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 online gaming, fantasy sports and other real-money skill-based games involving staking of money on uncertain outcomes are liable to GST as "betting and gambling"?

Britto Amusements Pvt. Ltd. vs. Assistant State Tax Officer – W.P.(C) No. 258 / 2025 [Supreme Court]

Decision: Yes.

The present batch of matters arose from a nationwide dispute concerning levy of GST on online gaming, fantasy sports, poker, rummy, casinos and allied activities, including challenges to show cause notices issued by DGGI demanding GST on the entire face value of stakes/deposits under Rule 31A(3) of the CGST Rules, 2017 by treating such activities as "betting and gambling" actionable claims. In Gameskraft, the Revenue sought to levy GST of approximately Rs. 21,000 crore on online rummy played with stakes by alleging that the assessee supplied actionable claims in the nature of betting and gambling rather than merely providing intermediary platform services. Multiple writ petitions and transferred cases challenged the constitutional validity of Section 15(5), Rule 31A(3), relevant notifications and retrospective levy on online gaming platforms, fantasy sports operators and casinos.

The Supreme Court held that: (i) games predominantly involving skill, including rummy and fantasy sports become "betting and gambling" as merely because played with stakes; (ii) Online gaming operators supplied actionable claims in the nature of betting and gambling; (iii) Rule 31A(3) of the CGST Rules, 2017, which prescribes valuation based on full face value of bets, applied to betting, gambling and horse racing; (iv) the actionable claim exclusion under Schedule III remained applicable to games of skill and the Revenue attempt to classify such activities as betting and gambling was legally sustainable; (v) the 2023 amendments bringing online money gaming and specified actionable claims within the GST net and introducing valuation based on total deposits were gambling in nature and therefore operate retrospectively; and (vii) consequently, show cause notices and proceedings seeking to levy GST on the entire stakes/deposits for the pre-amendment period was sustainable.

2. Whether GST can be levied on corporate guarantees extended by a holding company to its subsidiaries without consideration?

D.P. Jain & Co. Infrastructure Pvt. Ltd. v. Union of India & Ors. – Writ Petition No. 2087 of 2025 [Bombay High Court, Nagpur Bench]

Decision: No.

The petitioner is engaged construction of roads. It has subsidiaries. The subsidiaries require financial assistance. The banks/financial institutions required the petitioner company to offer "corporate guarantees". The GST Authorities issued a show cause notice seeking to demand gst of over Rs.15 crores along with interest and penalties on such corporate guarantees extended to subsidiaries without consideration. The Revenue sought to demand tax @1% of the guarantee amount in terms of Rule 28(2) of the CGST Rules. Hence; petition was filed.

The Bombay High Court (at Nagpur) set aside the show cause notice and allowed the petition. It held: (i) there is no supply of service when corporate guarantee is extended by the holding company without consideration; (ii) it is a contingent contract and cannot be pressed into service unless the guarantee is invoked; (iii) the petitioner is not in the business of extending guarantees; (iv) there cannot be a supply in absence of consideration; relies on judgment of Supreme Court in case of Edelweiss; (v) upholds the validity of Rule 28(2) of the CGST Rules; (vi) quashes the show cause notice and summons issued to the petitioner.

Matters Argued by us

3. Whether the adjudicating authority at the recipient unit can question and deny Input Tax Credit ("ITC") distributed by an Input Service Distributor ("ISD") registered in another State?

Abbott Healthcare Pvt. Ltd. v. Union of India & Ors. -CWP No. 2696 of 2024-[Himachal Pradesh High Court]

Decision: No.

The petitioner is a leading pharmaceutical MNC. It has its head office at Mumbai. The said office is registered as an "input service distributor". The ISD distributed credit to the Shimla plant. Similarly; there was a cross charge by Mumbai office to Shimla. The officer at Shimla questioned such credit on the ground that ISD has not correctly distributed the credit. Demand of over Rs.80 crores with interest and penalty was confirmed. Hence; petition came to be filed.

The Hon'ble Himachal Pradesh High Court set aside the order and allowed the petition. It noted: (i) there is a fundamental jurisdictional objection: the ISD distributing credit was registered in Mumbai, whereas the Shimla adjudicating authority proceeded to question and deny such ISD-distributed ITC at the recipient unit; (ii) the petitioner placed on record audit report of the Mumbai ISD by the jurisdictional authorities; which, after detailed verification of records, accepted the correctness of the credit distribution, thereby undermining the very basis of the Shimla proceedings; (iii) the court notes that the Revenue authorities at Shimla has no reply to the said audit report; (iv) notes that the adjudicating authority had failed to address the jurisdictional objection and accordingly; remands the matter back to the adjudicating authority; to pass fresh order; leaving all issues on merits open.

4. Whether delay in filing Form No. 10 for claiming accumulation under Section 11(2) of the Income Tax Act can be condoned under Section 119(2)(b) of the Act?

Bombay Prathana Samaj v. Union of India & Ors. -WP No. 2039 of 2025-[Bombay High Court]

Decision: Yes.

The Petitioner is a public charitable trust. It claimed exemption under section 11 of the Income Tax Act. For AY 2015-2016; it claimed accumulation under section 11(2). Same was denied on the ground that Form No.10 was not filed. It filed Form No.10 belatedly. It applied seeking condonation of delay under section 119(2)(b) of the Act; before the CBDT. The same came to be rejected. Hence; petition came to be filed.

TheBombay High Court set aside the order and allowed the petition. It held: (i) there was a CA working on honorary basis with the petitioner; which led to delay; and hence; sufficient cause was made out; (ii) condones delay of 430 days in filing Form No.10; (iii) substantive cause of justice needs to be seen than pedantic approach; (iv) relies on earlier decisions in the case of People's Mobile Hospital and KSB care; (v) directs acceptance of Form No.10 in time.

5. Whether mere uploading of an adjudication order on the GST portal constitutes valid service under Section 169 of the CGST Act?

Sri Nikhil Debnath v. Union of India & Ors.-WP(C) No. 708 of 2025- [Tripura High Court]

Decision: Stay granted.

The petitioner is a developer. A show cause notice proposing demand of GST was issued. It replied. It appeared. All correspondence was being undertaken physically under acknowledgment. However; order was simply uploaded on the portal. The petitioner became aware of such order only upon filing application under Right to Information (RTI) Act. Challenging such order, petition came to be filed.

The Hon'ble Tripura High Court admitted the petition and granted stay of recovery proceedings. It noted: (i) the Madras High Court in Sharp case has held that mere uploading of order on portal is not "valid" service under section 169 of the CGST Act and the Revenue has to follow other modes mentioned therein; (ii) as regards plea of sending it by Speed Post, what subclause (b) of sub-section (1) of section 169 of the Act requires is that the order should be sent by Speed Post with "Acknowledgement due". Though the department has produced the Dispatch Register; they have not produced the "Acknowledgment" card which would have been returned after the article sent by speed post is received by the petitioner; (iii) notes that the Postal Department has informed the petitioner that there is no evidence of service of the article in question on petitioner after it was dispatched.

Matters Argued by us

6. Whether provisional attachment of a bank account under Section 83 of the CGST Act can continue beyond the statutory period of one year?

Aurosis Enterprises v. Union of India & Anr.-Writ Petition No. 926 of 2025- [Bombay High Court]

Decision: No.

The petitioners bank account was attached provisionally under section 83 of the CGST Act by the DGGI, Pune officers. It was alleged that funds of over Rs.180 crores were parked in the bank account which were part of circular trading leading to fake input tax credit. The said attachment was challenged before the High Court in writ.

The Bombay High Court set aside the attachment and allowed the writ petition. It noted that that by operation of law i.e. Section 83(2) of the CGST Act; the attachment has ceased to have effect"; (ii) the Revenue also does not dispute that the time limit of one year had lapsed; (iii) without entering into merits of disputes between parties; Accordingly; permits Assessee to freely operate its SBI bank account.

7. Whether software development services provided by an Indian entity to its foreign group entities qualify as "export of services" or constitute "intermediary services" under Section 13(8)(b) of the IGST Act?

Varian Medical Systems International India Pvt. Ltd. v. Union of India & Ors. -Writ Petition No. 15874 of 2025- [Bombay High Court]

Decision: Matter remanded.

The petitioner is providing software development 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 of Rs.12.12 crores was rejected holding that the petitioner is an "intermediary" under section 13(8)(b) of the Act. Hence; petition was filed.

The Bombay High Court set aside the order and allowed the petition. It held: (i) the original authority has not passed a reasoned order as to whether the petitioner is an "intermediary" or not; (ii) similar issue has been decided in Sundyne Pumps; Vistex Asia and V Ships case; (iii) in that case the High Court examined the agreement and held that the Indian subsidiary was not an "agent"; (iv) accordingly; remands the matter back to the original authority to issue a fresh notice in two weeks and examine the issue again.

Matters Argued by us

8. Whether penalty under Section 122(1A) of the CGST Act can be imposed on a director for alleged GST short payment by the company?

Shri Girish Kumar Raval v. Union of India & Ors.-WP No. 4045 of 2026-[Bombay High Court, Nagpur Bench]

Decision: Stay Granted.

The petitioner is a director of the company. The company is the registered tax payer. There was an allegation that the company has short paid GST. There was a demand of over Rs.16 crores along with interest and penalty confirmed under section 74 against the company. A penalty of same amount came to be imposed on the director under section 122(1A) of the CGST Act. The same was challenged in writ.

The Bombay High Court at Nagpur granted stay of recovery against penalty. It noted that section 122(1A) cannot be invoked against individual who could not have retained the benefit of the transaction. It notes that similar issue has been decided in Shantanu case; which has been confirmed by the Supreme Court as well. Directs revenue to take instructions.

9. Whether rectification proceedings can be sustained without granting an opportunity of hearing and without considering the objection regarding duplication of proceedings by Central and State GST authorities?

Taiyo Nippon Sanso India Pvt. Ltd. v. Union of India & Ors. -Writ Petition No. 1966 of 2025-[Bombay High Court]

Decision: No.

The petitioner is a subsidiary of a foreign MNC. It is engaged in sale of Multi specialty gases. It availed transitional credit. The credit was sought to be disallowed on the ground that such credit cannot be availed due to delay. It contended that the state authorities have already initiated audit proceedings; hence; there was duplication of proceedings. However; order came to be passed. A rectification application was filed under section 161 of the CGST Act. The same was also rejected. Hence; petition came to be filed.

The Bombay High Court set aside the order and allowed the petition. It notes: (i) the rectification application has been rejected without hearing the petitioner; (ii) the ground of duplication of proceedings is not considered; (iii) hence; remands the matter back to the designated authority to consider the matter afresh; after issuing a fresh notice to the petitioner; if need arises.

10. Whether GST registration can be retrospectively cancelled without assigning reasons and whether consequential best judgment assessment under Section 63 of the CGST Act can be sustained?

J. N. Lighting India LLP v. Union of India & Ors. -WP No. 6079 of 2024-[Bombay High Court]

Decision: No.

The petitioner is a manufacturer. It converted from a partnership firm to LLP. During the intervening period; the petitioner paid GST on sales through the old registration. The said registration was sought to be cancelled by the department retrospectively. The application for revocation of such cancellation was also rejected. In the mean time; show cause notice came to be issued under section 63 proposing best judgment assessment treating the petitioner as "unregistered dealer". Hence; petition came to be filed.

The Bombay High Court set aside the orders and the show cause notices 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) quashes show cause notice issued under section 63 of the Act proposing best judgment assessment; (iv) grants liberty to revenue to issue fresh show cause notice within 2 weeks if any reason survives and pass reasoned orders thereupon.

Matters Argued by us

11. Whether service tax can be levied under reverse charge on hiring of dredgers/vessels from foreign suppliers under "supply of tangible goods for use" service in case of bareboat charter agreements?

International Seaport Dredging Pvt. Ltd. v. Commissioner of GST & Central Excise, Chennai-ST Appeal No. 40957 of 2017-[CESTAT Chennai]

Decision: No.

The appellant is a world leader in dredging activity. It took; on hire; dredgers and other equipment from a supplier located outside India. A demand of service tax of over Rs.20 crores along with interest and penalty was confirmed for the period from 2011-12 to 2014-15 on the ground that it was liable to service tax under "supply of tangible goods for use" service; on reverse charge basis. Hence; appeal.

CESTAT, Chennai set aside the order and allowed the appeal. It held: (i) the Tribunal in the appellants own case; on examination of the agreement; held that there was "transfer of right to use goods" and hence; cannot be subjected to service tax; (ii) it was a standard bareboat charter and not a service; relies on judgment of Supreme Court in Shelf Drilling and Great Eastern Shipping; (iii) rejects the argument that post 2012 (negative list); it is a taxable service as there is no supply; (iv) the lis between the parties is settled as revenue has accepted the earlier order; relies on judgment of Supreme Court in Jayswal Neco; (v) accordingly; sets aside demand on merits.

12. Whether transitional credit can be denied merely on account of belated filing of ST-3 returns when service tax had already been paid under the erstwhile regime?

Pyramid Infratech Co. v. Union of India & Ors. - WP No. 11086 of 2025-[Bombay High Court]

Decision: No.

The petitioner is engaged in construction and sale of buildings/flats. CIDCO leased (long term lease) a plot of land to the petitioner. It charged service tax thereon. The petitioner claimed credit. The said credit was transitioned into the GST regime by filing Trans-1 Form under section 140 of the Act. The said credit of over Rs.4.5 crores was denied on the ground that the petitioner filed belated ST-3 returns and hence; was not eligible. An appeal was filed. Appellate authority also confirmed the same. Hence; petition was filed.

The Bombay High Court set aside the orders and allowed the petition. It held: (i) CIDCO had filed a certificate that it had paid service tax to the government; the same was not appreciated by the authorities; (ii) petitioner also placed on record a receipt issued by CIDCO to the petitioner showing payment of service tax; (iii) the payment could not have been ensured by the petitioner; (iv) hence; remands the matter to the appellate authority to consider the said documents.

13. Whether interest and penalty can be demanded on inadmissible CENVAT credit reversed during audit?

Hindustan Construction Company Ltd. v. Commissioner of CGST, Navi Mumbai – Service Tax Appeal No. 85601 of 2022 [CESTAT, Mumbai]

Decision: No.

The appellant is a registered service tax payer. It availed credit of service tax paid on certain input services. During the course of audit; it was alleged that they were not "input services" and therefore; it reversed the credit. Show cause notice was issued proposing demand of interest and penalty invoking extended period of limitation. Demand was confirmed. On appeal; appeal was rejected. Hence; the present appeal.

CESTAT; Mumbai set aside the orders and allowed the appeal. It held: (i) when the appellant had credit balance of over Rs.2 crores; it had not "utilised" the credit; (ii) once the credit was reversed; no show cause notice could have been issued under section 73(3) of the Finance Act; (iii) rule 14 and 15 mutatis mutandis apply to section 73 and extended period could not have been invoked.

14. Whether refund of service tax paid on services can be denied on the ground that the appellant was not entitled to avail CENVAT credit, and whether such issues can be examined in refund proceedings?

Kazakhstancaspishelf India Pvt. Ltd. v. Principal Commissioner of Customs, Central Excise and Goods and Services Tax, Delhi East- Service Tax Appeal No. 52619 of 2019 [CESTAT, Delhi]

Decision: Matter remanded.

The appellant is Indian subsidiary of a foreign entity. The foreign entity provided services to Oil India Limited. The appellant paid service tax on such services. Oil India also paid service tax under reverse charge basis on such services. Hence; the appellant filed refund claim. Refund of over Rs.4.4 crores was rejected. On appeal; appellate authority confirmed the same. Hence; appeal.

CESTAT, Delhi set aside the order and allowed the appeal. It notes: (i) the assistant commissioner had rejected the refund claim on the ground that the appellant not being a service provider; was not entitled to cenvat credit; (ii) the argument of the appellant that credit cannot be denied in refund proceedings needs to be examined; (iii) whether the appellant had paid entire amount in cash needs to be examined; (iv) revenues arguments on non challenge of ST-3 returns by placing reliance on ITC decision also needs to be evaluated; (v) accordingly; remands the matter back to the adjudicating authority to pass denovo order.

15. Whether State Legislatures are competent to prohibit or regulate online games of skill played with stakes, and whether betting on games of skill falls within Entry 34 List II ("Betting and gambling")?

State of Tamil Nadu & Ors. v. Junglee Games India Pvt. Ltd. & Ors. & batch – Civil Appeal Nos. 6124-6131 of 2023 & connected matters [Supreme Court]

Decision: Yes.

The present batch of appeals arose from judgments of the Madras High Court and Karnataka High Court striking down legislative amendments enacted by the States of Tamil Nadu and Karnataka to prohibit/regulate online gaming involving stakes. The Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 and the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022/2023 prohibited wagering or betting in cyberspace, including games such as rummy and poker played for stakes. Likewise, the Karnataka Police (Amendment) Act, 2021 expanded the definition of "gaming", "common gaming house" and "instruments of gaming" to include online platforms, mobile apps, cyberspace and wagering on games of skill. Both High Courts had struck down the impugned enactments, inter alia, holding that "betting" and "gambling" in Entry 34 List II had to be read conjunctively, that games of skill stood outside the legislative competence of States under Entry 34, and that blanket restrictions on online games of skill played with stakes were disproportionate and violative of Articles 14 and 19(1)(g) of the Constitution.

The Supreme Court reversed the High Court judgments and held that: (i) Entry 34 List II ("Betting and gambling") must receive a broad and purposive interpretation and the expression "betting" cannot be read conjunctively with "gambling" so as to confine State competence only to betting on games of chance; (ii) betting on the uncertain outcome of even a game predominantly involving skill constitutes a distinct activity capable of regulation by the State under Entry 34 List II; (iii) games of skill do not lose their essential character merely because played online, however, the act of staking money on uncertain outcomes introduces a betting element distinct from the game itself; (iv) State Legislatures also derive competence under Entries 1 (Public Order), 2 (Police), 6 (Public Health), and 33 (Sports, Entertainments and Amusements) of List II to address addiction, financial distress, social harm and public order concerns associated with online gaming ecosystems; (v) online gaming involving stakes, anonymity, algorithmic participation and digital accessibility creates heightened regulatory concerns justifying legislative intervention; (vi) the impugned legislations were not manifestly arbitrary and satisfied the proportionality test, considering the empirical material regarding gaming addiction, indebtedness, suicides and social harms relied upon by the States.

16. Whether cutting, grooving and routing of Aluminium Composite Panels ("ACPs") for installation on building façades amounts to "manufacture" under Section 2(f) of the Central Excise Act, 1944?

Alupro Building Systems Pvt. Ltd. v. Commissioner of Central Excise, Bangalore-II – Civil Appeal No. 8030 of 2010 [Supreme Court]

Decision: No

The appellant, engaged in façade cladding works, imported pre-coated Aluminium Composite Panels ("ACPs") and undertook activities of cutting, grooving and routing them into required sizes for affixing on building structures. The department issued a show cause notice alleging that such activity amounted to "manufacture" under Section 2(f) of the Central Excise Act, 1944 and consequently demanded excise duty, interest and penalty. While the Commissioner (Appeals) upheld the excisability of the activity, the CESTAT allowed the assessee's appeal holding that no new product emerged and marketability had not been established. The High Court reversed the CESTAT order and held that a commercially distinct product came into existence. Hence, appeal before the Supreme Court.

The Supreme Court held that: (i) issues concerning excisability of goods relate directly to determination of rate of duty for assessment and, therefore, appeals against such questions lie exclusively before the Supreme Court under Section 35L and not before the High Court under Section 35G; (ii) the 2014 insertion of Section 35L(2) clarifying that "excisability" falls within questions relating to rate of duty is clarificatory and retrospective in nature; (iii) cutting, grooving and routing of ACPs merely adapts the goods for specific installation requirements and does not result in emergence of a new commercially distinct product with a separate name, character or use; (iv) the essential identity and end use of ACPs remain unchanged after the process, and the activity constitutes only preparation and installation for functional utility; and (v) in absence of transformation into a distinct marketable commodity, the process does not amount to "manufacture" under Section 2(f) of the Act and is consequently not liable to excise duty.

17. Whether proceedings initiated for alleged contravention of Rule 96(10) of the CGST Rules can survive after omission of the said Rule in absence of a saving clause?

Techno Waxchem Private Limited v. Union of India & Ors. – WPA 13772 of 2025 [Calcutta High Court]

Decision: No.

The petitioner, engaged in manufacture and export of chemical products, had availed refund of IGST amounting to Rs. 6.28 crores on export of goods while simultaneously importing certain inputs duty-free under Advance Authorisation Scheme. The department issued a show cause notice under Section 74 alleging wrongful availment of dual benefit in contravention of Rule 96(10) of the CGST Rules and confirmed demand vide Order-in-Original dated 04.02.2025. The petitioner challenged the proceedings inter alia contending that Rule 96(10), being the very basis of the proceedings, stood omitted vide Notification No. 20/2024-CT dated 08.10.2024 and, in absence of any saving clause, pending proceedings could not survive. Hence, the present petition.

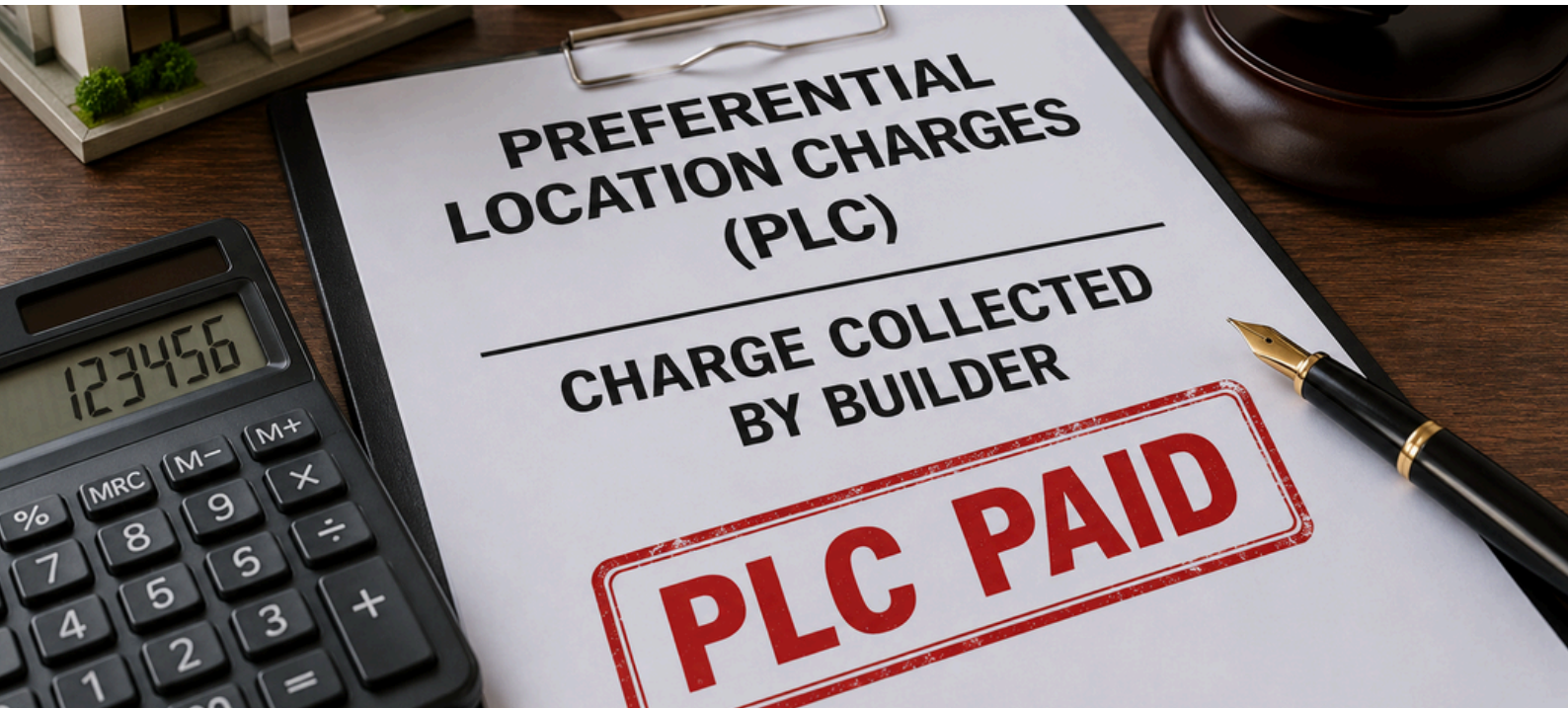
The Calcutta High Court held that: (i) the entire proceedings were founded upon alleged contravention of Rule 96(10) of the CGST Rules; (ii) upon omission of Rule 96(10) vide Notification dated 08.10.2024, and in absence of any saving clause, pending proceedings stood lapsed and could not be continued; (iii) Section 6 of the General Clauses Act applies only to repeal of a Central Act or Regulation and not to omission of a Rule; (iv) reliance was placed on decisions in Rayala Corporation and Kolhapur Canesugar Works Ltd. to hold that omission of a Rule obliterates its effect unless expressly saved; and (v) consequently, the Order-in-Original dated 04.02.2025 passed under Section 74(9) based on Rule 96(10) was quashed.

18. Whether Preferential Location Charges ("PLC") collected by a builder for preferred location of flats are taxable independently or not?

DLF Limited v. Commissioner, CGST & Ors. – CWP No. 17530 of 2022 [Punjab & Haryana High Court]

Decision: No.
The petitioner, a real estate developer, sought an advance ruling on whether charges collected towards Preferential Location Charges ("PLC") for preferred location of flats were liable to GST independently or along with construction/development services. The Authority for Advance Ruling held that PLC charges were independently taxable, which view was subsequently affirmed in appeal. During pendency of the writ petition, the GST Council in its 55th meeting recommended that PLC charges collected by developers should not be taxed separately but as part of construction services. Pursuant thereto, the Government issued a clarification vide Circular dated 11.10.2024 clarifying that location charges paid along with consideration for construction services form part of composite supply. Hence, writ petition before the Punjab & Haryana High Court.

The Punjab & Haryana High Court held that: (i) preferential location charges collected for preferred location of apartments are intrinsically linked to supply of construction services and form part of composite supply; (ii) the principal supply being construction service, PLC charges are liable to GST at the same rate as applicable to construction services and are not independently taxable; (iii) the clarification issued by the Government pursuant to GST Council recommendations is binding on tax authorities and operates retrospectively being clarificatory in nature; and (iv) consequently, the orders passed by the Advance Ruling Authority and Appellate Authority holding PLC charges independently taxable were quashed.



19. Whether GST can be levied under forward charge on shipping/vessel service providers in respect of transportation of imported goods on CIF basis, when customs duty and IGST have already been discharged on the composite value of goods including freight?

Midas Tankers Private Limited v. Union of India & Ors. – Writ Petition No. 2554 of 2026 [Bombay High Court]

Decision: No.

The petitioner, engaged in providing vessel services on hire and freight basis, was subjected to GST demand for FY 2021-22 on the premise that transportation services rendered in respect of imported goods had place of supply in India under Section 13(9) of the IGST Act and were liable to GST under forward charge. The petitioner contended that the goods were imported on CIF basis, customs duty and IGST had already been discharged on the composite transaction value including freight, and any further levy on transportation service would amount to impermissible double taxation. The petitioner further challenged the impugned show cause notice and adjudication order confirming tax, interest and penalty of approximately Rs. 15.82 crores. Hence, present petition.

The Bombay High Court held that: (i) where imported goods are supplied on CIF basis and customs duty along with IGST has already been discharged on the composite value including freight, the transportation service forms part of a composite supply and cannot be taxed again separately in the hands of the shipping line; (ii) levy of GST once again on the freight/service component would violate the principle of composite supply under Sections 2(30) and 8 of the CGST Act; (iii) reliance was placed upon the Supreme Court's decision in Mohit Minerals Pvt. Ltd., wherein it was held that transportation and insurance in a CIF contract are naturally bundled with supply of goods and cannot be artificially segregated for separate taxation; (iv) invocation of Section 13(9) of the IGST Act by the Revenue to levy tax on the petitioner was legally unsustainable; and (v) consequently, the impugned show cause notice and adjudication order were quashed, with direction to grant consequential refund along with interest.

20. Whether reassessment can be reopened merely on reinterpretation of an existing agreement and whether a member's share from an AOP is taxable as revenue or exempt as profit share?

Sanand Properties Pvt. Ltd. v. Jt. Commissioner of Income Tax & Ors. – Civil Appeal No. 9107 of 2012 [Supreme Court]

Decision: Reassessment valid; amount held to be share of profit and not taxable in hands of member.

The assessee a member of an AOP named Fortaleza Developers, had entered into an agreement for development of residential housing projects. Under Clause 7 of the AOP Agreement, the assessee was entitled to 35% share in receipts generated from the project. The assessee claimed such amount as exempt share of profit from the AOP under Sections 67A, 86 and 167B of the Income-tax Act. Subsequently, the Revenue reopened assessments under Sections 147/148 alleging that the amount received by the assessee was not share of profit but consideration in the nature of revenue/gross receipts arising from surrender of development rights and had escaped assessment. While the Bombay High Court quashed reopening for AY 2007-08, it upheld reopening for AY 2008-09. The issue regarding taxability of such receipts also travelled to the Tribunal and High Court, which held in favour of the assessee. Hence; appeals before Supreme Court.

The Supreme Court held that: (i) validity of reopening under Sections 147/148 has to be tested solely on the basis of reasons recorded and existence of "reason to believe"; merits of reassessment cannot justify reopening subsequently; (ii) reassessment cannot amount to review and must be founded upon tangible material having a live link with escapement of income; mere change of opinion is impermissible; (iii) material already disclosed and examined during original scrutiny cannot ordinarily form basis for reopening unless fresh tangible material emerges; (iv) however, information emanating from assessment proceedings of the AOP constituted tangible material sufficient to justify reopening for AY 2008-09; (v) Clause 7 of the AOP Agreement, properly construed, represented distribution of profits and not overriding title over gross revenue; (vi) the AOP was a separate taxable entity and had already been assessed as such; (vii) share received by the assessee from the AOP constituted exempt share of profit and not taxable revenue in hands of the assessee under Sections 67A and 86 of the Act; (viii) interpretation already affirmed in proceedings concerning the AOP attained finality and applied equally to the assessee-member; (ix) consequently, reassessment for AY 2007-08 was held invalid, reopening for AY 2008-09 sustained, but addition on merits deleted as amount was not taxable in hands of the assessee.

21. Whether interest paid on borrowed funds utilized for acquiring shares through a group/sister concern is allowable as deduction under Section 36(1)(iii) of the Income-tax Act on grounds of commercial expediency?

L.K. Trust v. Commissioner of Income Tax & Anr. – Civil Appeal No. 527 of 2012 [Supreme Court]

Decision: Yes.

The assessee-trust borrowed Rs. 3.80 crores from Corporation Bank for purchase of shares of Shaw Wallace & Company Limited pursuant to an agreement dated 19.11.1987 and claimed deduction of interest amounting to Rs. 21.74 lakhs under Section 36(1)(iii) of the Income-tax Act, 1961. The Assessing Officer disallowed the deduction on the ground that the borrowed amount had been routed through M/s Gayathri Holdings Private Limited, a group company, for purchase of shares and was not directly utilized for the assessee's business. While the CIT(A) upheld the disallowance, the ITAT allowed the deduction holding that the borrowings were utilized for purposes integral to the assessee's composite business. The High Court reversed the ITAT order inter alia holding that funds utilized for benefit of a subsidiary/group company could not be treated as expenditure for the assessee's business. Hence, appeal before the Supreme Court.

The Supreme Court held that: (i) Section 36(1)(iii) permits deduction of interest paid on capital borrowed for purposes of business and the expression "for the purpose of business" is to be construed broadly; (ii) the test for allowability of interest on borrowed funds is commercial expediency and not whether the funds were advanced solely for immediate profit-making; (iii) where borrowed funds are utilized in furtherance of business objectives, including acquisition of controlling interest or through group/sister concerns, deduction cannot be denied merely because the ultimate benefit accrued to a subsidiary or associated entity; (iv) the High Court erred in holding that utilization of borrowed funds through a group company disentitled the assessee from deduction; (v) reliance was placed on S.A. Builders and Sharp Business System to reiterate that business expediency must be examined from the perspective of the businessman and not the Revenue; and (vi) consequently, the assessee was held entitled to deduction of interest of Rs. 21.74 lakhs paid on the borrowed capital under Section 36(1)(iii).

22. Whether immunity under Section 270AA of the Income-tax Act can be denied and penalty under Section 270A imposed merely because the Assessing Officer disagrees with the assessee's claim, absent any misreporting or suppression of facts?

Airpay Money Private Limited v. Deputy Commissioner of Income Tax Circle 43(1), Delhi & Anr. – W.P.(C) 15119 of 2024 [Delhi High Court]

Decision: No.

The petitioner challenged the order dated 27.09.2024 rejecting its application under Section 270AA of the Income-tax Act, 1961 seeking immunity from penalty and prosecution, along with the consequential penalty order imposing penalty of Rs. 42.59 lakhs under Section 270A. The petitioner contended that all material particulars had been duly disclosed, tax and interest were voluntarily paid within the prescribed timeline, and mere rejection of its legal claim by the Assessing Officer could not amount to "misreporting of income" under Section 270A(9). Hence, writ petition before the Delhi High Court.

The Delhi High Court held that: (i) immunity under Section 270AA can be denied only where circumstances contemplated under Section 270A(9) involving "misreporting of income" exist; (ii) mere disagreement by the Assessing Officer with the assessee's claim or legal position does not amount to misrepresentation, suppression of facts or misreporting of income; (iii) the assessee had disclosed all material particulars and voluntarily paid tax and interest within the prescribed period, thereby satisfying statutory conditions for immunity; (iv) penalty provisions are intended to deter tax evasion or deliberate misreporting and ought not to be treated as a source of revenue; (v) in absence of mens rea or contumacious conduct, penalty under Section 270A could not be sustained; and (vi) consequently, rejection of the Section 270AA application and the consequential penalty order were quashed.

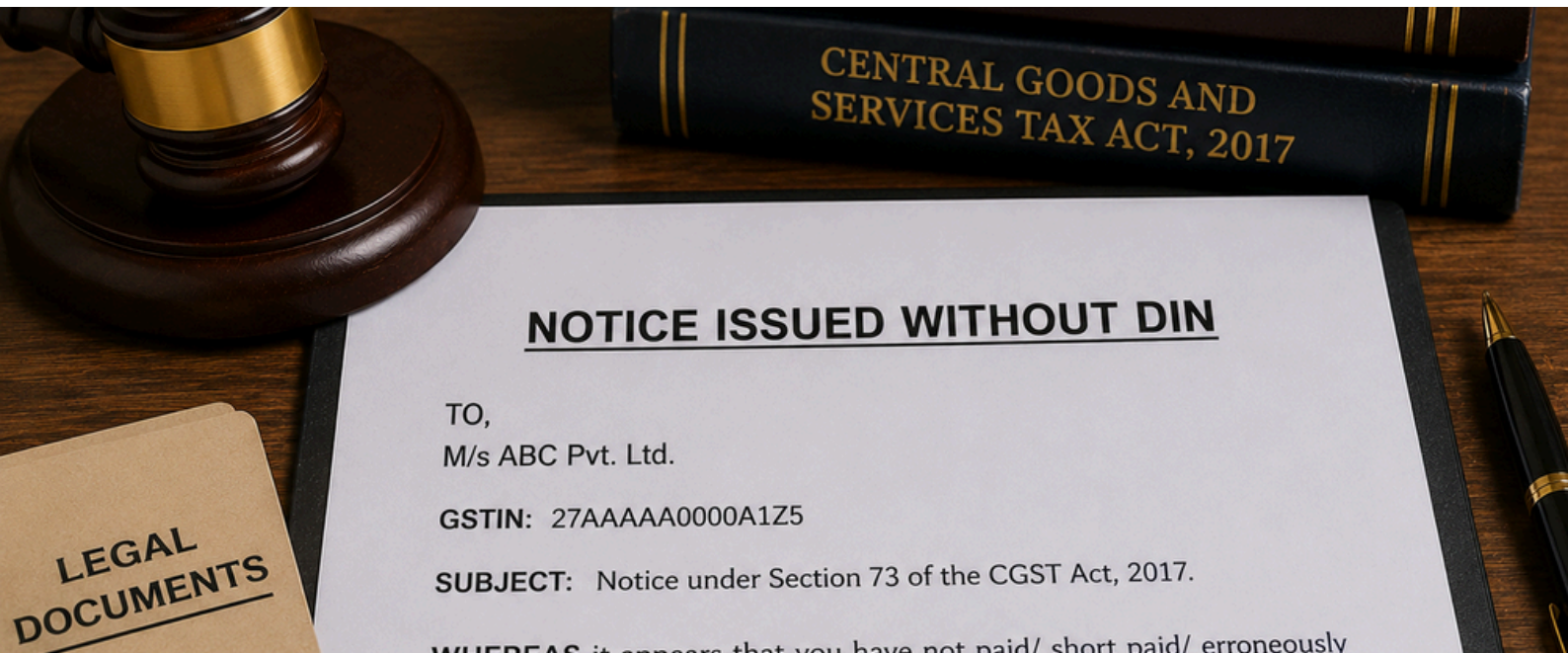
23. Whether an order under Section 154 of the Income-tax Act can be sustained if passed beyond the prescribed limitation period and without issuance of prior notice to the assessee?

Surajit Ghosh v. Income Tax Officer, Ward-29(4), Kolkata & Ors. – WPA 54 of 2026 [Calcutta High Court]

Decision: No.

The petitioner challenged an order dated 25.03.2022 passed under Section 154 read with Section 143(3) of the Income-tax Act, 1961 on the ground that the same was passed without issuance of prior notice as mandated under Section 154(3), beyond the limitation prescribed under Section 154(7), and without a Document Identification Number ("DIN") as required under the CBDT Circular dated 14.08.2019. The Revenue opposed the petition contending that the writ petition suffered from delay, having been filed nearly four years after passing of the impugned order. Hence, writ petition before the Calcutta High Court.

The Calcutta High Court held that: (i) Section 154(7) prescribes a limitation period of four years from the end of the financial year in which the order sought to be amended was passed; (ii) since the original assessment order under Section 143(3) was passed on 25.02.2015, the limitation for passing rectification order expired on 31.03.2019 and, therefore, the impugned order dated 25.03.2022 was barred by limitation; (iii) the Department failed to establish compliance with Section 154(3), which mandates prior notice to the assessee before passing an order prejudicial to him; (iv) absence of DIN in the impugned order lent further substance to the petitioner's challenge; (v) an order passed beyond limitation suffers from jurisdictional error and is liable to be set aside; and (vi) consequently, the impugned order and all consequential recovery proceedings were quashed.



24. Whether High Courts can interfere in writ jurisdiction with an arbitral tribunal's rejection of a Section 16 objection on stamping of agreements during pendency of arbitral proceedings?

Tarini Prasad Mohanty v. Sunflag Iron and Steel Company Limited – Civil Appeal arising out of SLP (C) No. 27534 of 2025 [Supreme Court]

Decision: No.

The dispute arose out of an agreement for sale of iron ore dated 12.02.2004 and subsequent supplementary agreements executed between the parties. During the course of arbitral proceedings, the mine owner raised an objection under Section 16 of the Arbitration and Conciliation Act, 1996 contending that the agreements were insufficiently stamped and, being in the nature of "conveyance", were liable to be impounded under the Indian Stamp Act, 1899. The arbitral tribunal rejected the objection holding that the agreements constituted "agreements to sell" and had been adequately stamped. Aggrieved thereby, the mine owner invoked writ jurisdiction under Articles 226 and 227 of the Constitution before the High Court. While the learned Single Judge interfered with the arbitral tribunal's order and directed impounding of the agreements, the Division Bench set aside such order. Hence, appeal before the Supreme Court.

The Supreme Court held that: (i) although writ jurisdiction under Articles 226 and 227 against arbitral tribunal orders is not completely barred, interference with interlocutory orders during arbitral proceedings ought to be exercised only in exceptional rarity involving patent lack of inherent jurisdiction; (ii) where an arbitral tribunal rejects an objection under Section 16 of the Arbitration and Conciliation Act, no immediate appeal is contemplated and the aggrieved party must ordinarily await the final award and avail remedy under Section 34; (iii) objections concerning non-stamping or insufficient stamping of agreements fall within the arbitral tribunal's competence under the doctrine of competence-competence and do not warrant judicial interference at an interim stage; (iv) non-stamping or inadequate stamping is a curable defect and does not render an agreement void or unenforceable; (v) the learned Single Judge exceeded writ jurisdiction by reinterpreting contractual terms and determining the true nature of the agreements while arbitral proceedings were pending, which exercise touched upon merits and required evidentiary appreciation; and (vi) the issue concerning adequacy of stamping and true nature of the agreements was left open to be agitated by the aggrieved party under Section 34 after culmination of arbitral proceedings, if necessary.

25. Whether an arbitral award can be challenged on the ground that the arbitrator's mandate had expired, despite continued participation and acquiescence of the parties in arbitral proceedings?

Gujarat Water Supply and Sewerage Board v. Saryu Plastics Pvt. Ltd. – Civil Appeal Nos. 769-770 of 2026 [Supreme Court]

Decision: No.

The dispute arose out of rate contracts awarded by the Gujarat Water Supply and Sewerage Board for supply of PVC pipes during the period 1998-2002. Following disputes concerning alleged excess payments and blacklisting of the respondent company, the parties entered into an arbitration agreement in 2012 providing for conclusion of proceedings within six months. Although the arbitrator's mandate was repeatedly extended, several such extensions were unilateral and the arbitrator ultimately passed an award dated 27.10.2015 partly allowing the respondent's claims. The Board challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 inter alia contending that the arbitrator's mandate had expired prior to passing of the award, that principles of natural justice had been violated, and that the Commercial Court had wrongly modified the award by substituting simple interest with compound interest for the pendente lite period. The High Court dismissed the Board's appeals. Hence, appeal before the Supreme Court.

The Supreme Court held that: (i) in the absence of any statutory requirement prior to insertion of Section 29A, extension of arbitral mandate need not necessarily be in writing and could be inferred from conduct of parties; (ii) the Board, having participated in arbitral proceedings and failed to object to repeated extensions of mandate, had tacitly acquiesced to continuation of proceedings and was estopped from challenging the award on the ground of expiry of mandate after the award was passed; (iii) the arbitral award had already been dispatched on 27.10.2015, prior to the Board's email dated 28.10.2015 objecting to continuation of mandate; (iv) no violation of principles of natural justice had occurred since the Board had been afforded repeated opportunities over more than three years to file pleadings, attend hearings and submit documents, but failed to effectively utilise such opportunities; (v) Section 33(1)(a) of the Arbitration and Conciliation Act confers only a limited power to correct computational, clerical or typographical errors and does not permit substantive review or modification of an arbitral award; and (vi) the Commercial Court exceeded jurisdiction in substituting "simple interest" with "compound interest" for the pendente lite period, since such alteration amounted to substantive modification of the arbitral award and not correction of an accidental or clerical error.

26. Whether a Successful Resolution Applicant can refuse to implement a CoC-approved resolution plan by alleging that the Letter of Intent (LoI) contained conditional stipulations?

Sanjay Dave v. Andhra Bank Ltd. & Ors. – Civil Appeal Nos. 12264-12266 of 2024 [Supreme Court]

Decision: No.

TThe dispute arose from CIRP proceedings of M/s Oracle Home Textiles Limited, wherein the appellant, being promoter/director of the corporate debtor, submitted a resolution plan which was approved by the CoC with 99.90% voting share. The appellant subsequently refused to accept the Letter of Intent ("LOI") contending that it was conditional as implementation of the plan was made subject to pending proceedings involving prospective resolution applicants and liabilities arising from employee/workmen claims. Upon failure to furnish performance guarantee, the earnest money deposit ("EMD") of Rs.1 crore was forfeited and, in absence of a valid resolution plan, the CoC approved liquidation under Section 33 of the Insolvency and Bankruptcy Code, 2016. The NCLT and NCLAT rejected the challenge. Hence, appeal before the Supreme Court.

The Supreme Court held that: (i) stipulations in the LOI referring to pending judicial proceedings or employee claims did not render the LOI conditional; (ii) the appellant was fully aware of such stipulations and had participated in CoC deliberations concerning the same; (iii) once a resolution plan is approved by the CoC, the Successful Resolution Applicant cannot renegotiate, modify or indirectly withdraw from the approved plan; (iv) the appellant, having acquiesced to the process, could not approbate and reprobate by refusing implementation of the plan; (v) forfeiture of EMD for failure to comply with LOI conditions and furnish performance guarantee was valid; and (vi) the CoC's commercial decision to liquidate the corporate debtor under Section 33 of the IBC was not amenable to judicial interference.

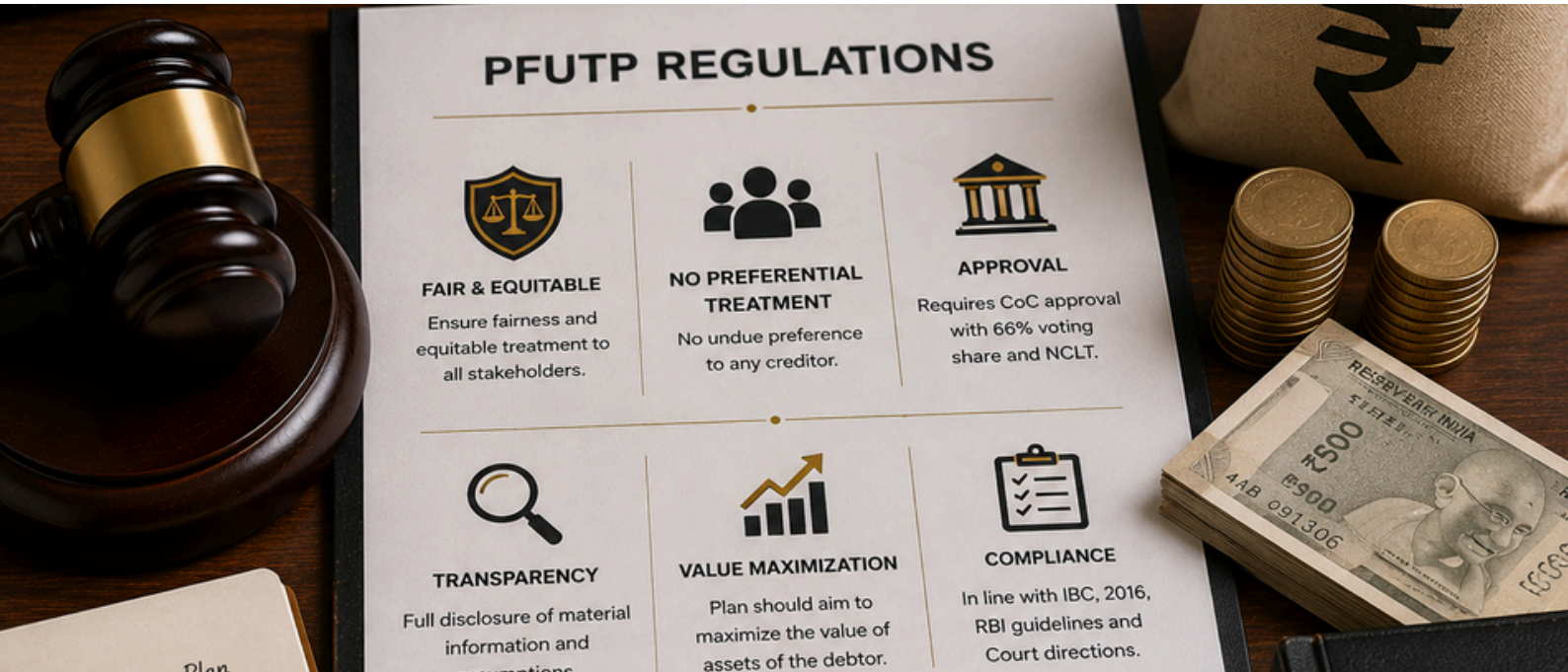
27. Whether genuine hedging transactions and breach of position limits in derivatives trading can, by themselves, constitute fraudulent and manipulative trade practices under the PFUTP Regulations?

Reliance Industries Limited & Ors. v. Securities and Exchange Board of India – Civil Appeal No. 4015 of 2020 [Supreme Court]

Decision: No.

The dispute arose from trading in shares of Reliance Petroleum Limited during November 2007, wherein Reliance Industries Limited proposed divestment of 5% shareholding in RPL and simultaneously took short positions in RPL futures through twelve entities pursuant to agency agreements. SEBI alleged that RIL, by aggregating positions through the said entities, cornered approximately 93.63% of the open interest in RPL November 2007 futures, manipulated settlement prices by selling 1.95 crore shares in the cash segment during the last few minutes of trading on 29.11.2007, and consequently earned unlawful gains of approximately Rs. 513 crore in violation of Section 12A of the SEBI Act and the PFUTP Regulations. The Whole Time Member ("WTM") directed disgorgement and imposed market restrictions, which were substantially upheld by a majority decision of the Securities Appellate Tribunal ("SAT"). Hence, appeal before the Supreme Court.

The Supreme Court held that: (i) genuine hedging is a legitimate commercial mechanism for mitigating risk exposure and cannot be invalidated merely because hedge positions are imperfect or commercially advantageous; (ii) although the agency arrangements with twelve entities resulted in breach of prescribed position limits, such regulatory infraction, by itself, did not amount to fraud or manipulation under the PFUTP Regulations; (iii) concentration or "cornering" of positions in derivatives market does not automatically establish manipulative conduct in absence of cogent proof of distortion of market conditions or inducement of investors; (iv) allegations of fraud under the PFUTP Regulations require clear evidence of manipulative conduct and inducement, which SEBI failed to establish; (v) sale of 1.95 crore RPL shares during the final minutes of trading on 29.11.2007 could not, in absence of concrete evidence, be treated as deliberate price depression or market manipulation; (vi) SEBI erred in treating genuine futures transactions undertaken for hedging proposed divestment as a fraudulent scheme merely because profits were realized in the futures segment; and (vii) consequently, the orders directing disgorgement and penalties under the PFUTP Regulations were set aside, though breach of position limits, if any, could attract consequences under the applicable SCRA/circular framework.



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