UBR LEGAL ADVOCATES

September 2025 | Issue 54

LEX LOQUITUR

A NEWSLETTER SUMMARIZING LATEST COURT RULINGS

CONTENT

Preface

Dear Reader,

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

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

We trust you will find it an interesting read.

We would, however, look forward to your feedback/comments. Do write to us at:
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Warm Regards
Team Lex Loquitur
UBR LEGAL, ADVOCATES

Matters Argued by us

1. Whether omission of Rule 96(10) of the CGST Rules, 2017 is saved by Section 6 of the General Clauses Act or not?

Alkem Laboratories Ltd. v. Union of India & Ors.- WP No. 3691 of 2021 [Bombay high Court]

Decision: No.

The petitioner is a manufacturer of medicines. It exports such goods. It availed benefit of duty free imports under advance authorisation scheme. It exported on payment of duty and claimed refund. The revenue sought to deny refunds relying upon Rule 96(10) of the CGST Rules. The said rule came to be challenged in writ petition. Several such petitions came to be filed.

The Bombay High Court quashed the notices and orders based on omitted Rule 96(10). It held: (i) the rule has been omitted without a saving clause; (ii) section 6 of the General Clauses Act would not save the rule; (iii) rejects reliance placed on section 161 and section 174 of the Act by the Revenue and holds that the said provisions do not save the rules; (iv) does not go into the question of constitutional validity of the said rule in as much as the same has already been struck down by the Kerala High Court. Accordingly; allows all petitions.

2. Whether a consolidated show cause notice covering multiple financial years under Section 74 is valid?

Atlas Chiropractic And Wellness Pvt Limited v. Union of India and others - W.P.No.31411 of 2025 & W.M.P.Nos.35147 & 35149 of 2025 [Madras High Court]

Decision: No.

The petitioner is a chiropractor. It was running a medical wellness centre. GST was sought to demanded on the ground that the activities were not exempt from payment of GST in terms of Notification No.12/2017-Central Tax as the exemption was only to recognised medicine practice. A show cause notice was issued under section 74 of the Act. The notice was challges in writ petition.

The Madras High Court set aside the show cause notice and allowed the writ petition. It noted that: (i) the show cause notice issued under section 74 is for a consolidated period for more than one financial year is bad in law; (ii) follows its earlier decision in R A & co and allows the petition.

Matters Argued by us

3. Whether orders demanding Local Body tax are valid when they ignored the petitioner's plea of duplication of tax already paid by the importer-dealer?

Dosti Realty Ltd. v. The Deputy Commissioner, Local Body Tax Thane Municipal Corporation- WP No. 10984 of 2025 [Bombay High Court]

Decision: No.

The petitioner is a developer. It purchases raw material for construction of flats. An assessment order came to be passed confirming demand of Local Body Tax (LBT), along with interest and penalties, for import into the municipal limits of Thane Municipal Corporation. It was contended that there was duplication of demand as tax was paid by the importer-dealer at the time of purchase. Assessment orders were challenged in appeal. However, to no avail. Hence; writ petitions came to be filed.

The Bombay High Court set aside the orders and allowed the writ petitions. It held that the impugned orders were non-speaking as they did not address any of the contentions/arguments of the petitioners. The Counsels for the Municipal Corporation agreed with the said submission. Accordingly, orders were set aside and the matter remanded for a fresh decision, after hearing the petitioners.

4. Whether rebate under Rule 18 can be denied for not producing original ARE-1 when photocopies were submitted?

Global Health Care Products v. Union of India & Ors.-WP No. 5960 of 2025- [Bombay High Court]

Decision: No.

The petitioner is an exporter of goods. It claimed rebate of duty on such exports under Rule 18 of the Central Excise Rules, 1944. The claim was rejected on the ground that out of 85 ARE-1, many original documents have not been produced. An appeal also came to be rejected on the ground of delay in submission of documents. A revision application filed before the Revisionary Authority also came to be rejected. Hence; petition.

The Bombay High Court set aside the order and allowed the petition. It held: (i) the revisionary authority must have looked into the photocopies of the documents submitted; (ii) the revisionary authority must have examined the plea whether there is any requirement; in law; to produce the originals; (iii) the revisionary authority must consider the decisions of the High Court in the case of UM Cables; Zandu Chemicals and Kaizen; (iv) accordingly; remands the matter back.

5. Whether ex parte order of CESTAT confirming denial of CENVAT credit on services used for construction of a club house is sustainable in law?

Dosti Corporation Vihar v. Commissioner Service Tax-1, Mumbai – Central Excise Appeal No. 2 of 2025- [Bombay High Court]

Decision: No.

The appellant is a developer. It constructs flats for sale. It pays service tax on such construction prior to receipt of occupation certificate (OC). It also constructed a club house. It availed cenvat credit of services used for construction of club house. Revenue sought to deny such credit on the ground that the club house is not intended for sale and hence; no output liability on such construction. Demands were confirmed along with interest and penalties. Hence, appeal. CESTAT passed an ex parte order confirming demand within normal period of limitation along with penalties. Hence, appeal before High Court.

The Bombay High Court set aside the order and allowed the appeal. It held: (i) in the entire order there was no discussion on merits of the issue about cenvat credit; (ii) though detailed grounds have been urged and appellant had filed written submissions; a non-speaking order has been passed; (iii) the counsel for the appellant was before another bench of the Tribunal and hence; could not appear; (iv) accordingly; remands the matter back to CESTAT to decide the appeal on merits after hearing the appellant.

Matters Argued by us

6. Whether demurrage charges collected by a shipping service provider constitute a "declared service" under Section 66E(e) of the Finance Act, 1994?

Commissioner of Central Excise & Service Tax LTU v. Shipping Corporation of India Ltd- ST Appeal No. 85421 of 2017 with cross-objection No. 91029 of 2017- [CESTAT Mumbai]

Decision: No.

The appellant is a public sector undertaking engaged in providing shipping services. It entered into an agreement with HPCL for transportation of goods. It collected "demurrage" charges for delayed clearance of the goods. The service tax authorities sought to demand service tax on such demurrage charges that it amounts to a declared service under section 66E(e) of the Finance Act, 1994. A demand of over Rs. 50 crores along with interest and penalty was proposed. However, the Commissioner; in adjudication; dropped the proceedings. Hence, appeal by Revenue.

CESTAT, Mumbai dismissed the department appeal. It held: (i) observes that in charter party agreements; lay time and Demurrage are know concepts. "demurrage" is disincentive to delay retention of vessel in port which has cost implication to vessel operator. It is, thus, a contractual arrangement that has everything to do with transport; (ii) Demurrage was not in the nature of declared service under section 66E(e) of the Finance Act (refrain from an obligation to do an act); (ii) declared service is a "legal fiction" and cannot be stretched beyond a limit; relies on Supreme Court decision in Bai Vina; (iii) it was in the nature of a deterrent; (iv) relies upon CBIC circular dated 28.02.2023 and decision of Cestat in South Eastern Coalfields; (v) Demurrage charges are additional charges for transportation of goods; which is admittedly not subject to service tax in view of section 66D of the Act; (v) relies on concept of "bundled service" under section 66F of the Act.

7. Whether deduction under Section 80G is allowable in respect of CSR expenditure and whether modification under Section 263 was justified?

ABM Knowledgeware Limited v. Assessing Officer Circle 4(1)(1), Mumbai-I.T.A. No. 3460/Mum/2025-[ITAT, Mumbai]

Decision: Yes.

The appellant is provider of software services. It filed its return of income for AY 2020-2021. Case was selected for scrutiny under section 143(2) of the Income Tax Act for verifying the deductions claimed. The AO passed order without making any addition. However, proceedings under section 263 were initiated by the Principal Commissioner on the ground that the appellant is not entitled for deduction of CSR expenses under section 80G as the same are mandatory expenses under the Companies Act. However, order under section 263 came to be passed modifying the assessment order. Hence, appeal.

ITAT, Mumbai set aside the order and allowed the appeal. It held: (i) initiation of proceedings under section 263 of the Act were correct as the specific issue of deduction under section 80G was not raised and hence; not addressed by the AO; (ii)however; holds that section 263 is not only a revenue saving provision; when the commissioner had sufficient documents to drop the proceedings; (iii) allows deduction of CSR expenses under section 80G of the Act; follws decision in First American and Sikka Port; (iv) payments forming part of CSR do not form part of the profit and loss account for the purpose of computing income under the head "Profits and Gains of Business or Profession. However, if certain payments that form part of CSR expenditure are otherwise eligible under section 80G, the deduction under section 80G cannot be denied, since the benefit under Chapter VI-A is available for the purpose of computing "Total Taxable Income.; (v) there was nothing on record to suggest that the donation was quid pro quo and hence; allows deduction.

8. Whether the limitation period for filing an appeal under section 85 of Finance Act, 1994 should be reckoned from the original demand order or from the date of rectification order under Section 74?

Raipur Treasure Island Pvt. Ltd. v. Commissioner (Appeals), CGST and Central Excise- ST Appeal No. 50937 of 2020- [CESTAT, New Delhi]

Decision: No**.**

The appellant is undertaking construction of a mall. Input credit was sought to be disallowed. A demand came to be confirmed under section 73 of the Finance Act. The appellant filed an application seeking rectification of mistake under section 74 of the Act. The said rectification was rejected. The appellant filed appeal before appellate authority. The appellate authority held that the appeal is time barred under section 85 of the Finance Act and it has no power to condone delay beyond one month. Hence, appeal before Tribunal.

CESTAT, Delhi set aside the order and allowed the appeal. It held that the period of limitation would start from the date of passing of the rectification order. Hence; from the date of the rectification order; the appeal was in time. Accordingly, remands the matter back to the Appellate authority to decide the appeal on merits.

9. **Whether the appeal filed by an importer against levy of anti-dumping duty could be rejected as time-barred when no speaking order under Section 17(5) of the Customs Act was issued and the duty was paid under protest?**

Spacewood Furnishers Pvt. Ltd. v. Commissioner of Central Excise, Nagpur- Custom Appeal No. 87817 of 2022 [CESTAT, Mumbai]

Decision: No.

The appellant is an importer. It imported goods on which anti dumping duty was sought to be levied. It paid duty "under protest" and sought speaking order in terms of section 17(5) of the Customs Act. No such order was issued. It filed appeal challenging the Bill of entry with application seeking condonation of delay (of 36 days). The appellate authority rejected the appeal holding that it did not have power to condone the delay beyond 30 days. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the period of limitation would start from the date of receipt of speaking order under section 17(5) and not from the date of assessment on the bill of entry; (ii) follows decision of Kerala High Court in HDFC Bank case; (iii) holds once the appeal was admitted; the appeal could not be rejected on ground of limitation as it was an objection at threshold; (iv) condones the delay in exercise of its appellate powers and directs the appellate authority to pass order under section 128(4) of the Act.

Matters Argued by us

10. Whether addition of Rs. 21 crores on account of notional FSI could be sustained when the assessee-developer had constructed government buildings but had not received any FSI from the State Government?

Income Tax Officer v. K S Chamankar Enterprises- ITA No. 4586/MUM/2024-[ITAT, Mumbai]

Decision: No.

The assessee is a real estate developer. It entered into an agreement with the State Government of Maharashtra for construction of RTO building and Maharashtra State Sadan at Mumbai. Total cost of the project was Rs. 100 cr. And assessee was eligible to FSI in lieu of construction. On basis of a letter from Executive Engineer, PWD Department, the AO held that assessee had incurred an expenditure of Rs.60 cr. and was eligible for FSI worth Rs 81.05 cr. which was not released to the assessee. As per the AO, the difference amount of Rs 21 cr. had already accrued to the assessee; thus; eligible FSI was 121450 sq.mt area as per stamp duty value works out to Rs. 81.05 cr. Hence, assessment was reopened and addition was made. On appeal; the CIT(A) reversed such order; relying on subsequent letter from the Executive Engineer that; in fact; no FSI was released to the asssesee. Hence, appeal by the Income Tax Department.

ITAT, Mumbai dismissed the appeal filed by the Revenue. It held: (i) that no FSI was released to the Assessee and hence; no income had accrued; (ii) relies on Bombay High Court judgment in FGP Limited case; (iii) the demand was being created based on conjectures and surmises as there was no denial/contrary evidence produced on record by that thr Assessee has actually spent Rs.121 crores and therefore; there was a loss; (iv) the CIT(A) had rightly held that addition could not be sustained.

11. Whether services received and consumed outside India can be subjected to service tax under reverse charge in India?

Shipping Corporation India Ltd. v. Commissioner of Central Goods, Service tax & Central Excise, Mumbai South- ST Appeal No. 85564 of 2017- [CESTAT Mumbai]

Decision: No.

The appellant is a public sector undertaking engaged in providing shipping services. It received certain services from overseas entities. A demand of service tax; on reverse charge basis; was confirmed under section 66A of the Finance Act read with the Place of Provision of Service Rules, 2012. A demand of over Rs.192 crores along with interest and equivalent penalty was confirmed. Hence, appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the commissioner has not examined whether port services; steamer agent; cargo handling services etc. received outside in India can be subject to service tax; (ii) the appellant has produced documents to show that the services are received outside India and cannot be subjected to service tax in India; (iii) accordingly; remands the matter back to the commissioner to denovo consider the submissions of the appellant and pass reasoned order.

12. Whether service tax demand on (i) overseas technical/testing charges, and (ii) supply of tangible goods for use, was legally sustainable against an iron ore importer?

Timblo Private Ltd v. Commissioner of Service Tax- ST Appeal No. 86294 of 2016 [CESTAT, Mumbai]

Decision: No.

The appellant is engaged in import and sale of iron ore. A demand of service tax came to be confirmed on: (i) technical and testing charges received from service provider located outside India; (ii) letting of barge on hire basis; (iii) supply of tangible goods for use service. The Commisioner confirmed demand of over Rs.1.8 crores along with interest and penalties. Hence; appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) the decisions relied upon by the DR refer to amendment of the import rules; however; the commissioner had not examined whether the activity was covered by section 65(105)(zzi) of Finance Act, 1994; (ii) section 66 of Finance Act provides for chargeability to tax; but recourse to "deemed provider' is validated only by the contextual placement in the scheme of section 66A of Finance Act, 1994; (iii) the taxable service rests on an activity that excludes 'deemed sale" and is; constitutionally, is beyond the pale of taxation by the Union; (iv) Taxing jurisdiction is not a buffet offering; the letter of the law must prevail. Hence; whether it is supply of tangible goods service or deemed sale has to be determined on principles of Supreme Court in BSNL; (v) holds hire charges for use of barges is liable to service tax; (vi) remands the matter back to the adjudicating authority to decide in light of the above principles.

13. Whether a supplementary refund claim of accumulated CENVAT credit for Swachh Bharat Cess under Rule 5 can be denied merely because one refund claim for the same period was already filed?

Icertis Solutions Pvt. Ltd. v. Commissioner of (Appeals-II), Central Tax- ST Appeal No. 86282 of 2021-[CESTAT, Mumbai]

Decision: No.

The appellant is a service provider. It exported services. On account of exports, there was accumulation of input tax credit. It claimed refund of such credit under Rule 5 of the Cenvat Credit Rules. The refund was sanctioned. Realising that the appellant forgot to claim refund of Swatch Bharat Cess (SBC); it filed a supplementary claim. Such claim was rejected on the ground that two refund claims cannot be filed for the same period. Hence; appeal.

CESTAT, Mumbai set aside the order and allowed the appeal. It held: (i) it was a supplementary claim for SBC; (ii) there is no bar under Rule 5 which does not allow the applicant from filing two claims for the same period; (iii) the only requirement under Rule 5 is that services should have been exported and the claimant should have complied with the conditions of the notification issued there under; which in the instant case has been satisfied; (iv) accordingly; directs refund.

14. Whether the department can issue a consolidated show cause notice for multiple assessment/financial years or not?

S.J. Constructions v Assistant Commissioner & Ors – W P No. 11028 of 2025 [Andhra Pradesh High Court]

Decision: No.

Petitioner is engaged in the business of civil construction and execution of government works contract. The petitioner received a show cause notice wherein various discrepancies were raised for the period 2017-18 to 2020-21. Assessment orders were passed confirming the differential tax along with interest and penalty for the period 2017-18 to 2020-21. Hence, the petition.

The Andhra Pradesh High Court relied upon various decisions of the Madras, Karnataka and Kerala High Court and held that issuance of a single show cause notice and composite assessment order covering multiple tax periods is contrary to the scheme of the GST law and therefore unsustainable in law.

15. Whether movement of goods from DTA to SEZ can be treated as an export under the Customs Act or not?

Union of India v Adani Power Limited – Civil Appeal no. 4489 of 2023 [Supreme Court]

Decision: No.

Petitioner was operating from SEZ. Petitioner procured goods from vendors in the DTA for use in its SEZ power project. The Customs Department sought to levy export duty on these supplies, treating the movement of goods from DTA to SEZ as an "export" under the Special Economic Zones Act, 2005 (SEZ Act). Aggrieved the petitioner challenged the levy of custom duty on movement of goods from DTA to SEZ before the Gujarat High Court.

The High Court after examining the interplay between the Customs Act and SEZ Act, held that the movement of goods from DTA to SEZ is not an export outside India, and therefore no export duty can be levied. It reasoned that while the SEZ Act deems such transactions as "exports" for granting benefits or exemptions, it does not convert them into exports for the purpose of imposing customs duties. The imposing an export duty on such domestic transfers would contradict the very purpose of SEZs, which are designed to be duty-free enclaves to promote exports from India. Hence, appeal by revenue.

The Supreme Court upheld the decision of the High Court and held that the movement of goods from a Domestic Tariff Area (DTA) to a Special Economic Zone (SEZ) is a domestic supply and not an export outside India.

16. Whether GST under a Joint Development Agreement (JDA) can arise upon execution of the JDA, or only upon transfer / conveyance / grant of rights or possession in the completed property?

Provident Housing Limited v. Union of India – WP No. 5 of 2022 [Bombay High Court, Goa Bench]

Decision: No.

Petitioner is engaged in the business of real estate development. Petitioner entered into a JDA with Trinitas Realtors India LLP (landowner). DGGI took up an investigation as regards the transaction involving the landowner and the petitioner as the developer and insisted for payment of GST on the premise that it is due and payable on the construction service provided by the assessee to the landowner. The petitioner ultimately paid GST on the said transaction. Hence, the petition.

The High Court held that no liability actually fell upon the petitioner at the time when JDA was entered into, as the liability arises only upon the conveyance of the property. The assessee developer becoming the owner of the property for which the JDA was executed. Accordingly, the tax liability does not fall upon the petitioner. Further, tax liability under JDA (joint development agreement) arises only upon conveyance of property, not on execution of agreement.

17. Whether the department can attach or retain funds despite pre-deposit u/s 107 of the CGST Act paid by the assessee?

Wingtech Mobile Communications (India) Pvt. Ltd. vs. Deputy Commissioner & Ors - WP No: 22461/2025[Andhra Pradesh High Court]

Decision: No.

Petitioner is engaged in the mobile handset business. Investigation was initiated by the department. It was alleged that short payment of tax and other non-compliances. Show Cause Notice was issued proposing a tax demand of about ₹244 crores, which culminated in an assessment order dated 02.08.2025 passed under Sections 73/74 of the CGST Act. However, even before the completion of the assessment department issued recovery notice. under Section 79(1)(c) and provisionally attached the petitioner's bank accounts, recovering around ₹170 crores from its HSBC account. Aggrieved, the petitioner filed an appeal under Section 107, depositing 10% of the disputed tax (approximately ₹24.4 crores) as the statutory pre-deposit. Despite this, the Chief Commissioner, while revoking the provisional attachment, imposed a condition to retain ₹130 crores from the recovered amount.

The Andhra Pradesh High Court held that once a taxpayer files an appeal under Section 107 of the CGST Act and deposits 10% of the disputed tax as a statutory pre-deposit, a deemed stay on recovery proceedings comes into effect by operation of law. The Court clarified that after such payment, the department has no authority to continue recovery proceedings, retain amounts already recovered beyond the pre-deposit, or keep bank accounts attached. It observed that neither Section 107 nor Section 79 provides any legal basis for attachment or retention of funds once the pre-deposit condition is fulfilled. However, as a safeguard, the Court directed the petitioner to furnish an undertaking to retain the refunded amount and any future sale proceeds in its bank account until the final disposal of the appeal.

18. Whether exporters can be penalized under Section 50 of the Foreign Exchange Regulation Act, 1973 (FERA) for non-realisation of a small portion of export proceeds despite taking reasonable recovery steps?

P. Balasubramaniam v. The Appellant Tribunal for Foreign Exchange – W.A. Nos. 12 and 57 of 2023 [Madras High Court]

Decision: No.

Appellant is an exporter. Between 1991 and 1995, the appellant company exported goods worth over ₹20 crores to various foreign buyers, but about ₹1.09 crores (5.45%) of the export proceeds remained unrealised as several buyers became untraceable and defaulted on payments. The appellants made continuous efforts to recover the dues. Consequently, they refunded the duty drawback/export incentives claimed on the unrealised portion and sought permission from the RBI to write off the outstanding amount. In 2002, the Enforcement Directorate issued a show cause notice alleging violation of Section 18(2) of the FERA for failure to realise export proceeds and imposed penalties of ₹8,00,000 on the company and ₹2,00,000 on its managing director under Section 50. The Appellate Tribunal for Foreign Exchange upheld the penalty, prompting the appellants to approach the Madras High Court challenging the orders.

The High Court held that Section 18(1)(a) of the Foreign Exchange Regulation Act is to be read along with Section 18(2) and Section 18(3) of the Foreign Exchange Regulation Act, penalty under Section 50 of the Foreign Exchange Regulation Act is not applicable to the facts and circumstances of the case as admittedly the Appellants/Exporters had failed to realize approximately 5.45% of the export proceeds. Even if there was a contravention, the Appellant are entitled to write-off of the unrealised export bills. The Appellants have also reversed the proportionate Duty Drawback that was paid to the Appellants by the Customs Authority. Thus, the Appellants have not misused the export incentives. Hence, penalty under Section 50 is not applicable for export shortfall below 10%.

19. Whether issuance of pre-show cause notice consultation is mandatory before the issuance of show cause notice or not?

Pyramid Developers v Union of India & ors – WP No. 1466 of 2021 [Bombay high Court]

Decision: Yes.

The petitioners, challenged show cause notices issued under Section 73 of the Finance Act, 1994 demanding service tax. The challenge was based on the ground that the notices were issued without a mandatory pre-show cause consultation as required under CBEC Master Circular No. 1053/02/2017 dated 10 March 2017 and Circular No. 1076/02/2020 dated 19 November 2020, which mandate such consultation for demands exceeding ₹50 lakhs.

The High Court held that the issuance of a pre-show cause consultation notice under CBEC Master Circular No. 1053/02/2017 dated 10 March 2017 and Circular No. 1076/02/2020 dated 19 November 2020 is not an empty formality but mandatory in all service tax matters where the demand exceeds ₹50 lakhs, except in preventive or offence-related cases. The Court ruled that failure to conduct such consultation vitiates the show cause notice issued under Section 73 of the Finance Act, 1994. Follows its earlier decisions and disagrees with the view taken by the Ld. Single Judge of the Madras High Court. Following While quashing the impugned notices, the Court permitted the Department to reinitiate proceedings after proper consultation and directed that the intervening period be excluded for limitation purpose.

20. Whether payments made to consultant/honorary doctors are in nature of salary attracting deduction u/s 192 or professional fees attracting deduction under section 194J?

CIT (TDS -1), Mumbai v Dr. Balabhai Nanavati Hospital – ITA No. 2166 of 2018 [Bombay High Court]

Decision: 194J.

The appellant is a trust runs a hospital. Appellant had appointed consultant doctors on its panel and deducted TDS u/s 194J. A survey under Section 133A of the Income Tax Act, which revealed alleged discrepancies in tax deduction at source (TDS). AO held that the appellant wrongly deducted TDS under Section 194J for payments made to consultant and honorary doctors, asserting that they were in fact "employees" and the payments constituted "salary" taxable under Section 192. The AO also held that TDS on AMC payments for maintenance of specialized medical equipment should have been deducted under Section 194J instead of Section 194C, as such services involved technical expertise.

CIT(A) and ITAT ruled in favor of the hospital, holding that the doctors were independent professionals and that AMC payments were contractual in nature. Hence, appeal by Revenue.

The High Court held that there does not exist an employer-employee relationship between the appellant and consultant doctors. The Court noted that these doctors were independent professionals, free to practice elsewhere, not entitled to PF or service benefits, and assessed their income under the head "Profits and Gains from Business or Profession." Therefore, TDS under Section 194J was appropriate, not Section 192.

On the issue of AMCs, the Court set aside the ITAT's finding and remanded the matter for fresh consideration. It held that the ITAT failed to independently analyze each AMC to determine whether the services rendered were technical/professional or routine maintenance, which would decide whether TDS was deductible under Section 194J or Section 194C. Accordingly, the appeal was partly allowed, and the case remanded on the limited issue of AMC classification.

21. Whether cash deposited in bank during demonetisation amounts to unexplained money or not?

Nanakchand Agrawal L/h of Kalawati Agrawal v. ITO – TAXC No. 8 of 2024 [Chhattisgarh High Court]

Decision: No.

The original assessee, Smt. Kalawati Agrawal, filed her return for AY 2017-18, declaring income and stating a deposit of ₹23,00,000 in Specified Bank Notes (SBNs) following the demonetization in 2016. She claimed that this deposit came from cash-in-hand balances reflected in the closing balance of the balance sheet for earlier years (i.e., the balance as on 31-03-2016). She had earlier withdrawn amounts in prior years, advanced them as loans, and subsequently recovered them. AO passed assessment order u/s 143(3) treating the deposit as unexplained money. Appeal filed before CIT(A) and ITAT. ITAT partly allowed the appeal and reduced the reduced the addition to ₹20,50,000, accepting part of the explanation but sustaining the rest as unexplained. Hence, the appeal.

The Chhattisgarh High Court held that the provisions of Section 69A of the IT Act contemplate that the 'money' (cash deposit in the present case) could be deemed to be in the nature of income only in the financial year in respect of which the assessee is found to be the owner and in the instant case, by offering plausible explanation tracing the source of money to closing balance of preceding year, the assessee was found to be the owner of the 'asset'/cash in the assessment year 2016-17. Hence, the explanation of nature and source of such money and invocation of deeming fiction engrafted under Section 69A could have been sought/examined by the Assessing Officer in the assessment year 2016-17 and could not have been done in the assessment year 2017-18 going by the express language contained in Section 69A and not otherwise. ITAT is absolutely unjustified in dismissing the appeal partly upholding the addition of ₹ 20,50,000/- treating it as unexplained money invoking the deeming fiction engrafted under Section 69A of the IT Act charging the same to higher rate of tax as prescribed under Section 115BBE of the IT Act. Hence, cash deposits during demonetisation are not unexplained money if traceable to previous year's balance.

22. Whether notice u/s 148 of Income Tax Act must be delivered to addressee personally by post to complete service u/s 27 or not?

Mahesh Gautam v CIT – ITA No. 436 of 2012 [Allahabad High Court]

Decision: Yes.

The appellant was issued notices under Section 148 of the Income Tax Act, 1961, seeking to reopen the assessments for the Assessment Years 2001-02, 2002-03, and 2003-04. The said notices were dispatched through speed post to the appellant's address. As the appellant failed to file returns pursuant to the said notices, a further notice under Section 142(1) was issued, fixing a date and time for personal hearing. The appellant, however, did not appear in response to the said notice. Subsequently, when an Income Tax Inspector was deputed to serve the notices personally, he reported that the assessee was not traceable at the given address. In the absence of compliance, the Assessing Officer proceeded ex parte and completed the reassessment proceedings. The resultant assessment orders were thereafter dispatched to the appellant's Rajasthan address, where they were duly received. In appeal, the Commissioner of Income Tax (Appeals)-II, Agra set aside the reassessment orders, holding that the notices under Section 148 had not been duly served on the appellant, thereby vitiating the assessment proceedings. Aggrieved by the said order, the Revenue preferred an appeal before the Income Tax Appellate Tribunal (ITAT), Agra Bench, which reversed the decision of the CIT(A), holding that, since the envelopes containing the notices had not been returned undelivered, service of notice must be presumed to have been effected. Hence, appeal.

The High Court held that n case of the assesee, the notice was sent through speed post instead of registered post as required by the Act. Therefore, the presumption under Section 27 of General Clauses Act regarding service without return of post could not be made. It held that the ITAT had also failed to see the record before returning a finding that notice was served. Further, it was noted that the Income Tax Inspector had not affixed the notice at the address of the assesee. Accordingly, the Court held that the service was not sufficient and set aside the order of the Income Tax Appellate Tribunal.

23. Whether ex-parte reassessment proceedings initiated under Sections 147, 144, and 144B of the Income Tax Act, 1961, without proper communication to the assessee, can be quashed?

Manjunatha Electricals and Engineers, Rep. by Gangadhara v. Principal Commissioner of Income Tax & Others - 28007 of 2025 (T-IT) [Karnataka High Court]

Decision: Yes.

The petitioner, engaged in government electrical contracts, had ceased operations in April 2018 and claimed unawareness of reassessment for AY 2017-18. Ex-parte reassessment and penalty orders were passed u/ss 147, 144, 144B, 271B, and 270A, with demand notices sent only by e-mail. The petitioner attributed non-participation to lack of communication by its Chartered Accountant. On appeal, the ITAT summarily dismissed the case. Aggrieved, the petitioner approached the High Court.

The High Court, relying on Vijay Shrinivasrao Kulkarni v. ITAT and Supreme Court precedents on audi alteram partem, held that proceedings affecting rights must follow due process and opportunity of hearing. Since proper communication was lacking and ITAT failed to consider the petitioner's submissions, the Court quashed the impugned orders and remitted the matter to ITAT for a de novo hearing, directing the petitioner to cooperate and the authorities to provide adequate opportunity.

24. Whether proceedings for conciliation and arbitration under Section 18 of the MSMED Act, 2006 can be conducted simultaneously or in a clubbed manner or not?

Dodal Electro Instruments v The Mirco and Small Enterprises Facilitation Council & Anr – WP No. 9081 of 2025 [Bombay High Court]

Decision: No.

Petitioner entered into two work orders with respondent for the supply of adhesive tapes. Dispute arose between the parties. Respondent invoked the dispute resolution mechanism under the MSMED Act, 2006 and filed references before the MSEFC. The MSEFC passed ex parte orders directing petitioner to pay the amounts with interest under Section 16 of the MSMED Act, without formally terminating the conciliation stage or declaring conciliation to have failed, and without following the procedural safeguards laid down under Section 18 of the MSMED Act and the Arbitration & Conciliation Act, 1996. Thus, the petition.

The High Court held that held that the two-stage procedure under Section 18 of the MSMED Act is mandatory, and that the Facilitation Council cannot impermissibly club conciliation and arbitration. The court observed that if a party fails to respond or appear at the conciliation stage, the Council may record the failure of conciliation and only thereafter refer the matter to arbitration under the Arbitration Act; but it cannot leapfrog directly into arbitration without such formal step. It also noted that the impugned orders did not comply with the procedural requirements of the Arbitration Act (e.g. following sections 24, 25 etc.) and thus could not be sustained as an arbitration award.

25. Whether plea against misuse of digital signature amounts to denying existence of arbitration agreement?

Sunita Gupta v Ms URGO Capital Limited & Ors. – G.A. (COM) No. 1 of 2025 [Calcutta High Court]

Decision: No.

The plaintiffs, family members of late Bhagat Ram Gupta, alleged that their digital signatures were fraudulently misused without their knowledge or consent by defendant no. 3, who had earlier obtained their OTPs for routine filings, to execute a loan agreement dated 25 July 2023 with UGRO Capital Ltd. for a ₹2 crore facility. The agreement falsely recorded them as co-applicants even though they had no involvement in the transaction, were not beneficiaries of the loan, and had no business relationship with the borrower. Following this, their names were also wrongly reported as defaulters to CIBIL, causing reputational and financial harm. Contending that the loan agreement was fabricated and void, the plaintiffs filed a civil suit seeking a declaration to that effect, cancellation of the document, and an injunction restraining the defendants from circulating false default information. The defendants, however, relied on Clause 15.2 of the agreement containing an arbitration clause, and sought reference of the dispute to arbitration.

The High Court held that dispute between the parties was squarely covered by the arbitration clause (Clause 15.2) in the loan agreement and therefore must be resolved through arbitration. The Court observed that the plaintiffs' primary grievance was the alleged misuse of their digital signatures in the execution of the agreement, which did not amount to a challenge to the existence of the contract itself but rather concerned its validity a matter that can be adjudicated by an arbitral tribunal. Relying on the Supreme Court's decision in Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., the Court reiterated that mere allegations of fraud do not render disputes non-arbitrable unless they involve serious criminal wrongdoing or issues beyond the scope of the contract.

26. Whether bona fide homebuyers whose claims were verified and admitted by the Resolution Professional are entitled to possession of their apartment under the approved Resolution Plan, notwithstanding their claim being submitted after the public announcement?

Amit Nehra and Another v. Pawan Kumar Garg and Others, Civil Appeal No. 4296 of 2025-[Supreme Court]

Decision: Yes**.**

The Appellants booked an apartment in the IREO Rise (Gardenia) project in 2010 and paid nearly the full consideration. Owing to delay in possession, they filed a consumer complaint, but withdrew it after initiation of CIRP against the developer under the IBC, 2016. They submitted their claims in Jan 2019 (disputed) and again in Feb 2020 by email, which were verified and admitted by the Resolution Professional and reflected in the list of creditors. However, NCLT and NCLAT dismissed their applications, treating them as belated claimants under Clause 18.4(xi) of the Resolution Plan, granting only 50% refund. The Appellants contended that once their claims were verified and admitted, they fell under Clause 18.4(ii) read with 18.4(vi)(a), entitling them to possession.

The Supreme Court allowed the appeal, holding that verified and admitted claims form part of the CIRP with full legal recognition and cannot be treated as belated. Clause 18.4(xi) applies only to unverified claims, not to bona fide allottees whose claims were already admitted. Treating the Appellants otherwise misapplied the Resolution Plan and unfairly prejudiced homebuyers. The Court directed that the Appellants are entitled to possession of the apartment as per the Resolution Plan.

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