UBR LEGAL ADVOCATES

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LEX LOQUITUR

A NEWSLETTER SUMMARIZING LATEST COURT RULINGS

CONTENT

Preface	1
Matters Argued by us	2-5
Indirect Tax	6-9
Direct Tax	10-11
Arbitration	12
IBC	13

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 commission earned by an Indian agent from a foreign principal for procuring orders from Indian customers qualifies as export of service or not?

Commissioner of Service Tax – III, Mumbai v ATE Enterprise Private Limited- Civil Appeal No. 4009 of 2018 [Supreme Court]

Decision: No.

The assessee is undertaking marketing for products manufactured by the foreign principal. It procures purchase orders for the foreign principal from Indian purchasers. It receives commission; based on sale; in convertible foreign exchange. A demand of service tax of over Rs. 8 crores was raised along with interest and penalty on the said commission. It was alleged that the services are not export of services as the beneficiary of the service is located in India. Appeal was filed before CESTAT, Mumbai. The CESTAT allowed the appeal. The Revenue; being aggrieved; filed appeal before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court dismissed the said appeal. Being aggrieved; the Revenue filed appeal before the Hon'ble Supreme Court.

The Hon'ble Supreme Court; in a batch of appeals; dismissed the appeal filed by the department. It held: (i) service tax is a destination based consumption tax; (ii) the transaction between the Indian agent and foreign customer was on a principal to principal basis; there was no privy of contract with the Indian customer; (iii) traces history of export of services since 1999 to 2014 and holds that the services have been delivered and used outside India; (iv) the finding of fact rendered by the CESTAT and High Court cannot be said to be perverse; hence; upheld

2. Whether refund of GST amount lying in electronic cash ledger can be withheld or revised by invoking Section 108 of the CGST Act in absence of any pending demand or prima facie illegality?

Union of India & Ors v HCC VCCL Joint Venture – SLP (Civil) Diary No (s) 24660 of 2025 [Supreme Court]

Decision: No.

The petitioner is undertaking works for Delhi Metro Rail Corporation. DMRC deducts GST TDS under section 51 of the CGST Act and the same is credited to the "electronic cash ledger" of the petitioner. It sought refund of the said amount lying in balance. The refund was sanctioned. However, the said order came to be stayed by the Commissioner invoking revision power under section 108 of the Act. Such order was challenged in writ petition.

The High Court set aside the order and allowed the writ petition. It held: (i) as far as invocation of section 108 is concerned, there is no difference between refund of ITC in electronic credit ledger and electronic cash ledger; (ii) there was no pending demands against the petitioner; hence; the Commissioner could not have invoked section 54(11) of the Act; (iii) the Commissioner was not justified in invoking section 108 as there is no prima facie finding that the order of refund is erroneous, prejudicial to the interest of revenue and illegal; (iv) the allegation of incorrect availment of ITC can be tested under other provisions of the GST Law; it has nothing to do with the refund of amount lying in electronic cash ledger.

The Revenue, being aggrieved, filed SLP before the Hon'ble Apex Court. The Supreme Court dismissed the SLP holding that there was no ground to interfere with the judgment of the High Court. However, question of law, if any, is kept open.

Electronic Cash / Credit Ledger

3. Whether the benefit of the Supreme Court's suo motu extension of limitation due to COVID-19 applies to an application for rectification under Section 254(2) of the Income Tax Act?

Leena Power Tech Engineers Private Limited v. DCIT, Circle -15 – SLP (C) No. 16881 of 2025

Decision: Notice issued.

The petitioner filed appeal before ITAT, Mumbai. It was rejected. It filed a miscellaneous application for rectification under section 254(2) of the Income Tax Act. The application was rejected as time barred; holding that ITAT does not have power to condone delay if the application is filed beyond six months.

The petitioner approached the Bombay High Court by way of a writ petition. It contended that in light of suo moto order of extension passed by the Hon'ble Supreme Court (in wake of COVID-19 pandemic), there was no delay. However, the High Court dismissed the petition holding that the benefit of the Supreme Court order was not available to the petitioner. On SLP, the Hon'ble Supreme Court issued notice to the respondents on the said SLP.

4. Whether an exporter who repaid RODTEP rebate voluntarily can later seek refund if eligible under the scheme or not?

Baramati Agro Limited v Union of India & Ors – WP No. 19461 of 2024 [Bombay High Court]

Decision: Yes.

The petitioner is an exporter of sugar. It claimed rebate under the Remission of Duties and Taxes Export Scheme (RODTEP) under the Foreign Trade Policy. However, the Customs authorities initiated investigation on the ground that the petitioner is not entitled to rebate as export of sugar was restricted. The petitioner paid back the rebate amount and did not claim benefit for subsequent exports. However, it filed claims for refund on the ground that it was eligible under the RODETP scheme. However, the claims were not being adjudicated. Hence, petition came to be filed.

The High Court allowed the writ petition and directed the respondent authorities to examine the claim on merits and in accordance with law within three weeks. It noted the contention of the Respondent that the petitioner paid back the rebate amount voluntarily and hence, closure report was issued. However, the contention whether the payment was made "under protest" or not is kept open. It accepts the petitioners statement that if found eligible; it would not claim interest for the period from the date of the closure report till the institution of the writ petition.

5. Whether penalty under Section 74 is justified when GST and interest were paid voluntarily, and there is no fraud or suppression?

Ultratech Cement Limited V. Union of India & Ors.-WPT No. 90 of 2025 [Chhattisgarh HC]

Decision: No.

The petitioner is a manufacturer of cement. It had received mining lease from the State Government of Chattisgarh. It paid upfront fees to the State for the said rights. The Revenue alleged that the petitioner is liable to pay GST (on reverse charge basis) on the said fees. The petitioner paid the said GST amount along with interest before show cause notice itself. However, invoking section 74 of the GST Act, notice was issued proposing equivalent penalty. Demands were confirmed. Appellate authority also upheld invocation of section 74. Hence, writ petition.

The High Court admitted the petition and granted stay from recovery. It allowed the stay application. It held: (i) there is a vacancy of the State President of the Tribunal; hence; no remedy; (ii) refers to Supreme Court order in Udaipur Chamber case to note that issue relating to applicability of GST and service tax on royalty/ upfront fees is pending before the Apex Court; notices that Gujarat High Court and Delhi High Court had passed interim orders granting stay; (iii) on a plain reading of section 74; it notes that there could not be; prima facie; case of fraud or suppression of facts; (iv) directs Revenue to file reply to the petition.

6. Whether the services provided by an Indian subsidiary entity to its foreign principal entity located outside India would amount to "intermediary" services or not?

Magna Automotive India Private Limited v Union of India & Ors – WP No. 14325 of 2024 [Bombay High Court]

Decision: No**.**

The petitioner is engaged in providing services to its foreign principal. It is a subsidiary of a foreign company making autonomous driving systems. As per the agreement, it provided modification, advancement and customization of the said processes which are supplied to OEM manufacturers. It filed for refund of accumulated input tax credit in terms of Rule 89 of the CGST Rules read with section 54 of the GST Act. Refunds were rejected on the ground that the services did not qualify as "export of services" in terms of section 2(v) of the IGST as the petitioner was an establishment of the foreign company in terms of explanation to section 8 of the IGST. It was an agent of the foreign company. Refunds of over Rs.55 crores were rejected. Hence, writ petition came to be filed.

The High Court set aside the orders and allowed the petition. It noted that the issue was covered by judgment in the case of Sundyne Pumps. The Revenue also agreed that it was covered by the said judgment; however; they were contemplating challenging the said order before the Supreme Court. However; noting that the said judgment holds the field; allows the writ petition.

7. Whether GST is leviable on interim arbitral award granted, especially when demand order is unsigned and violates Rule 26(3) of CGST Rules?

Hindustan Construction Co Ltd v Union of India & Ors – WP(C) No. 1466 of 2025 [Jammu & Kashmir High Court]

Decision: Stay Granted.

The petitioner is undertaking works contract. There was a payment related dispute with the customer which was referred to arbitration. An arbitral award came to be passed in favour of the petitioner. The same was challenged by the customer, albeit unsuccessfully, before the Hon'ble Delhi High Court. The petition under section 34 of Arbitration and Conciliation Act was rejected. It was challenged before the Hon'ble Supreme Court. The Apex court passed interim order awarding the said sum to the petitioner subject to furshining security in form of immovable property. The state tax officer demanded GST on the said interim compensation amount. A demand of over Rs.18 crores came to be confirmed along with interest and penalty under section 73 of the Act. The same was challenged by way of a writ petition.

8. Whether customs authorities can issue a show cause notice after 15 years alleging FTP violations, despite DGFT confirming fulfilment of export obligation or not?

Flexituff Ventures International Limited v Union of India & Ors. – WP (C) No. 10197 of 2025 [Delhi High Court]

Decision: Stay Granted.

The petitioner is an exporter. It imported certain raw materials, without payment of customs duty, under advance license scheme. The imports were of 2009. However, show cause notice came to be issued by the customs authorities; pursuant to investigation by DRI; alleging violation of provisions of Foreign Trade Policy and non-fulfilment of export obligation. The show cause notice was issued on 09.05.2025. The said show cause notice was challenged in writ petition.

The High Court grants stay and directs no final orders to be passed on the said show cause notice. However; directs petitioner to file a reply. It notes that there is delay in issuance of show cause notice over 15 years and customs does not have jurisdiction to allege violation of provisions of FTP. Notes that the DGFT has passed orders holding that the petitioner has fullfilled export obligation. Notes that presence of DGFT is important. Takes note of reliance placed on decision in Garizmo case.

Matters Argued by us

9. Whether refund of differential GST paid at 18% is allowable when plastic toys were rightly classifiable at 12% and classification was not independently examined by the appellate authority?

CMP Euro Technoplast Pvt Ltd V. Union of India- Writ Petition No. 4616 OF 2024- Bombay HC

Decision: Yes**.**

The petitioner is a manufacturer of plastic toys. It initially classified the products under HSN Code 9503, attracting a 12% GST. An enquiry by DGGI dated 20.10.2020 led to a reclassification at 18% GST, and the Petitioner, as a precautionary measure, paid the differential tax and interest. Subsequently, relying on an Advance Ruling from the Gujarat AAR which supported the 12% rate for plastic toys, the Petitioner filed a refund application on 06.07.2022. The refund was rejected. Appeal by the appellate authority was also rejected. Hence, writ petition came to be filed.

The High Court set aside the order and allowed the petition. It held: (i) the GST Tribunal is not funct-ional; hence; petition has been filed; (ii) there was total non-application of mind on part of the appellate authority in not considering the grounds of appeal; (iii) reliance on AAR order was one of the grounds and not the only ground; (iv) the issue of classification has not been addressed; independently; on merits; (v) accordingly; remands the matter back to the appellant authority to pass reasoned orders.

The High Court issues notice and grants stay of recovery. It notes that GST is being sought to be demanded on interim award post the courts order. It also notes that the order is an “unsigned” order and thus in violation of Rule 26(3) of CGST Rules, 2017.

10. Whether an order under Section 74 of the HPGST Act is sustainable when no ASMT-10 or pre-show cause notice in Form DRC-01A was issued, particularly for demands raised on unbilled revenue?

Hindustan Construction Company Limited v Union of India & Ors – CWP No. 1827 of 2024 [Himachal Pradesh High Court]

Decision: No.

The petitioner is undertaking works contracts for the State of Himachal Pradesh. A scrutiny was undertaken under section 61 of the HPGST Act. ASMT-10 for issued for certain issues. Show cause notice was issued on the said issues. However, show cause notice came to be issued under section 74 for which no ASMT-10 was issued. No pre-SCN (in form DRC-01A) was issued for financial year 2017-2018. It was contended that ASMT 10 is mandatory under Rule 99 of the CGST Rules. It was argued that no GST can be demanded on “unbilled revenue” as there is no concept of notional transaction value and provisions of Income Tax and GST are different. However, order came to be passed under section 74 of the Act. The same was challenged in writ petition.

The High Court at Shimla set aside the order and allowed the writ petition. It set aside the recovery action. It noted that the Revenue was in agreement that the matter should be remanded back to the adjudicating authority to reexamine the legal and factual issues involved in the writ petition.

11. Whether stem cells banking services qualify as 'healthcare services' and is exempt from payment of service tax or not?

Stemcyte India Therapeutics Private Limited v Commissioner of C. Ex., & ST, Ahmedabad – III – Civil Appeal No. 3816-3817 of 2025 [Supreme Court]

Decision: Yes.

The appellate is a JV and engaged in collection, processing, testing, and storage of umbilical cord blood units and their therapeutic application. The appellant is a member of the Association of Stem Cell Banks of India. Search was conducted at the premises of the appellant. The appellant filed a reply along with documents and deposited the demand under protest stating that the payment was made under protest, as the services provided by it, were exempt under Notification No.25/2012-ST dated 20.06.2012 under the heading "Healthcare Services".

The appellant filed a refund application. However, the same was rejected. The appellant filed an appeal before CESTAT. CESTAT dismissed the appeals and upheld the Orders-in-Original. Therefore, the appeal before Supreme Court.

The Supreme Court held as per Entry 2 of Notification No.25/2012-ST dated 20.06.2012, services provided by clinical establishments in the nature of health care were exempt from service tax. Subsequently, Notification No.4/2014-ST dated 17.02.2014 introduced Entry 2A, specifically exempting services provided by cord blood banks for the preservation of stem cells or related services. Therefore, the activities carried out by the appellant were covered under these notifications. Thus, stem cell banking services, including enrolment, collection, processing, and storage of umbilical cord blood stem cells, constitute "Healthcare Services" which were exempted from service tax as per the notifications issued by the Ministry of Finance in 2012 and 2014 under the Finance Act, 1994.

12. Whether payment of penalty for the release of goods u/s 129 of CGST Act amounts to waiver of the right of assessee to file an appeal or not?

ASP Traders v State of Uttar Pradesh & Ors – Civil Appeal no. 9764 of 2025 [Supreme Court]

Decision: No.

The appellant is a registered dealer in Red Arecanut. The appellant consigned goods to consignee through vehicle accompanied by an E-Way Bill. During transit, the goods were transhipped and loaded onto another vehicle. However, few goods were missing from the original consignment. The vehicle was detained by Mobile Squad. Driver's statement was recorded in Form GST MOV-01. Following physical inspection, a report was generated in Form GST MOV-04 on 20.01.2022 alleging certain deficiencies. A detention order in Form GST MOV-06 dated 20.01.2022 was also issued.

Notice u/s 129(3) of the act was issued highlighting the discrepancies of the missing consignment alleging that consignee was non-existent and address of the consignor was incorrect as per departmental record. Appellant to buy peace with department paid deposited demand indicated in Show Cause notice. Thereafter, goods were released under Form GST MOV-05.

Despite the release, no final order under Section 129(3) of the act. The appellant submitted a representation seeking an order in Form GST MOV-09. In response, by communication dated 03.03.2022, the Mobile Squad Official stated that one Mohd. Javed, the appellant's representative, appeared on 27.01.2022, orally requested withdrawal of the earlier reply dated 24.01.2022, and sought release of goods, and hence, no further proceedings were deemed necessary. The appellant denied having made any oral request to withdraw the reply or abandon further proceedings. The appellant sent further communication. However, to no avail. Aggrieved by non-communication the appellant filed an appeal before High Court which was rejected. Hence, the appeal.

The Supreme Court held that Section 129 of the CGST Act deals with detention, seizure, and release of goods in transit. While sub-section (1) allows for release upon payment of tax and penalty, sub-section (3) requires the proper officer to issue a notice within seven days of detention, specifying the penalty, and to pass a reasoned order within seven days of service of that notice. Sub-section (5) provides that upon such payment, the proceedings under sub-section (3) are deemed to have been concluded. The mere payment of penalty for the release of goods detained during transit under the GST regime does not conclude proceedings unless a formal, reasoned order is passed under Section 129(3) of the CGST Act. Thus, by mere payment of penalty for the release of the goods detained under Section 129 of the Central Goods and Services Tax Act, the assessee cannot be held to have waived the right to file a statutory appeal.

13. Whether the assessee can make pre-deposit u/s 107(6) of CGST Act using Input tax Credit or not?

Navnit Motors Private Limited v Commissioner of CGST & C. Ex., (Appeals – III), Mumbai & Anr – WP No. 2345 of 2025 [Bombay High Court]

Decision: Yes.

The petitioner has filed an appeal before the appellant authority challenging the order passed by the adjudicating authority. The petitioner paid the mandatory pre-deposit of 10% as provided under section 107(6) of CGST Act using Input Tax Credit. The appellate authority dismissed the appeal filed by the petitioner solely on the ground that the mandatory 10% pre-deposit required under Section 107(6) of the CGST Act, 2017 was not paid in cash but was discharged using Input Tax Credit (ITC). Hence, the writ.

The High Court held that the act was in breach of natural justice by not issuing notice or hearing the petitioner before rejecting the appeal for non-compliance with Section 107(6). As per judicial discipline, notice must be given especially where alternate interpretations of law exist. The judgment in the case of Oasis Realty, which allows utilization of ITC for pre-deposit under Section 107(6), was binding on the Appellate Authority. Thus, the Authority erred by relying on the Patna High Court's contrary view, particularly when it was not binding in Maharashtra and the Supreme Court had stayed the relevant portions of the Patna HC ruling. The stay by the Hon'ble Supreme Court, even though ex-parte, remains binding and undermines the Patna High Court's observations which the Appellate Authority chose to follow. The Appellate Authority acted contrary to judicial discipline by disregarding the binding precedent of the Bombay High Court in Oasis Realty v. UOI, which had categorically held that ITC can be used to satisfy the 10% pre-deposit under Section 107(6).

14. Whether GST advisory issued by department on interest for delayed payment of tax is valid or not?

Reliance Formulation Private Limited v Assistant Commissioner of State Tax – R/SCA No. 5453 of 2025 [Gujarat High Court]

Decision: Yes.

The Petitioner is a private limited company specialised in formulation of psychotropic range of Ayurvedic and herbal products. The petitioner received an advisory for financial years 2017-18, 2018-19, 2021-22, 2022-23 and 2023-24 for ensuring payment of interest under Section 50(1) of the GST Act in respect of self-assessed tax paid after the due date of furnishing of returns.

The petitioner challenged the above advisory since the department could not have issued the advisory as per the provisions of Section 50(1) of the GST Act which provides that if any person who is liable to pay self- assessment tax, then he will be liable to pay interest at the rate of 18% per annum or as may be recommended by the GST Council. there is no provision for issuance of the advisory under Section 50(1) of the GST Act and thereto, referring to the provisions of Section 79 of the GST Act to initiate the recovery proceedings. Hence, the petition.

The Gujarat High Court held that the reference to Section 79 of the GST Act in the advisory is only to put the assessee on guard as to such outstanding liability as per the record of the Authority so that the assessee can either make the payment of such liability if agreed or may oppose the same when the notice in Form GST DRC-01D is received by the assessee for recovery of such amount. In view of the above, the bench held that no interference is required to be made at the stage of issuance of advisory by the Authority as the same is subject to further proceedings as contemplated in Rule 142B of the GST Rules read with Section 79 of the GST Act.

15. Whether Kerala VAT can be levied on Advertisement Hoardings where right to use Has Not Been Transferred or not?

J. Vijayakumar v Assistant Commissioner & Ors – WP(C) No. 4274 of 2023 [Kerala High Court]

Decision: No.

The petitioner is engaged in erecting hoardings on properties and buildings owned by third parties, on the basis of agreements and such hoardings are fixed either on a property or on top of a building. After erecting the hoardings, the advertisement of consumers would be displayed on the said hoardings for a particular period. The aforesaid transactions were subjected to assessment under Section 25 of the KVAT Act by the Assistant Commissioner, and the assessment order was passed. Hence, the petition.

The High Court held that the obligations of the assessee include erection and maintenance of the hoardings. as per the terms and conditions agreed between the petitioner and his customers. The display was provided by the petitioner on the hoardings erected at the expense of the petitioner, to which the content alone would be supplied by the customer. Thus, no taxable event under the provisions of the KVAT Act had occurred in respect of the transactions referred to in the assessment order, as there was no transfer of right to use the hoardings. Therefore, transactions involving the display of advertisements on hoardings are not taxable under the Kerala Value Added Tax Act (KVAT), where the right to use has not been transferred.

16. Whether IGST is leviable on secondment of employees from overseas group companies or not?

Alstom Transport India Limited v Commissioner of Commercial Taxes – WP No. 1779 of 2025 (T-Res) [Karnataka High Court]

Decision: No.

The Petitioner is engaged in the undertaking railway and metro infrastructure projects. During the period from July 2017 to March 2023, the employees of its overseas group companies were seconded to work in India for a fixed tenure. The salaries were paid directly by the assessee after deducting applicable Tax Deducted at Source (TDS) in accordance with the provisions of the Income Tax Act, 1961. Notice in Form DRC 01A was issued inter alia demanding IGST along with interest and penalty. Petitioner filed reply. However, show cause notice was issued.
Petitioner filed a Writ challenging the show cause notice. The High Court directed the petitioner to file reply. Accordingly, petitioner filed reply. The respondent despite submission of additional documents and explanations in line with this clarification, proceeded to pass the impugned order confirming the IGST demand on alleged import of manpower recruitment and supply services. Hence, the petition.

The High Court held that the clarification in Para 3.7, the value of such services must be deemed to be 'Nil' and treated as the open market value. Even if arguendo such secondment arrangement is assumed to be a supply, the deeming fiction under the Circular neutralises any scope for further tax liability. The second proviso to Rule 28 cannot be invoked to displace the legal effect of a 'Nil' value where the legislative framework itself permits a deeming fiction, especially when full ITC is available. In light of the statutory exclusion under Schedule III and the clarificatory Circular issued by the CBIC, the bench held that the secondment arrangement does not give rise to any tax liability, and the demand raised by the Revenue is liable to be set aside.

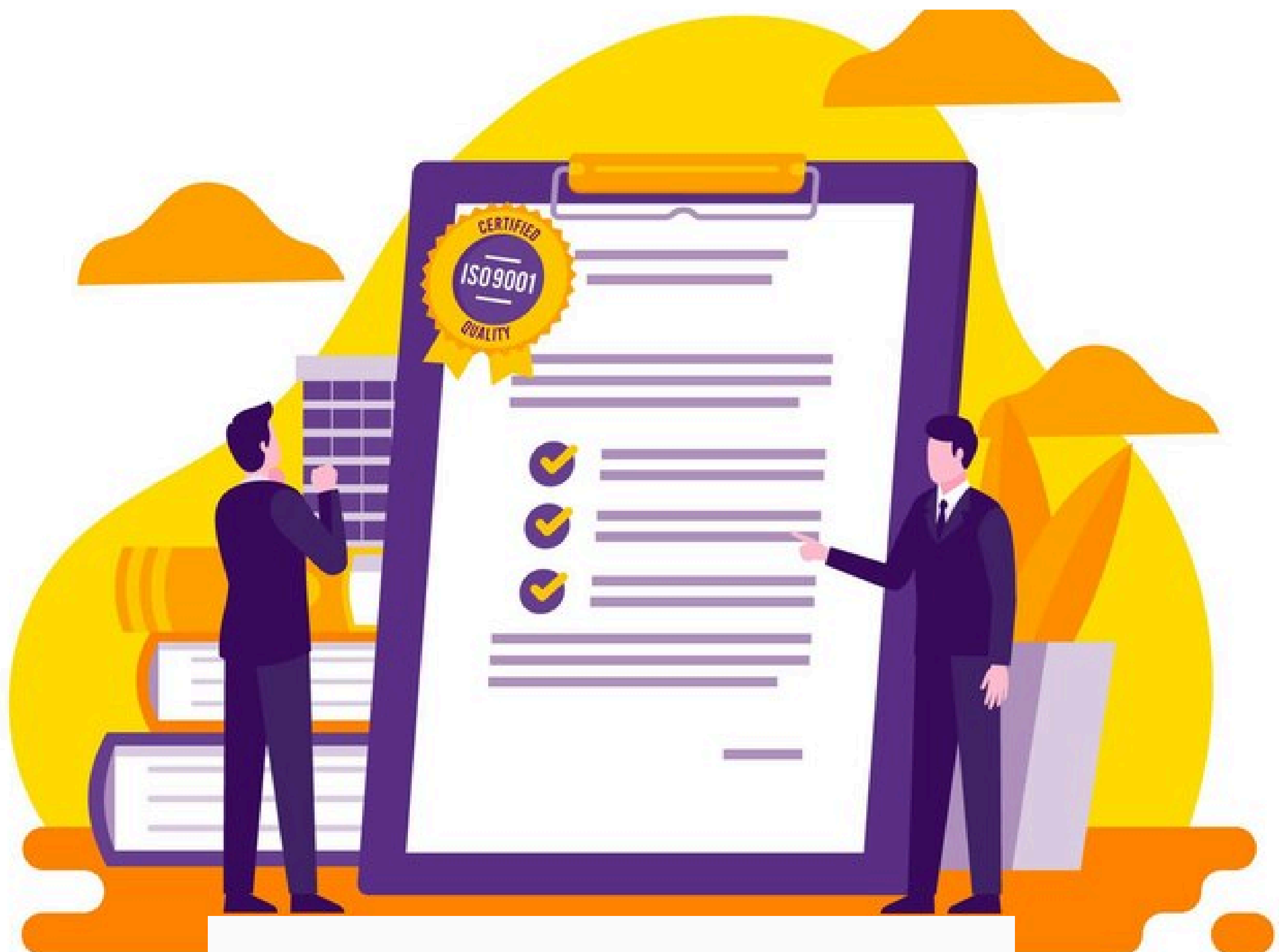
17. Whether GST officers issuing summons/arrest memo are required to be cross-examined by the assessee or not?

Sazid Ali Khan v Pr. Commissioner, CGST & C. Ex., Vadodara – I & Ors – R/SCA No.6437 of 2025 [Gujarat High Court]

Decision: No.

The Petitioner is a proprietor of M/s. KSEG India International and doing scrap business. The Petitioner was accused of availing input tax credit on the strength of invoices without receipt of the goods from various bogus firms on basis of certain information. Search was conducted at the premises of the petitioner and documents were seized. Notice in Form GST-DRC-01A under Rule 142(1A) of CGST Act was issued. Show Cause Notice was issued as no reply was filed. Order-in-Original was passed inter alia confirming the demand along with interest and penalty. The petitioner filed petition on the ground that the order is passed without giving an opportunity of hearing to the assessee or his Advocate and without affording any opportunity of cross-examination.

The High Court held that the persons who were named in the application dated 04.10.2024 for cross-examination, out of the five persons, four belongs to the Department who have either issued the summons or arrest memo and therefore, such persons are not required to be cross-examined by the assessee and therefore, the respondent No.2 has rightly not granted the cross-examination of such Departmental Officers to the assessee. The assessee has an alternative efficacious remedy to challenge the order by preferring an Appeal under Section 107 of the GST Act. In view of the above, the bench dismissed the petition with a liberty to the assessee to file statuary Appeal as provided under Section 107 of the GST Act.



18. Whether foreign entity doing business through temporary premises in India is liable to Income Tax or not?

Hyatt International Southwest Asia Limited v ADIT – Civil Appeal no. 9766 of 2025 [Supreme Court]

Decision: Yes.

The appellant is incorporated in Dubai. It is a tax resident of the UAE under Article 4 of the Agreement between the Government of India and the UAE for the avoidance of Double Taxation. The appellant entered into two Strategic Oversight Services Agreements with Asian Hotels Limited India – one for AHL, Delhi and another for AHL, Mumbai.

For A.Y. 2009-10 the appellant filed its return of income declaring 'Nil' income and claiming a refund. AO issued a notice u/s 142(1) r/w section 143(3) of the act. Appellant filed reply. AO passed a draft assessment order under Section 143(3) read with Section 144C of the Act. Appellant filed its objections before Dispute Resolution Panel (DRP). DRP rejected and upheld the AO's order. Similar Assessment order was passed for A.Y. 2010-11 to 2017-18. The appellant filed eight appeals before ITAT. ITAT rejected all the appeals and rejected the appellant's contention that it did not have a PE in India and dismissed the appeals.

The appellant filed eight appeals before the High Court. The High Court answered the first question in favour of the appellant / assessee, and referred the fourth question to a larger Bench. However, it answered questions (ii) and (iii) against the appellant holding that the appellant, being a company incorporated in Dubai and a tax resident of the UAE, had a Permanent Establishment (PE) in India in the form of a fixed place of business. Aggrieved by this part of the High Court's judgment, the appellant has preferred the present appeals.

The Supreme Court relying on Formula One World Championship Limited v. Commissioner of Income Tax, International Taxation-3, Delhi & Anr. (2017) 15 SCC 602 observed that because the hotel premises were effectively at the disposal of Hyatt due to its continuous and substantial control over key operational aspects of the hotel business, therefore exclusive ownership or physical possession is not a precondition for establishing a PE, and even shared or temporary access to premises can constitute a PE if the foreign entity conducts business through them.

The existence of a Permanent Establishment (PE) is sufficient to attract tax liability for a foreign entity in India, even in the absence of exclusive possession of a fixed place of business. The Court clarified that temporary or shared use of premises, when combined with administrative or operational control, is adequate to establish a PE, thereby triggering income tax liability in India.

19. Whether section 54(1) of the Income Tax Act allows the Assessee to set off the purchase cost of more than one residential unit against the capital gains earned from sale of a single residential house or not?

Krishnagopal B. Nagpal v DCIT, Special Range – 3, Pune – ITA No. 569 of 2003 [Bombay High Court]

Decision: Yes.

A Flat situated at Marine Drive, Mumbai was owned by appellant's mother. Appellant's mother executed a will. Madan Samant was appointed as guardian of the appellant, since he was a minor at that time. Appellant's mother expired and Mr. Madan Samant entered into an agreement for sale of the Mumbai Flat on appellant's behalf. Appellant received a notice u/s 158BC of the Income Tax. Appellant filed return and revised return for the block period of 1987-88 to 1996-97. The appellant showed Nil income for AY 1994-95 and 1995-96 stating that he had invested the entire capital gain arising out of sale of his flat at Mumbai for acquisition/construction of the 7 row houses in a joint venture with Samant Estate Private Limited and that therefore he was entitled for exemption under Section 54 of the Act against the entire capital gain on sale of his flat.

However, DCIT, Pune passed the assessment order disallowing the deduction under Section 54 of the Act against capital gain arising out of Appellant's flat at Mumbai for assessment year 1995-96. Appellant filed an appeal before ITAT. ITAT partly allowed the appeal preferred by the Assessee directing the Assessing Officer to consider investment made in acquiring/construction of only one row house as qualifying for exemption under Section 54 of the Act while computing the long term capital gain arising out of sale of flat at Mumbai for a total consideration of Rs.1,45,00,000/-. Hence, the present appeal under section 260A of the Income Tax Act.

The High Court referred to the case of Tilokchand & Sons v. ITO 2019 (413) ITR 189 (Madras) where it was held that "even if the multiple houses are purchased bearing different addresses, the same did not make any difference, so long as the same Assessee has purchased the same out of sale consideration of the sold house. The provisions of Section 54(1) of the Act are beneficial in nature. The benevolent provision is aimed at encouraging the house purchase activities. It therefore needs to be read literally and reasonably. Therefore, even though two interpretations of the provisions of unamended Section 54(1) of the Act may be possible, the one in favour of the Assessee will have to be accepted. Thus, sale proceeds of one residential house, used for purchase of multiple residential houses, would qualify for exemption under Section 54(1) of the Income Tax Act.

20. Whether payment made to AWS for cloud computing services are taxable or not?

CIT- International Taxation – I v Amazon Web Services, INC – ITA No. 150 of 2025 [Delhi HC]

Decision: No.

The assessee is a company incorporated in USA and tax resident of that country. For the AY 2014-15 and AY 2016-17, the Assessee had received certain sums of money from Indian entities for rendering cloud computing services. The AO treated the same as chargeable to tax as royalty and fees for technical service [FTS] under the Act as well as "the Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and Prevention of Fiscal evasion with respect to taxes on income. Accordingly, AO issued a notice u/s 148 for re-assessment. Draft assessment order was passed by AO. Assessee filed objections before Dispute Resolution Panel (DRP) and the same was rejected. Thereafter, AO issued final assessment order, whereby the AO determined the Assessee's income chargeable to tax for AY 2014-15 and AY 2016-17.

Appeal was filed before ITAT which allowed the appeals and held that the amounts received by the Assessee were neither in the nature of royalties nor fees for included services [FIS], which were chargeable to tax under the Act read with the India-US DTAA. Hence, the appeal.

The High Court upheld the decision of ITAT and held that the amounts received by the Assessee were neither in the nature of royalties nor fees for included services (FIS), and thus, were not chargeable to tax under the Income Tax Act. The court observed that bare access to a software's features would not amount to a transfer of intellectual rights which is necessary for a payment to be characterized as royalty. The services provided by Amazon Web Services were basic and automated, and did not involve transferring to customers any technology, skills, or special knowledge as required under Article 12(4)(b) of the DTAA. The assistance given to customers like setup advice or troubleshooting was just basic support and does not count as sharing technical knowledge. The Court also rejected the argument that these payments were linked to royalty under Article 12(4)(a), because customers didn't get any rights to use AWS's technology or property.

The Court emphasized that AWS maintained full control over its infrastructure at all times, and customers only accessed the resources remotely via the internet, without acquiring any physical possession or control. This absence of "possession or control" meant there was no "use of, or right to use" equipment, as required under Explanation 2(iv) to Section 9(1)(vi) of the Income Tax Act. The court also referred to its earlier ruling in CIT (International Taxation) v. Salesforce.com Singapore Pte. Ltd, where it held that merely granting access to a platform for data input and analytics does not constitute "making available" technical knowledge under Article 12(4)(b).The court while dealing with of Article 12(4)(a), which refers to services being ancillary and subsidiary to the enjoyment of a right or property for which royalty is paid, the court held that this argument was unsustainable. It reasoned that such a claim would rely on the payment qualifying as royalty in the first the court had already rejected.

21. Whether the High Court can grant relief for an assessee to operate its bank account, frozen by the revenue, pending disposal of an appeal against a high-pitched assessment order?

UPAJ Leasing and Finance Company (P) Ltd. v. ACIT – WP (C) No. 5811 of 2025 [Delhi High Court]

Decision: Yes.

For the assessment year 2016-17, the Assessing Officer conducted a scrutiny assessment of the income tax return filed by petitioner and issued a high-pitched assessment order, significantly increasing the tax liability. Aggrieved, the assessee filed an appeal before the CIT(A), which remained pending for over six years without resolution. During this period, the Assessing Officer recovered a portion of the tax demand by adjusting refunds due to the assessee for subsequent assessment years and froze the assessee's bank account to secure the remaining demand, severely impacting its ability to conduct business operations. Hence, the petition.

The High Court partly allowed the petition and held that the inordinate delay of over six years in disposing of the appeal before the CIT(A) justified judicial intervention to prevent prejudice to the assessee. CIT(A) was directed to expedite the appeal process and dispose of it within six weeks from the date of the order. The assessee was granted interim relief, permitting it to operate its bank account for legitimate business purposes, subject to maintaining a specified minimum balance to safeguard the revenue's interest until the appeal's resolution. The court emphasized the need to balance the revenue's right to secure tax dues with the assessee's right to carry on its business, especially given the financial strain caused by the frozen account

22. Whether a clause stating that redressal of disputes "may be sought through arbitration" constitutes a binding arbitration agreement?

BGM AND M-RPL-JMCT (JV) v. Eastern Coalfields Limited Civil Appeal of 2025 Arising out of SLP (C) Diary No. 21451/2024 [Supreme Court]

Decision: No.

The appellant entered into a contract with the respondent for transportation and handling of goods. Upon disputes arising, the appellant sought appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, relying on Clause 13 of the General Terms and Conditions of the contract, which stated that "redressal of the dispute may be sought through Arbitration and Conciliation Act, 1996". The High Court dismissed the application, holding that the use of the word "may" indicates a non-binding, enabling provision and does not reflect a clear intention to arbitrate. This view was challenged before the Supreme Court. The Supreme Court upheld the High Court's decision and held that a clause that merely provides that disputes may be referred to arbitration does not amount to a binding arbitration agreement under Section 7 of the 1996 Act. For a valid arbitration agreement, parties must be ad idem (of the same mind) in agreeing to resolve disputes through arbitration. Clauses requiring further consent or indicating only a future possibility of arbitration are not sufficient. The phrase "may be sought through arbitration" in Clause 13 only indicates a permissive arrangement and does not create a present and binding obligation to arbitrate. The Court emphasized that only prima facie existence of an arbitration agreement is to be examined under Section 11(6A), and in this case, such an agreement did not exist. Accordingly, the appeal was dismissed.

23. Whether an arbitral award passed under Section 34 of the Arbitration Act is a nullity if the judge lacked jurisdiction under the Commercial Courts Act?

Garden Reach Shipbuilders & Engineers Ltd. v. Marine Craft Engineers Pvt. Ltd. - A.P.O. 84 of 2023 with A.P. 831 of 2018 [Calcutta High Court]

Decision: Yes.

The dispute arose from a contract for repair work at Garden Reach Shipbuilders' yard, awarded to the respondent, an MSME-registered enterprise. Upon non-payment, the respondent initiated proceedings before the MSME Facilitation Council under Section 18 of the MSMED Act, 2006. Meanwhile, the appellant invoked an arbitration clause and obtained an award in its favour on 23 September 2018. The respondent then challenged this award under Section 34 of the Arbitration and Conciliation Act, 1996. Single Judge allowed the Section 34 application and set aside the award. The appellant appealed this order under Section 37.

The Division Bench held that Ld. Single Judge lacked the roster (jurisdiction) to decide commercial arbitration matters under Section 34 when the matter was heard and disposed of. Citing precedents including State of Rajasthan v. Prakash Chand and Garden Reach Shipbuilders v. GRSE Workmen's Union, the Court emphasized that judicial orders passed outside the roster assignment are without jurisdiction and therefore void. Accordingly, the impugned order was set aside as a nullity, without going into the merits of the dispute. The matter was remanded to the appropriate Commercial Division Bench for fresh adjudication of the Section 34 application.

The Commercial Courts Act

24. Whether DRT can reject consolidated plea by tenants under SARFAESI Act or not?

Moideen Koya v Pegasus Assets Reconstruction Co. Private Limited – OP (DRT) No. 287 of 2024 [Kerala High Court]

Decision: No.

The petitioners were tenants of a borrower whose secured asset was subjected to enforcement action under the SARFAESI Act by the secured creditor, M/s Pegasus Assets Reconstruction Company Pvt. Ltd. After receiving a dispossession notice from the Advocate Commissioner dated 05.06.2024, the petitioners jointly filed a securitisation application before the Debts Recovery Tribunal (DRT), Ernakulam under Section 17 of the SARFAESI Act, challenging the enforcement measures. However, the Registrar of the DRT declined to register the application solely on the ground that it was a consolidated application filed by multiple tenants, and that each tenant was required to file a separate application. Aggrieved, the petitioners approached the Kerala High Court under Article 227 of the Constitution.

The High Court held that rejection of a joint application by multiple tenants having a common cause of action is legally unsustainable, particularly in the absence of any bar under the SARFAESI Act or the Rules thereunder. Relying on the inclusive language of Section 17(1) and the principle that procedural rules must facilitate access to justice, the Court observed that tenants affected by the same enforcement action are entitled to file a consolidated application. It also cited Mardia Chemicals Ltd. v. Union of India to emphasize that DRT proceedings are akin to original civil suits and must not be defeated by hyper-technical objections. Consequently, the impugned order was set aside and the DRT was directed to register and hear the petitioners' application on merits.

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