

GST

KEY OBSERVATIONS BY APEX COURT!

[FROM 1984 TO 2024]

[8th May 2024]

CA Pritam Mahure and Associates!

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LEVY!

If not taxable itself, then no requirement of exemption!

Gypsy Pegasus Ltd
[2018 (15) GSTL
305 (SC)

Para 9

* Entertainment Tax

- *Section 3 of the Act is the charging section whereas Section 3A of the Act makes certain forms of entertainments non-taxable. **If** a form of entertainment is **not taxable** under Section 3A of the Act **we do not see** how the **requirement of exemption** and necessity to conform to the requirement of exemption can apply to a non-taxable form of entertainment.*

'User Development Fees' – Itself a tax!

Delhi
International
Airport [SC - CA
No. 8996/2019]*

Para 35

- ... the **UDF is in the form of 'tax or cess'** collected for financing the cost of future projects and **there was no consideration for services provided** by the assessee to the customer, visitors, passengers, vendors etc.

* Service Tax

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Levy and uniform rate of tax are two different concept!

Durga Projects Inc
[2018 (10) GSTL
513 (SC)

Para 16

* Karnataka VAT

- *In Gannon Dunkerly & Co., this court expressed the view that it is open to the states **to provide a uniform rate of tax** on goods transferred in the course of the execution of a works contract. The exigibility to tax is not (as it cannot be) dependent on the state prescribing a uniform rate of tax for goods involved in works contracts.*

Taxable event and Taxable person – Are distinct concepts!

**Bengal Shrachi
Housing Dev. Ltd**

**[2017 (6) GSTL 356
(SC)**

Para 18

* Service Tax

- ...the **taxable event** and the **taxable person are distinct concepts**.
- *In the present case, therefore, the “taxable event” is the provision of the service of renting out immovable property, and the “taxable person”, that is the person liable to pay tax, is the service provider, namely the lessor.*

Measure – Not controlled by nature if there is reasonable nexus!

Grasim Industries
Ltd

[2018 (360) GSTL
769 (SC)

Para 22

* Excise

- ...**measure of the levy** contemplated in Section 4 of the Act will **not be controlled by the nature of the levy**. So long a **reasonable nexus** is discernible between the measure and the nature of the levy ...

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Dutiable – Duty-free item cannot be included!

**Grasim Industries
Ltd**

**[2018 (360) GSTL
769 (SC)]**

Para 22

* Excise

- **Softwares** which were **duty free** items and could be transacted as softwares came to be combined with the computer hardware which was a dutiable item for purposes of clearance. The Revenue sought to take into account the value of the computer software for the purposes of determination of 'transaction value' with regard to the computer. This Court negated the stand of the Revenue taking the view that when software as a separate item was not dutiable its **inclusion in the hard-disk of the computer cannot alter the duty liability ...**

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Unjust enrichment provisions - Cannot help decide who is liable to pay tax!

**Bengal Shrachi
Housing Dev. Ltd**

**[2017 (6) GSTL 356
(SC)**

Para 27

* Service Tax

- *This Section only casts the burden of proof upon the service provider to prove negatively that he has not passed on the incidence of the tax to the recipient of the service. **This Section**, which is **part of** the machinery for **refund**, **can in no way help ...to determine** as to **who is the person primarily liable to pay** service tax which has to be determined on a reading of the Act and the Rules*

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Exemption to duty – Does not mean exemption to cess!

Unicorn Industries
[2019 (370) ELT 3
(SC)

Para 41

* Cess

- ...statutory **notification must cover specifically the duty exempted**. When a particular kind of duty is exempted, **other types of duty or cess** imposed by different legislation for a different purpose **cannot be** said to have been **exempted**.

Service Tax – It's a consumption tax!

**Bengal Shrachi
Housing Dev. Ltd**

**[2017 (6) GSTL 356
(SC)**

Para 18

* Service Tax

- *Being a tax on service, it is not a direct tax on the service provider but is a **value added tax** in the nature of a **consumption tax** on the activity which is by way of service*

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LIABILITY!



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Liability is on supplier!

Bharat Forge Ltd
[2022 (64) GSTL 3
(S.C.)]*

Para 38

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- The **liability** to pay tax under the GST regime is **on the supplier**. He **must** make inquiries and **make an informed decision** as to what would be the relevant HSN Code applicable to the items and the rate of tax applicable.

* GST

One person cannot sell goods to self!

Calcutta Club Ltd
[2019 (29) GSTL
545 (SC)]*

Para 30/76

* Service Tax

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- *Since the members perform the activities of the club for themselves, the fact that they incorporate a legal entity to do it for them makes no difference ...*
- *What is of essence, therefore, in applying this doctrine is that there is no sale transaction between two persons, as **one person cannot sell goods to itself...***
- *What has been stated in the present judgment so far as Sales Tax is concerned applies on all fours to Service Tax; as, if the doctrine of agency, trust and mutuality is to be applied qua members' clubs, **there has to be an activity carried out by one person for another for consideration...***

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INTRA-STATE OR INTER-STATE!



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'Delivery' – Means delivery to recipient!

Bombay Machinery Store

[2020 (36) GSTL
161 (SC)]

Para 15

* CST Act, 1956

- There is **no concept of constructive delivery** either express or implied in the said provision... a plain reading of the statute, the **movement** of the goods, for the purposes of clause (b) of Section 3 of the 1956 Act **would terminate only when delivery is taken**, having regard to first explanation to that Section. There is no scope of incorporating any further word to qualify the nature and scope of the expression "delivery" within the said section. The legislature has eschewed from giving the said word an expansive meaning...

'Commencement' and 'termination' are different!

**Bombay
Machinery
Store**

[2020 (36) GSTL
161 (SC)]

Para 15

- *...first explanation to Section 3 of the 1956 Act specifies that movement of the goods would be deemed to **commence** at the time when goods are delivered to a carrier and shall **terminate** at the time when delivery is taken from such carrier.*

* CST Act, 1956

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'Occasion' – To cause or to be immediate cause of!

**Nimal Kumar
Parsan** [2020
(33) GSTL 129
(SC)]

Para 12

- *...seeking exemption, it is necessary that the goods must be in the process of being imported when the sale occurs or the sale must occasion the import thereof within the territory of India. The word **“occasion”** is used to mean **“to cause”** or **“to be the immediate cause of”**.*

* CST Act, 1956

'Sale or purchase in course of import'!

**Nimal Kumar
Parsan** [2020
(33) GSTL 129
(SC)]

Para 20

* CST Act, 1956

- The phrase “sale in the course of import” would constitute **three essential features** - (i) that there must be a **sale**; (ii) that goods must actually be **imported**; and (iii) that the sale must be **part** and parcel **of the import**. ...A priori, for a sale or purchase to qualify as a sale or purchase in course of import, the essential conditions are that **such sale shall occur before the goods had crossed the customs frontiers** of India and the import of the goods must be effected or the import is occasioned due to such sale or purchase...

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'Sale in course of export'!

**Nimal Kumar
Parsan** [2020
(33) GSTL 129
(SC)]

Para 11

* CST Act, 1956

- ...the **appellants had to prove** that there was some other State, where the **goods** could be said to have been **delivered** as a direct result of the sale for the purpose of consumption **in that other State** and as they failed to do so, the **goods loaded on board of an aircraft for consumption** though taken out of India, was **not export since it had no destination**, where it can be said to have been imported and so long as it did not satisfy that test, it could not be said that the sale was in the course of export.

Insurance – Not sole criteria to decide ownership or point of sale!

**Ispat Industries
Ltd**

[2015 (324) ELT
670 (SC)]

Para 27

* Excise

- *We are inclined to the opinion that the Tribunal was correct in relying upon this judgment on the facts in the present case and on the Circular dated 3-3-2003, which specifically stated, following the said judgment, that **insurance** of goods during transit **cannot possibly be the sole consideration to decide ownership or the point of sale of goods.***

GOODS OR SERVICE!



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Classification – Onus on the revenue!

D L Steels

[2022 (381) ELT
289 (SC)]

Para 25

* Excise

- ...**when the Revenue challenges the classification** made by the assessee, the **onus is on the Revenue** to establish that the item in question falls in taxing category as claimed by them. The burden is on the Revenue to adduce proper evidence to show that the goods are classifiable under a different heading than that claimed by the assessee.

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'Goods', 'Services', 'input goods' and 'input services' – Distinct species!

VKC Footstep
Industries
[2021 (52) GSTL
SC (513)]

Para 75

- *A cause of invalidity arises where equals are treated as unequally and unequals are treated as equals. Both under the Constitution and the CGST Act, **goods and services** and **input goods and input services** are **not treated as one and the same** and they are **distinct species**.*

Goods – See from point of view of a common man and refer contract!

**Bharat Sanchar
Nigam Ltd**

[2006 (2) STR
161(SC)]

Para 48

* Service Tax

- What are the **“goods”** in a sales transaction, therefore, remains **primarily a matter of contract** and intention. The seller and such purchaser would have to be *ad idem* as to the subject matter of sale or purchase. The Court would have to arrive at the conclusion as to what the parties had intended when they entered into a particular transaction of sale, as being the subject matter of sale or purchase. In arriving at a conclusion the Court would have to **approach the matter from the point of view of a reasonable person** of average intelligence.

'Actionable claims' are 'goods'!

Skill Lotto
Solutions Pvt
Ltd [2020 (43)
GSTL 289 (SC)]

Para 33/ 49/ 59

- **Definition of goods** as occurring in Article 366(12) is inclusive definition and **does not specifically excludes actionable claim** from its definition.
- We are of the view that **definition of goods under Section 2(52)** of the Act, 2017 **does not violate any constitutional provision** nor it is in conflict with the definition of goods given under Article 366(12).
- The **inclusion of actionable claim in definition "goods"** as given in Section 2(52) ... **is not contrary** to the legal meaning of goods and is neither illegal nor unconstitutional.

Ring tones, download music is not 'goods'!

BHARAT
SANCHAR
NIGAM LTD.
[2023 (73) GSTL
449 (SC)]*

Para 5

*Service Tax

- *the High Court held that SIM Cards, Rechargeable Coupons, Fixed Monthly Charges and Value-Added Services (towards SMS, **ring tones, download music** etc.) are **not "goods"**...*

If its 'goods' then its not a service!

Quick Heal Tech.
Ltd. [2022 (63)
GSTL 385 (SC)]*

Para 55

* Service Tax

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- We are of the view that the **artificial segregation** of the transaction, as in the case on hand, into two parts **is not tenable** in law. It is, in substance, one transaction of sale of software and **once it is accepted that** the software put in the **CD is "goods"**, **then there cannot be any separate service** element in the transaction... even otherwise the user is put in possession and full control of the software. It amounts to **"deemed sale"** which would **not attract service tax.**

If its 'goods' then its not a 'service'!

Venus Albums
Co. Pvt. Ltd.
[2023 (70) GSTL
225 (SC)]*

Para 8

*Service Tax

- *CESTAT Order Affirmed by SC*
- *(...appellant has undertaken the activity of **printing photograph** on plain printing paper and thereafter bind them and selling them as **photo books**... after introduction of GST...
...These items fall under HS code 4911 and attract 12% GST...the activity undertaken by the appellant **amounts to manufacture** and classifiable the Chapter 4911, therefore, no service tax is payable ...) [2019 (22) GSTL 386 (Tribunal)]*

Customised design – Goods for Customs but may be a ‘service’ for Service Tax!

Suzlon Energy
Ltd. [2023 (5)
CENTAX 152
(SC)]*

Para 8

*Service Tax

- *However, by the impugned judgment and order, the CESTAT has held that the respondent is not liable to pay the service tax under "design services" under the Finance Act, 1994 mainly on the ground that the **custom authority considered the same as 'goods' and therefore the same activity cannot be taxed as 'goods' and 'services'**. The aforesaid view is **absolutely erroneous**.*

State does not have power to separate 'Composite Supply'!

**Bharat Sanchar
Nigam Ltd**

[2006 (2) STR
161(SC)]

Para 43

* Service Tax

- ...unless the transaction in truth represents **two distinct and separate contracts** and is **discernible as such**, then the **State** would **not have the power to separate** the agreement to sell from the agreement to render service, and impose tax on the sale. The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be - did the parties have **in mind or intend separate rights** arising out of the sale of goods...We will, for the want of a better phrase, call this the **dominant nature test**.

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Separate contracts - May entail separate tax implications!

**GANNON
DUNKERLEY &
COMPANY
(MADRAS) LTD.**

[1958 AIR 560]

Para 57

* Entry 48 in List II of Sch. VII to the GoI Act, 1935, "Taxes on the sale of goods"

- To avoid misconception, it must be stated that the above conclusion has reference to **works contracts, which are entire and indivisible**, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building contracts, at p. 165. **It is possible** that the **parties might enter into distinct and separate contracts**, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. **In such case, there are really two agreement, though there is a single instrument** embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment.

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Intention of the parties is relevant!

Suzlon Energy
Ltd. [2023 (5)
CENTAX 152
(SC)]*

Para 9

*Service Tax

- *as observed by this Court in the case of BSNL (supra), there is a distinction between the sale of goods and a contract of service. **What is relevant is the intention of the contracting parties** and whether the contracting parties intend transfer of both goods and services, **either separately** or in an indivisible manner **or in a composite manner.***

Goods or services - Nature and terms of contract critical!

Great Eastern Shipping [2020 (32) GSTL 3 (SC)]*

Para 47/53

* Karnataka Sales Tax Act, 1957

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- **Merely rendering service by the servants** and crew to carry the goods **will not make it a service contract**. It **depends upon the nature of each contract**, and the **terms and conditions** agreed to. What is of relevance for our purpose is whether there is a transfer of right to use.
- ...there is **no super-check formula** to find out the nature of the contract. It depends upon the terms and conditions of each contract. Merely **use of specific words**, as mentioned above, is **not determinative**, but the real crux is to be seen as per relevant conditions as agreed to between the parties...

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Violation of 'Composite Supply' not permissible!

Mohit Minerals
Pvt Ltd

[2022 (61) GSTL
257 (SC)]

Para 147 (v)

- *The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act.*
- *Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.*

Not 'consulting engineer' but 'works contract services'!

Jyoti Ltd
[2022 (64) GSTL
129 (SC)]*

Para 4

- ...**considering the various services rendered** by the assessee like erection/installation/commissioning of goods at customers' site and incidentally they may also be providing the services of drawing, design etc., it cannot be said that the services rendered by the assessee was as a consulting engineer. The contract can be said to be **'works contract'**.

* Service Tax

Hangover of earlier regime not permissible!

Mohit Minerals
Pvt Ltd
[2022 (61) GSTL
257 (SC)]

Para 132/133

- ... *Prima facie*, it appears that while issuing the impugned notification, the delegated legislature **had in mind** the provision of the **Finance Act, 1994**...
- ... despite having levied ... integrated tax ..., on import of goods on the entire value ..., once again the integrated tax is being levied under an **erroneous misconception** of law **that separate tax can be levied on the services components** (freight), which is otherwise impermissible under the scheme of the GST legislation made under the CA Act, 2016.

Share of revenue of JV - Not a service!

Mormugao Port Trust

[2017 (48) STR 69
(Tri. Mum.)]

Para 2

- Service Tax
- Affirmed in 2018 (19) GSTL J118 (SC)

- *Having gone through the impugned judgment passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and the reasoning given, no interference of this Court is called for.*
- [Tribunal - “23. We are accordingly of the view that there is **no service** that has been rendered by the Appellant, much less the taxable service of renting of immovable property. The **money flow** to the Assessee from SWPL, under the nomenclature of Royalty, is **not a consideration** for rendition of any services but infact represents the Appellant’s **share of revenue** arising out **of the Joint Venture** being carried on by the Assessee and SWPL”].

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Legislative competence under Entry 49 – Pending before nine judges bench!

UTV News Ltd
[2018 (13) GSTL 3
(SC)]

Para 3

Service Tax

(Whether CG can levy ST on Renting of Immovable Property?)

- ...scope and ambit of **Entry 49 of List II** of the Seventh Schedule to the Constitution of India dealing with “Taxes on lands and buildings”. If the impost/levy is **directly relatable** to the lands/buildings contemplated in Entry 49 of List II of the Seventh Schedule to the Constitution of India we would have had **no hesitation in saying that the Union Parliament would lack legislative competence** to enact the particular provision in the Finance Act, 1994
- Whether such **indirect connection or relation** would be **of any relevance** to decide the issue of legislative competence appears to be **pending before a nine judges Bench** of this Court on a reference made in an order in **Mineral Area Development Authority and Others...**

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“Parts” – ‘Wires’ are essential part of crane!

**Prasoon
Enterprises**
[2019 (23) GSTL
441 (SC)]

Para 27/31/ 32

* Rajasthan VAT

- In other words, “a thing is a part of the other, **if the other cannot function without it**”.
- Mere perusal of the literature would go to show that the Mobile Cranes are **not complete without the wire ropes**. In other words, in order to use the Mobile Cranes and make them operational, the use of wire ropes is essential. If wire ropes are not fitted in the Mobile Cranes, they will not function much less effectively.
- **32.** It is for this reason, we are of the considered opinion that the Mobile Crane Wire Rope is an essential part of the Mobile Crane

“Component” – Integral part!

**Saraswati Sugar
Mills**

[2011 (270) ELT
465 (SC)]

Para 12/13

* Excise

- *In order to determine whether a particular article is a **component part** of another article, the correct test would be to look both at the article which is said to be component part and the completed article and then come to a conclusion whether the first article is a component part of the whole or not. ... The meaning of the expression '**component**' in common parlance is that 'component part of an article is an **integral part** necessary to the constitution of the whole article and **without it, the article will not be complete**'.*

Classification – Sometimes technical terms relevant!

**Reliance Cellulose
Products**

[1997 (93) ELT 646
(SC)]

* Excise

- ... if in the fiscal statute, the article in question falls within the ambit of a **technical term** used under a particular entry, **then that article cannot be taken away from that entry** and placed under the residuary entry on the pretext that the article, even though it comes within the ambit of the technical term used in a particular entry, has acquired some other meaning in market parlance. For example, if a type of explosive (**RDX**) is known in the market as **Kala Sabun** by a section of the people who uses these explosives, the manufacturer or importer of these explosives **cannot** claim that the explosives must **be classified as soap** and not as explosive.”

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Classification – ‘Common Parlance test’ relevant!

D L Steels

[2022 (381) ELT
289 (SC)]

Para 12

- When a **word** is **not explicitly defined**, or there is ambiguity as to its meaning, it **must be interpreted** for the purpose of classification **in the popular sense**, which is the sense attributed to it by **those people who are conversant** with the subject matter that the statute is dealing with...

* Excise

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Classification – Expert opinion should not be ignored!

**Konkan Synthetic
Fibres**

[2012 (278) ELT 37
(SC)]

Para 9

- *It is a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the **opinion of the expert** in the field of trade, who deals in those goods, **should not be ignored**, rather it should be given due importance...*

* Excise

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How consumer perceives is important than how product is marketed!

**Cannuaught Plaza
Restaurants (P) Ltd**

2012 (286) E.L.T.
321 (SC)

Para 34

* Excise

- *The manner in which a product may be **marketed** by a manufacturer, does **not** necessarily **play a decisive role** in affecting the commercial understanding of such a product. **What matters** is the way in which the **consumer perceives** the product at the end of the day notwithstanding marketing strategies... The true character of a product cannot be veiled behind a charade of terminology which is used to market a product. In other words, **mere semantics cannot change the nature** of a product in terms of how it is perceived by persons in the market, when the issue at hand is one of excise classification.*

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Classification – ‘End use’ and ‘Market Parlance test’ relevant!

Thermax Ltd

[2022 (382) ELT
442 (SC)]

Para 21

* Excise

- The **end use** of MVAC is to produce Chilled Water. The use of heat as one of the sources in the air-conditioning system would not take away the primary or basic function of the MVAC, which is to cool and not heat water. The additional heating capability of the machine thus raises a peculiar dilemma, but then one can be guided by the **market parlance test** which shows that the machine is perceived and purchased only as a cooling device. ... The uncharacteristic capability of the **cooling machine** to **also produce hot water**, should **not** however deflect us and it would be appropriate to observe in this case that a chiller machine is attempting to masquerade as a **heat pump...**

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“HSN” – WCO Tariff can be referred!

Thermax Ltd

[2022 (382) ELT
442 (SC)]

Para 6

* Excise

- The **definition** of a product given **in** the **HSN** should **be given due weightage** in the classification of a product for the purpose of levying excise duty. This is because in the Statement of Objects and Reasons of the Bill leading to enactment of Central Excise Tariff Act, 1985, it was clearly stated that the pattern of **tariff classification is broadly based on** the system of classification derived from the International Convention on the Harmonised Commodity Description and Coding System (**Harmonised System**) with such contraction or modification thereto as are necessary...

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CONSIDERATION!



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No consideration, No Service Tax!

EDELWEISS
FINANCIAL
SERVICES LTD.
[2023 (73) G.S.T.L.
4 (S.C.)]*

Para 7

* Service Tax

- ...**assessee had not received any consideration** while providing corporate guarantee to its group companies. No effort was made on behalf of the Revenue to assail the above finding or to demonstrate that issuance of corporate guarantee to group companies without consideration would be a taxable service. In these circumstances, in view of such conclusive finding of both forums, we see no reason to admit this case ...

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Consideration and Service – Nexus must!

Delhi
International
Airport [SC - CA
No. 8996/2019]*

Para 32

* Service Tax

- This court, in **Bhayana Builders** (supra), ruled that **to attract service tax** levy, a taxable **service has to be provided to a recipient**, by a service provider, **for a consideration** and in the absence of any **nexus** to any service rendered, an amount charged, or value of service or goods provided without a consideration, would not be a taxing incident.

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Remittance is consideration!

**Northern
Operating System**
[2022-TIOL-48-SC-
ST-LB]*

Para 58

* Service Tax judgment

- The **mere payment in the form of remittances** or amounts, by whatever manner, either for the duration of the secondment, or per employee seconded, is **just one method** of reckoning if there is consideration.
- The other way of looking at the arrangement is the economic benefit derived by the assessee, which also secures specific jobs or assignments, from the overseas group companies... The **quid pro quo ... is implicit...**

Consideration can be a right, interest, profit or benefit!

Tata Motors Ltd
[2019 (25) GSTL
481 (SC)]*

Para 61

* VAT

- ...In ... *Fiat India Private Limited, (2012) 9 SCC 332*, this Court observed that **consideration means something which is of value** in the eye of the law. In other words, it may consist either in some **right, interest, profit or benefit** accruing to one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other.

Credit Note – Can be a consideration!

Tata Motors Ltd
[SC - CA No.
1822/2007]*

Para 48/ 70

* VAT

- ... we hold that the amount shown in the account of the dealer in the form of a **credit note is** nothing but **a price received for a sale of a spare part** by the dealer which is from his stock and which belongs to him.
- ...a **credit note** issued by a manufacturer to the dealer, in the situations explained above, **is a valuable consideration** within the meaning of the definition of sale and hence, **exigible to sales tax ...**

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'Consideration' - Who pays is irrelevant!

Tata Motors Ltd
[SC - CA No.
1822/2007]*

Para 65/48

* VAT

- ...The person **who pays** the valuable consideration in a sale transaction **is irrelevant** so long as it is paid.
- 48... The nature of consideration in the form of a **credit note is also monetary in nature.**

Refundable deposits – Documents verification critical!

Adani Gas Ltd.
[2020 (40) GSTL
145 (S.C.)]*

Para 37

* Service Tax

CA Pritam Mahure and Associates

- ...it is evident that the **percentage of funds refunded varies** from customer to customer, while the **remaining amount is retained** by the respondent. In any case, as regards the domestic customers, **no deposit receipts have been provided** and instead, the respondent has relied on the tabulation of the refund of deposit to industrial consumers to support their contention. Thus, the argument of the respondent that these gas connection charges collected from industrial, commercial and domestic consumers constitute a refundable security deposit is rejected.

EXEMPTION!



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Notification – Read as a whole!

Arcelor Mittal
Nippon Steel India
Ltd

[2022 (379) ELT
418 (SC)

Para 14.2

* Gujarat Sales Tax

- *It is settled law that the **notification has to be read as a whole**. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an **exempting** provision in a taxing statute **should be construed strictly** and it is not open to the Court to ignore the conditions prescribed in industrial policy and the exemption notifications.*

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Exemption Notification – To be interpreted strictly!

Dilip Kumar & Co.

[2018 (361) ELT
577 (SC)]

Para 66

*Constitution Bench

- “66. To sum up, we answer the reference holding as under :
66.1 **Exemption notification should be interpreted strictly**; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
66.2 When there is **ambiguity** in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted **in favour of the Revenue...**

Exemption is an exception!

Empire Industries
Ltd
[1985 (20) ELT 179
(SC)

Para 47

- *A tax payer subject is entitled only to such benefit as is granted by the legislature. Taxation under the Act is the rule and benefit and **exemption, the exception.***

* Excise

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Notification – Has effect as if part of statute!

Orient Paper Mills

1997 (96) ELT 15
(SC)*

Para 2

- *...in Orient Weaving Mills (P) Ltd. & Anr. v. Union of India & Ors. - 1978 (2) E.L.T. (J 311) (S.C.) = AIR 1963 SC 98, ... it was held that the exemption granted by an **exemption notification has effect as if enacted as a part of the statute.***

* Excise

Exemption Notification – To be construed strictly as well as reasonably!

HMM Ltd

1996 (87) ELT 593
(SC)*

Para 14

- *It is true that the **notification** provides for an **exemption** and has to be **strictly construed** but it is equally well-settled that the exemption notifications, like any other statutory provision, has to be **construed reasonably** having due regard to the language employed. I*

* Excise

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Exemption Notification – Are meant to be implemented!

Swadeshi Polytex
Ltd

1989 (44) ELT 794
(SC)*

Para 20

* Excise

- *It is true that when in a fiscal provision, if benefit of exemption is to be considered, this should be **strictly considered**. But the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation. After all, exemption notifications are **meant to be implemented** ...*

Exemption– Integral connection vs indirect connection!

Mother Superior Adoration Convent

2021 (376) ELT 242 (SC)*

Para 12

* Kerala Building Tax Act

- Take a case where the neighbouring **building to the convent is let out on rent** to any member of the public, and the rent is then **utilised only for core religious activity**. Can it be said that the letting out at market rent would be connected with religious activity because the rental that is received is ploughed back only into religious activity? Letting out a building for a commercial purpose would lose any rational connection with religious activity. The **indirect connection** with religious activity being the profits which are ploughed back into religious activity would obviously not suffice to exempt such a building. **But if** on the other hand, **nuns are living** in a neighbouring building to a convent only so that they may receive religious instruction there, **or if students are living** in a hostel close to the school or college in which they are imparted instruction, it is obvious that the **purpose** of such residence is **not to earn profit but residence** that is **integrally connected** with religious or educational activity.

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Exemption – Beneficial vs general!

**Mother Superior
Adoration
Convent**

2021 (376) ELT 242
(SC)*

Para 24

* Kerala Building Tax Act

- ...it is obvious that the **beneficial purpose of the exemption** contained in Section 3(1)(b) **must be given full effect to**, the line of authority being applicable to the facts of these cases being the line of authority which deals with **beneficial exemptions as opposed to exemptions generally** in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the **object sought to be achieved** by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, **such ambiguity must be in favour of that which is exempted.**

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'Eligibility' clause to be strictly construed but 'conditions' should be liberally construed!

Compack Pvt Ltd *

2005 (189) ELT 3
(SC)

Para 12

* Excise

- ...whereas the **eligibility clause** in relation to an exemption notification is given **strict meaning** where for the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a **condition thereof** may be given a **liberal meaning**. [See *Tata Iron & Steel Co. Ltd. ...* (2005 (4) SCC 272.).]

'Eligibility' clause to be strictly construed first and then liberally!

**IVRCL Infra. &
Projects Ltd.**

2015 (319) ELT 194
(SC)

Para 4

- ... in *G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh - (2009) 2 SCC 90*, this Court held : “29. It is now a well-established principle of law that whereas **eligibility criteria** laid down in an exemption notification are required to be **construed strictly, once** it is found that the applicant **satisfies the same**, the **exemption notification** should be **construed liberally**. [See *CTT v. DSM Group of Industries [(2005) 1 SCC 657]* (SCC para 26); *TISCO v. State of Jharkhand [(2005) 4 SCC 272]* ...

'Road' includes parking bays, rest room etc

**GMR Projects Pvt
Ltd ***
2021 (44) GSTL
110 (Tri. - Bang)

Para 6

* Affirmed in 2022 (67)
GSTL 5 (SC)

- *...we hold that construction like toll plaza, cattle/pedestrian crossing facilities, parking bay for buses/trucks, rest room for staff and common public at large, etc. are also part of the road ...*

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'Predominant use' relevant and not 'Optional use'!

BPL Ltd
2015 (319) ELT 556
(SC)

Para 16

* Affirmed in 2015 (324) ELT A79 (SC)

- ...defibrillator manufactured by the appellant is **not implantable internally** in the human body. The only justification given by the appellant is that at the time of carrying out the open heart surgery same device can be used to deliver electrical shock. However, it is accepted that to give the electrical shock paddles are needed, which is sold by the appellant only as an accessory... During the arguments it was conceded that **99 per cent sale** of these defibrillators **were without paddles** which means that **predominantly** the goods are **sold for external use only**. ...simply because it can be used internally as well but not without the paddles and paddle is optional accessory, it is **difficult to hold that conditions contained in the exemption Notifications are satisfied...**

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Sovereign functions – Not a ‘service’

**Krishi Upaj Mandi
Samiti**

[2022 (58) GSTL
(129) (SC)]*

Para 7

* Service Tax

- *As per the exemption circular only such activities performed by the **sovereign/public authorities** under the provisions of law being **mandatory and statutory functions** and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities.*

CLASSIFICATION!



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Principles of Classification!

RECKITT
BENCKISER (INDIA)
LTD.

2023 (384) E.L.T.
616 (SC)

Para 9.8

* Kerala VAT

- Thus, as per the settled position of law while considering a particular entry the **principles of classification** which are fundamental to any matter relating to classification under the taxing statute are :
 - a) **plain meaning** to be given to the taxing provision;
 - b) **burden** to prove classification in a particular entry is **always on the Revenue**;
 - c) any **ambiguity has to be resolved in favour** of the assessee and in case of a reasonable doubt, the construction most beneficial to the assessee must be adopted;
 - d) **specific entry would override** a residuary entry; and
 - e) resort to **residuary entry** is to be taken as **a last measure**, only when by liberal construction the specific entry cannot cover the goods in question.

Classification determined by Suppliers is final!

Steel Authority of
India Ltd.
2022 (382) ELT 10
(SC)
Para 6

- *As per the settled position of law, **classification** of a product done at the **consignor's end shall be final** and that cannot be changed/questioned at the consignee's end*

* Excise

Duty determined by supplier end cannot be challenged at recipient end!

MDS Switchgear
Ltd
2008 (229) ELT 485
(SC)
Para 6

* Excise

- *The rules entitled the receipt manufacturer to avail of the benefit of the duty paid by the supplier manufacturer. A **quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested** or challenged by the officers in charge of **recipient** unit [2000 (38) RLT 179].”*

Specific entry will prevail over general entry!

SANTHOSH MAIZE
& INDUSTRIES LTD.

2023 (385) ELT 814
(SC)

Para 25/26

* TN General Sales Tax

- *What emerges from the above discussion is that Taxation Entry No. 61 is relatable to 'starch' of any kind whereas Exemption Entry No. 8 relates to products of 'millet'.*
- *Looking at the **specific** (Taxation Entry No. 61) in contradistinction with the **general** (Exemption Entry No. 8), there can be no manner of doubt that maize starch would be covered by the taxation entry and not by the exemption entry.*

Rule 2 (a) – Applicable only if all parts removed together at same point of time!

L G Electronics

2023 (6) CENTAX
183 (Tri.)*

Para 16

Affirmed in 2023 (6) CEN 184 (SC)

- *It would be clear that this rule can be applied only if **all the components** which form part of the assembly or complete or finished goods are removed together **at the same point of time**. Thus, unless and until all the component or parts which form part of the complete goods, which in the present case are CTVS, are **removed together, rule 2(a)** would have **no applicability**.*

'Soft-serve' – Is 'ice-cream'!

**Cannuaught Plaza
Restaurants (P) Ltd**
2012 (286) E.L.T.
321 (SC)

Para 33/ 46

* Excise

- ...we are **unable to accept** the argument that since **'soft serve' is distinct from "ice-cream"** due to a difference in its milk fat content... In view of the foregoing discussion, we are of the opinion that the Tribunal erred in law in classifying 'soft-serve' under tariff sub-heading 2108.91, as "Edible preparations not elsewhere specified or included", "not bearing a brand name". We hold that **'soft serve'** marketed by the assessee, during the relevant period, is to be classified under tariff sub-heading 2105.00 **as "ice-cream"**.

'Salted peanuts and cashew nuts' – Not 'fruit' or 'vegetable'!

*The King v. Planter
Nut and Chocolate
Company Ltd. -
(1951) C.L.R. (Ex.
Court) 122*

- "...would a householder when asked to bring home **fruit or vegetables** for the evening meal bring home **salted peanuts, cashew** or nuts of any sort? The answer is obviously **'no'**."

* Exchequer Court of Canada

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'Betel nuts' – Not 'vegetable'!

**Ramavatar
Budhaiprasad Etc.**

(1962) 1 SCR 279

* C.P. & Berar Sales Tax Act,
1947

- “...But this **word must be construed** not in any technical sense nor from the botanical point of view but **as understood in common parlance**. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning “that sense which people conversant with the subject matter with which the statute is dealing would attribute to it.”
- [Betel nuts are not vegetables]

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'Betel leaves' – Not 'vegetable'!

Jaswant Singh
Charan Singh

AIR 1967 SC 1454

* MP Sales Tax

- *"...There were two items in the Schedule, namely, item 6, "**vegetables**", and item 36, "**betel leaves**", and subsequently item No. 36 was deleted by an amendment of the Act. This Court held that the use of two distinct and different items, i.e., "vegetables" and "betel leaves" and the subsequent removal of betel leaves from the Schedule were indicative of the Legislature's intention of not exempting betel leaves from taxation."*

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Dettol – Dominant use is relevant!

RECKITT
BENCKISER (INDIA)
LTD.

2023 (384) E.L.T.
616 (SC)

Para 9.6

* Kerala VAT

- Thus the **Dettol is used as an antiseptic liquid** and is used in hospitals for surgical use, medical use and midwifery, due to therapeutic & prophylactic properties. Therefore, the same can be said to be an item of **medicament** to be treated as a drug and medicine. Here also the **dominant use is a relevant consideration.**

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Dant Manjan Lal – Is Tooth powder and not cosmetic!

Shree Baidyanath
Ayurved Bhavan
LTD.

[2009 (237) ELT
225 (SC)

Para 42

* Excise

- Rule 3(a) of the general Rules of interpretation that states that heading which provides the **most specific description** shall be preferred to headings providing a more general description. DML is a tooth powder which has not been held to be Ayurvedic Medicine in **common parlance** in Baidyanath I. We have already observed that common parlance test continues to be one of the determinative tests for classification of a product whether medicament or cosmetic. There being no change in the nature, character and uses of DML, it has to be held to be a **tooth powder** - as held in Baidyanath I DML is used **routinely for dental hygiene**. Since tooth powder is specifically covered by Chapter Sub-heading 3306, it has to be classified thereunder. By virtue of Chapter Note 1(d) of Chapter 30 **even if** the product DML **has some therapeutic or medicinal properties**, the product stands excluded from Chapter 30.

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'Vaseline' – Not cosmetic!

Ponds India Ltd

[2008 (227) ELT
497 (SC)]

Para 39/43/47

* UP Trade Tax Act, 1947

- *...If the common parlance test is to be applied, **vaseline** must come within the purview of cosmetic or toilet preparation. With a view to satisfy the requirements of the said definition, it must be held to be **used for beautification** or care of the skin ... If the product, in question does not satisfy the aforementioned **twin tests**, it is **difficult to presume any legislative intention** ... In this case also, the **report of the Chemical Examiner** is in favour of the assessee. Furthermore, in a case of this nature, where the revenue itself has been holding the assessee to be a producer of a pharmaceutical product, the **burden would be on the Revenue** For the said purpose, no material was placed by the Revenue which was imperative...We have noticed hereinbefore that the meaning of "drug" is very wide and same has been held to be so in a large number of cases.*

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Nycil prickly heat powder – Its cosmetic!

Heinz (INDIA) LTD.
2023 (385) E.L.T.
162 (SC)

Para 53

* TN General Sales Tax

- In the present case, the TNGST was consciously amended to include **talcum powder, whether or not medicated** in the specific entry or class of entries, enumerating **cosmetics**. Hence, like in the Kerala case, the plain meaning of that taxation head or entry had to be given, as there was no ambiguity.

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Harpic and Lizol – Dominant use and specific entry is relevant!

RECKITT
BENCKISER (INDIA)
LTD.

2023 (384) E.L.T.
616 (SC)

Para 9.6

* Kerala VAT

- *What is required to be considered is the **dominant use** which is cleaning and removal of stains of floor and the toilet. Thereafter, the same shall not fall under Entry 44(5) - HSN Code No. 3808 as insecticides or disinfectant. Entry 27(4) of SRO No. 82 of 2006 is with respect to stain busters, stain removers, abir, blue and all kinds of cleaning powder and liquids including floor and toilet cleaning. In that view of the matter Entry 27(4) being a **specific entry** the same shall be applicable ... chargeable to tax at 12.5%...*

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'Residential building' – Built exclusively for residential purposes!

Mother Superior
Adoration
Convent

2021 (376) ELT 242
(SC)*

Para 13

* Kerala Building Tax Act

- ***“Residential building”*** is defined separately from “building” in Section 2(l). A “residential building” means a building or any other structure or part thereof ***built exclusively for residential purpose...***

For classification, General Rules of Interpretation can help!

**Anuthan Exim Pvt
Ltd ***

2021 (378) E.L.T.
611 (Tri. - Kolkata)

Para 25

* Affirmed in 2023 (73)
GSTL 578 (SC)

- *In our view neither carbonated beverage alone nor fruit juice alone gives the essential character of the products in question; both contribute to its essential character.*
- *Since Customs Tariff Heading 2202 99 20 comes last in the order, it prevails and the goods are classifiable under this heading.*

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For classification – Chapter Notes critical!

**Videocon
Industries Ltd ***

2023 (384) E.L.T.
628 (SC)
Para 25

* Excise

- *It is, therefore, clear that when goods are **excluded from a particular chapter, the “pull in” through a note has to be narrowly construed**, as otherwise, the basis of exclusion would be defeated, and the earlier note (of exclusion) rendered redundant.*

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For classification – Specific heading preferable!

**Videocon
Industries Ltd ***

2023 (384) E.L.T.
628 (SC)
Para 25

* Customs

- *In this Court's opinion, this note, along with the General Note 3(a) [of the General Rules of Interpretation] that **headings that are specifically provided, should be preferred over the general ones**, is decisive. Thus, the revenue's contention that by virtue of Note 2(b) to Chapter 85, the goods are to be classified based on their principal or sole use is insubstantial because of the clear mandate of Note 1(m), which excludes Chapter 90 goods (which includes LCD panels). More importantly, Note 2 opens with the expression "subject to Note 1". This subordinates the entire subject matter in Note 2:*

Specific and Residual - Prefer specific entry!

**Mauri Yeast India
Pvt. Ltd ***

2008 (225) ELT 321
(SC)

Para 48

* UP Trade Tax

- *We, therefore, are of the opinion that if there is a conflict between **two entries** one leading to an opinion that it comes within the purview of the **tariff entry and another** the **residuary entry**, the **former** should be **preferred**.*

Residuary entry – Applicable only if cannot be brought under specific entry!

**Durga Projects
Inc***
2018 (10) GSTL
513 (SC)

Para 14

- ... this Court reiterated that “only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry”.

* Karnataka VAT

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'Doctrine of Executive construction'!

**Mauri Yeast India
Pvt. Ltd ***

2008 (225) ELT 321
(SC)

Para 47

* UP Trade Tax

- *They also referred to a Circular dated 12th November, 1958 issued by the Central Government, whereby, for the purpose of some other statutes, yeast has been considered to be a chemical. A similar interpretation having been made to the entry in question by the authorities themselves, they cannot be said to be wholly irrelevant, particularly having regard to the doctrine of 'Executive Construction'.*

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Medical oxygen – Is a drug or medicine!

Linde India Ltd *
2020 (36) GSTL 3
(SC)
Para 24/29/ 31

* AP VAT Act

- *Applying the user test and functional test, the Kerala High Court noted that **Medical Oxygen** is administered to patients and Nitrous Oxide is used as an anesthetic agent and concluded that both are **medicines**. ...*
- *Medical Oxygen is also used for the treatment of patients and to mitigate the intensity of disease or disorder in human beings. It is utilised to prevent a sudden collapse of patients and to aid in the recovery of health*
- *There is no doubt that **Medical Oxygen IP and Nitrous Oxide IP are medicines** ...*

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Boilers – Cleared in CKD form also ‘boiler’ only and not ‘parts’!

BHEL*
2018 (10) GSTL 3
(SC)
Para 7

* Central Excise

- *Be that as it may, in the face of the **opinion of the expert and the HSN note**, details of which have been extracted above, we are of the view that the Primary Authority as well as the First Appellate Authority was perfectly justified in coming to the conclusion that the components of the **boilers cleared as parts but essential to put into operation the boilers**, would be classifiable under sub-heading 8402.10*

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Job work vs Manpower supply services

Adiraj Manpower Services

2022 (58) GSTL
137 (SC)*

Para 17

* Service Tax

- In this case, though ostensibly, the agreement contains a provision for payment on the basis of the rates mentioned in Schedule II, the agreement has to be read as a composite whole. On reading the agreement as a whole, it is apparent that the contract is pure and simple a contract for the provision of contract labour. An attempt has been made to camouflage the contract as a contract for job work to avail of the exemption from the payment of service tax.*

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Acceptance of classification does not mean ack. of liability!

Damodar Poly Fab
2018 (14) GSTL
162 (SC)*
Para 10/11

* Excise duty

- *While it is correct that duty has to be paid as per classification determined, **acceptance of classification** may **not** necessarily amount to **acknowledgment of the liability** to pay duty.*
- *The very fact that the requirement of **giving notice** has been statutorily engrafted casting a **mandatory** character to the said requirement*

Oil in bunker tank of ship – To be assessed as ship!

Mahalaxmi Ship
Breaking Corp.

2018 (14) GSTL
162 (SC)*

Para 4/6

* Customs

- *...the **Oil in the Bunker Tanks** of the Engine Room/outside the Engine Room of the **vessels sent for being broken up**, are to be assessed separately or as part of the vessels to be scrapped. ... the CESTAT ruled that the **oil is to be assessed as part of the Ship**...this Court is of the view that the ...view ... is correct...*

VALUATION!



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Value to be determined as per Sec. 15!

Skill Lotto
Solutions Pvt Ltd
[2020 (43) GSTL
289 (SC)]

Para 78/ 80

- **Section 15** of the Act, 2017 by sub-section (2) it is provided **what shall be included** in the value of supply. What can be included in the value is enumerated in sub-clause (a) to (e) of sub-section (2) of Section 15. Further, sub-section (3) of Section 15 provides that **what shall not be included** in the value of the supply.
- What is the value of taxable supply is subject to the statutory provision which clearly regulates, which provision has to be given its full effect and something which is not required to be excluded in the value of taxable supply cannot be added by judicial interpretation.

'Such' – Amount which is for providing such services only includable!

Intercontinental Consultants and Technocrates

[2018 (10) ELT
401 (SC)]

Para 24

* Service Tax

- *In this hue, the expression '**such**' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'.*

FOC supplies – Not includable!

**Intercontinental
Consultants and
Technocrates**

[2018 (10) ELT
401 (SC)]

Para 31

* Service Tax

- We have already held above that the **value of such material** which is **supplied free** by the service recipient cannot be treated as 'gross amount charged' and that is not the 'consideration' for rendering the services. Therefore, value of free supplies of diesel and explosives **would not warrant inclusion** while arriving at the gross amount charged on its service tax is to be paid.

FOC supplies – ITC Available!

Menon & Menon Ltd

[2015 (325) ELT
10 (SC)]

Para 1

- *The respondent is the manufacturer of Hydraulic Control Lever Assembly and other assembly. These items are supplied by the respondent to Bharat Earth Movers Ltd. “free of cost”. The question is whether an excise duty is applicable on such goods. The Tribunal has answered the question in the negative following the judgment of this Court in International Auto Ltd. v. Commissioner of Central Excise, Bihar [(2005) 183 E.L.T. 239], holding that manufacturer of final products would be **entitled to adjust the credit on the inputs supplied by it to the intermediate purchasers** and also entitled to credit for the duty paid by the intermediate purchasers on its products.*

* Excise

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FOC supplies – No service provided against such supplies!

**Bhayana
Builders Pvt Ltd**

[2018 (10) ELT
118 (SC)]

Para 13/16

* Service Tax

- *This further gets strengthened from the words ‘for such service provided or to be provided’ by the service provider/assessee. Again, **obviously, in respect of the goods**/materials supplied by the service recipient, **no service is provided by the assessee**/service provider.*
- *Thus, on first principle itself, a **value which is not part of the contract** between the service provider and the service recipient **has no relevance** in the determination of the value of taxable services provided by the service provider.*

If amount paid is not towards price then not part of TV!

D J Malpani
[2019 (366) ELT
385 (SC)]

Para 14

- *Thus, duty is chargeable on the “price actually paid for the goods”,...No amount not paid as consideration for the goods can go to make transaction value. ...Thus, if an amount is paid at the time of the sale transaction for a purpose other than the price of the goods, it cannot form part of the transaction value...*

* Excise

TV – Price must be sole consideration!

**FIAT India Pvt
Ltd**

[2012 (283) ELT
161 (SC)]

Para 60

* Excise

- *The important requirement under Section 4(1)(a) is that the **price must be the sole and only consideration** for the sale. If the sale is influenced by considerations other than the price, then, Section 4(1)(a) will not apply. In the instant case, the main reason for the assesseees to sell their cars at a lower price than the manufacturing cost and profit is to penetrate the market and this will constitute extra commercial consideration and not the sole consideration*

Value – Actual / final/ eventual price is relevant!

Southern Motors

[2017 (358) ELT 3
(SC)]

Para 26/ 37

* Karnataka VAT

- Understandably, the taxable turnover is the summation of the **actual sale/purchase price** exigible to tax under the Act and the Rules. Depending on the eventualities as comprehended in Section 30, **credit and debit notes** are issued, as a consequence whereof, the tax liability is **reduced or enhanced** correspondingly ... The tax liability, to reiterate would be contingent on the sale/purchase price in the **eventual** sale/purchase price... It is too trite to state that neither an assessee is liable to pay tax in excess of what is due in law nor is the revenue authorized to exact the same ... requirement of reference of the discount in the tax invoice or bill of sale to qualify it for deduction has to be construed in relation to the transaction resulting in the **final sale/purchase price** and not limited to the original sale sans the trade discount.

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Post-supply discount – Deductible, subject to proof!

**Southern
Motors**

[2017 (358) ELT 3
(SC)]

Para 28

* Karnataka VAT

- *The actual quantification of the **trade discount**, depending on the nature of the trade and the related stipulations in any contract with regard thereto, may be **deferred** till the happening of a contemplated event... That by itself, subject to proof of such regular **trade practice** and the **contract/agreement** entered into between the parties, would not render the trade discount otherwise legal and acceptable, either non est or fictitious for evading tax liability...Perceptionally, if taxable turnover is to be comprised of sale/purchase price, it is **beyond one's comprehension as to why** the **trade discount should be disallowed**, subject to the proof thereof...*

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Post-supply discount – Levying tax thereon is un-authorized!

**Southern
Motors**

[2017 (358) ELT 3
(SC)]

Para 36

* Karnataka VAT

- *To insist on the quantification of trade discount for deduction at the time of sale itself, by incorporating the same in the tax invoice/bill of sale, would be to demand the impossible for all practical purposes and thus would be ill-logical... To reiterate, trade discount though an admitted phenomenon in commerce, the computation thereof may depend on various factors ... To deny the benefit of deduction only on the ground of omission to reflect the trade discount though actually granted in future, in the tax invoice/bill of sale at the time of the original transaction would be to ignore the contemporaneous actuality and be unrealistic... This may herald as well the possible unauthorised taxation ...*

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Value – Discount or rebate is deductible!

**Universal
Cylinders Ltd**
[2018 (10) GSTL
528 (SC)]

Para 15

- ...a bare reading of Section 2(39) of the Rajasthan Sales Tax Act, which defines **“sale price”** clearly indicates that it is the **price which is either paid or payable** to a dealer as consideration for the sale. The definition itself makes it clear that any sum by way of any **discount or rebate** according to the practice normally prevailing in the trade **shall be deducted** and shall not be included in the sale price. The definition of ‘turnover’ means the aggregate amount received or receivable by a dealer.

Value – Discount or rebate is deductible!

**Maya
Appliances Pvt
Ltd [2018 (10)
GSTL 6 (SC)]**

Para 12

* Karnataka VAT

- *Taxable turnover is arrived at after making **permissible deductions** from the total turnover. Among them are “all amounts allowed as **discounts.**”*
- *Above all, it must be remembered that taxable turnover is turnover net of deductions. An trade discounts are allowable as permissible deductions.*

Discount – Are deductible!

**Bombay Tyres
International
Pvt Ltd**

[1984 (17) ELT
329 (SC)]

Para 1

* Excise

- **Trade Discounts.** - Discounts allowed in the Trade (by whatever name such discount is described) **should be allowed to be deducted** from the sale price having regard to the nature of the goods, **if established under agreements or under terms of sale or by established practice**, the allowance and the nature of the discount being known **at or prior to the removal** of the goods. Such Trade Discounts shall **not be disallowed only because** they are **not payable at the time of each invoice or deducted from the invoice price.**

Value – Credit is not part of cost!

**Dai Ichi Karkaria
Ltd.**

[1999 (7) SCC
448]

Para 25

* Excise

- *A man of commerce would, in our view, look at the matter thus : ‘I **paid Rs. 100** to the seller of the raw material as the price thereof. The seller of the raw material had **paid Rs. 10 as the excise duty** thereon. Consequent upon purchasing the raw material and by virtue of the Modvat Scheme, I have become **entitled to the credit of Rs. 10** with the Excise Authorities and can utilize this credit when I pay excise duty on my finished product. The real cost of the raw material (exclusive of freight, insurance and the like) to me is, therefore, Rs. 90. In reckoning **the cost** of the final product I would include **Rs. 90** on this account.’*

Ordinarily sold – Sale should be in ordinary course only!

**FIAT India Pvt
Ltd.**

[2012 (283) ELT
161]

Para 50

* Excise

- ...the expression '**ordinarily sold**'. There could be instances where a manufacturer may sell his goods at a **price less than the cost** of manufacturing and manufacturing profit, when the company wants to **switch over its business for any other** manufacturing activity, it could also be where the manufacturer has goods which **could not be sold within a reasonable time**. These instances are not exhaustive but only illustrative. In the instant cases, since the price charged for the sale of cars is exceptional...Therefore, in our view, such sales may be disregarded as not being done in the ordinary course of sale or trade...

TAX RATE!



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Premium paid prior to increase in tax rate – No additional tax payable!

Bajaj Allianz Gen.
Insurance Co. Ltd.
[2022 (64) GSTL
513 (S.C.)]*

Para 2

* Service Tax

CA Pritam Mahure and Associates

- *The Learned Tribunal, by a detailed judgment and order [[2009 \(13\) S.T.R. 259](#) (Tri. - Mum.)], and considering the fact that the **entire premium was paid prior** to 10-9-2004 i.e. before the change in the rate of tax, has rightly observed and held that the **assessee is not liable to pay the enhanced rate** of tax.*
- ***We are in complete agreement*** with the view taken by ***the Tribunal.***

CA Pritam Mahure and Associates

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Non-compete fees liable only after 1.07.2012!

JAMNA AUTO
INDUSTRIES LTD.
[2023 (73) GSTL 3
(SC)]

Para 1/4/5

- *the amount it received under what has described as ‘**non-compete fee**’. ... With effect from 1-7-2012, there is no dispute that the said amount would be exigible to tax under Section 66E(5)...The amount which was made under the agreement was a one time payment. In other words, the amount did not spill over after 1-7-2012... Accordingly, the appeal is allowed ...*

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ITC!



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ITC – If validly taken then indefeasible!

Daiichi Karkaria Ltd
[1999 (112) ELT
353 (SC)]

Para 17

*MODVAT / CENVAT

CA Pritam Mahure and Associates

- *It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is **no provision** in the Rules which **provides for a reversal** of the credit by the excise authorities **except where** it has been **illegally or irregularly taken, in which event it stands canceled or, if utilised, has to be paid for**. We are here really concerned with credit that has been **validly taken**, and its benefit is available to the manufacturer **without any limitation** in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, **indefeasible**.*

CA Pritam Mahure and Associates

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If prospective amendment – Accumulated credit remains!

New Swadeshi
Sugar Mills
[2015 (323) ELT
222 (SC)]

Para 5/6

*MODVAT / CENVAT

CA Pritam Mahure and Associates

- *From the perusal of this Rule, it is evident that under the new Cenvat Credit Rule, 2002, no credit shall be allowed to the manufacturer on such quantity of inputs which is used in the manufacturer of exempted goods and those exempted goods have been detailed in clause 3(a) of this rule. This rule **nowhere takes away** the right of a manufacturer to utilize the **already accumulated credit** under the earlier Cenvat Credit Rules of 2001. This rule only prohibits the availability of credit under the new Cenvat Credit Rules, 2002... We are in agreement with the aforesaid interpretation given by the Tribunal*

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CA Pritam Mahure and Associates

GSTR-2A is only a facilitator!

Suncraft Energy
Pvt Ltd [MAT 1218
of 2023 (Cal.)]

Para 9/6

*Apex Court dismissed SLP filed
against impugned order
[2024 (80) G.S.T.L. 225 (S.C.)]

CA Pritam Mahure and Associates

- ... The first respondent **without resorting to any action against** the fourth respondent who is the **selling dealer** has **ignored the tax invoices produced ..** the action of the first respondent has to be branded as **arbitrarily**. Form GSTR-2A was explained by the Hon'ble **Supreme Court in Bharti Airtel Ltd**. It was held that Form **GSTR-2A is only a facilitator**
- Form GSTR-2A was explained by the Hon'ble **Supreme Court in Bharti Airtel Ltd**. It was held that Form **GSTR-2A is only a facilitator**

CA Pritam Mahure and Associates

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No movement, no ITC!

**ECOM Gill Coffee
Trading**
[2023-TIOL-18-SC-
VAT]

*VAT

- Merely because the **tax invoice** ... produced, that **by itself cannot** be said to be **proving the actual physical movement** of the goods, which is required to be proved, as observed hereinabove.
- If the purchasing dealer/s fails/**fail to establish** and prove the said important aspect of physical **movement** of the goods alleged to have been purchased by it/them from the concerned dealers and on which the ITC have been claimed, the Assessing **Officer is absolutely justified in rejecting such ITC** claim.

To claim ITC, documentation must!

**ECOM Gill Coffee
Trading**
[2023-TIOL-18-SC-
VAT]

*VAT

- ... **over and above the invoices and** the particulars of **payment**, the purchasing dealer **has to produce** further material like the **name and address** of the selling dealer, **details of the vehicle** which has delivered the goods, payment of **freight** charges, **acknowledgement** of taking delivery of goods including actual **physical movement** of the goods, alleged to have been purchased from the concerned dealers.

In case of import, ITC available on Bill of Entry!

**Marmagoa Steel
Ltd**
[2008 (229) ELT
481 (SC)]

Para 10/11

- *For such a situation the proviso to sub-rule (2) of Rule 57G states that the **relevant document** indicating payment of duty would be **Bill of Entry**...Bills of Entry were produced by the assessee which indicate that M/s. Essar Gujarat Limited had paid duty at the time of import and, therefore, the assessee was entitled to take MODVAT Credit for the duty paid on the imported goods.*

Payment of duty by supplier – Practically impossible to find out!

Kay Kay Industries
[2013 (295) ELT
177 (SC)]

Para 24

*CENVAT

- ...at the time of Modvat verification it was found that the **supplier** of the inputs **had not discharged full duty** liable for the period covered under the invoices. **This lapse of the seller** is different and **not a condition** or rather a pre-condition postulated in the notification.... require the **assessee to find out** from the departmental authorities **about the payment of excise duty** on the inputs used in the final product which have been made allowable by the notification would be travelling beyond the notification, and in a way, transgressing the same. This would be **practically impossible** and would lead to transactions getting delayed

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ITC – Is a concession and not a right!

JAYAM & Co
[2018 (19) GSTL 3
(SC)]

Para 12/13

*TN VAT

- *It is a trite law that whenever concession is given by statute or notification etc. the **conditions** thereof are to be **strictly complied with** in order to avail such concession. Thus, it is **not the right** of the 'dealers' to get the benefit of ITC **but its a concession** granted by virtue of Section 19.*
- *When a concession is given by a statute, the Legislature has power to make the provision stating the form and manner in which such concession is to be allowed...Main purport was to protect the Revenue against clandestine transactions resulting in evasion of tax.*

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ITC – Is a concession and not a right!

**TVS Motor
Company Ltd**
[2018 (18) GSTL
769 (SC)]

Para 43

*TN VAT

- *In essence, the State is putting the condition that ITC would be admissible when Form 'C' is given, which can be given only in those cases where sale is to a registered dealer. Prescribing such a condition in order **to ensure that there is no evasion**, has a rationale purpose and objective. Consideration of this aspect in the context of the very nature of the **ITC scheme**, which is a **concession and not a right**, would lead us to the conclusion that it was open to the Legislature to make such a provision.*

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ITC – Due to Article 14, provisions can be read down!

**TVS Motor
Company Ltd**
[2018 (18) GSTL
769 (SC)]

Para 437/48

*TN VAT

- *This situation puts those dealers who are making sales to the State Government in disadvantageous position, even when it is clear that there is **no possibility of tax evasion** as there cannot be any such apprehension in case of **sales to the State Government**.*
- *...provisions of Section 19(5)(c) are to be **read down** by construing that those dealers who are making sales exclusively to the other State Governments (i.e. outside the State of Tamil Nadu), the said States would be **deemed as registered** dealers for the purposes of availing benefits of ITC.*

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Retrospective amendment – Cannot be detrimental to accrued vested right!

JAYAM & Co
[2018 (19) GSTL 3
(SC)]

Para 18

*TN VAT

- *Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, i.e., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC was entirely different before this amendment...*
- *This is clearly **a provision** which is made for the first time to the **detriment** of the dealers. Such a provision, therefore, cannot have **retrospective effect**, more so, when **vested right had accrued** in favour of these dealers*

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Right accrued would continue!

Eicher Motors Ltd

[1999 (106) ELT 3
(SC)]

Para 5/ 6

*Modvat

- Thus the right to the credit has become absolute at any rate when the input is used in the manufacture of the final product. The basic postulate, that the **scheme is merely being altered** and, therefore, does not have any retrospective or retro-active effect, submitted on behalf of the State, **does not appeal to us. ... when on the strength of the rules available certain acts have been done** by the parties concerned, **incidents** following **thereto must take place** in accordance with the scheme... **Thus a right accrued** to the assessee on the date when they paid the tax on the raw materials or the inputs and that right **would continue** until the facility available thereto gets worked out or until those goods exist

If excluded specifically – No question of vested right!

**Sangam Spinners
Ltd**
[2011 (266) ELT
145 (SC)]

Para 41

*TN VAT

- Since the product High Speed **Diesel** oil was **excluded specifically** from the list of eligible inputs in the notifications, **there was no question of** creation of any right in favour of the appellant to avail such benefit. Therefore, contention that a **vested or accrued right** is sought to be taken away by giving retrospective effect is without any merit....Further on a conjoint reading of all the notifications it is clearly established that the **intention** of the Government **all along was to exclude** the appellants from getting the benefit of the MODVAT credit, therefore, the contentions that the Finance Act violates the vested right is without any basis

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Taxable and exempt sale - Proportionate ITC!

M K Agro Tech (P)
Ltd

[2017 (6) GSTL
125 (SC)]

Para 30

*KVAT

- The **ratio** of sale of sunflower oil and de-oiled cake **is 55:45**. The respondent-assessee is, thus, able to generate 45% revenue from the sale of de-oiled cake. However, no output tax is paid on the sale of this item since this item is **exempted** from payment of VAT under Section 5 of the KVAT Act. Section 17 is meant to take care of these situations, which is the purpose behind that provision.

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Exempted products – Credit not allowed!

Gujarat Narmada
Valley Fert. Co. Ltd
[2020 (371) ELT 3
(SC)]*

Para 9

* Excise/ CCR

CA Pritam Mahure and Associates

- *Thus, the finding of this Court restates an important principle under the Cenvat Credit Rules, and which is inbuilt in the structure of the Cenvat credit scheme, which is that **Cenvat credit** for duty paid on inputs used in the manufacture of **exempted final products cannot be allowed**. It is only a reflection of this larger principle which is contained in Rule 6. When Rule 6(1) says that*

Reversal - Cannot be more than ITC claimed!

**Reliance
Industries Ltd**

[2017 (6) GSTL
113 (SC)]

Para 9/ 20

*Gujarat VAT

- *...According to him, if one keeps in mind this scheme of giving tax credit, the intention is clear, namely, the **reduction rate cannot be more than the tax credit allowed**. Pointing out that in respect of furnace oil VAT is payable at 4% and if the contention of the appellant State is accepted, deduction there on will be at the rate of 8%... it would result in an anomalous position...After all, Section 11 deals with giving credit in respect of tax that is paid. Therefore, **if some reduction is to be made** from the said credit, **it cannot be more than the credit given...***

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ITC – Reversal amounts to non-availment!

Chandrapur
Magnet Wires (P)
Ltd
[1996 (81) ELT 3
(SC)]*

Para 10

* Also refer Precot Meridian 2015 (325)
ELT 234 (SC), Hello Minerals [2004 (174)
ELT 422 (All.)], Franco Italian Co. [2000
(120) ELT 792 (Tri.-LB)]

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- ...we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. **If this debit entry is permissible** to be made, credit entry for the duties paid on the **inputs utilised** in manufacture of the final exempted product **will stand deleted** in the accounts of the assessee. In such a situation, it cannot be said that **the assessee has taken credit ...**

CA Pritam Mahure and Associates

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ITC - Available on power plant!

**Ambuja Cement
Ltd**

[2022 (65) GSTL
3 (SC)]

Para 4

* MODVAT Credit

- ... credit on parts, components and accessories of Diesel

Generating Power Plant ... the High Court has specifically observed and found that DGPP sets on which Modvat credit is allowed is part and parcel of the factory of the respondent which is ultimately used in the manufacture of end product – cement. Therefore, Sl. No. 5 of the Table appended to Rule 57Q shall be attracted and therefore the assessee shall be entitled to the Modvat credit on such DGPP sets being parts/components of the cement plant/final manufacture product

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ITC - Should be availed on self-assessment!

Bharti Airtel Ltd
[2021 (54) GSTL
257 (SC)]

Para 46

- The **primary source** is in the form of agreements, invoices/ challans, receipts of the goods and services and books of accounts which are maintained by the assessee manually/electronically.
- ... books of accounts and record ... are **primary** documents and **source** material on the basis of which **self-assessment** is done by the registered person including about his eligibility and entitlement to get ITC and of OTL.
- Form **GSTR2A** is **only a facilitator** for taking an informed decision while doing such self-assessment.

Rent-a-cab services – No ITC as its for personal convenience!

Solar Ind. India
Ltd. [2022 (64)
GSTL 257 (S.C.)]*

Para 2/3

* Excise/ CCR

CA Pritam Mahure and Associates

- Providing **transportation** service to the employees cannot be said to be “input service” as it has **nothing to do with the manufacture** of the goods.
- ... it cannot be said that the High Court has committed any error in denying the Input Tax Credit and holding that such a service is excluded from the input service.

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Outdoor catering– No ITC available!

Toyota Kirloskar
Motor Pvt Ltd
[2021 (55) GSTL
129 (S.C.)]*

Para 2/3

* Excise/ CCR

CA Pritam Mahure and Associates

- 2. The statutory provision - Rule 2(1) defining “Input Service” post 1-4-2011 is very clear and the **out-door catering services** when such services are used **primarily for personal use or consumption** of any employee is held to be excluded from the definition of “Input Service”.
- 3. In that view of the matter, it cannot be said that the High Court has committed any error in denying the input tax credit and holding that such a service is **excluded from input service**.

Building - Is not a 'plant'!

J K Cotton Spg &
Wvg. Mills Co. Ltd
[1997 (91) ELT 34
(S.C.)]*

Para 11

* Sales Tax

CA Pritam Mahure and Associates

- *It is true that buildings must be constructed for housing the factory in which machinery is installed... **Building materials** used as raw materials for construction of "plant" **cannot be said to be used as plant** in the manufacture of goods. The Legislature has contemplated that the goods to qualify under Section 8(3)(b) must be intended for use as raw materials or as plant, or as equipment in the manufacture or processing of goods, and it cannot be said that building materials fall within this description...*

MODVAT and CENVAT– Not different!

Vikram Cement

[2006 (194) ELT 3
(SC)]

Para 24

- *The schemes of **Modvat and Cenvat credit are not** therefore, **different** and we are unable to agree with the conclusion of the Court in J.K. Udaipur Udyog that the decision in Jaypee Rewa Cement (supra) would have no application to Cenvat Rules.*

*CENVAT

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Credit – Must be claimed within prescribed time limit!

ALD Automotive

[2018 (364) ELT 3
(SC)]

Para 38/ 40

*CENVAT

- *The time under which a return is to be filed for purpose of assessment of the tax cannot be dependent on the will of a dealer. The use of word '**shall**' in Section 19(11) does not admit to any other interpretation except that the submission of Input claimed cannot be beyond the time prescribed. Section 19(11), in fact, gives additional time period for claim of Input Credit...*
- *Section 19(11) thus allowed an extended period for Input Credit which if not claimed in any month can be claimed before the end of the financial year or before the 90 days from the date of purchase whichever is later. The provision of Section 19(11) is thus an additional benefit given to dealer for claiming Input Credit in extended period. The use of word "**shall make the claim**" needs no other **interpretation**.*

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If eventually tax is held as payable – Credit can be given!

NTB International
(P) Ltd

[2015 (319) ELT
545 (SC)]*

Para 5

* CENVAT/ MODVAT

- *At this stage learned counsel appearing for the appellant states that the appellant should be extended the benefit of the Modvat credit, in this connection, **if the assessee is entitled to such Modvat credit otherwise, the same shall be given to him.***

'In the manufacture' – Is wide, no reason to limit!

Jayaswal Neco Ltd
[2015 (319) ELT
247 (SC)]*

Para 12

* CENVAT/ MODVAT

- *In the process, the court also explained that there is **no warrant for limiting** the meaning of the expression “in the manufacture of goods” to the process of production of goods only. In the opinion of the court, the expression **“in the manufacture” takes within its compass, all processes which are directly related to the actual production.***

Time limit to take credit – Is a procedural restriction which is permissible in law!

Osram Surya (P)
Ltd

[2002 (142) ELT 5
(SC)]*

Para 7

* CENVAT/ MODVAT

- .., a manufacturer cannot take the Modvat credit after **six months from the date of the documents** specified ...in the instant case by the introduction of the second proviso to Rule 57G, the credit in the account of a manufacturer was not taken away but only **the manner and the time** within which the said credit was to be taken or utilized alone was **stipulated**. It is to be noted at this juncture that the substantive right has not been taken away by the introduction of the proviso to the rule in question but a **procedural restriction** was introduced which, in our opinion, **is permissible in law...**

REFUND!



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Refund - Is a statutory prescription!

VKC Footsteps
India Pvt Ltd
[2021 (52) GSTL
513 (SC)]

Para 58/ 70/ 81

- **Refund** is a matter of **a statutory prescription**.
- A claim to **refund is governed by statute**. There is **no constitutional entitlement** to seek a refund.
- The Court while interpreting the provisions of Section 54(3) **must give effect to its plain terms**. The Court **cannot redraw legislative boundaries** on the basis of an ideal which the law was intended to pursue.

Export of services – Relevant date is date of realization of foreign exchange!

**Blackberry India
Pvt Ltd**

[2021 (45) GSTL
272 (Tri. Del)]

Para 5

*Affirmed in 2024 (387) ELT
642 (SC)

- ... the Tribunal has, in a series of decisions, held that relevant date in case of **export of services** is the **date of realisation of the foreign exchange**.
The reason for this is the export of services is not complete until the foreign exchange is realised as per Rule 3(2)(b) of “Export of Services Rules, 2005”.

“So far as may be” – Specific provision and not a time limit!

**Sony India Pvt
Ltd** [2014 (304)
ELT 660 (Del.
HC)]

Para 16

**Refer Nanak
Electronics**
[2023 (385) ELT 801(SC)]

- *All that can be inferred from the term “so far as may be” would be that specific provisions relating to the mechanism applicable for refund, in the Customs Act, applied; **not the period of limitation.***

Unjust enrichment – Not applicable to provisional assessment!

Hindustan Zinc
Ltd

[2023 (384) ELT
626 (SC)]

Para 2

- *Allied Photographics India Ltd.” [(2004) 4 SCC 34 = 2004 (166) E.L.T. 3 (S.C.)]. The Court held that the doctrine of **unjust enrichment** was **not applicable to provisional assessment** even after finalization of the proceedings.*

'Buyer' - Can claim refund!

**Addisson & Co.
Ltd**

[2016 (339) ELT
177 (SC)]

Para 21/ 36

* Excise

- *That a **consumer can make an application for refund** is clear from paras 98 and 99 of the judgment of this Court in Mafatlal Industries (supra). ...The word **'buyer'** in Clause (e) to proviso to Section 11B(2) of the Act cannot be restricted to the first buyer from the manufacturer... It might be difficult **to identify who had actually borne the burden** but such verification would definitely assist the Revenue in finding out whether the manufacturer or buyer who makes an application for refund are being unjustly enriched... As it is clear that the Assessee has borne the burden of duty, it cannot be said that it is not entitled for the refund of the excess duty paid...*

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RETURNS!



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GSTR-3B - Is a return for all purposes!

Bharti Airtel Ltd
[2021 (54) GSTL
257 (SC)]

Para 46

- *...the efficacy of Form **GSTR3B** being a stop gap arrangement for furnishing of return, as was required under Section 39 read with Rule 61, **would not stand whittled down** in any manner. It would **still be considered as a return for all purposes** though filled manually electronically.*

Rectification - Permissible, but in specified manner!

Bharti Airtel Ltd
[2021 (54) GSTL
257 (SC)]

Para 46

- ... registered person is **not denied of the opportunity** to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter **in which** such omission or incorrect particulars are **noticed**.
- ... the **law permits rectification** of errors and omissions only at the initial stages of Forms GSTR1 and GSTR3, **but in** the **specified manner**.

RCM!



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Revenue neutrality - Is irrelevant!

**Nothern
Operating System**
[2022-TIOL-48-SC-
ST-LB]*

Para 59

- *As regards the question of revenue neutrality is concerned, ... That a particular rate of tax- or no tax, is payable, or that if and when liability arises, the assessee, can through a certain existing arrangement, claim the whole or part of the duty as refund, is an **irrelevant detail**.*

* Service Tax judgment

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Revenue neutrality – Open to assessee to claim credit!

Star Industries

[2015 (324) ELT
656 (SC)]*

Para 35

* Excise

- *It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid. If that is so, this argument in the instant case rather goes against the assessee. Since the assessee is in appeal and if the exercise is Revenue neutral, then there was no need even to file the appeal. Be that as it may, if that is so, it is **always open to the assessee to claim such a credit.***

SUB-CONTRACT!



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Sub-contractor - Liable to pay ST even if main contractor pays!

Om Sai Fabricators
[(2023) 6 Centax
208 (Tri.-Bom)]*

Para 29

- A subcontractor has to discharge the Service Tax liability when he renders taxable service

- Service Tax judgment
- Affirmed by SC (2023) 6 Centax 208 (Tri.-Bom)

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AGREEMENTS!



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Apply substance over form!

**Nothern
Operating System**
[2022-TIOL-48-SC-
ST-LB]*

Para 47/48/ 51/ 52

* Service Tax judgment

- *... the nomenclature of any contract, or document, is not decisive of its nature. An **overall reading** of the document, and its effect, is to be seen by the courts.*
[Titaghur Paper Mills Co. Ltd 1985 Supp SCC 280]
- *This court has consistently applied one test: **substance over form**, ...*

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INTEREST!



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Reopened assessments – Highly inequitable to charge interest!

Indian Oil Corporation Ltd
[2018 (11) GSTL 8 (S.C.)]*

Para 30

* Entry Tax

CA Pritam Mahure and Associates

- *Given the fact that the State continued with the grant of set off till the year 2014, and **reopened assessments** beginning from 2008-09 based on an audit objection, we are of the view that it would be **highly inequitable** at this juncture to allow the State **to charge interest**,...
The principal amount also is not something that the Appellant was able to pass on to the ultimate consumer in the peculiar facts of this case ...*

CA Pritam Mahure and Associates

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Interest – There must be substantive provision!

**Steel Authority of
India Ltd**
[2019 (366) ELT
769 (S.C.)]*

Para 22

* Excise

CA Pritam Mahure and Associates

- *In short, therefore, the principle may be taken to be established that while levy of interest is a part of the adjective law, yet **to levy interest there must be substantive provision**. Demand for interest can be made only if the legislature has specifically intended collection of interest. We must look at the statutory provisions.*

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PENALTY!



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Interpretation cases – No penalty!

International
Merch. Co. LLC
[2022 (67) GSTL
129 (S.C.)]*

Para 25

* Service Tax

CA Pritam Mahure and Associates

- **25.** *As far as the penalty is concerned, we are of the considered view that there was **no** warrant for the imposition of the **penalty** as the dispute **in** the present case essentially turned on the **interpretation** of the statutory provisions and their inter-play with the circular issued by the CBEC.*

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Bona fide mistake – No penalty!

Kisan Mouldings
Ltd

[2010 (260) ELT
167 (SC)]*

Para 4

* Excise

CA Pritam Mahure and Associates

- ...this Court has observed that the **penalty** under Section 11AC, as the word suggests, **is punishment for an act of deliberate deception** by the assessee with the intent to evade duty for adopting any of the means mentioned in the Section. Since the present is a case of **bona fide mistake** and because there was a categorical finding then there was no intention to evade tax by the respondent, therefore in terms of the ratio laid down by this Court in the aforesaid decision, no interference is called for.

Bonafide mistake - No penalty and no interest!

Honda Siel Power
Products

[2015 (223) ELT
644 (SC)]*

Para 5

* Excise

CA Pritam Mahure and Associates

- However, in a case like this, the **mistake**, if any, was **bona fide** which would no doubt deprive the assessee of the benefit of the exemption notification but it is not a case where any penalty or interest should be imposed. We, therefore, **set aside the penalty as well as interest** charged by the Revenue.

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Non-extension of e-way bill does not mean evasion!

Satyam Shivam
Papers Pvt Ltd
[2022 (57) GSTL
97 (SC)

Para 4

- On account of **non-extension** of the validity **of the e-way bill** by petitioner or the auto trolley driver, **no presumption** can be drawn **that there was an intention to evade tax.**

Penalty – Cannot violate Article 14!

**Shree Bhagwati
Steel Rolling
Mills**

[2015 (326) ELT
209 (SC)]

Para 35

- *It is clear that as has been held by this Court, penalty imposable under the aforesaid three Rules is inflexible and mandatory in nature. The High Court is, therefore, correct in saying that an assessee who pays the delayed amount of duty **after 100 days** is to be on the **same footing as an assessee who pays the duty only after one day's delay** and that therefore, such rule **treats unequals as equals** and would, therefore, **violate Article 14** of the Constitution of India*

Penalty on Authorities!

Satyam Shivam
Papers Pvt Ltd
[2022 (57) GSTL
97 (SC)

Para 3/ 7

- 44. *In our opinion, there has been a blatant **abuse of power** by the 2nd respondent in collecting from the petitioner tax and penalty both under the CGST and SGST and compelling the petitioner to pay Rs. 69,000/- by such conduct...*
- *...Considering the overall conduct of the petitioner No. 2 and the corresponding **harassment** faced by the writ petitioner we find it rather necessary to enhance the amount of costs.*

INTERPRETATION!



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Charging section – Has to be construed strictly!

**Ellis Bridge
Gymkhana**

[AIR 1998 (SC)
120]

- *“The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A **charging section has to be construed strictly**. If a person has not been brought within the ambit of the charging section **by clear words**, he cannot be taxed at all.”*

Taxing statutes - To be interpreted literally!

**Reliance
Industries Ltd**

[2017 (6) GSTL
113 (SC)]

Para 17

*Gujarat VAT

- **17.** *Moreover, there is no quarrel about the well-settled proposition of law that **taxing statutes are to be interpreted literally** [See Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana - (2014) 6 SCC 444, State of Madhya Pradesh v. Rakesh Kohli & Anr. - (2012) 6 SCC 312 and V.V.S. Sugars v. Government of Andhra Pradesh & Ors. - (1999) 4 SCC 192].*

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Definition – In one statute cannot be applied in other!

Cannuaught Plaza
Restaurants (P) Ltd

2012 (286) E.L.T.
321 (SC)

Para 43

- *It is a settled principle in excise classification that the **definition of one statute** having a different object, purpose and scheme **cannot be applied mechanically to another statute.***

* Excise

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Definition – In one statute cannot be applied in other!

**Shree Baidyanath
Ayurved Bhavan
LTD.**

[2009 (237) ELT
225 (SC)
Para 41

* Excise

- *True it is that Section 3(a) of the Drugs and Cosmetics Act, 1940 defines 'Ayurvedic, Sidha or Unani Drug' but that definition is not necessary to be imported in New Tariff Act. The **definition of one statute having different object**, purpose and scheme **cannot be applied mechanically to another statute**. As stated above, the object of Excise Act is to raise revenue for which various products are differently classified in New Tariff Act.*

Meaning of a Word – Context and Scheme of Act also relevant!

**Biswanath
Bhattacharya**

[2014 (301) ELT
593 (SC)]

Para 33

*FEMA

- *Chief Justice Sikri in His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Another - (1973) 4 SCC 225 dwelt on this subject referring to two English decisions and one American decision stating in substance that the meaning of a **word** occurring in a statute cannot be ascertained without examining **the context and** also the **scheme of the Act** in which the expression occurs.*

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One Word – Two meanings in one Act possible!

Saheli Leasing &
Industries Ltd

[2010 (253) ELT
705 (SC)]

Para 34 (vi)

*Income Tax

- ...**one word** occurring in different Sections of the Act can have **different meaning**, if the object of the **two Sections** are different and when both operate in different fields.

Provision – Must not be read in isolation!

ALD Automotive

[2018 (364) ELT 3
(SC)]

Para 38/ 40

*CENVAT

• ... this Court in *Kailash Chandra and Another v. Mukundi Lal and Others*, 2002 (2) SCC 678. In paragraph 11, following has been laid down :-

“11. **A provision in the statute is not to be read in isolation.** It has **to be read with other related provisions** in the Act itself, more particularly, when the subject-matter dealt with in different sections or parts of the same statute is the same or similar in nature.”

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Courts – If literal reading leads to absurdity, then it must be avoided !

Southern Motors

[2017 (358) ELT 3
(SC)]

Para 34

* Karnataka VAT

- ... though words in a statute must, to start with, be extended their ordinary meanings, but **if the literal construction thereof results in anomaly or absurdity, the courts must seek to find out the underlying intention** of the legislature and in the said pursuit, can within permissible limits strain the language so as to avoid such unintended mischief.

Words – Must be understood in natural sense!

Linde India Ltd

2020 (36) GSTL 3
(SC)*

Para 16

* AP VAT Act

- The **words** of a statute should be first understood in their **natural, ordinary or popular sense** and phrases and sentences should be construed according to their grammatical meaning, **unless that leads to some absurdity** or unless there is something in the context, or in the object of the statute to suggest the contrary.

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Act vs Rules – Rules cannot go beyond Act!

**Intercontinental
Consultants and
Technocrats**

[2018 (10) ELT
401 (SC)]

Para 26/27

* Service Tax

- CA Pritam Mahure and Associates
- It is trite that **rules cannot go beyond the statute.**
 - The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a **rule** which comes in conflict with the main enactment **has to give way to the provisions of the Act.**

Rules – Must be consistent with scheme of Act!

Wipro Ltd
[2015 (319) ELT
177 (SC)]

Para 32

* Customs Act

- *No doubt, rulemaking authority has the power to make Rules but such power has to be exercised by making the **rules which are consistent with the scheme of the Act** and not repugnant to the main provisions of the statute itself. Such a provision would be valid and **1% F.O.B. value** in determining handling charges, etc., **could be justified only in those cases where actual cost is not ascertainable**. The High Court missed the point that Garden Silk Mills Ltd. case was decided by this Court in the scenario where actual cost was not ascertainable.*

CA Pritam Mahure and Associates

Rules – Framed to achieve purpose of the Act!

Intercontinental
Consultants and
Technocrats

[2018 (10) ELT
401 (SC)]

Para 28

* Service Tax

- It is also well established principle that **Rules are framed for achieving the purpose** behind the provisions **of the Act**, as held in *Taj Mahal Hotel* :
the Rules were meant only for the purpose of carrying out the provisions of the Act and they **could not take away what was conferred by the Act** or whittle down its effect.”

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No estoppel against law

Jayswal Neco Ltd

[2015 (322) ELT
587 (SC)]

Para 13

* Excise

- *Tribunal was not correct in observing that merely because the appellant paid the aforesaid portion of duty subsequently in cash, it had accepted the legal position... Whether such a course of action was permissible or not had to be **examined in the light of the legal provisions**... There is **no estoppel against law**. Merely because the appellant had **yielded to the demand** of the Revenue to pay that portion of duty also in cash, would **not mean** that the appellant was **precluded from taking a stand** that such mode of payment through Cenvat Credit ...*

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Promissory estoppel - Not available against legislative function!

**Hero Motocorp
Ltd [2022 (66)
GSTL 129 SC]**

Para 45

- *It can thus clearly be seen that this Court held that the plea of **promissory estoppel would not be available against** the exercise of the **legislative functions** of the State. Equally, it cannot be invoked for preventing the Government from discharging its functions under the law.*

Retrospective legislation – Legislature have power!

JAYAM & Co
[2018 (19) GSTL 3
(SC)]

Para 14

*TN VAT

- No doubt, when it comes to fiscal legislation, the **Legislature has power to make the provision retrospectively**. In *R.C. Tobacco Pvt. Ltd. ...* [(2005) 7 SCC 725...], this Court stated **broad legal principles** while testing a retrospective statute, in the following manner :

“(i) A law cannot be held to be unreasonable merely because it operates retrospectively;

*(ii) The unreasonability must lie in some other **additional factors**;*

*(iii) The retrospective operation of a fiscal statute **would have to be found to be unduly oppressive and confiscatory** before it can be held to be unreasonable as to violate constitutional norms;*

*(iv) Where taxing statute is **plainly discriminatory** or provides no procedural machinery for assessment and levy of tax or that is confiscatory, Courts will be justified in striking down the impugned statute as unconstitutional;*

*(v) The other factors being **period of retrospectivity** and degree of unforeseen or unforeseeable financial burden imposed for the past period; ...*

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Subordinate legislation - Must have express provision regarding retrospective legislation!

**Federation of
Indian Minerals
Industries**

[2017 16 SCC 186]

Para 26

- “26...The relevant principles are :
 - (i) The Central Government or the State Government (or any other authority) **cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly** or by necessary implication, **authorises it** to do so.
 - (ii) Delegated legislation is **ordinarily prospective in nature** and a right or a liability created for the first time cannot be given retrospective effect
 - (iii) As regards a **subordinate legislation concerning a fiscal statute**, it would **not be proper** to hold that **in the absence of an express provision** a **delegated authority can impose a tax** or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen.

Schemes - No straight jacket formula!

Kanak Exports

[2015 (326) ELT
26 (SC)]

Para 6/ 108

* Exim

- *“5. **Export and import policy.** - The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the export and import policy and may also, in the like manner, **amend** that policy.”*
- *No doubt, this Section confer powers upon the Central Government to ‘amend’ the policy which has been framed under the aforesaid provisions. **However, that by itself would not mean** that such a provision **empowers** the Government **to do so retrospective.***

Clarificatory Notification – Retrospective in nature!

WPIL Ltd
[2005 (181) ELT
359 (SC)]

Para 15

* Excise

CA Pritam Mahure and Associates

- *...in ...Collector of Central Excise, Shillong v. Wood Craft Products Ltd., [(1995) 3 SCC 454]... this Court held that a **clarificatory notification would take effect retrospectively**. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.*

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Notification - To be read as a whole!

**Ganesh Metal
Processors
Industries**

[2003 (151) ELT
21 (SC)]

Para 5

* Excise

- *The **Notification has to be read as a whole**. If any of the **condition** laid down in the Notification is **not fulfilled**, the party is **not entitled to the benefit** of that Notification...*

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'Include' – Generally used to enlarge meaning!

**Ramala Sahakari
Chini Mills Ltd**

[2016 (334) ELT 3
(SC)]

Para 1

* Cenvat Credit Rules, 2002

- *...it has been clearly held in Regional Director, Employees' State Insurance Corporation (supra) that the word the word **"include"** in the statutory definition is generally **used to enlarge the meaning of the preceding words** and it is by way of **extension**, and **not with restriction ...***

'Entitlement' – Right to have something!

Sandoz Pvt Ltd
[2022 (379) ELT
279 (SC)]

Para 19

- *Needless to observe that there is marked distinction between the expression “benefit” and “entitlement”. “Benefit”, by its very nature, is an advantage, help or aid, while **“entitlement” is right to have something.***

'In all forms' vs 'All kinds'!

Lohiya Agencies

[2019 (21) GSTL
113 (SC)]

Para 15

- Rajasthan VAT
- [Refer '*all forms of supply*']

CA Pritam Mahure and Associates

- *The observations of this Court in Trutuf Safety Glass Industries (supra) are of significance, where a distinction is sought to be made between the words 'in all forms' as juxtaposed to the expression 'all kinds'. The words '**all kinds**' are said to be **restricted to multiple items of the same kind**, while the expression '**in all forms**' is to **multiply the same commodity into different forms**. Therefore, different 'forms' of gypsum would get included in the expression 'in all forms'.*

'In all its forms' – Something more than basic included!

Lohiya Agencies

[2019 (21) GSTL
113 (SC)]

Para 14/16

* Rajasthan VAT

- This certainly signified that **something more than basic gypsum was sought to be included** in the Entry by referring to 'gypsum in all its forms'
- CA Pritam Mahure and Associates If the object was to include only 'gypsum', then why would the Entry be changed to '**gypsum in all its forms**'? The corollary would also be as to what is meant by 'in all its forms', as it is not, as if mere geometrical alteration of a shape would form part of the Entry. In such a situation, the original Entry itself was comprehensive enough to have included it...
- ...the expression 'in all forms' being added to 'gypsum' to naturally include **not only** just gypsum in its original form **but in different forms** as well.

Singular - Includes plural and vice-versa!

Bhagat Singh
[2021 (46) GSTL
3 (SC)]*
Para 17

* Sales Tax

- It is well settled that in construing a statutory provision, words in the **singular** are **to include the plural and vice versa**, unless repugnant to the context in which the expression has been used, as provided in Section 13(2) of the General Clauses Act, 1897
- ...this Court has held that the expression “any bodies or persons” in Section 43-A(1)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948, will include a singular person, in the same way as the expression “leases” in the provision will include a single lease.” [Govinda Bala Patil v. Ganpati Ramchandra Naikwade, (2013) 5 SCC 644

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Definitions – Refer to what ‘definition’ say than Circular !

INTERNATIONAL
MERCHANDISING
COMPANY, LLC
[2022 (67) GSTL
129 (SC)]*

Para 17

* Service Tax

- CA Pritam Mahure and Associates
- The CBEC **circular** dated 23 August, 2007 deals with a situation where there exists a relationship of employer and employee between the agency which supplies the service and a person whose service is supplied. But it does not postulate that such a relationship must exist for the **statutory definition** to be attracted. Hence, the fact that there may be no relationship of employment between VA and FSE would not be dispositive for the purposes of the statutory definition in Section 65(68). For the above reasons, we are of the view that the decision of the Tribunal on this aspect of the matter cannot be faulted with.

Strict interpretation is to be followed!

**Krishi Upaj
Mandi Samiti**
[2022 (58) GSTL
(129) (SC)]*

Para 8.3/9

*Service Tax

- **Strict interpretation** of the provision is to be accorded to each case on hand. **Purposive** interpretation can be given **only when there is an ambiguity** in the statutory provision or it results in absurdity,...
- wherever the legislature intended that the particular activity is a **mandatory** statutory, the legislature has used the word **“shall”**.

'Or' cannot be read as 'and'!

**Shapoorji
Pallonji & Co.
Pvt. Ltd.**

[2023 (79) GSTL
(145) (SC)]

Para 24

- *In the present case, the word “or” between sub-clauses (i) and (ii) indicates the independent and **disjunctive nature** of sub-clause (i), meaning thereby that “or” used after sub-clause (i) **cannot be interpreted as “and”** so as to tie it with the condition enumerated in the long line of clause 2(s) which is applicable only to sub-clause (ii).*

'Or' cannot be read as 'and'!

Ind-Swift
Laboratories
Ltd.
[2011 (265) ELT
(3) (SC)]

Para 17

- *The issue is as to whether the aforesaid word "OR" appearing in Rule 14, twice, could be read as "AND" by way of reading it down as has been done by the High Court. If the aforesaid provision is read as a whole **we find no reason to read the word "OR" in between the expressions 'taken' or 'utilized wrongly' or has been erroneously refunded' as the word "AND".***

'Or' can be read as 'and'!

**Spendex
Industries Ltd.**

[2015 (324) ELT
(686) (SC)]

Para 22 (iv)

- *The aforesaid discussion leads us to the only inevitable consequence which is this : the word '**OR**' occurring in Rule 18 **cannot be given literal interpretation** as that leads to various disastrous results pointed out in the preceding discussion and, therefore, this word **has to be read as 'and'** as that is what was intended by the rule maker in the scheme of things and to carry out the objectives of the Rule 18 and also to bring it at par with Rule 19.*

Comma, semicolon – Relevant for construction!

**Shapoorji
Pallonji & Co.
Pvt. Ltd.**
[2023 (79) GSTL
(145) (SC)]

Para 26/ 27

- *What follows is that **punctuation**, though a minor element, may be resorted to for the purpose of construction... In the present case, the use of a **semicolon** is not a trivial matter but a deliberate inclusion with a clear intention to differentiate it from sub-clause (ii). Further, it can be observed upon a plain and literal reading of clause 2(s) that while there is a semicolon after sub-clause (i), sub-clause (ii) closes with a comma. This essentially supports the only possible construction that the use of a **comma** after sub-clause (ii) relates it with the long line provided after that and, by no stretch of imagination, the application of the long line can be extended to sub-clause (i), the scope of which ends with the semicolon.*

'A' / 'An' / 'Any' or 'The' – Generic vs specific!

Cannon India
Pvt Ltd
[2021 (376) ELT
(3) (SC)]

Para 10

* Customs Act

- There are only two articles 'a (or an)' and 'the'. **'A (or an)'** is known as the **Indefinite Article** because it does not specifically refer to a particular person or thing. On the other hand, **'the'** is called the **Definite Article** because it points out and refers to a particular person or thing. There is no doubt that, if Parliament intended that any proper officer could have exercised power under Section 28(4), it could have used the word **'any'**.

Interpretation - Supported by plain words to be preferred!

**Radha Krishan
Industries [2021
(48) SC (113)]**

Para 40

- *The language of the statute has to be interpreted bearing in mind that it is a taxing statute which comes up for interpretation. The **provision must be construed on its plain terms.***
- *Equally, in interpreting the statute, **we must have regard to the purpose** underlying the provision.*
- *An **interpretation which effectuates the purpose must be preferred** particularly **when** it is **supported by the plain meaning** of the words used.*

Interpret statutes in just, reasonable and sensible manner!

Bhagat Singh
[2021 (46) GSTL
3 (SC)]*

Para 18

* Sales Tax

- The Court **must interpret** a statute **in a manner which is just, reasonable and sensible**. If the grammatical construction leads to some absurdity or some repugnancy or inconsistency with the legislative intent, as may be deduced by reading the provisions of the statute as a whole, the grammatical construction may be departed from to avoid anomaly, absurdity or inconsistency.

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'Mission-Impossible' not possible in law!

Shekhar Resorts
Ltd. [2023 (68)
GSTL 225 (S.C.)]*

Para 7.1 to 7.3

* SVLDR Scheme

CA Pritam Mahure and Associates

- **7.1** *As per the settled position of law, no party shall be left remediless and whatever the grievance the parties had raised before the court of law, has to be examined on its own merits [Sunil Vasudeva (supra) (para 31)].*
- **7.2** *... in the case of Calcutta Iron Merchants' Association (supra), **no law would compel a person to do the impossible...***
- **7.3** *In the case of Gyanichand (supra) it was observed ... that it would not be fair on the part of the Court to give a direction to do something which is impossible and if a person has been directed to do something which is impossible, and if he fails to do so, he cannot be held guilty.*

'Use' – Does not have fixed meaning!

Adani Gas Ltd.
[2020 (40) GSTL
145 (S.C.)]*

Para 27

CA Pritam Mahure and Associates

- The expression **“use” does not have a fixed meaning**. The content of the expression must be based on the context in which the expression is adopted. The use of an article may or may not result in a visible change in its form or substance. Moreover, the nature of use is conditioned by the kind of article which is put to use... physical operation is not the only or invariable feature of use.

* Service Tax

'For' or 'in' – Meaning!

Linde India Ltd.
[2020 (36) GSTL 3
(S.C.)]*

Para 15

* AP VAT Act

CA Pritam Mahure and Associates

- *It is significant to note the use of the phrase **“for or in”** in the definitional clause. Section 3(b)(i) includes both medicines or substances used for the diagnosis, treatment, mitigation or prevention of any disease or disorder or in the diagnosis, treatment, mitigation or prevention of any disease or disorder. Where the **former highlights the direct use** of the product in question in diagnosing, treating, mitigating or preventing a disease or disorder, the **latter highlights its instrumental use as a facilitative agent ...***

CA Pritam Mahure and Associates

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'Of' – Must be considered having regard to intention!

**Mauri Yeast India
Pvt. Ltd ***

2008 (225) ELT 321
(SC)

Para 33

* UP Trade Tax

- *The meaning of the word 'of' used in an item in a fiscal statute must be considered having regard to the **intention** of the maker thereof. The court shall, for the said purpose, put itself in the chair of the legislature. It would presume the 'legislation' to be reasonable.*

'From' is starting point and 'Upto' is terminating point!

Ultra Tech Cement
Ltd. [2018 (9) GSTL
337 (S.C.)]*

Para 7

CA Pritam Mahure and Associates

- Whereas the word **'from'** is the indicator of **starting point**, the expression **'upto'** signifies the **terminating point**, putting an end to the transport journey.

* Central Excise

Illustration cannot control main provision!

Saurashtra
Chemicals Ltd
[2007 (212) ELT
7(SC)

Para 11

- *...the illustration will have no application in the instant case. It is furthermore now a well-settled principle of law that an **illustration cannot control the main provision...***

* Excise

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Procedural provisions cannot take away substantive rights!

Home Ashok
Leyland Ltd
[2007 (210) ELT
178 (SC)

Para 4

* Excise

- ...the courts below were right in holding that **Rule 57E was procedural**, clarificatory and therefore would **not affect the substantive rights** of the manufacture of the specified final product to claim Modvat credit for the duty paid on the inputs subsequent to the date of the receipt of those inputs.

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Match facts completely then only apply judgment!

FIAT India Pvt Ltd

[2012 (283) ELT
161 (SC)]

Para 66

* This Para was referred by CBIC in
Instruction No. 5/2023-GST, dated
13-12-2023

- “66..... **Each case depends on its own facts** and a **close similarity** between one case and another is **not enough** because either a single significant detail may alter the entire aspect. In deciding such cases, one should **avoid the temptation** to decide cases (as said by Cardozo) **by matching the colour** of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

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Precedence – Accepted unless new ground or material change in position!

**Bharat Sanchar
Nigam Ltd**

[2006 (2) STR
161(SC)]

Para 18

- *The Courts will generally adopt an earlier pronouncement of the law or a conclusion of fact **unless there is a new ground** urged **or a material change** in the factual position.*

* Service Tax

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Smaller bench cannot disagree with Larger bench!

Unicorn Industries
[2019 (370) ELT 3
(SC)

Para 42

- ...*Central Board of Dawoodi Bohra Community & Ors. v. State of Maharashtra & Ors., (2005) 2 SCC 673 ... It was held that a **smaller bench could not disagree with** the view taken by a **Larger Bench***

* Cess

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Smaller bench bound to follow Larger bench judgment!

**Ramesh Food
Products**
**[2004 (174) ELT
310 (SC)]**

Para 7

* Excise

- *In a number of cases this Court has observed that judicial propriety demands that when a Larger Bench judgment holds the field, **Smaller Bench of the Tribunal is bound to follow it**. If it expresses any doubt about the correctness of the view expressed by the Larger Bench, it cannot per se on its own take a different view.*

Deeming/ Legal fiction – Must be taken to logical conclusion!

**Sports & Leisure
Apparel Ltd**
**[2016 (338) ELT 3
(SC)]**

Para 15

* Excise

- *...when Explanation II states that the duty shall be deemed to have been paid even without production of documents evidencing payment of duty thereon, it was clearly meant that no duty was required to be paid by the manufacturers of knitted garments...It is trite law that a **fiction created** by a provision of law is to be given its due play and it **must be taken to its logical conclusion** [Union of India v. Jalyan Udyog - (1994) 1 SCC 318 = 1993 (68) E.L.T. 9 (S.C.)].*

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In taxing policy, Courts have limited play!

Skill Lotto
Solutions Pvt Ltd
[2020 (43) GSTL
289 (SC)]

Para 57

- ... it is well settled that with regard to **taxing policy** of the legislature, the **Courts have very limited role to play.**

Court cannot redraw legislative boundaries!

VKC Footstep
Industries [2021
(52) GSTL SC
(513)]

Para 58

- *The Court while interpreting the provisions of Section 54(3) **must give effect to its plain terms.** The **Court cannot redraw legislative boundaries** on the basis of an ideal which the law was intended to pursue.*

Double Taxation - Court may lean in favour of construction which avoids double taxation!

Premier Tyres
Ltd
[1987 (28) ELT 58
SC]

Para 4

* Excise

- There is **no general principle** that there can be **no `double taxation`** in the levy of Excise Duty. The **Court may lean in favour** of a construction **which will avoid double taxation ...**

SCN - Is foundation of demand!

**Gas Auth. Of
India Ltd**
[2008 (232) ELT
7 (SC)]

Para 7

- As repeatedly held by this Court, **show cause notice is the foundation** of the Demand under Central Excise Act and if the show cause notice ... Ultimately, an assessee is required to reply to the show cause notice ...

SCN - Is foundation of demand!

**Ballarpur
Industries Ltd**

[2007 (215) ELT
489 (SC)]

Para 21

- *It is well settled that the **show cause notice is the foundation** in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule.*

Excise – Judgment of Income Tax and other laws have no relevance!

**Dai Ichi
Karkaria Ltd**
[1999 (112) ELT
353 (SC)]

Para 21

- *The learned Attorney General submitted that judgments relating to the **Income Tax Act** or **other statutes** had **no relevance** while considering a provision **in an excise statute**.*

* Excise

Excise – Judgment of Income Tax have no relevance!

**Steel Authority
of India Ltd**

[2019 (366) ELT
769 (SC)]

Para 30

* Excise

- *We are of the view that the appellants are **not justified in seeking to derive support from the judgments** rendered by this Court under the **Income Tax Act**. The impact of taxing of income under the Income Tax Act would not be apposite for considering the question which arises in these cases which is whether interest can be levied under Section 11AB of the Act ...*

Other laws – Principle laid down can be referred!

Jawahar Mills
Ltd

[2001 (132)
GSTL 3 (SC)]

Para 6

- ... **decisions** referred by the Tribunal in the impugned order were cases **involving sales tax and income tax** and, therefore, the Tribunal should not have relied on those decisions is without any substance because the real question is that of the **principle laid down** by a decision...

* Excise

Principle of *stare decisis*!

**Total
Environment
Building
Systems**

[2022 (63) GSTL
257 (SC)]

Para 12

* Service Tax

- Therefore, on the **principle of stare decisis**, we are of the firm view that the judgment of this Court in the case of *Larsen and Toubro Limited (supra)*, **neither needs to be revisited, nor referred to a Larger Bench** of this Court as prayed, i.e., after a period of almost seven years

Nositur a Sociis and *Ejusdem generis*!

**Kartos
International**
[2011 (268) ELT
289 (SC)]

Para 29

* Service Tax

- ***Nositur a Sociis*** means that when two words are capable of being analogously defined, then they take colour from each other. The term ***ejusdem generis*** is a facet of *Nositur a Sociis*. The aforesaid principle means that the general words following certain specific words would take colour from the specific words.

Authorities - Cannot give their own interpretation to legislative provisions!

**Bombay
Machinery
Store** [2020
(36) GSTL 161
(SC)]

Para 15

* CST Act, 1956

- *The Tax Administration **Authorities cannot give their own interpretation to legislative provisions** on the basis of **their own perception** of trade practise. This administrative exercise, in effect, would result in supplying words to legislative provisions, as if to cure omissions of the legislature.*

Law - At the time of enactment, every eventuality may not be visualised!

G S Chatha Rice Mills

[2020 (374) ELT 289 (SC)]

Para 35

* Customs Act

- *First, the legislature does not always say everything on the subject. **When it enacts a law, every conceivable eventuality** which may arise in the future **may not be present** to the mind of the lawmaker. Legislative silences create spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense. Second, regulatory governance is evolving in India as **new technology replaces** old and **outmoded ways** of functioning. The virtual world of electronic filings was not on the horizon when Parliament enacted the Customs Act in 1962.*

Schemes - No straight jacket formula!

Kanak Exports

[2015 (326) ELT
26 (SC)]

Para 104

- *Therefore, it cannot be denied that the Government has a right to amend, modify or even rescind a particular Scheme. It is well settled that **in complex economic matters every decision is necessarily** empiric and it is based on **experimentation** or what one may call trial and error method and therefore, its validity cannot be tested on any rigid prior considerations or on the application of **any straightjacket formula...***

* Exim

VAT laws of other countries may not be relevant!

Skill Lotto
Solutions Pvt
Ltd [2020 (43)
GSTL 289 (SC)]

Para 81

- *When the levy of GST, determination of taxable value are governed by the Parliamentary Act in this country, we are of the view that **legislative scheme of other countries may not be relevant** for determining the issue which has been raised before us.*
- *The taxing policy and the **taxing statute of various countries are different** which are in accordance with taxing regime suitable and applicable in different countries.*
- *The issue ... has to be answered by looking into the statutory provisions of the Act, 2017 and the Rules framed therein which govern the field.*

Wikipedia – Could be referred, but not authentic source!

Ponds India Ltd
[2008 (227) ELT
497 (SC)]

Para 24

* UP Trade Tax

- **Wikipedia**, like all other external aids to construction, like dictionaries etc, is **not an authentic source**, although the same **may be looked at for the purpose of gathering information**. Where an express statutory definition of a word exists, a Wiki definition cannot be preferred. It cannot normally be used for the purpose of interpreting a taxing statute or classification of a product vis-a-vis an entry in statute.
- However, as a source of authority, Wikipedia is frequently cited by judges around the world. This is not restricted to India alone.

RECOVERY!



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Transfer valid if in good faith and for consideration!

**Radico Khetan
Ltd [2022 (65)
GSTL 258 (SC)]**

Para 5*

* UP Trade Tax Act, 1948

- *Section 34 of the Act shall be applicable only in a case where there is a transfer of immovable property belonging to the original assessee, **during the pendency** of any proceedings under the Act **with the intention of defrauding** any such tax or other dues. As per proviso to Section 34, nothing in Section 34 shall impair the rights of a transferee in **good faith and for consideration**. Thus, the power of Section 34 can be exercised only in a case where the transfer of immovable property belonging to the original assessee is made during the pendency of any proceedings under the Act and such transfer is found to be with the intention to defraud any such tax and other dues.*

Deceased person / dissolved Firm – If no machinery provisions, all proceedings abate!

**Shabina
Abraham**

[2015 (322) ELT
372 (SC)]

Para 21*

* Income Tax Act, 1961

- Nevertheless, this Court held that **in the absence of any machinery provisions** to assess and collect sales tax from a deceased person - in that case it was a dissolved partnership firm - **all proceedings** against such deceased person/dissolved firm **abate**. The aforesaid judgment has been followed by this Court in *Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur*, (1967) 19 STC 381 and in *Additional Tahsildar, Raipur v. Gendalal*, (1968) 21 STC 263.

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No valid service – No recovery can be made!

**Manmohanlal
and Others**

[1988 (34) ELT
419 (SC)]

Para 5*

* Income Tax Act, 1961

- *It is settled by authority long accepted that **tax can be recovered** from an assessee **only when it becomes a debt due** from him, and that it becomes a debt due **when a notice** of demand calling for payment of the tax has been **served** on the assessee. If an assessee objects to the recovery proceeding taken under Section 226(4) on the ground that there has been **no valid service** of a notice of demand and that therefore **no debt is due**, the Court must decide the objection, and if it upholds the objection it cannot permit recovery of the tax claimed.*

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PRINCIPAL TO PRINCIPAL!



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Acts of agent are attributable to principal!

CANARA Bank
[2023 (71)
G.S.T.L. 225 (SC)*

Para 6

* Service Tax

- *in State of Madras v. Cement Allocation Coordinating Organisations, 1971 (2) SCC 587. The Court had said on that occasion that the **acts of the agent** are also **attributable to the principal**. This principle is also embodied in Section 65(7) of the Finance Act, 1994.*

P2P transactions may not qualify as promoting business!

EMU LINE PVT.
LTD.
[2023 (72) G.S.T.L.
443 (SC)*

Para 2

* Service Tax

- Tribunal judgment affirmed
- *[In the case of Greenwich Meridian Logistics (I) Pvt. Ltd. [\[2016 \(43\) S.T.R. 215](#) (Tri. - Mumbai) ..., the Tribunal has specifically observed it is **nothing but a principal-to-principal** transaction and the freight charges are consideration for space procured from shipping line]*

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APPEAL!



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Appeal – Must be filed within time!

**Living Media
India Ltd** [2012
(277) ELT (289
(SC))]

Para 12

* Refer **Vishnu Aroma** [2021
(50) GSTL 337 (S.C.)]

- *The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available.*
- The **law of limitation undoubtedly binds everybody** including the Government.*

Delay - Of 109 days condoned!

SAPIENT TOURS
AND TRAVEL
PVT. LTD. [2023
(70) GSTL (433
(SC))]

Para 12

* Refer Vishnu Aroma [2021
(50) GSTL 337 (S.C.)]

- *there was a delay of only 109 days in preferring the Appeal and there does not appear to be any other mala fide intention on the part of the appellant in not preferring the appeal within the period of limitation and so as to enable the appellant to submit the case on merits... We condone the delay ...*

Delay - By Government is not condonable!

Vishnu Aroma
[2021 (50) GSTL
337 (S.C.)]

Para 2/3

- **2.** *We are of the view that such kind of lethargy on part of the revenue department with so much computerization having been achieved is no more acceptable.*
- *The leeway which was given to the Government/public authorities on account of innate inefficiencies was the result of certain orders of this Court which came at a time when technology had not advanced and thus, greater indulgence was shown. This position is no more prevalent*

Appeal dismissed on limitation grounds – Not to merge with First Appellate Authority's Order!

**Glaxo Smith
Kline** [2020 (36)
GSTL 305 (S.C.)]

Para 12

- *It is well settled that rejection of delay application by the appellate forum does not entail in merger of the assessment order with that order.*

Appeal – Not filed but relief granted!

Shoeline

[2017 (6) GSTL
226 (S.C.)]

Para 21

* Service Tax

- *In a case like this, **equities would be balanced** by not insisting on payment of penalty and interest. Thus, when the appellant approached belatedly, it may not be entitled to refund of Service Tax already paid but at the same time, the appellant should not be called upon to pay any interest and penalty levied on a tax which was not payable at all in law.*

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Limitation – No right in procedural law!

Thirumalai Chemicals Ltd

[2011 (268) ELT
296 (SC)]

Para 15

* FEMA

- *Law on the subject has also been elaborately dealt with by this Court in various decisions and reference may be made to few of those decisions. This Court in Garikapati Veeraya v. N. Subbiah Choudhry & Ors. - AIR 1957 SC 540, New India Insurance Company Limited v. Smt. Shanti Mishra - (1975) 2 SCC 840, ...; Shyam Sundar & Ors. v. Ram Kumar & Anr. - (2001) 8 SCC 24, has elaborately discussed the scope and ambit of an amending legislation and its retrospectivity and held that **every litigant has a vested right in substantive law but no such right exists in procedural law**. This court has held the **law relating to forum and limitation is procedural** in nature whereas **law relating to right of appeal** even though remedial is **substantive** in nature.*

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Procedural law – Not to be tyrant!

**Sambhaji vs
Gangabai**

[2009 (240) ELT
161 (SC)]

Para 12

- ***Processual law is not to be a tyrant*** but a servant, not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

* CPC

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ATTACHMENT!



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Provisional attachment is draconian!

**Radha Krishan
Industries [2021
(48) SC (113)]**

Para 48

- *The power to order a provisional attachment of the property of the taxable person including a bank account is **draconian in nature and the conditions which are prescribed** by the statute for a valid exercise of the power **must be strictly fulfilled**;*

CONSTITUTION!



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Article 246A - Confers 'simultaneous power'!

Mohit Minerals
Pvt Ltd

[2022 (61) GSTL
257 (SC)]

Para 30

- **Article 246A has a non-obstante provision** which overrides Article 254. Article 246A **does not provide a repugnancy clause**. Unlike Article 254...The concurrent power exercised by the legislatures under Article 246A is termed as a **'simultaneous power'** to differentiate it from the constitutional design on exercise of concurrent power under Article 246, the latter being subject to the repugnancy clause under Article 254.

Article 246A - Confers very wide power!

Skill Lotto
Solutions Pvt Ltd
[2020 (43) GSTL
289 (SC)]

Para 49

- **Article 246A** begins with non obstante clause that is “Notwithstanding anything contained in Articles 246 and 254”, which **confers very wide power to make laws**.
- The power to make laws as conferred by Article 246A **fully empowers** the Parliament to make laws with respect to Goods and Services Tax and **expansive definition of goods** given in Section 2(52) **cannot be said to be not in accord** with the constitutional provisions.

Article 246A - Must be liberally construed!

Skill Lotto
Solutions Pvt Ltd
[2020 (43) GSTL
289 (SC)]

Para 58

- ... **Article 246A is a special provision** with regard to Goods and Services Tax w.e.f. 16-9-2016, which special power **has to be liberally construed** empowering the Parliament to make laws with respect to Goods and Services Tax...
- This Court further laid down that a **word** appearing **in a Constitution Act, must not be construed in any narrow and pedantic sense.**

'Recommendation' - Not binding!

Mohit Minerals
Pvt Ltd

[2022 (61) GSTL
257 (SC)]

Para 148 (i) (c)

- *The Government while exercising its rule-making power under the provisions of the CGST Act and IGST Act is bound by the recommendations of the GST Council. However, that **does not mean that all the recommendations** of the GST Council made by virtue of the power under **Article 279A(4) are binding** on the Legislature's power to enact primary legislations;*

'Law' - There is always a presumption of constitutionality!

**Madras Bar
Association**

[2021 (377) ELT
305 (SC)]

Para 39

- *Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that **there is always a presumption of constitutionality** of an enactment and a clear transgression of constitutional principles must be shown...*

'Law' - Can be struck down!

Madras Bar Association

[2021 (377) ELT
305 (SC)]

Para 39

- *In State of Madhya Pradesh v. Rakesh Kohli & Anr. [(2012) 6 SCC 312], this Court held that ...legislative enactment can be **struck down only on two grounds** : (i) that the appropriate legislature does **not have the competence** to make the law, and (ii) that it takes away or **abridges** any of the **fundamental rights** enumerated in Part III of the Constitution or any other constitutional provisions. Subsequently, the Court has also recognised "**manifest arbitrariness**" as a ground under **Article 14** on the basis of which a legislative enactment can be judicially reviewed*

Article 14 - Taxing statutes need to pass the test!

Kasaragod
District Parallel
College Asso.
[2014 (34) STR
327(Ker.)]

Para 40

[Affirmed in 2023
(79) GSTL 291 (SC)]

- *The question is not only whether there is legislative competence to impose tax on any segment but it should further satisfy the test under Article 14...*

Article 14 – Breached only when there is perversity or gross disparity resulting in descrimination!

Indian Oil
Corporation Ltd
[2018 (11) GSTL 8
(S.C.)]*

Para 24

* Entry Tax

CA Pritam Mahure and Associates

- *When it comes to taxing statutes, the law laid down by this Court is clear that Article 14 of the Constitution can be said to be **breached only when there is perversity or gross disparity resulting in clear and hostile discrimination** practiced by the legislature, without any rational justification for the same. (See *The Twyford Tea Co. Ltd. & Anr. v. The State of Kerala & Anr.*, (1970) 1 SCC 189 at paras 16 and 19...*

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Article 14 – Discrimination not hit by Article 14 if does not single taxpayer out!

NITDIP Textiles
Processors Pvt Ltd
[2011 (273) ELT
321 (SC)]*

Para 45

* KVSS

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- **Discrimination resulting from fortuitous circumstances** arising out of particular situations, in which some of the tax payers find themselves, is **not hit by Article 14** if the legislation, as such, is of general application and **does not single them out** for harsh treatment. Advantages or disadvantages to individual assesseees are accidental and inevitable and are inherent in every taxing Statute as it has to draw a line somewhere and some cases necessarily fall on the other side of the line

VAT Act – Amendment after 1.07.2017 held void!

Tirumala Constructions

[2023 (386) ELT
644 (SC)]

Para 116

- *The amendments in question, made to the Telangana VAT Act, and the Gujarat VAT Act, after 1-7-2017 were correctly held void, for want of legislative competence, by the two High Courts (Telangana and Gujarat High Court). The judgment of the Bombay High Court is, for the above reasons, held to be in error; it is set aside; the amendment to the Maharashtra Act, to the extent it required pre-deposit is held void.*

Constitutionally – No distinction between DT and IDT!

**Bengal Shrachi
Housing Dev. Ltd**

**[2017 (6) GSTL 356
(SC)**

Para 19

* Service Tax

- *It needs to be clarified at this juncture that **our Constitution**, unlike the British North America Act of 1867, **makes no distinction**, constitutionally speaking, **between direct and indirect taxes**.*

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No Treaty - Domestic law will prevail!

G M Exports
[2015 (324)
GSTL 209 (SC)]
Para 23 (1)

• **Article 51(c) of the Constitution of India is a Directive Principle** of State Policy which states that the State shall **endeavour to** foster **respect** for international law and **treaty** obligations. As a result, rules of international law which are not contrary to domestic law are followed by the courts in this country. This is a situation in which there is an international **treaty to which India is not a signatory** or general rules of international law are made applicable. It is in this situation that if there happens to be a conflict between domestic law and international law, **domestic law will prevail.**

Direct Taxes, Indirect Taxes and Duty!

NITDIP Textiles
Processors Pvt Ltd
[2011 (273) ELT
321 (SC)]*

Para 26/ 27

* KVSS

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- The word '**duty**' means an indirect tax imposed on the importation or consumption of goods. 'Customs' are duties charged upon commodities on their being imported into or exported from a country... The expression '**Direct Taxes**' include those assessed upon the property, person, business, income, etc., of those who are to pay them, while **indirect taxes** are levied upon commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. For the purpose of the Scheme, Indirect tax enactments are defined as Customs Act, 1962, Central Excise Act, 1944 or the Customs Tariff Act, 1985 and the Rules and Regulations framed thereunder.

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PRE-DEPOSIT!



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Pre-deposit – Can be through credit ledger as well!

FLIPKART
INTERNET PVT.
LTD. [2024 (80)
GSTL 3 (SC)]*

Para 2

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- *Order of HC stayed*
[H'ble HC had held that pre-deposit should be made through Electronic Cash Ledger only]

* GST

Pre-deposit – Not towards tax dues but a ‘deposit’!

MRF LTD.
[2020 (36) GSTL
171 (SC)]*

Para 5/6

* Kerala VAT

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- ...the applicant was directed to pay the amount equivalent to tax payable but that was to be treated as **“deposit”** with the Department and not payment (of tax dues). The expression used ‘will be treated as deposit not payment’; is quite significant.
- The amount deposited by the applicant was **not towards tax dues** as such, but to be treated as “deposit” in terms of order of the Court. That deposit would continue to remain with the Department until the final decision ...

Under-protest payment can be considered for Pre-deposit!

VVF (INDIA) LTD.
2023 (72) G.S.T.L.
444 (S.C.)*

Para 12

* MVAT Act, 2002

- *Consequently, the appellant was liable to pay, in terms of Section 26(6A), 10 per cent of the tax disputed together with the filing of the appeal. There is no reason why the amount which was paid under protest, should not be taken into consideration. It is common ground that if that amount is taken into account, the provisions of the statute were duly complied with. Hence, the rejection of the appeal was not in order..*

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Pre-deposit – Not violative of Article 14!

Tecnimont Pvt
LTD. 2019 (29)
G.S.T.L. 737 (S.C.)*

Para 17/25

* PVAT Act, 2005

- ... the High Court rightly held Section 62(5) of the PVAT Act to be legal and valid and the **condition of 25% of pre-deposit not** to be onerous, harsh, unreasonable and **violative of Article 14** ...
- As stated in *P. Laxmi Devi* - (2008) 4 SCC 720 and *Har Devi Asnani* - (2011) 14 SCC 160, **in genuine cases** of hardship, **recourse would still be open** to the concerned person.

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Pre-deposit – To be refunded as matter pending for almost a decade!

Prime Leathers
2018 (15) G.S.T.L.
641 (S.C.)*

Para 5

- *Having regard to the above, when these matters are **pending for** the last **almost 10 years** and **no adjudication** has taken place, it may not be appropriate to interfere with the directions of the High Court to refund the amount to the respondents*

* Customs Act, 1962

ARREST!



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Article 32 – A salutary safeguard!

Devendra Dwivedi
[2021 (44) GSTL
225 (SC)]

Para 6

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- Article 32 is a **salutary constitutional safeguard** to protect the fundamental rights of citizens. The Court must be solicitous in exercising it where a breach of fundamental human rights is in issue. But equally, whether recourse to the jurisdiction under Article 32 should be entertained in a particular case is a matter for the calibrated exercise of judicial discretion...

* GST

Bail – If no evidence of tampering then bail can be granted!

Siddharth [2023
(64) GSTL 34 (SC)]

Para 12

CA Pritam Mahure and Associates

- *Merely because an arrest can be made because it is lawful does not mandate that arrest must be made... If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person... If the Investigating Officer has **no reason to believe** that the **accused will abscond or disobey summons** and has, in fact, throughout **co-operated** with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.*

* GST

Bail – If no evidence of tampering then bail can be granted!

Ratnambar
Kaushik [2023 (68)
GSTL 233 (SC)]

Para 6

* GST

CA Pritam Mahure and Associates

- *The petitioner has already undergone incarceration for more than four months and completion of trial, in any event, would take some time... Further, in a case of the present nature, the evidence to be tendered by the respondent would essentially be documentary and electronic. The ocular evidence will be through official witnesses, due to which there can be no apprehension of tampering, intimidating or influencing... Hence, it is directed that the petitioner be released on bail ...*

Investigation – State should endeavour to complete the investigation!

Sandeep Goyal
[2020 (36) GSTL
497b (SC)]

Para 3/ 5/ 6

* GST

CA Priram Mahure and Associates

- **3.** *It is not in dispute that the maximum punishment to be imposed on the petitioner, if convicted, is five years. It is also not in dispute that the petitioner has already undergone one year and eight months imprisonment. It is brought to our notice that some of the accused are released on bail.*
- **5.** *The **State shall make endeavour to complete the investigation** within three months from today.*
- **6.** *In case the investigation is not completed within three months from this day, the petitioner shall be released on bail by the Trial Court by imposing appropriate terms and conditions.*

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Supplementary chargesheet - Cannot scuttle right of default bail!

Ritu Chhabaria
[2023 (385) ELT
321 (SC)]

Para 24

* IPC/ PCA

CA Pritham Mahure and Associates

- ... as such, a **supplementary chargesheet**, wherein it is explicitly stated that the **investigation is still pending**, **cannot** under any circumstance, be used to **scuttle the right of default bail**, for then, the entire purpose of default bail is defeated, and the filing of a chargesheet or a supplementary chargesheet becomes a mere formality, and a tool, to ensue that the right of default bail is scuttled.

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WRIT!



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Writ – Not maintainable if alternate remedy exists!

BM Construction
[2022 (65) GSTL
129 (SC)]

Para 2

* GST

CA Pritam Mahure and Associates

- *What was challenged before the High Court was the Assessment Order. Against the order of assessment, **there is a further appeal under Section 107** of the Central Goods & Services Tax Act, 2017*
- *...Under the circumstances, in view of the **alternative statutory remedy available** by way of appeal, the High Court has **rightly refused to entertain the writ** petition.*

Writ – Not to disregard substantive provisions!

Glaxo Smith Klin
[2020 (36) GSTL
305 (SC)]

Para 15

* AP VAT Act

CA Pritam Mahure and Associates

- *In other words, the fact that the High Court has wide powers, **does not mean that it would issue a writ which may be inconsistent with the legislative intent** regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.*

Writ – High Court should relegate Assessee before Authorities!

Kay Pan Fragrance
[2019 (31) GSTL
385 (SC)]

Para 8

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- *For the sake of consistency, we have no hesitation in observing that the High Court in all such cases ought to have for complying with the procedure prescribed in Section 67 of the Act read with Rules as applicable for release (including provisional release) of seized goods.*

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Writ – Court should not concede victory to Assessee in undeserving cases!

Ahluwalia
Contracts (I) Ltd
[2018 (9) GSTL 345
(SC)]

Para 19

* Delhi VAT Act

CA Pritam Mahure and Associates

- ...where the initial show cause notice was issued within time and its **legitimacy was not contested** by the respondent-Assessee. Had such legitimacy been questioned at the stage of reply or even in the course of the adjudication proceedings, there would still have been room/time for the revenue to correct the error that had occurred...
- Assessee, therefore, **cannot be allowed to take advantage of its own wrong**. The courts exercising extraordinary jurisdiction cannot be understood to be helpless but concede to the assessee an undeserved victory over the Revenue

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CIRCULARS!



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Circulars – Binding but facts to be checked!

**COASTAL
CONTAINER
TRANSPORTERS
ASSOCIATION**

[2019 (22) GSTL
481 (SC)]*

Para 18

* Service Tax

CA Pritam Mahure and Associates

- *It is true that circulars issued by the C.B.E. & C. are **binding on the authorities, but** at the same time, such circulars are **applicable or not**, is a matter which is to be considered with reference to **facts** of each case*

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Circulars – Not to be adverse to assessee!

**J K Lakshmi
Cement Ltd**
[2018 (14) GSTL
497 (SC)]

Para 25

* CST Act, 1956

CA Pritam Mahure and Associates

- *Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasise that a **circular** should **not be adverse** and cause prejudice to the assessee.*

Circular – May not apply subsequently after amendment!

Ultra Tech Cement
Ltd.

[2018 (9) GSTL 337
(S.C.)]*

Para 7

* Central Excise

CA Pritam Mahure and Associates

- *...the Circular relates to the **unamended regime**. Therefore, it cannot be applied after amendment in the definition of 'input service' which brought about a total change...It is this **amendment** which **has made the entire difference**. That aspect is not dealt with in the said Board's circular, nor it could be.*

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STATE VS CENTRE!



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Two officers – Cannot exercise their powers in same case!

**Cannon India
Pvt Ltd**
[2021 (376) ELT
(3) (SC)]

Para 13

* Customs Act

- *Where the statute confers the same power to perform an act on different officers, as in this case, the **two officers**, especially when they belong to different departments, **cannot exercise their powers in the same case**. Where one officer has exercised his powers of assessment, the power to order reassessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank. In our view, this would result into an anarchical and unruly operation of a statute which is not contemplated by any canon of construction of statute.*

Only original officer can re-open assessment!

**Cannon India
Pvt Ltd**
[2021 (376) ELT
(3) (SC)]

Para 14

* Customs Act

- *It is well known that when a statute directs that the things be done in a certain way, it must be done in that way alone. As in this case, when the statute directs that **“the proper officer”** can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone. We find it **completely impermissible to allow an officer, who has not passed the original order of assessment, to re-open** the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorised to make the assessment.*

State have power to impose taxes on Lottery!

State of Karnataka
vs State of
Meghalaya [2022
(60) GSTL 161
(SC)]*

Para 7

* GST

CA Pritam Mahure and Associates

- ...That the subject 'betting and gambling' in Entry 34 of List II is a State subject.
- **Entry 62 of List II is a specific taxation Entry** on 'luxuries, including taxes on entertainments, amusements, betting and gambling'. The power to tax is on all activities which are in the nature of 'betting and gambling,' including lotteries

EXTENDED PERIOD!



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Facts known – No question of suppression!

Raymond Ltd
[2017 (6) GSTL 225
(SC)]

Para 3

* Excise

CA Pritam Mahure and Associates

- ...insofar as the issue of limitation is concerned, **as the materials** on the basis of which the claims/demands have been raised **were before the Revenue** at **all material points of time, no question of suppression** or mis-statement can legitimately arise to enable the Revenue to avail the benefit of extended period of limitation.

If details disclosed on Financials, then no scope for suppression

SHRIRAM CHITS
PVT. LTD.
[2023(69) GSTL
338 (S.C.)]*

Para 25

* Service Tax

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- *Tribunal Order affirmed*
- *[...documents relied on by the authority for issuing Show Cause Notice are the balance-sheet, P & L Account ... these are the statutory documents which have to be prepared and filed before the respective authorities ... the network access fee has been picked up from these very statutory documents and therefore, there cannot be any scope to allege suppression of the same... [2023 (69) G.S.T.L. 397 (Tri. - Hyd.)]*

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Two views – Extended period not invocable!

**Reliance
Industries Ltd**
[2023 (385) ELT
481 (SC)]

Para 23

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- *...the issue of valuation involved in this particular matter is indeed one where **two plausible views** could co-exist. In such cases of disputes of interpretation of legal provisions, it would be **totally unjustified to invoke the extended period** of limitation ...*

* Excise

Suppression – Only if such information was required be disclosed!

Reliance Industries
Ltd

[2023 (385) ELT
481 (SC)]

Para 25

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- *An assessee can be accused for suppressing only **such facts** which it was otherwise required to be **disclosed under the law...***

* Excise

Suppression – Entitled to credit is not by itself conclusive!

Mahindra &
Mahindra Ltd
[2005 (179) ELT 21
(SC)]

Para 3/ 4

* Excise

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- The **AMCO Batteries** decision **cannot be held** to have laid down that in cases where the assessee is **entitled to** get the benefit of the **Modvat** scheme, there can be **no question of suppression** ... There can be **number of eventualities** where extended period of limitation in terms of proviso to section 11A may be available to the Department despite availability of Modvat credit to an assessee. The **availability of Modvat credit** to an assessee **by itself is not conclusive** or decisive consideration. It may be one of the relevant consideration. How much weight is to be attached thereto would depend upon the facts of each case.

Absence of period of limitation – Reasonable time period still applicable!

**Citadel Fine
Pharmaceuticals**
[1989 (42) ELT 512
(SC)]

Para 6

* Medicinal and Toiler Preparation (ED)
Act, 1955

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- *While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of **Article 14** ...In the **absence of any period of limitation** it is settled that authority is to **exercise** powers **within a reasonable period** and what would be the reasonable period would **depend upon the facts of each case** and whenever a question regarding the **inordinary delay** in issue of demand notice is raised, it would be open to the assessee to contend that it **is bad on the ground of delay...***

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CESS!



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Cess – Constitution does not indicate that henceforth no cess shall be levied!

**Mohit Mineral Pvt
Ltd**

[2018 (17) GSTL
561 (SC)]

Para 55

* Compensation Cess

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- *The expression used in Article 246A is “power to make laws **with respect to goods and services tax**”. The power to make law, thus, is not general power related to a general entry rather it specifically relates to goods and services tax. When express power is there to make law regarding goods and services tax, we fail to comprehend that how such power shall not include power to levy cess on goods and services tax.*
- *True, that Constitution (One Hundred and First Amendment) Act, 2016 was passed to subsume various taxes, surcharges and cesses into one tax but the **constitutional provision does not indicate that henceforth no surcharge or cess shall be levied.***

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WAY FORWARD!



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VAT regime - Dominant Nature test is not determinative!

**Bharat Pest
Control** [2018
(13) GSTL 401
(SC)]

Para 5/6

- ... *the dominant nature test would no longer be determinative, ...*
- ...*the view taken by the High Court that there is no deemed sale of the goods used in the contract executed by the respondent-contractor cannot have our approval.*

* VAT

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DIN – To be implemented by States as well!

Pradeep Goyal
[2022 (63) GSTL
286 (SC)]*

Para 7

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- We impress upon the concerned **States to consider to implement** the system for electronic (digital) generation of a **DIN** for all communications sent by the State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest.

* GST

Demurrages – Payable by importer only!

Mumbai Port Trust
vs Shri Lakshmi
Steels

[2017 (352) ELT
401 (SC)]*

Para 34

* Customs

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- *The DRI/Customs authorities can be directed to pay the demurrage/detention charges only when it has proved that the action of the DRI/Customs Authorities is absolutely mala fide or is such a gross abuse of power that the officials of the DRI/Customs should be asked to compensate the importer ... Even if an importer feels that it has been unjustly dealt with, it **must clear the goods by paying the charges due** and then claim reimbursement*

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CBIC - Must lay down uniform policy to file Appeal against Orders!

**Doaba Steel
Rolling Mills**
[2011 (269) ELT
298 (SC)]*

Para 24

* Excise

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- *As regards the argument of learned counsel for the respondents that having not assailed the correctness of some of the orders passed by the Tribunal and a decision of the High Court of Karnataka, the revenue cannot be permitted to adopt the policy of pick and choose and challenge the orders passed in the cases before us, it would suffice to observe that such a proposition cannot be accepted as an absolute principle of law, although we find some substance in the stated grievance of the assessee before us, because such situations tend to give rise to allegations of mala fides etc...We, may however, hasten to add that it is high time when the Central Board of Direct and Indirect Taxes comes out with a uniform policy*

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Defaulters cannot be better placed than compliant taxpayers!

**Corporation Bank
Vs Sarswati
Abharansala**

[2009 (233) ELT 3
(SC)]*

Para 26/27

* Sales Tax

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- *The statute furthermore, it is trite, should be read in the manner so as to do justice to the parties. If it is to be held, without there being any statutory provision that those **who have deposited the amount in time would be put to a disadvantageous position** and those who were **defaulters would be better placed**, the same **would give rise to an absurdity**. Construction of the statute which leads to confusion must be avoided.*
- *Thus the condition of non-refund of the excess amount must be held to have been repealed by necessary implication as the rate of tax so applied to the transaction of sale of gold bullion was with retrospective effect.*

Thank you!

CA Pritam Mahure and Associates

Happy to Discuss

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[E-books on GST](#)

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Smile please 😊

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