii) applicability of Section 93 (liability of legal heir/ successor) requires factual determination as to whether business is continued; and cannot be presumed; (iii) recovery under Section 79 presupposes an existing and determined liability; (iv) coercive action cannot be initiated without adjudication of liability; (v) no show cause notice was issued to the petitioner; (vi) attachment of bank account affects property rights under Article 300A and must follow due process of law; (vii) reliance placed on Supreme Court judgment in Radha Krishan Industries to hold that provisional attachment requires formation of opinion based on tangible material; (viii) department committed jurisdictional error in directly invoking recovery provisions without determining liability of the petitioner; (ix) accordingly; bank attachment set aside; however; liberty granted to department to initiate proceedings in accordance with law.

20. Whether an e-commerce platform can be subjected to demand under Sections 52, 17(2) and 74 of the CGST Act when it neither collects consideration nor makes taxable supplies?

Hiveloop Technology Private Limited v. Union of India & Ors. – Writ Petition No. 21130 of 2022 (T-Res) [Karnataka High Court]

Decision: No.

The petitioner operates an e-commerce platform (Udaan) facilitating B2B transactions between independent buyers and sellers. It was alleged by the department that the petitioner failed to collect TCS under Section 52; wrongly availed ITC without reversal under Section 17(2); and was liable under Section 74 for tax demand. The petitioner contended that it merely provides access to platform; does not collect consideration; logistics/payment services are rendered by separate entities; and therefore provisions invoked are inapplicable. Hence; petition before High Court challenging show cause notice.

The Karnataka High Court held that (i) Section 52 applies only where e-commerce operator collects consideration; absence of such collection renders provision inapplicable; (ii) petitioner merely facilitates transactions and is not supplier; hence cannot be treated as "person chargeable with tax" for invoking Section 74; (iii) there is no deeming fiction under GST to treat operator as assessee in default for non-collection of TCS; (iv) separate legal identity of group entity providing logistics/payment services cannot be ignored; (v) invocation of Section 74 without allegations of fraud, suppression or wilful misstatement is without jurisdiction; (vi) promotional activities without consideration do not constitute "supply" under Section 7 and cannot be treated as exempt supplies; (vii) consequently; Section 17(2) relating to reversal of ITC on exempt supplies is not attracted; (viii) absence of jurisdictional facts vitiates the notice; (ix) SCN based on incorrect assumptions and beyond statutory provisions is liable to be quashed.

21. Whether amended refund formula under Rule 89(5) of the CGST Rules is applicable retrospectively to refund applications filed prior to 05.07.2022?

CHEC-TPL Line 4 Joint Venture v. Union of India & Ors. – Writ Petition No. 2583 of 2025 [Bombay High Court]

Decision: Yes.

The petitioner, engaged in execution of metro rail works, accumulated Input Tax Credit (ITC) on account of inverted duty structure and filed multiple refund claims under Section 54(3) of the CGST Act for the period November 2018 to March 2021. The refund claims were rejected by the authorities on the ground that the amended formula under Rule 89(5) (introduced vide Notification No. 14/2022 dated 05.07.2022) is applicable only prospectively, in terms of Circular dated 10.11.2022. The petitioner contended that the amendment was curative in nature and ought to be applied retrospectively, relying on Gujarat High Court decisions in Ascent Meditech Ltd. and subsequent cases.

The Bombay High Court held that: (i) amendment to Rule 89(5) was introduced pursuant to observations of Supreme Court in VKC Footsteps to remove anomaly in refund formula; (ii) such amendment harmonizes numerator and denominator and is therefore curative in nature; (iii) clarificatory/curative amendments are required to be applied retrospectively; (iv) reliance placed on Gujarat High Court decision in Ascent Meditech Ltd., which has attained finality upon dismissal of SLP and review by Supreme Court; (v) Circular dated 10.11.2022 stating prospective applicability is contrary to statutory intent and judicial interpretation; (vi) refund applications filed within limitation under Section 54 cannot be denied benefit of amended formula; (vii) rejection of refund on technical ground of prior application or prospective applicability is unsustainable; (viii) petitioner entitled to refund of accumulated ITC due to inverted duty structure.

22. Whether an amalgamated company is entitled to set-off accumulated losses of the amalgamating company under the Kerala Agricultural Income Tax Act?

Aspinwall and Co. Ltd. v. Inspecting Assistant Commissioner – Civil Appeal No. 7796 of 2012 [Supreme Court]

Decision: No.

The appellant company amalgamated with another company pursuant to a scheme of amalgamation approved in 2006. The appellant sought to claim set-off of accumulated losses of the amalgamating company against its own income under the Kerala Agricultural Income Tax Act, 1991. The claim was denied by the authorities; which was upheld by the Tribunal and High Court. The appellant relied upon the scheme of amalgamation and judgments including Dalmia Power Ltd. to contend that losses stood transferred. Hence; appeal before Supreme Court.

The Supreme Court dismissed the appeals and upheld denial of set-off. It held: (i) under Section 12 of the Kerala Act; losses can be carried forward only by the same assessee who incurred such losses; (ii) there is no provision under the Kerala Act similar to Section 72A of the Income-tax Act permitting transfer of losses in case of amalgamation; (iii) mere approval of scheme of amalgamation does not override statutory provisions; (iv) reliance on Dalmia Power Ltd. is misplaced as in that case notice was issued to tax authorities; whereas in present case no notice was issued to the State; (v) scheme clauses cannot confer tax benefit contrary to statute; (vi) amalgamating company having ceased to exist cannot claim set-off; and such benefit cannot be availed by amalgamated company.

23. Whether an assessee executing infrastructure projects under Government contracts qualifies as a "developer" eligible for deduction under Section 80-IA(4) of the Income-tax Act?

Commissioner of Income Tax v. Patel Engineering Ltd. – Income Tax Appeal Nos. 1146 of 2004 & 934 of 2008 [Bombay High Court]

Decision: Yes.

The respondent-assessee was engaged in execution of large infrastructure projects including the Koyna Project in Maharashtra and the Srisailam Project in Andhra Pradesh. It claimed deduction under Section 80-IA(4) of the Income-tax Act. AO denied the deduction holding that the assessee was merely a contractor executing works awarded by the State Governments, did not own the infrastructure facility, and had not undertaken operation or maintenance thereof. The disallowance was confirmed by the CIT(A). However, the ITAT allowed the assessee's claim holding that it satisfied the conditions of Section 80-IA(4). Aggrieved thereby, the Revenue preferred an appeal before the Bombay High Court.

The Bombay High Court held that: (i) the term "developer" has to be understood in a commercial sense; and is not restricted to ownership of infrastructure; (ii) distinction between "developer" and "contractor" depends upon nature of work; terms of agreement; and risks undertaken; (iii) where assessee undertakes planning; designing; execution; deploys technical expertise; manpower; machinery; and bears financial and operational risks; it cannot be termed as mere contractor; (iv) in the present case; assessee had undertaken complete development activity including design; execution methodology; deployment of resources; and bore substantial risks; hence; qualifies as developer; (v) ownership of infrastructure is not a condition under Section 80-IA(4); (vi) post amendment by Finance Act, 1999 and 2001; deduction is available even where assessee is only engaged in "development" and not necessarily in operation and maintenance; (vii) exclusion relating to "works contract" does not apply where assessee undertakes investment and development risk; (viii) legislative intent of Section 80-IA is to encourage private sector participation in infrastructure; and narrow interpretation would defeat the object; (ix) follows decisions in ABG Heavy Industries and Montecarlo Construction; (x) accordingly; assessee held entitled to deduction under Section 80-IA(4).

24. Whether Dividend Distribution Tax (DDT) paid under Section 115-O of the Income-tax Act is subject to beneficial rate under DTAA and whether excess DDT is refundable?

Foseco India Ltd. v. ACIT – Income Tax Appeal No. 1123 of 2025 & batch [Bombay High Court]

Decision: Referred to Larger Bench.

The assessee distributed dividends to its UK-based shareholders and paid DDT under Section 115-O at the domestic rate. It claimed that in terms of Article 11 of the India-UK DTAA; dividend is taxable at 15% and therefore excess DDT paid is refundable. The claim was rejected by the authorities, CIT(A) and Tribunal on the ground that DDT is a tax on the company and not on shareholders; hence DTAA benefit is not applicable. The assessee relied upon Bombay High Court (Goa Bench) decision in Colorcon Asia Pvt. Ltd. holding DDT to be tax on shareholders and DTAA applicable. Hence; appeal before High Court.

The Bombay High Court held that (i) Section 115-O creates an independent charge of tax on distributed profits of company; (ii) as per earlier binding precedent in Godrej & Boyce; DDT is a tax on company's profits and not on dividend income of shareholders; (iii) DTAA provisions generally apply to taxation of income in hands of residents of contracting states and not to taxes levied on domestic companies; (iv) however; subsequent decision in Colorcon Asia Pvt. Ltd. takes contrary view holding DDT to be tax on shareholders and allowing DTAA benefit; (v) such divergence creates substantial question of law requiring authoritative determination; (vi) issue involves interplay between domestic charging provision and treaty provisions; (vii) prima facie view of Court leans towards DDT being tax on company; but correctness of contrary view needs examination; (viii) considering importance and recurring nature of issue; reference to Larger Bench warranted.

25. Whether discount/margin on sale of lottery tickets constitutes 'commission' attracting TDS under Section 194G?

CT v. Martin Lottery Agencies Ltd. – TC No. 955 of 2008 [Madras High Court]

Decision: No.

The assessee was engaged in purchase and sale of lottery tickets from State Governments. It purchased tickets at discounted rates and sold them to distributors/dealers at a margin. The department alleged that the difference between face value and sale price constituted "commission" paid to dealers; thereby attracting TDS under Section 194G and raised demand under Sections 201(1) and 201(1A). The assessee contended that transactions were on principal-to-principal basis; no commission was paid or credited; and discount cannot be equated with commission.

The Madras High Court held that: (i) essential condition for Section 194G is payment/credit of income by way of commission; which was absent in present case; (ii) transaction between assessee and dealers was outright sale on principal-to-principal basis; (iii) difference between face value and sale price represents trade discount/margin and not commission; (iv) no payment or credit of commission by assessee to dealers; hence machinery provision for TDS fails; (v) in case of commission; there is no transfer of property; whereas present case involves sale of lottery tickets.

26. Whether an order rejecting jurisdictional objection under Section 16 of the Arbitration Act can be challenged under Section 34 before passing of final award?

MCM Worldwide Private Limited v. Construction Industry Development Council – SLP No. 33075 of 2025 [Supreme Court]

Decision: No.

The dispute arose during arbitral proceedings where the respondent challenged the maintainability of claims on the ground of limitation by invoking Section 16 of the Arbitration and Conciliation Act, 1996. The Arbitrator rejected the jurisdictional objection. The respondent thereafter filed an application under Section 34 challenging such order, which was entertained by the District Court and further by the Delhi High Court under Section 37. The High Court allowed the appeal on merits. Hence; appeal before Supreme Court.

The Supreme Court held that: (i) scheme of Section 16 is clear that where arbitral tribunal rejects plea of lack of jurisdiction; proceedings must continue and culminate in final award; (ii) remedy against such rejection lies only after final award under Section 34; (iii) Section 34 cannot be invoked at an intermediate stage against rejection of jurisdictional objection; (iv) distinction must be drawn between "interim award" and an order under Section 16; (v) decision in Indian Farmers Fertilizer Cooperative Ltd. applies only where issue is finally decided as interim award and not where it arises under Section 16; (vi) entertaining Section 34 challenge at such stage defeats legislative intent and leads to piecemeal litigation; (vii) Section 37 permits appeal only where plea of lack of jurisdiction is accepted and proceedings are terminated; (viii) rejection of jurisdictional plea does not give rise to immediate appeal; (ix) High Court erred in overlooking statutory scheme and entertaining challenge.

27. Whether enforcement of a foreign arbitral award can be refused on grounds of 'public policy of India' under Section 48, particularly alleging violation of Companies Act and Specific Relief Act?

Municipal Corporation of Greater Mumbai v. M/s R.V. Anderson Associates Ltd. –SLP (C) No. 23846-47 of 2025 – [Supreme Court of India]

Decision: No.

The dispute arose from enforcement of a foreign arbitral award rendered under SIAC Rules, whereby investors were awarded damages (exit price) against promoters for failure to provide exit under shareholders' agreement. The Madras High Court enforced the award under Sections 47-49 of the Arbitration Act. The promoters resisted enforcement under Section 48 contending that: (i) award effectively amounted to impermissible buy-back of shares violating Companies Act; (ii) grant of damages coupled with strategic sale violated Specific Relief Act; (iii) multiple remedies granted contrary to contract; and (iv) enforcement was against public policy of India.

The Supreme Court held that: (i) scope of Section 48 is narrow and does not permit review on merits; (ii) 'public policy of India' must be construed restrictively and includes only fundamental policy, fraud, or basic notions of justice; (iii) mere violation of a statutory provision does not amount to violation of fundamental policy; (iv) distinction between 'buy-back' and 'surrender of shares' is valid and award did not mandate buy-back; (v) even assuming procedural non-compliance under Companies Act; same would not render award unenforceable; (vi) award primarily grants damages; strategic sale is only a mode of enforcement in case of non-payment; hence no violation of Specific Relief Act; (vii) contractual interpretation by arbitral tribunal is final and cannot be re-opened at enforcement stage; (viii) doctrine of 'transnational issue estoppel' applies and issues decided by seat court cannot be re-agitated; (ix) enforcement court cannot entertain new grounds not raised before arbitral tribunal or seat court.

28. Whether an unsuccessful party in arbitration can seek interim relief under Section 9 of the Arbitration Act at post-award stage?

Home Care Retail Marts Pvt. Ltd. v. Haresh N. Sanghavi – Civil Appeal SLP (C) Nos. 29972/2015 [Supreme Court]

Decision: Yes.

The issue before the Supreme Court was whether a party unsuccessful in arbitral proceedings can maintain an application under Section 9 of the Arbitration and Conciliation Act, 1996 after passing of the arbitral award but before its enforcement. Divergent views existed across High Courts; some holding that only a successful party can seek interim protection to preserve fruits of award; while others allowed such relief even to unsuccessful parties. Hence; batch of appeals before Supreme Court.

The Supreme Court held that: (i) Section 9 uses expression "a party" which includes all parties to arbitration agreement without distinction; (ii) statute does not restrict remedy only to successful party; reading such limitation would amount to judicial legislation; (iii) object of Section 9 is to provide interim protection till culmination of judicial process including Section 34 proceedings; (iv) remedies under Sections 34 and 36 operate in distinct spheres and do not bar relief under Section 9; (v) denial of interim relief would leave unsuccessful party remediless even where award is under challenge or liable to be set aside; (vi) scope of Section 9 extends to protection of "subject matter of arbitration" and not merely "fruits of award"; (vii) Court may grant interim relief even to unsuccessful party in appropriate cases including fraud, lack of notice, or need to preserve assets; (viii) however; higher threshold applies and courts must exercise caution and circumspection.

29. Whether liability arising from corporate guarantees constitutes "financial debt" under IBC and whether such claims can be rejected on grounds of non-disclosure, stamping or timing of execution?

State Bank of India & Ors. v. Doha Bank Q.P.S.C. & Anr. – Civil Appeal No. 8527 of 2022 [Supreme Court]

Decision: Yes.

The appellants (consortium lenders led by SBI) claimed status of financial creditors based on corporate guarantees executed by the corporate debtor in respect of loans extended to group entities. The NCLT and NCLAT rejected such claims on grounds including non-disclosure of guarantees in financial statements; improper verification; timing of execution when debtor was under financial stress; and insufficient stamping. Consequently; lenders were excluded from Committee of Creditors. Hence; appeal before Supreme Court.

The Supreme Court held that: (i) liability arising from corporate guarantee squarely falls within definition of "financial debt" under Section 5(8) of IBC; (ii) guarantor's liability is co-extensive with principal borrower and enforceable in law; (iii) execution of corporate guarantee was admitted by corporate debtor; hence existence cannot be disputed; (iv) timing of execution cannot invalidate guarantee merely because debtor was in financial stress; particularly where restructuring was undertaken; (v) non-disclosure in financial statements does not defeat enforceability of guarantee and at best constitutes default by company; (vi) rejection of claims on ground of non-filing of documents at initial stage is unsustainable; relevant documents can be produced even at appellate stage; (vii) verification of claims by Resolution Professional based on available material is valid; (viii) insufficient stamping is a curable defect and does not render document void or unenforceable.

30. Whether delays in approval of Resolution Plans by NCLT defeat the objective of time-bound insolvency resolution under IBC and warrant judicial intervention?

AVJ Heightss Apartment Owners Association v. IIFL Finance Ltd. & Anr. – Civil Appeal No. 3811 of 2023 & batch [Supreme Court]

Decision: Yes.

The appeals brought to light substantial delays in approval of Resolution Plans by NCLT across the country. The Supreme Court called for data regarding pendency and reasons for delay. The report revealed that 363 applications for approval of Resolution Plans were pending; with delays ranging from 48 days to over 4 years. The primary reasons cited were shortage of members; lack of infrastructure; administrative inefficiencies; and procedural delays including objections by stakeholders. Hence; Court examined larger systemic issues affecting implementation of IBC.

The Supreme Court held that: (i) IBC mandates time-bound resolution; however current delays defeat its core objective; (ii) NCLT is functioning with significant shortage of members and infrastructure; adversely impacting disposal of cases; (iii) contractual staffing and lack of permanent administrative support undermine efficiency; (iv) delays in approval of Resolution Plans directly affect economic stability; credit system; and value maximization; (v) misuse of provisions such as Section 60(5) contributes to delays; (vi) systemic deficiencies require urgent attention at institutional level; (vii) Court acknowledged suggestions regarding staffing; infrastructure; timelines; and procedural streamlining; (viii) noted that amendment introducing 30-day timeline for approval (Section 31(2A)) may be ineffective without systemic improvements; (ix) matter involves issues of public importance affecting insolvency regime; (x) accordingly; Court took suo motu cognizance and directed matter to be placed before Chief Justice of India for further directions.

31. Whether the State can withdraw exemption from electricity duty once granted, and whether promissory estoppel prevents such withdrawal?

State of Maharashtra & Ors. v. Reliance Industries Ltd. & Ors. – Civil Appeal Nos. 3012-3029 of 2010 [Supreme Court]

Decision: Yes.

The State Government had granted exemption from electricity duty to industries generating captive power under Section 5A of the Bombay Electricity Duty Act, 1958. Subsequently; the State withdrew/modified such exemption by issuing notifications dated 01.04.2000 and 04.04.2001. The same were challenged before the High Court; which quashed the notifications holding them to be arbitrary and violative of promissory estoppel. Hence; appeal before Supreme Court.

The Supreme Court held that (i) exemption granted under a fiscal statute is a concession and not a vested right; (ii) power to grant exemption inherently includes power to withdraw or modify the same in public interest; (iii) doctrine of promissory estoppel cannot be invoked to prevent exercise of statutory power; particularly in fiscal matters; (iv) legitimate expectation also cannot override public interest and policy decisions; (v) decision to withdraw exemption based on fiscal considerations and revenue augmentation is a valid policy decision; (vi) courts should not interfere in economic policy unless manifestly arbitrary; (vii) however; withdrawal must satisfy test of fairness and should not cause undue hardship; (viii) industries having made investments based on exemption are entitled to reasonable transition period; (ix) accordingly; while upholding validity of withdrawal; Court directed that notifications shall take effect after a reasonable notice period of one year; (x) thus; withdrawal upheld but made prospective with transition relief.

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