UBR LEGAL ADVOCATES

December 2025 | Issue 57

LEX LOQUITUR

A NEWSLETTER SUMMARIZING LATEST COURT RULINGS

CONTENT

Preface

Dear Reader,

Courts "rule". They actually do. Significance, application and implication of such rulings needs to be understood and appreciated.

Lex Loquitur is an endeavor to bring to you the latest rulings from the Courts and various other judicial fora. We intend to cull out the ratio of some important rulings and summarize them for your ready reference, with our observations/ comments, if any.

We trust you will find it an interesting read.

We would, however, look forward to your feedback/comments. Do write to us at:
ubrlegal@yahoo.in.

Warm Regards
Team Lex Loquitur
UBR LEGAL, ADVOCATES

Matters Argued by us

1. Whether a single composite show cause notice covering multiple financial years under Sections 73/74 of the CGST Act is valid in law?

Pramur Homes Private Limited v. State of Karnataka & Ors.- WP No. 10424 of 2024- [Karnataka High Court]

Decision: No.

The petitioner is a developer. It was issued a show cause notice proposing to demand GST in transfer of alleged development rights In a joint development agreement. The show cause notice was issued for 2019-2020 to 2023-2024. The said notice was challenged before the High Court on several grounds.

The Karnataka High Court; in a 105 page judgment; quashed and set aside the show notice and allowed the petition. It held: (i) clubbing/ consolidation/ bunching/ combining of multiple tax periods/financial years in a Solitary/Single/Composite Show cause notice issued under Section 73/74 of the CGST/KGST Act is illegal, invalid, impermissible and without jurisdiction or authority of law and contrary to the provisions of the CGST/KGST Act"; (ii) the very architecture of the GST Act revolves around financial year; (iii) follows its earlier decisions; and recent judgment of the Bombay High Court in Milroc case; (iv) holds that consolidation bypasses mandatory statutory constraints, which clearly tantamount to a colorable exercise of power; extending limitation artificially; (v) each year involves different turnover, ITC positions, contracts, amendments in law, accounting treatments, and reconciliations u/ss 37, 38, 39 and 44, Assessee is entitled to give year-wise explanations, reconciliations, and legal defences, and therefore, a single notice for 5 years deprives the assesee of this opportunity and violates natural justice; (vi) relies on amendment vide section 74A; (vii) rejects contention of the Revenue on alternate remedy as issue relates to very jurisdictional fact for issuance of such notice.

2. Whether, after issuance of a Discharge Certificate under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, the Revenue can issue a show cause notice demanding interest and penalty for the same period?

Astute Consultancy Services v. Union of India & Ors.- WP No. 74 of 2023 [Bombay High Court]

Decision: No.

The petitioner is providing consultancy services. An audit was conducted for period from 2013 to 2017. The petitioner paid certain amount of service tax. During the pendency; it applied under the Sabka Vishwas Legacy Dispute Resolution Scheme (SVLDRS). It was issued Form 3. It paid the sum adjudged. Form 4 (discharge certificate) was issued. However; yet; Revenue issued show cause notice came to be issued demanding interest and penalty for delayed payment of service tax. Hence; petition was filed.

The Bombay High Court quashed and set aside the show cause notice and allowed the petition. It held: (i) after obtaining Discharge Certificate; the Petitioner
cannot be fastened with any liability in terms of interest; (ii) it was contrary to section 124 and 129 of the Finance Act; as well as the object of the SVLDRS Scheme; (iii) follows its earlier decision in Thought Blurb and Unique Enterprises; (iv) rejects Revenues contention that the application was filed under "arrears" category (wrong category) and hence; notice was rightly issued; (v) rejects Revenues contention that the petition is hit by delay and laches.

Matters Argued by us

3. Whether the GST authorities can adopt coercive measures to recover alleged tax during investigation in the absence of any confirmed demand or adjudication?

Testbook Edu Solutions Pvt. Ltd. v. Senior Intelligence Officer, DGGI, Meerut & Anr.- Writ Tax No. - 6634 of 2025 [Allahabad High Court]

Decision: No.

The petitioner is providing online test/examination services. It paid GST @5%. The officers of DGGI were of the opinion that there is a short payment as tax ought to have been paid @18%. During the course of investigation; the petitioner was being coerced to make deposit of the tax. Hence; petition came to be filed.

The Allahabad High Court disposed off the petitiondirecting no coercive steps for recovery; in absence of any confirmed demand. It recorded the statement made by the Revenue. It directed the petitioner to co-operate with the investigating authorities; directing them to complete recording the statements of directors on the same day.

4. Whether show cause notices can be adjudicated after an inordinate and unexplained delay when the issue on merits already stands concluded?

Computer Graphics Private Limited V. Union of India & Ors. – WP No. 2052 & 2054 of 2025 [Bombay High Court at Goa]

Decision: No.

The petitioner is a manufacturer. It availed benefit of the NPV Scheme floated by the State Government for payment of sales tax/VAT. Revenue sought to demand central excise duty on the differential amount of sales tax retained by it. Show cause notice came to be issued on 2016 and 2017. It was sought to be adjudicated. Hence; petition came to be filed.

The Bombay High Court at Goa set aside the notices and allowed the petition. It held: (i) there is unexplained delay in adjudication of the show cause notice; (ii) follows its earlier decisions in ATA freight and Sanghvi Reconditioners; (iii) the issue has been concluded; on merits, in the case of Uttam Galva; and thereafter also there is no justification for the delay.

5. Whether service tax can be levied on steamer agents for ocean freight paid by importer under reverse charge for the period prior to GST regime?

Mangalore Steamer Agents Association v. Union of India & Ors. – WP No. 32835 of 2017 [Karnataka High Court]

Decision: No.

The petitioner is an association of steamer agents. It challenged the validity of notification no. 28/2012-ST seeking to levy service tax on service recipient for receipt of transportation service by foreign shipping lines. Hence; petition came to be filed.

The Karnataka High Court allowed the writ petition. It held: (i) steamer agent is not the "service recipient" of transportation service provided by shipping line to the exporter/importer; hence; not liable to pay service tax; (ii) notification validity needs not be looked into in view of no liability to pay service tax; (iii) follows decision of Madras High Court in Ennore Steamer Agents Association case; (iv) directs refund of service tax; subject to unjust enrichment.

Matters Argued by us

6. Whether non-edible arecanuts meant for industrial use can be seized under the Food Safety and Standards Act as "food"?

FQ Traders V. The Food Safety and Standards Authority of India, Mumbai and ors.- WP No. 7094 Of 2025 [Bombay High Court at Nagpur]

Decision: No.

The petitioner is a trader. It is based in Karnataka. It sold arecanuts (non-edible) to purchaser based in Delhi. The goods were intercepted in Maharashtra by the Food Inspector under the Food and Drug Safety Act (FSSAI). It was alleged that the goods were of sub-standard quality. Petitioner contended that it was not fit for human consumption but meant for dyeing/printing purposes; hence; not "food". However; the goods were seized. Hence; writ petition came to be filed.

The Bombay High Court at Nagpur disposed of the petition with a direction to consider the grounds raised by the petitioner for release of the goods. It directed that if the goods are non-edible; they must be released forthwith. In case of any adverse order; the same can be challenged by the petitioner.

7. Whether GST authorities can deny rectification of returns for bona fide errors and initiate proceedings despite no loss of revenue?

Hindustan Construction Company Ltd. v. Union of India & Ors. – WP No. 22377 of 2022 [Karnataka High Court]

Decision: No.

The petitioner is a works contractor. It filed returns for the initial period from July, 2017 to March, 2018. It realised an error in filing that GSTR-3B return. It sought to rectify the sales declared as B2C instead of B2B. Also, it realized that it had reported turnover treating it as inclusive of GST @18% instead of 12%. It carried out the amendment, on 06.05.2019; as portal allowed it. However; show cause notice came to be issued denying the amendment as being beyond time prescribed under proviso to section 39 of the CGST Act. Demand of over Rs. 15 crores was sought to be demanded. Hence; petition came to be filed.

The Karnataka High Court set aside the notice and allowed the petition. It held: (i) amendment which does not have any revenue implication can be allowed; (ii) follows its earlier decision in Wipro; Bombay High Court judgment in Aberdare Technologies; (iii) notes that the Supreme Court had directed CBIC to issue guidelines for carrying out such amendments/rectifications which are noticed by the Assessee on its own; (iv) quashes show cause notice and all proceedings thereto.

8. Whether mere uploading of an order on the GST portal amounts to valid service under Section 169 of the CGST Act?

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

Decision:

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 Tripura High Court examining the issue as to whether mere uploading of order on portal is "valid" service under section 169 of the CGST Act, or the Revenue should adopt one or more methods of ensuring service upon the taxpayer; relies upon Madras High Court judgment in Sharp Tanks and Structural limited; grants stay directing no recovery should be undertaken pursuant to such order.

9. Whether R&D and business support services provided by an Indian entity to its foreign parent on a principal-to-principal basis constitute "export of services", entitling it to refund of accumulated ITC?

Bluefish Pharmaceuticals Private Limited v. Union of India & Ors.- WP No. 19351 of 2024 (T-RES) [Karnataka High Court]

Decision: Yes.

The petitioner is engaged in providing Research and Development services and other business support services to its Parent company in Sweden. For April, 2022 to September, 2022, it filed a claim for refund of over Rs. 6 crores for accumulated input tax credit. The refund claim was rejected holding that the services are not "export of services". Appeal was filed. The appellate authority also rejected the appeal. Hence; petition came to be filed.

The Karnataka High Court set aside the orders and allowed the petition. It held: (i) the petitioner was not an "intermediary"; the services were provided on a principal to principal basis; (ii) rejects revenues contention that it was a local supply of service in India; (iii) follows its earlier decisions in Amazon; Nokia and Columbia; (iv) directs that refund be granted; along with applicable interest; within three months.

10. Whether declared import value can be rejected solely on NIDB data and DGoV circular?

Nico Extrusions Limited V. Commissioner of Customs (Preventive)- Custom Appeal No. 85057 of 2020 [CESTAT Mumbai]

Decision: No.

The appellant is an importer. It imported metal scrap. It filed Bills of entry. On scrutiny; it was found that the value declared in the B/E was lower than one mentioned by the National Import Data Base (NIDB). Hence; Circular dated 01.12.2016 issued by the Directorate General of Valuation (DGoV), Mumbai, orders confirming demand came to be passed under section 17(5) of the Customs Act; invoking Rule 12 of the Customs Valuation Rules; 2007. Unsuccessful in first appeals; the appellant approached the Tribunal.

CESTAT, Mumbai set aside the orders and allowed the appeals. It held: (i) procedure under Rule 12 was not followed for rejection of the declared value; (ii) there was no evidence on record to prove any contemporaneous imports under Rule 5 to reject the value declared under section 14 of the Act; (iii) Mere reliance on DGoV Circular dated 01.02.2016 is not correct as it is merely guideline for determining the pricing based on discount offered to LME prices for prime metal; (iv) follows decisions of the co-ordinate bench in Sushil Kumar Agarwal and Guru Mettaloys case and allows the appeals.

11. Whether the time spent in pursuing a refund before the department can be excluded while computing limitation for filing an appeal against a Bill of Entry?

Kalmar India Private Limited V. Commissioner of Customs- Customs Appeal Nos. 40368 to 40370 of 2021- [CESTAT Chennai]

Decision: Yes.

The appellant is an importer. It imported machines from Malaysia. It was exempt from payment of customs duties on production of country of origin certificate in terms of Notification No. 53/2011-cus. It paid duty and subsequently, on receipt of the certificates, claimed refund. The refund sanctioning directed it to file appeal challenging the bill of entry in light of decision of Supreme Court in the case of ITC after 2 years. It filed appeal. Appeal was rejected as time barred. Hence; appeal

CESTAT, Chennai set aside the order and allowed the appeal. It held: (i) appeal was filed in time; (ii) time spent before the refund sanctioning authority needs to be excluded in terms of section 14(1) of the Limitation Act; (iii) the delay in responding to the appellants claim and reminders is against the citizen charter; (iv) the delay on part of the department cannot prejudice the appellant; (v) follows decision of Madras High Court in Nipman Fastners; vi) though there is no proof of payment under protest, the claim was in time; (vii) the appellate authority has not considered any of the submissions of the appellant and hence; remanded to decide the claim on merits.

12. Whether the commission earned by an Indian subsidiary from its foreign principal for indenting services constitutes "export of service" and is therefore not liable to service tax?

Sojitz India Private Limited V. Pr. Commissioner of Central GST & Central Excise - ST Appeal No. 87356 of 2019 [CESTAT Mumbai]

Decision: Yes.

The appellant is a subsidiary of a foreign principal. It was indenting in chemicals etc. it earned commission. It earned foreign exchange. It claimed it to be an export of service. However; show cause notice was issued for period from 2006-2010 alleging that it was liable to pay service tax under "business auxiliary" service. A demand of over Rs.2.5 crores was confirmed along with interest and penalty. Hence; appeal was filed.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) on perusal of the agreement; it can be sssn that the appellant did not act as "intermediary"; (ii) the services provided to foreign principal amount to "export of service" under Rule 3(1)(iii) of the Rules; (iii) the accrual of the benefit of the service was outside india; (iv) relies on CBIC circular issued in 2011 and decision of the Bombay High Court in ATE Enterprises; (v) follows Larger Bench judgement in Arcelor Mittal and allows appeal with consequential relief.

13. Whether extended limitation can be invoked for reversal of CENVAT credit in the absence of suppression with intent to evade tax?

KEC International V. Commissioner of CGST & Central Excise, Panchkula- ST Appeal No. 60226 of 2023- [CESTAT Chandigarh]

Decision: No.

The appellant undertakes works contracts for electricity distribution companies. It had certain taxable and exempted services. It reversed pro rata/ proportionate CENVAT Credit in terms of the formula provided under Rule 6(3)(II) of the Cenvat Credit Rules, 2004. It reversed credit taking into account "common input Service". Revenue sought reversal on "total CENVAT Credit". Show cause notice dated 28.09.2020 was issued for period up to 01.04.2016. Demand of about Rs.19 crores along with interest and penalty were confirmed. Hence; appeal.

CESTAT, Chandigarh set aside the demand and allowed the appeal. It held: (i) the expression "suppression of facts" is coupled with mens rea; (ii) the Supreme Court in Pushpam Pharmaceuticals held that it has to be something more than mere non disclosure; (iii) the appellants have informed about reversal and the revenue could have sought details about the quantum of reversal; (iv) inaction on part of the Department cannot be construed as suppression of facts; (v) follows decision in G. D. Goenka case to hold that demand is time barred; (vi) though matter is argued to be covered on merits as well; no finding is returned on merits.

14. Whether renting of hostel to students and working professionals is exempt from GST as "renting of residential dwelling for use as residence" under Entry 13 of Notification No. 9/2017-IGST (Rate)?

The State of Karnataka & Anr. v. Taghar Vasudeva Ambrish & Anr. – Civil Appeal Nos. 7846-7847 of 2023 [2025 (12) TMI 505] [Supreme Court]

Decision: Yes.

The respondents leased a residential property to a company, which in turn operated the premises as a hostel providing long-term accommodation to students and working professionals. The Advance Ruling Authorities denied exemption under Entry 13 of Notification No. 9/2017-IGST (Rate) on the ground that the lessee was a commercial entity and not itself using the premises as a residence. The High Court set aside the ruling and granted exemption. The revenue appealed before the Supreme Court.

The Supreme Court held that hostel accommodation used by students and working professionals constitutes use of a residential dwelling for residence. Entry 13 of Notification No. 9/2017-IGST (Rate) does not require that the lessee itself must use the premises as a residence. So long as the residential dwelling is ultimately used for residential purposes, the exemption applies. The Court further held that amendments made in 2022 restricting exemption cannot be applied retrospectively. Accordingly, leasing of residential premises as hostel for the relevant period is exempt from GST.

15. Whether Cross-LoC barter trade between Jammu & Kashmir and Pakistan Occupied Kashmir (PoK) is liable to GST under the CGST Act, 2017?

New Gee Enn & Sons v. Union of India & Ors. – WP (C) No. 1938/2024 along with connected petitions [Jammu & Kashmir and Ladakh High Court]

Decision: Yes.

The petitioners were engaged in Cross-LoC trade between Jammu & Kashmir and Pakistan Occupied Kashmir (PoK), conducted under the Standard Operating Procedure dated 20.10.2008 issued by the Ministry of Home Affairs as a confidence-building measure between India and Pakistan. The trade was on barter basis involving exchange of goods without monetary consideration. It was treated as zero-rated under the J&K VAT regime.

The Jammu and Kashmir and Ladakh High Court held that Cross-LoC barter trade between Jammu & Kashmir and PoK constitutes an intra-State supply, as both the location of the supplier and the place of supply fall within the territory of India as defined under Article 1 of the Constitution read with Section 2(56) of the CGST Act and Section 8 of the IGST Act. In the absence of any exemption notification issued under Section 11 of the CGST Act, such barter transactions are liable to GST attracting CGST and SGST. The Court further held that non-disclosure of such taxable supplies in GST returns amounts to suppression of facts under the CGST Act.

16. Whether Section 16(2)(aa) of the CGST Act can deny Input Tax Credit to a bona fide recipient solely on account of default by the supplier in furnishing invoice details in GSTR-1?

McLeod Russel India Limited v. Union of India & Ors. – WP(C) No. 5725 of 2022 [2025 (12) TMI 756] [Gauhati High Court]

Decision: No.

The petitioner challenged the constitutional validity of Section 16(2)(aa) of the CGST Act and AGST Act, contending that it arbitrarily denies Input Tax Credit to a bona fide recipient where the supplier fails to upload invoice details in GSTR-1, despite the recipient having paid tax and possessing valid tax invoices. It was contended that the condition imposes an impossible burden on the purchasing dealer and results in denial of ITC for no fault of the recipient.

The Gauhati High Court upheld the validity of Section 16(2)(aa) of the CGST Act, holding that the provision was introduced to curb fraudulent ITC claims and to ensure supplier compliance. However, the Court, read down the provision to hold that before denying ITC to a bona fide purchaser on account of supplier default, the recipient must be given an opportunity to establish its bona fides through tax invoices and supporting documents. Denial of ITC without such opportunity would defeat the object of GST and result in unjust cascading of tax.

17. Whether exemption can be denied by reading an end-use condition into the notification where no such condition is expressly provided?

VVF India Ltd. & Anr. v. Union of India & Ors. – R/Special Civil Application No. 4418 of 2014 [Gujarat High Court]

Decision: No.

The petitioners imported crude palm kernel oil (edible grade) and claimed exemption from customs duty under Serial No. 57 of Notification No. 12/2012-Cus. The exemption was sought to be denied by the department on the ground that the imported goods were not ultimately used for edible purposes, based on Circular No. 40/2001-Cus., thereby alleging violation of an implied end-use condition. A show cause notice was issued proposing denial of exemption and demand of duty.

The Gujarat High Court held that on a plain reading of Notification No. 12/2012-Cus., Serial No. 57 grants exemption to goods answering the description "crude and edible grade" and does not prescribe any end-use condition. The department cannot, by way of a circular or interpretative exercise, introduce conditions not contained in the exemption notification. Exemption notifications must be construed strictly on their terms, and where the goods satisfy the description in the notification, the benefit cannot be denied by reading in additional requirements. The show cause notice was held to be without jurisdiction and unsustainable in law.

18. Whether the GST Department can raise fresh tax demands for a period prior to approval of a resolution plan under the Insolvency and Bankruptcy Code, 2016?

Era Infra Engineering Limited v. Joint Commissioner, CGST Delhi South Commissionerate & Ors. – W.P. (C) Nos. 2281, 2305 & 2307 of 2025 [2025 (12) TMI 1133] [Delhi High Court]

Decision: No.

The petitioner company underwent corporate insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016. During the CIRP, the GST Department filed its claims before the Resolution Professional, which were duly considered. The resolution plan was approved by the NCLT, Delhi. Subsequent to approval of the resolution plan, the GST Department issued fresh orders raising GST demands for periods prior to the approval date. The said demands were challenged before the High Court.

The Delhi High Court held that once a resolution plan is approved under Section 31 of the Insolvency and Bankruptcy Code, all claims not forming part of the approved resolution plan stand extinguished. The GST Department, having participated in the insolvency proceedings and filed its claims, cannot raise fresh demands for any period prior to the approval of the resolution plan. Raising such demands would defeat the finality attached to the insolvency process and impermissibly burden the new management with past liabilities. Accordingly, the impugned orders and consequential demands were set aside.

19. Whether exemption from export duty under Notification No. 50/2023-Customs can be denied to an exporter who does not export goods through an irrevocable Letter of Credit (LoC)?

Eastman International v. Union of India & Ors. – WPT No. 228 of 2023 [2025 (12) TMI 1087] [Chhattisgarh High Court]

Decision: No.

The petitioner exported parboiled rice and claimed exemption from export duty under Notification No. 50/2023-Customs, which prescribed nil rate of duty subject to fulfilment of Condition No. 6. The petitioner had satisfied clause (i) of the condition, as the goods had entered the customs station prior to 25.08.2023 and export proceeds were duly realised. However, the exemption was denied on the ground that the exports were not backed by an irrevocable Letter of Credit as required under clause (ii) of Condition No. 6. The export duty was paid under protest and refund was sought.

The Chhattisgarh High Court held that export through a Letter of Credit is neither compulsory nor statutorily mandated, and clause (ii) of Condition No. 6 applies only to exporters who transact through such mechanism. Where no Letter of Credit exists, the requirement under clause (ii) cannot be insisted upon. The Court held that conditions in an exemption notification must be construed purposively and contextually, and procedural or technical conditions cannot defeat substantive entitlement. Since the petitioner had fulfilled the applicable condition and realised export proceeds through other recognised modes, denial of exemption was unsustainable. The respondents were directed to refund the export duty paid, along with applicable interest.

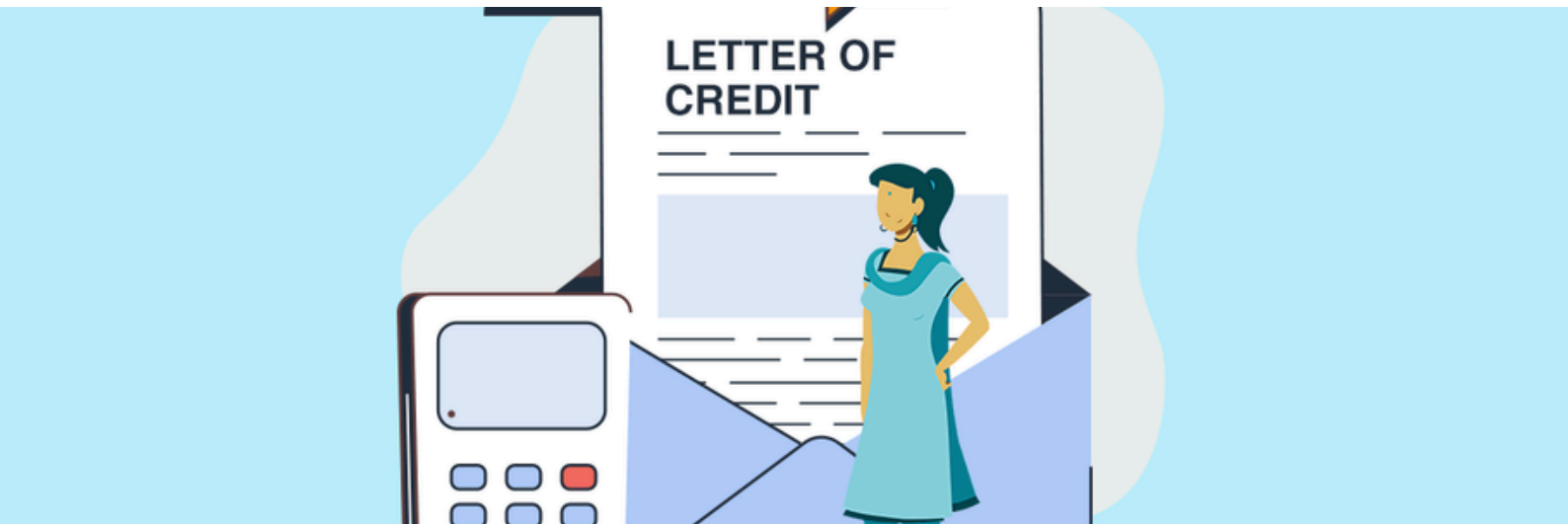
20. Whether confiscation proceedings under Section 130 of the CGST Act can be initiated straightaway for goods intercepted in transit without first completing proceedings under Section 129 of the CGST Act?

Panchhi Traders v. State of Gujarat & Anr. – R/Special Civil Application No. 9250 of 2020 with connected matters [2025 (12) TMI 941] [Gujarat High Court]

Decision: Yes.

The petitioners' goods were intercepted and detained during transit under Section 129 of the CGST Act. The authorities, upon interception, issued notices in Form GST MOV-10 proposing confiscation of goods and conveyance under Section 130 of the CGST Act, alleging intention to evade tax. The petitioners challenged the action contending that, after amendment of Sections 129 and 130 w.e.f. 01.01.2022, confiscation proceedings could not be initiated without first concluding proceedings under Section 129, especially since the non-obstante clause had been deleted from Section 130.

The Gujarat High Court held that Sections 129 and 130 of the CGST Act operate independently and are mutually exclusive, even after the 2022 amendments. Deletion of the non-obstante clause from Section 130 does not prohibit initiation of confiscation proceedings at the threshold. If, at the stage of interception, the proper officer forms a reasoned opinion based on attendant circumstances that the movement of goods is with intent to evade tax, proceedings under Section 130 can be directly invoked by issuance of notice in Form GST MOV-10. However, such drastic action must be confined to cases involving serious contraventions indicating clear intent to evade tax, and not mere procedural lapses or technical defects. The petitions were disposed of with directions for re-examination of confiscation notices in light of these principles.



21. Whether a show cause notice for imposition of penalty under a repealed State VAT law can be issued after the coming into force of the GST regime?

Reckitt Benckiser India Private Limited v. State of Madhya Pradesh & Ors. – W.P. No. 10820 of 2020 with W.P. No. 1665 of 2023 [2025 (12) TMI 1001] [Madhya Pradesh High Court]

Decision: No.

The petitioner was subjected to assessment proceedings under the Madhya Pradesh Value Added Tax Act, 2002 for AY 2008-09. Nearly nine years after the assessment order and subsequent to repeal of the MP VAT Act pursuant to the Constitution (101st Amendment) Act, 2016 and introduction of GST, a show cause notice under Section 52 of the MP VAT Act was issued in June 2020 proposing levy of penalty. The validity of such notice was challenged on the ground of lack of legislative competence and absence of authority of law.

The Madhya Pradesh High Court held that once the MP VAT Act stood repealed and replaced by the MP GST Act, no proceedings for imposition of penalty could be initiated under the repealed statute. Relying on the decision of the Supreme Court in State of Telangana v. Tirumala Constructions, the Court held that amendments or proceedings under State VAT laws after the expiry of the transitional period under Section 19 of the Constitution (101st Amendment) Act, 2016 are void for want of legislative competence. Consequently, the impugned show cause notice was quashed.

22. Whether interest or penalty collected by a chit fund foreman for delay in payment of monthly subscriptions is liable to GST as consideration for supply of services?

Ushabala Chits Private Limited v. Commissioner of State Tax, Andhra Pradesh & Ors. - W.P. No. 14745 of 2021 [2025 (12) TMI 868] [Andhra Pradesh High Court]

Decision: No.

The petitioner, a chit fund company, collected interest and penalty from defaulting subscribers for delayed payment of monthly subscriptions. The Authority for Advance Ruling and the Appellate Authority for Advance Ruling held that such interest and penalty formed part of the value of supply of services provided by the foreman in relation to the chit and was exigible to GST. The petitioner challenged the advance rulings contending that the amounts recovered were in the nature of interest on debt and exempt under Entry 27 of Notification No. 12/2017-Central Tax (Rate).

The Andhra Pradesh High Court held that the commission or remuneration payable to a foreman under Section 21(b) of the Chit Funds Act, 1982 alone constitutes consideration for supply of services and is exigible to GST. Interest and penalty recovered on account of default in payment of installments arise from a debt incurred by the subscriber and fall within the scope of "interest" exempted under Entry 27 of Notification No. 12/2017. Such amounts cannot be treated as service fees or additional consideration for supply of services.

23. Whether dividend income, interest on short-term bank deposits, and service charges received for monitoring Sugar Development Fund loans qualify as "profits derived from the business of providing long-term finance"?

National Cooperative Development Corporation v. Assistant Commissioner of Income Tax – Civil Appeal Nos. 4612-4621 of 2014 [2025 (12) TMI 809] [Supreme Court]

Decision: No.

The appellant, a statutory financial corporation, claimed deduction under Section 36(1)(viii) of the Income-tax Act in respect of three categories of income: (i) dividend income from investments in shares, (ii) interest earned on short-term deposits with banks, and (iii) service charges received for monitoring and administering loans under the Sugar Development Fund on behalf of the Government of India. The Revenue disallowed the claim on the ground that such receipts were not profits derived from the business of providing long-term finance. The disallowance was upheld by the appellate authorities and the High Court.

The Supreme Court held that the expression "derived from" used in Section 36(1)(viii) has a narrow and restrictive meaning and requires a direct and first-degree nexus with the business of providing long-term finance. Dividend income arises from investment in share capital and not from lending activity. Interest earned on short-term bank deposits is attributable only to parking of surplus funds and is a step removed from the activity of providing long-term finance. Service charges received for administering Sugar Development Fund loans are in the nature of agency fees, as the funds belong to the Government and no lending risk is undertaken by the assessee. Consequently, none of these receipts qualify as profits derived from the business of providing long-term finance, and deduction under Section 36(1)(viii) was rightly denied.

24. Whether head office expenditure incurred by a non-resident exclusively for its Indian branches is subject to the deduction under Section 44C of the Income-tax Act, 1961?

Director of Income Tax (IT)-I, Mumbai v. M/s American Express Bank Ltd. – Civil Appeal No. 8291 of 2015 with Civil Appeal No. 4451 of 2016 [2025 (12) TMI 980] [Supreme Court]

Decision: Yes.

The respondent, a non-resident banking company, claimed deduction of expenditure incurred by its head office outside India exclusively for its Indian branches, contending that such expenses were allowable in full under Section 37(1) of the Income-tax Act and were not subject to the ceiling under Section 44C. The Revenue restricted the deduction by applying Section 44C, limiting the allowance to 5% of the adjusted total income. The Tribunal and the High Court ruled in favour of the assessee, holding that Section 44C applies only to common head office expenditure and not to exclusive expenditure incurred for Indian operations.

The Supreme Court held that Section 44C does not distinguish between common and exclusive head office expenditure. Once the expenditure qualifies as "head office expenditure" within the meaning of the Explanation to Section 44C and is incurred by a non-resident outside India, the statutory ceiling under Section 44C applies irrespective of whether the expenditure is common or incurred exclusively for Indian branches. The Court overruled the contrary view taken in Emirates Commercial Bank and held that the deduction of such expenditure must be restricted to the limits prescribed under Section 44C. The matters were remanded to the Tribunal only for factual verification of whether the disputed expenses satisfy the statutory definition of head office expenditure.

25. Whether Section 206AA of the Income-tax Act, 1961 overrides the beneficial rate of tax provided under a Double Taxation Avoidance Agreement in cases where the non-resident deductee does not possess a PAN?

The Commissioner of Income Tax & Anr. v. Manthan Software Services Pvt. Ltd. & Ors. – SLP (C) Nos. 21435/2023, 23931/2023, 23766/2023 & 23760/2023 [2025 (11) TMI 1914] [Supreme Court]

Decision: No.

The assessees made payments to non-resident entities located in countries having Double Taxation Avoidance Agreements with India. Tax was deducted at source at the rates prescribed under the applicable DTAAs, notwithstanding that the non-resident payees did not possess Permanent Account Numbers (PANs). The Revenue contended that in view of Section 206AA, tax was required to be deducted at a higher rate. The High Court ruled in favour of the assessees. Aggrieved, the Revenue filed Special Leave Petitions before the Supreme Court.

The Supreme Court dismissed the Special Leave Petitions, holding that the issue stands conclusively covered by its earlier order in Commissioner of Income Tax (International Taxation) v. Air India Ltd. The Court affirmed that where a DTAA applies, the treaty provisions prevail over Section 206AA of the Income-tax Act. Section 206AA must be read down to ensure that beneficial treaty rates are not defeated merely on account of the non-resident deductee not having a PAN. Consequently, deduction of tax at DTAA rates was upheld and the Revenue's challenge was rejected.

26. Whether proceedings initiated under Section 153C of the Income-tax Act, 1961 are valid in the absence of a proper approval under Section 153D reflecting application of mind?

Pr. Commissioner of Income Tax-1, Thane v. Vrushali Sanjay Shinde – Income Tax Appeal (L) No. 12683 of 2024 [2025 (12) TMI 1049] [Bombay High Court]

Decision: No.

Proceedings under Section 153C of the Income-tax Act were initiated against the assessee pursuant to approval granted by the Additional Commissioner under Section 153D. The approval was in a standard format merely stating that the draft assessment order was approved, without indicating any examination of the material or application of mind. The Tribunal held such approval to be mechanical and invalid, rendering the proceedings under Section 153C incompetent. The Revenue challenged the Tribunal's order before the High Court.

The Bombay High Court held that approval under Section 153D is a mandatory pre-condition for valid initiation of proceedings under Section 153C. While the approval order need not be a reasoned order, it must reflect minimum application of mind. An approval granted mechanically, without even prima facie consideration of the material, is vitiated. Filing affidavits or referring to surrounding circumstances cannot cure the defect. In the absence of a valid approval under Section 153D, the proceedings under Section 153C are without jurisdiction and liable to be quashed. The appeal filed by the Revenue was dismissed.

27. Whether the Income Tax Appellate Tribunal can invoke its rectification powers under Section 254(2) of the Income-tax Act, 1961 on the basis of a subsequent decision of the Supreme Court?

Sila Solutions Pvt. Ltd. v. Income Tax Officer-8(2)(1), Mumbai & Ors. – Writ Petition No. 3161 of 2023 [2025 (12) TMI 1114] [Bombay High Court]

Decision: No.

The Tribunal had originally allowed the assessee's claim for deduction of employees' contribution to PF and ESIC deposited before the due date of filing return under Section 139(1), following the law as it stood at the relevant time. Subsequently, the Supreme Court in Checkmate Services Pvt. Ltd. held that such deduction is allowable only if the contribution is deposited within the time prescribed under the respective statutes. Relying solely on this subsequent judgment, the Revenue filed a rectification application under Section 254(2), which was allowed by the Tribunal.

The Bombay High Court held that rectification under Section 254(2) is permissible only to correct a mistake apparent on the face of the record and cannot be invoked on the basis of a subsequent change in law. On the date when the Tribunal passed its original order, it had correctly applied the law prevailing at that time and there was no error apparent on record. A later judgment of the Supreme Court cannot retrospectively render the earlier order erroneous for the purpose of rectification. Accordingly, the rectification order passed by the Tribunal was quashed and the original order was restored.

28. Whether a non-banking co-operative society is entitled to deduction under Section 80P(2)(d) of the Income-tax Act, 1961 on interest earned from deposits made with co-operative banks?

Sikkim State Cooperative Supply and Marketing Federation Limited v. Deputy Commissioner of Income-tax, Circle 3(2), Gangtok – Tax Appeal No. 02 of 2025 [2025 (12) TMI 808] [Sikkim High Court]

Decision: Yes.

The assessee, SIMFED, is a co-operative society registered under the Sikkim Co-operative Societies Act, 1978. During the relevant assessment year, it earned interest income from deposits made with two co-operative banks, namely Sikkim State Co-operative Bank Ltd. and Citizens Urban Co-operative Bank Ltd. The Assessing Officer disallowed the deduction claimed under Section 80P(2)(d) by applying Section 80P(4), treating co-operative banks at par with commercial banks. The Tribunal upheld the disallowance relying on the decision in Totgars' Cooperative Sale Society Ltd. The assessee challenged the Tribunal's order.

The Sikkim High Court held that Section 80P(4) only excludes co-operative banks from claiming deduction on their own income and does not disentitle a non-banking co-operative society from claiming deduction under Section 80P(2)(d) on interest earned from investments made with co-operative banks registered as co-operative societies. The Court further held that the decision in Totgars' Cooperative Sale Society Ltd. was rendered in the context of Section 80P(2)(a)(i) and was not applicable to cases falling under Section 80P(2)(d). Since the interest income was derived from investments with co-operative societies, the assessee was held entitled to deduction under Section 80P(2)(d). The order of the Tribunal was set aside and the appeal was allowed.

29. Whether registration under Section 12A of the Income-tax Act, 1961 can be denied solely on the ground that the trust has not commenced its charitable activities?

Chief Commissioner of Income Tax (OSD) – Rajkot v. Sukhsagar Education & Charitable Trust – R/Tax Appeal No. 291 of 2012 [2025 (12) TMI 698] [Gujarat High Court].

Decision: No.

The assessee trust was constituted with the primary object of imparting education and applied for registration under Section 12A of the Income-tax Act. The Commissioner rejected the application on the ground that the trust had not commenced any activity towards its main object and, therefore, failed to establish the genuineness of its activities. The Tribunal allowed the trust's appeal and directed grant of registration. The Revenue challenged the Tribunal's order before the High Court.

The Gujarat High Court held that non-commencement of activities cannot be equated with lack of genuineness of activities for the purpose of registration under Section 12A. Genuineness of activities can be examined only when some activity is actually carried out. At the stage of registration, the Commissioner is required to examine the objects of the trust and their charitable nature, not the application or utilisation of income. The Court further clarified that grant of registration does not automatically entitle a trust to exemption under Sections 11 and 12, which can be examined independently by the Assessing Officer at the stage of assessment.

30. Whether an individual member of a consortium can invoke arbitration in its own capacity and seek appointment of an arbitral tribunal under Section 11 of the Arbitration and Conciliation Act, 1996?

Andhra Pradesh Power Generation Corporation Limited (APGENCO) v. M/s Tecpro Systems Limited & Ors. – Civil Appeal Nos. 14836-14837 of 2025 [2025 (12) TMI 1068] [Supreme Court]

Decision: Yes.

APGENCO awarded an EPC contract for a thermal power project to a consortium comprising Tecpro Systems Ltd. (lead member), VA Tech Wabag Ltd. and Gammon India Ltd. Disputes arose during execution of the contract. Tecpro Systems, acting in its individual capacity, invoked the arbitration clause and sought constitution of an arbitral tribunal under Section 11 of the Arbitration and Conciliation Act, 1996. APGENCO objected, contending that only the consortium as a collective entity could invoke arbitration and that an individual member lacked authority to do so. The High Court appointed the arbitral tribunal. Aggrieved, APGENCO preferred appeals before the Supreme Court.

The Supreme Court held that at the stage of Section 11, the court's enquiry is confined to a prima facie determination of the existence of an arbitration agreement. Once such an agreement prima facie exists, the referral court should refrain from entering into contentious issues such as capacity, authority, maintainability, or arbitrability. Whether an individual consortium member is a "veritable party" entitled to invoke arbitration depends on the terms of the principal contract and the consortium agreement and must be examined in detail by the arbitral tribunal under Section 16. The High Court, having found prima facie existence of an arbitration agreement, rightly constituted the arbitral tribunal. All objections regarding the individual invocation of arbitration were left open to be decided by the arbitral tribunal.

31. Whether the mandate of an arbitrator stands terminated by operation of law upon expiry of the statutory period under Section 29A of the Arbitration and Conciliation Act, 1996?

Mohan Lal Fatehpuria v. Bharat Textiles & Ors. – Civil Appeal No. 14681 of 2025 [2025 (12) TMI 872] [Supreme Court]

Decision: Yes.

Disputes between partners of a firm were referred to arbitration and a sole arbitrator was appointed by the High Court. The arbitrator entered reference in May 2020. After exclusion of the Covid-19 period, the statutory time limit under Section 29A expired on 28.02.2023 without any award being passed and without any application by the parties seeking extension of time. The High Court, however, declined substitution of the arbitrator and merely extended his mandate under Section 29A(6). This order was challenged before the Supreme Court.

The Supreme Court held that upon expiry of the period prescribed under Section 29A(1) read with Section 29A(4), and in the absence of any extension sought by the parties, the mandate of the arbitrator stands terminated by operation of law, rendering the arbitrator functus officio. Once the mandate has ceased, continuation of the same arbitrator is impermissible. Section 29A(6) empowers and obligates the court to substitute the arbitrator, not to revive a lapsed mandate by granting extension. The remedies under Sections 14, 15 and 29A operate in distinct fields, and rejection of an earlier petition under Sections 14 or 15 does not bar substitution under Section 29A(6).

32. Whether termination of arbitral proceedings by the arbitral tribunal for non-payment of arbitral fees under Section 38 of the Arbitration and Conciliation Act, 1996 results in termination of the arbitral proceedings itself?

Harshbir Singh Pannu & Anr. v. Jaswinder Singh – Civil Appeal No. 14630 of 2025 [2025 INSC 1400] [Supreme Court]

Decision: Yes.

Disputes between partners were referred to arbitration pursuant to a partnership deed. During arbitral proceedings, disputes arose regarding payment of arbitral fees fixed by the sole arbitrator in terms of the Fourth Schedule. The claimants expressed inability to pay their share of fees, while the respondent refused to bear the claimants' share. Invoking Section 38(2) of the Arbitration and Conciliation Act, 1996, the sole arbitrator terminated the arbitral proceedings for non-payment of fees. The High Court declined to appoint a fresh arbitrator under Section 11, holding that termination of proceedings did not amount to termination of mandate. The matter reached the Supreme Court.

The Supreme Court exhaustively analysed the scheme of the Arbitration and Conciliation Act, 1996 and held that termination of arbitral proceedings on the ground of non-payment of fees is a termination of proceedings within the meaning of the Act, traceable to Sections 32 and 38. Such termination brings the arbitral proceedings to an end and, as a necessary consequence, also results in termination of the mandate of the arbitral tribunal. The Court clarified that termination under Section 38 is not a mere procedural suspension but a substantive termination of the arbitral proceedings.

On the question of remedy, the Court held that a party aggrieved by an order terminating arbitral proceedings cannot seek appointment of a fresh arbitrator straightaway under Section 11. The appropriate remedy lies in challenging the termination order in accordance with law, depending on the nature of the termination, and the arbitral proceedings cannot be revived merely by seeking substitution or reappointment of an arbitrator. The appeal was accordingly dismissed, while laying down authoritative principles on termination of arbitral proceedings and remedies thereagainst.

33. Whether an arbitral award directing payment of the full contract price can be set aside on the ground of frustration of contract under Section 56 of the Indian Contract Act, 1872, where the contract was terminated after substantial performance?

State of Uttar Pradesh through Uttar Pradesh Legislative Assembly Secretariat v. Tata Consultancy Services Limited – Commercial Arbitration Petition No. 142 of 2024 [Bombay High Court]

Decision: No.

The Uttar Pradesh Legislative Assembly Secretariat engaged Tata Consultancy Services Limited (TCS) to conduct online examinations for recruitment of Review Officers and Assistant Review Officers. TCS conducted the examinations in December 2015 and raised invoices for services rendered. Subsequently, the Speaker of the Legislative Assembly cancelled the examination in June 2016 citing alleged anomalies in other examinations conducted by TCS. Payment was withheld, and TCS invoked arbitration. The arbitral tribunal held the termination to be illegal and awarded the full contract amount with interest. The award was challenged under Section 34 of the Arbitration and Conciliation Act on the ground that the contract stood frustrated under Section 56 of the Contract Act and, at best, only compensation on a quantum meruit basis under Section 70 could be granted.

The Bombay High Court held that Section 56 of the Contract Act has no application where the agreed act has already been substantially performed. The examination had been successfully conducted, and the remaining steps were merely administrative in nature. The subsequent cancellation of the examination was an act of the petitioner itself and amounted to self-induced frustration, to which the doctrine of frustration does not apply. The Court further held that Section 70 of the Contract Act is inapplicable where services are rendered pursuant to an express contract. The arbitral tribunal's findings were based on a plausible appreciation of evidence and did not suffer from perversity or violation of public policy. Accordingly, the arbitral award directing payment of the full contract price was upheld and the petition under Section 34 was dismissed.

34. Whether proceedings against a personal guarantor under the Insolvency and Bankruptcy Code, 2016 can be validly initiated or continued before the Debt Recovery Tribunal instead of the National Company Law Tribunal?

Kotak Mahindra Bank Ltd. & Ors. v. State of Maharashtra & Ors. – Writ Petition Nos. 9380, 9388, 9385 & 1494 of 2024 [2025 (12) TMI 887] [Bombay High Court]

Decision: No.

The petitioners, secured creditors, had initiated recovery proceedings against the principal borrower under the SARFAESI Act. Subsequently, insolvency applications under Section 95 of the Insolvency and Bankruptcy Code, 2016 were filed before the Debt Recovery Tribunal against the personal guarantors of the corporate debtor. The DRT entertained the applications and declared an interim moratorium under Section 96 of the IBC. Meanwhile, proceedings against the corporate debtor were initiated before the NCLT. The petitioners challenged the jurisdiction of the DRT to entertain insolvency proceedings against personal guarantors.

The Bombay High Court held that in view of Section 60 of the Insolvency and Bankruptcy Code and the law laid down by the Supreme Court in Lalit Kumar Jain v. Union of India, the NCLT is the exclusive adjudicating authority for insolvency proceedings relating to personal guarantors of corporate debtors. Even if proceedings were initially filed before the DRT, the same ought to have been transferred to the NCLT once insolvency proceedings against the corporate debtor were pending. The DRT lacked jurisdiction to entertain or continue such proceedings, and any orders passed by it were without authority of law.

35. Whether issuance of an auction sale notice under Rule 8(6) of the SARFAESI Rules extinguishes the borrower's ownership rights in the secured asset?

Arrow Business Development Consultants Pvt. Ltd. v. Union Bank of India & Ors. Writ Petition No. 11132 of 2025 [2025 (12) TMI 824] [Bombay High Court]

Decision: No.

The petitioner was declared the successful auction purchaser of a secured residential property sold by the bank under the SARFAESI Act. After issuance of the auction sale notice and confirmation of sale, but before completion of payment and issuance of the sale certificate, one of the borrowers filed an application for personal insolvency under Section 94 of the IBC, triggering an interim moratorium under Section 96. Despite receipt of substantial payments and issuance of a sale certificate by the bank after commencement of the interim moratorium, possession of the property was not handed over. The auction purchaser approached the High Court contending that the borrower's ownership stood extinguished upon issuance of the sale notice and that the interim moratorium could not affect its vested rights.

The Bombay High Court held that even after the 2016 amendment to Section 13(8) of the SARFAESI Act, issuance of a sale notice only extinguishes the borrower's right of redemption and not ownership of the secured asset. Ownership is transferred only upon completion of sale in accordance with Rules 8 and 9 of the SARFAESI Rules, i.e., after full payment of the sale consideration and issuance of a valid sale certificate.

The Court further held that once an interim moratorium under Section 96 of the IBC comes into force, the secured creditor is prohibited from continuing SARFAESI proceedings or accepting further payments in respect of the debt. Since substantial payments and the sale certificate were issued after commencement of the interim moratorium, the sale did not stand completed in law. Consequently, the auction purchaser did not acquire ownership rights and was not entitled to possession of the secured asset.

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