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JULY 2024

Legal Updates, Insights and Summary Judgements

This update covers:

Insight and Foresight: our perspective on key global developments

Budget 2024-25 Highlights: A Step Towards Comprehensive Growth

The Budget 2024-25 sets the stage for transformative growth across various sectors. Here's a glimpse:

Agriculture: A push for productivity with ₹1.52 lakh crore allocated, introduction of high-yield, climate-resilient crops, and a digital crop survey in 400 districts.

Employment & Skilling: Central outlay of ₹2 lakh crore to facilitate opportunities for 4.1 crore youth, with a focus on skilling 20 lakh youth over five years.

Inclusive Human Resource Development & Social Justice: Commitment to education, health, and economic activities with ₹3 lakh crore for women and girls' schemes.

Manufacturing & Services: Credit support for MSMEs, promotion of e-commerce export hubs, and reforms in the shipping industry.

Urban Development: Investment in urban housing, water supply, and solid waste management with ₹10 lakh crore allocated for PM Awas Yojana Urban 2.0.

Energy Security: Launch of PM Surya Ghar Muft Bijli Yojana and fiscal support for AUSC technology implementation.

Infrastructure: Capital expenditure of ₹11.11 lakh crore, support for state-level projects, and financial aid for flood mitigation.

Innovation, Research & Development: Emphasis on space economy, domestic production through Critical Mineral Mission, and private sector-driven research.

To delve into the specifics, please review the information provided in the following link :

https://www.linkedin.com/feed/update/urn:li:activity:7221852027914477568

Karnataka's New Gig Workers Bill!

Here's an analysis of the **Draft Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024**. This groundbreaking legislation aims to safeguard the rights of nearly 2 lakh gig workers in Bengaluru by ensuring social security, transparency, and welfare measures. Following Rajasthan's lead, Karnataka is taking a significant step towards protecting gig workers.

To delve into the specifics, please review the information provided in the following link :

https://www.linkedin.com/feed/update/urn:li:activity:7221077502717267970

Transforming Punishments in India: Bharatiya Nyaya Sanhita, 2023

The Bharatiya Nyaya Sanhita (BNS), 2023, has replaced the Indian Penal Code (IPC) of 1860, bringing criminal law into the 21st century. This new framework addresses inconsistencies and promotes a more rational approach to punishments.

Key Highlights:

Imprisonment: Reducing inconsistencies in sentencing.
Life Imprisonment: Reevaluating the application of life sentences.
Death Penalty: Ensuring consistent application for the most heinous crimes.
Fines: Introducing clearer guidelines and fairer practices.
Community Service: Expanding its use for minor offenses.

The BNS focuses on reform, rehabilitation, and creating a justice-centered approach over punitive measures.

To delve into the specifics, please review the information provided in the following link :

https://www.linkedin.com/feed/update/urn:li:activity:7219943243738677248

Landmark judgment in W.P.No.31281 of 2019

The High Court of Judicature at Madras has issued a **landmark judgment in W.P.No.31281** of 2019, emphasizing the need to uphold the nobility and integrity of the legal profession.

The court found that online platforms like **Quikr, Sulekha, and Just Dial** were facilitating the solicitation of legal work and providing lawyer rankings, which **violates the Bar Council of India (BCI) Rules.**

The judgment declared such actions as **professional misconduct** and directed the BCI to take strict measures against these practices, including **issuing guidelines to State Bar Councils** and **removing unlawful advertisements.**

This ruling underscores the importance of **preventing the commercialization of legal services and maintaining the profession's dedication** to service over profit. **Compliance reporting is set for 20.08.2024**.

To delve into the specifics, please review the information provided in the following link :

https://www.linkedin.com/feed/update/urn:li:activity:7218866927564165121

Recent Judgements

CIVIL

Our Lady of Immaculate Conception Church A Public Charitable Trust vs. Municipal Corporation of Greater Mumbai (2024 SCC OnLine Bom 1905)

The Hon'ble Bombay High Court in the present case deliberated over the question of whether land reserved for public purpose under the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act") can be acquired by granting TDR/FSI as compensation.

The Petitioner is a registered Public Charitable Trust who approached the Hon'ble Court under Article 226 of the Constitution of India, seeking directions to the Respondents to adhere to the due process of law in acquiring its land according to the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("2013 Act").

The Petitioner owns land adjacent to the Mandapeshwar Caves, which the Archaeological Survey of India (ASI) claims ownership of, based on a declaration that the land is vested in the Government of India. Despite an order from the City Civil Court in 2001 restraining the ASI from disturbing the Petitioner's possession, the Municipal Corporation requested the Petitioner to hand over the land for developing a public garden, offering Transferable Development Rights (TDR) in lieu of monetary compensation. The Petitioner, however, refused the TDR, insisting on monetary compensation as per the provisions of the 2013 Act.

The Petitioner in this case expressed willingness to transfer the land, if monetary compensation is provided according to the law. The Municipal Corporation rejected this request, maintaining that TDR could be offered instead of monetary compensation under the MRTP Act. This led to the present writ petition, where the Petitioner seeks a direction that any acquisition of its land should follow the procedure outlined in the 2013 Act if there is no agreement on TDR/FSI.

The primary legal issue for consideration is whether land reserved for public purposes under the MRTP Act, can be acquired by granting TDR or FSI as compensation or whether it must follow the 2013 Act if the landowner rejects TDR/FSI. Sections 125 and 126 of the MRTP Actstipulate that land required for public purposes is deemed needed for such purposes under the 2013 Act. Section 126 of the MRTP Act further provides that such land can be acquired by agreement (by paying an agreed amount or granting TDR/FSI) or by applying to the State Government for acquisition under the 2013 Act if no agreement is reached.

A careful reading of Section 126 of the MRTP Act reveals that TDR or FSI can only be granted based on an agreement between the parties. Without such an agreement, the reserved land must be acquired under the 2013 Act. This interpretation aligns with the decision passed by a full bench of this Hon'ble Court in Shree Vinayak Builders and Developers, Nagpur v. State of Maharashtra, where the Court emphasized that acquisition under Section 126(1)(a) and (b) of the MRTP Act must be by mutual agreement, not unilaterally imposed by the acquiring authority.

The court, after considering the submissions from both the parties, held that in the absence of an agreement between the Petitioner and the planning authority/development authority, the land reserved for public purposes can only be acquired by following the procedure under Section 126(1)(c) of the MRTP Act, which involves the 2013 Act. Consequently, the Respondents cannot compel the Petitioner to accept TDR/FSI and must adhere to the land acquisition process under the 2013 Act.

Accordingly, the court directed that any acquisition of the Petitioner's land by the Municipal Corporation must comply with Section 126(1)(c) of the of the MRTP Act, by following the 2013 Act procedures if there is no mutual agreement on TDR/FSI.

Mukatlal v. Kailash Chand, 2024 SCC OnLine SC 964

The Apex Court in the present case revisited the scope & application of Sec. 14 (1) of the Hindu Succession Act, 1956 ("Succession Act"). The present case involves an issue over the ownership of a property & the right of Kailas Chand ("Plaintiff") being legal heir of Hindu widow to enforce her right of succession in the unpartitioned Joint Hindu Family property by virtue of Section 14(1) of Succession Act.

The property in dispute is the unpartitioned Hindu Joint Family Property ("Property") which was came in the possession of Mukatlal ("Defendant") through a Will executed by the Defendant's father ("Will"). The deceased widowed mother of the Plaintiff had filed a suit in the Civil Court seeking declaration of title and possession over the Property contending that the same was joint Hindu family property and the Will allegedly executed by Defendant's father was illegal.

The Court dismissed the suit while recognizing the right of widow only to the extent of receiving maintenance from the property, which was not challenged by her any further. The Defendant on attaining the age of majority preferred an appeal against the aforementioned judgement, which was allowed by the Senior Civil Judge. Being aggrieved by the order of the Senior Civil Judge, the Plaintiff's mother preferred a Second appeal before the Single Judge of the High Court and during the pendency of the case, she passed away and her legal heir (the Plaintiff) was taken on record. The Single Judge restored the Civil Court's judgment to the extent of the Plaintiff's mother's right to be maintained by the Property. Subsequently, the Plaintiff filed Revenue Suit for partition of the Property before the Revenue Court claiming his mother was entitled to a rightful share in the Property by virtue of Section 14(1) of the Succession Act. The appeal from the said Revenue Suit seeking partition culminated in the impugned judgment.

The Court reiterated that the issue regarding title and possession over the Property was concluded against the Plaintiff's mother and that she was never in possession of the Property was an admitted position from the record which was never challenged. The Hon'ble Court placed reliance on Munni Devi v. Rajendra, wherein, the widow was actually residing in the suit property during the time the coparcener was alive and even after his death, she continued to reside in the said house and used to collect the rents from the tenants who were occupying the suit property, the Court after taking into consideration the pre-existing right of the female to maintenance from the estate of the HUF of her husband and her exclusive settled possession over the suit property concluded that she had acquired the suit property in lieu of her pre-existing right to maintenance and that she had held the suit property as the full owner and not limited owner by virtue of Section 14(1) of the Succession Act.

Regarding the question that whether in absence of even a semblance of possession either actual or legal over the suit property, the Plaintiff being the legal heir of his widowed mother, would beentitled to institute a Revenue Suit for partition of the Property based on the succession rights of the widow on the HUF property

the Hon'ble Court referred to Ram Vishal v. Jagan Nath, wherein, it was held that, a pre-existing right is a sine qua non for conferment of a full ownership under Section 14 of the Hindu Succession Act. The Hindu female must not only be possessed of the property, but she must have acquired the property.

Hence, the Hon'ble Apex Court reiterated that, for establishing full ownership on the undivided joint family estate under Section 14(1) of the Succession Act, the Hindu female must not only be possessed of the property but she must have acquired the property and such acquisition must be either by way of inheritance or devise, or at a partition or "in lieu of maintenance or arrears of maintenance" or by gift or be her own skill or exertion, or by purchase or by prescription.

ARBITRATION

Pitambar Solvex Pvt. Ltd. & Anr. V. Manju Sharma & Ors. [2024 SCC OnLine Del 3995]

In the present case, the Hon'ble Delhi High Court ruled that mere initiation of arbitration proceedings does not preclude a Corporate Debtor from pursuing other legal remedies, including those available under the Insolvency and Bankruptcy Code, 2016 ("IBC").

The present dispute is between the Petitioners (the shareholders and buyers of the shares) and the Respondents (the promoters and the founders of the Petitioner No. 1). The Respondents had approached OFB Tech Private Limited and the Petitioner No. 2 (Agri Farms Private Limited) to sell their 100% shares in Petitioner No. 1 company to the Petitioner No. 2.

Thereafter, the Respondent signed and executed a term sheet wherein they projected an average EBITDA of around Rs. 17,92,00,000/- for the Financial Year 2021-2022 based on the turnover of Rs. 501 Crores and 390 Crores for the years 2021-2022 and 2022-2023 respectively. However, the actual average EBITDA was approximately around Rs. 4,50,36,307 which was much lower than projected EBITDA (Rs. 17.92 Crores).

The erstwhile shareholders had assured and represented to the Petitioner No. 2 that the EBITDA reflected in the books of accounts was not the true indicator of their valuation, and that actual EBITDA was around Rs. 17,92,00,000/- and the same had been achieved by utilizing only 75% of the plant capacity and there was scope of growth for the Petitioner No. 2. Based on the Respondents representations, the Petitioner No. 2 and the Respondents entered into Share Purchase Agreement dated 7th October 2022 which was subsequently amended. Also, the Petitioner No. 1 and the Respondents entered into Credit Facility Agreement. Subsequently, it came to the knowledge of the Petitioners that the Respondents had falsified previous years accounting figures. Further, the Respondents even failed to provide transitional services. As the disputes and difference arose between the parties, the Petitioners issued notice under section 21 of the Arbitration & Conciliation Act, 1996 ("the Act") and invoked arbitration.

The Respondents contended that the two separate agreements and signatories resulted in misjoinder of cause of action and that there is no dispute inter se the parties and the amounts due from the Petitioners are admitted and consequently the Respondents had filed a Petition under section 7 of the IBC in the Hon'ble National Company Law Tribunal, Jaipur.

The Hon'ble Delhi High Court held that various disputes were mentioned in the legal notices and the invocation notice addressed to the Respondents and the Respondents had acknowledged certain amounts as due. Further, the Ld. Arbitrator has the liberty to register the two arbitrations separately if it is determined that the agreements cannot be consolidated. Accordingly, the Hon'ble Delhi High Court allowed the application filed by the Petitioner seeking appointment of the arbitrator and appointed an arbitrator and referred the parties to the arbitration.

INSOLVENCY & BANKRUPTCY

Tata Capital Limited V. Geeta Passi and Ors. 2024 SCC OnLine Bom 1897

In this case the Hon'ble Bombay High Court has addressed the question that whether the moratorium under section 96 of the Insolvency and Bankruptcy Code, 2016 ("IBC") is in respect of debt or debtor and whether in view of the commencement of the moratorium can arbitration proceedings be stayed against some of the parties and against other parties?

The factual matrix is that the Petitioner had sanctioned a loan to one Sterling Motor Company ("SMC"). The loan documents were executed by Mr. Traun Kapoor in the capacity of the proprietor and has also stood as guarantor for the repayment of the said loan. Also, Mrs. Pavan Kapoor, Mr. B. L. Passi and Rameshwar Sweets and Namkeens Private Limited stood as guarantors. Thereafter, the Petitioner initiated arbitration proceedings. During the pendency of the said arbitration proceedings, Volkswagen Finance Private Limited filed a Company Petition against SMC and Mr. Tarun Kapoor. In view thereof, Mr. Tarun Kapoor filed an application in the Hon'ble National Company Law Tribunal ("NCLT") thereby contending that in view of section 96 of the IBC, a moratorium had come into effect due to the initiation of the aforesaid insolvency proceedings by the said Volkswagen Finance Private Limited on account of which the arbitration proceedings were required to be kept in abeyance. In the meantime, Mr. B.L. Passi passed away and his legal heirs (the present Respondents) were impleaded as a party to the arbitration proceedings.

Vide order dated 11th January 2021, the Ld. Arbitrator accorded the benefit of the moratorium to Mr. Tarun Kapoor and Mrs. Pavan Kapoor and the proceedings against them were directed to remain in abeyance. However, the arbitration proceedings against Respondent Nos. 4 and 5 were directed to continue. Also, the Ld. Arbitrator restrained the present Respondents from disposing of their assets. Thereafter, Mr. Tarun Kapoor filed an application in the arbitration proceedings seeking adjournment of the arbitration proceedings, sine die on account of the proceedings against SMC kept in abeyance (by order dated 11th January 2021) which came to be dismissed by order dated 16th December 2021 as a result of which the proceedings continued. Subsequently, vide order dated 7th October 2022, the Ld. Arbitrator directed the arbitration proceedings to remain in abeyance as long as the moratorium is in force. Also, the Ld. Arbitrator dismissed the application filed by the Petitioner seeking vacation of the order dated 7th October 2022.

The Hon'ble Court held that it could invoke jurisdiction under Article 226 only if the arbitral tribunal acted perversely or committed patent illegality. As regards, the issue of separating and continuing arbitration proceedings, the Hon'ble Court held that Section 3(11) of the IBC defines 'debt' as a liability from any person, including financial and operational debts, without distinguishing between principal borrowers and guarantors. Similarly, the protection under Section 96 is in respect of entire debt, regardless of who owes it. Thus, the moratorium covers "all debts", including those owed by guarantors. The court further stated that when the Hon'ble NCLT imposed moratorium under Section 96 for the principal borrower and the guarantor, it covered the entire debt without any distinction. The debt in arbitration includes liabilities of both the principal borrower and guarantors, and it cannot be divided to stay proceedings against one party while continuing against others. Also, there is no provision in the Arbitration & Conciliation Act, 1996 for splitting up arbitration proceedings; and the same has to be decided in their entirety against all the parties and the entitlement of the Claimant and the liabilities of the respective Respondents shall be determined on the basis of the evidence.

Thus, the Hon'ble Court clarified that the moratorium applies to the entire debt, not allowing selective continuation of arbitration proceedings.

GENERAL CORPORATE

Susela Padmavathy Amma Vs. M/s. Bharti Airtel Limited (2024 LiveLaw (SC) 237)

In the intricate tapestry of corporate law, where the threads of individual responsibility and corporate liability intertwine, the Supreme Court of India has once again provided a clarifying stitch. The recent judgment in the present case marks a significant development in the interpretation of Section 141 of the Negotiable Instruments Act of 1881. This case, arising from the quashing of criminal proceedings against a company director, delves into vicarious liability in cases of dishonored cheques. The Court's decision addresses a perennial issue in corporate criminal jurisprudence, to what extent can directors be held personally liable for the financial misdeeds of their companies?

The Supreme Court, after carefully considering the arguments presented by both parties and examining the relevant legal precedents, allowed the appeals reaffirmed the principle that merely being a director of a company does not automatically make one liable under Section 141 of the Negotiable Instruments Act. Relying on State of Haryana vs. Brij Lal Mittal and others (1998) 5 SCC 343, the Court emphasized that vicarious liability arises only if, at the material time, the person was in charge of and responsible for the conduct of the company's business. The Court relied on the judgment in S.M.S. Pharmaceuticals Ltd. vs Neeta Bhalla and another (2007) 9 SCC 481, which established that there must be clear and specific averments showing how a director was responsible for the company's conduct. The Court noted that simply reproducing the words of Section 141 without supporting facts is insufficient to establish vicarious liability.

Further, the Court found that the only specific allegation against the appellant was that she, along with the second accused, had no intention to pay the dues owed to the complainant. The complaint stated that both were directors and promoters of the company, but crucially, it specified that only the second accused was the authorized signatory in charge of day-to-day affairs. The Court determined that these averments were not sufficient to invoke Section 141 against the appellant. It noted the absence of any specific allegation that the appellant was in charge of or responsible for the day-to-day affairs of the company. The Court also observed that it was not the complainant's case that the appellant was either the Managing Director or Joint Managing Director of the company.

The Court referred to a series of its own judgments, including Pooja Ravinder Devidasani vs. State of Maharashtra and another (2014) 16 SCC 1, Ashoke Mal Bafna vs. Upper India Steel Manufacturing and Engineering Company Limited (2005) 8 SCC 89, and Lalankumar Singh and others vs. State of Maharashtra 2022 SCC OnLine SC 1383. These cases consistently held that for making a director liable under Section 141, there must be specific averments showing how and in what manner the director was responsible for the conduct of the company's business. The Supreme Court found that the High Court had erred in dismissing the appellant's petition for quashing the criminal complaints. It held that given the lack of specific allegations against the appellant regarding her role in the company's affairs, the continuation of criminal proceedings against her was not justified.

Consequently, the Supreme Court allowed the appeals and set aside the judgment of the High Court, It further quashed and set aside the under Section 138 read with Section 142 of the Negotiable Instruments Act, but only insofar as they pertained to the appellant.

The Court's decision serves as a significant precedent, offering protection to directors who are not actively involved in a company's daily affairs from being automatically implicated in criminal proceedings related to the company's financial transactions. The judgment reiterated the position upheld in various judgments.

Earlier, in National Small Industries Corporation Limited v. Harmeet Singh Paintal & Anr. (2010) 3 SCC 330, the Supreme Court reiterated the principle laid down in S.M.S. Pharmaceuticals Ltd., emphasizing that specific allegations against the directors regarding their role in the day-to-day management of the company are necessary for their liability under Section 141 of the Negotiable Instruments Act, 1881. In Ashoke Mal Bafna v. M/s. Upper India Steel Manufacturing And Engineering Company Ltd. the Supreme Court reiterated that to hold a director liable under Section 138, it must be shown that the director was in charge of and responsible for the conduct of the business of the company. Vague and general allegations without specific details are not sufficient.

M/S. Kozyflex Mattresses Private Limited Versus SBI General Insurance Company Limited And Anr. (CIVIL APPEAL NO(S). 7966 OF 2022)

The Apex Court in the present case marks a significant milestone in the interpretation of consumer rights, particularly in the context of insurance disputes involving corporate entities. This case brings the questions about the scope of consumer protection laws, the rights of corporate policyholders, and the procedural fairness in insurance claim settlements. The Supreme Court's decision clarifies the applicability of consumer protection laws to companies and underscores the importance of transparency and fairness in the insurance claim process.

The Court first addressed the preliminary objections raised by the insurer-respondent regarding the maintainability of the complaint before the National Commission. These objections were: that a 'company' is not covered within the definition of 'person' under Section 2(1)(m) of the Consumer Protection Act, 1986, and, that the insured-appellant, having taken the policy for commercial purposes, cannot invoke the jurisdiction of the National Commission.

Regarding the first objection, the Court held that the definition of 'person' in the Act of 1986 is inclusive and not exhaustive. Emphasizing that the Consumer Protection Act is beneficial legislation requiring liberal interpretation, the Court noted that the inclusion of 'body corporate' in the definition of 'person' in the 2019 Act indicates that the legislature recognized and rectified an incongruity in the earlier provision. Thus, the Court rejected the argument that a company was not covered under the 1986 Act's definition of 'person'.

As for the second objection concerning commercial purposes, the Court relied on Shrikant G. Mantri v. Punjab National Bank and National Insurance Company v. Harsolia Motors and Ors. The Court observed that, unlike those cases which dealt with insurance policies taken for straightforward commercial purposes, the policy in question was specifically a 'Standard Fire and Special Perils Policy (Material Damage)' covering only the risk of fire and related perils. The claim was filed to indemnify losses from a fire accident at the insured premises, not for general commercial activities. Consequently, the Court rejected both preliminary objections raised by the insurer-respondent.

Moving to the merits of the case, the Court focused on a crucial point raised by the insured-appellant in their appeal. The appellant contended that they were not provided timely copies of the surveyor's report and the investigators' reports, thus depriving them of a proper opportunity to rebut these findings. The Court noted that this allegation was not specifically refuted by the insurer-respondent in their counter-affidavit, with only a formal denial offered. Hence, the Court determined that the ends of justice required the insured-appellant to have a proper opportunity to file rebuttal or objections to the affidavits and reports submitted by the insurer-respondent before the National Commission. The Court felt that the complaint should be reconsidered on its merits after providing such an opportunity to the appellant.

Consequently, the Supreme Court set aside the impugned order issued by the National Commission. The Court remitted the matter back to the National Commission with specific directions. It ordered that the appellant should be permitted to file a rebuttal or rejoinder affidavit before the National Commission, limited to the contents of the reports in question. Following this, the National Commission was directed to rehear the matter and decide it afresh on its merits.

The Supreme Court's decision focused on ensuring procedural fairness and a comprehensive examination of all relevant evidence. By allowing the appellant to respond to crucial reports that they claim were not previously available to them, the Court aimed to facilitate a more thorough and equitable consideration of the case. The beneficiaries of this judgment, ‘companies’ can indeed be considered 'persons' under the Consumer Protection Act, 1986. This broadens the avenue for businesses to seek redressal through consumer forums, potentially leading to more efficient resolution of disputes. Earlier in Morgan Stanley Mutual Fund v. Kartick Das 4 SCC 225, the Supreme Court held that a company, as an entity, could file a complaint under the Consumer Protection Act if it falls within the definition of a "consumer" under the Act. The Court emphasized that the services availed by the company must be for a purpose that is not linked to its commercial activities. In Laxmi Engineering Works v. P.S.G. Industrial Institute 3 SCC 583, the Supreme Court clarified that a corporate entity can be a "consumer" if the goods or services are not purchased for resale or for any commercial purpose. It was held that services availed for commercial purposes are excluded from the purview of the Act unless they are used exclusively for the purposes of earning livelihood by means of self-employment.

CRIMINAL

Naresh Kumar Versus State of Delhi, Criminal Appeal No.: 1751 of 2017 (2024 LiveLaw (SC) 443)

The Supreme Court in the present case grapples with the intricate balance between procedural compliance and substantive justice, particularly in cases involving grave offenses punishable with life imprisonment or death. The Apex Court addresses a critical issue of whether a conviction stands justified if the accused is not given an opportunity to explain key incriminating circumstances during their Section 313 examination. In addressing this issue, the Court delves deep into the principles of natural justice, the doctrine of prejudice, and the overarching aim of criminal trials.

The Court acknowledged the seriousness of the charge against the appellant, noting that he was convicted under Section 302 of the Indian Penal Code (murder) with the aid of Section 34 (common intention). The Court emphasized that in cases where extreme penalties like death or life imprisonment are imposable, procedural safeguards ensuring the protection of the accused's rights must be stringently followed.

The Court then addressed the core issue of non-compliance with Section 313 of the Code of Criminal Procedure (CrPC) citing the maxim "actus curiae neminem gravabit" and referencing the decision in Oil and Natural Gas Company Limited v. Modern Construction and Company[1].

[1] (2014) 1 SCC 648

In examining the Section 313 proceedings, the Court found that two crucial incriminating circumstances were indeed not put to the appellant during his examination:

1. The alleged exhortation by the appellant to kill Arun Kumar and others in his family.
2. The allegation that he had caught hold of the deceased to enable Mahinder Kumar to stab him repeatedly.

The Court noted that these circumstances formed the very foundation of the charge against the appellant and were central to establishing his common intention under Section 34 IPC. Their omission from the Section 313 examination was deemed a serious lapse. While acknowledging that non-compliance with Section 313 does not automatically vitiate a trial, the Court emphasized that it must be shown to have caused material prejudice to the accused. In this case, the Court found such prejudice existed. It pointed out that the trial court's judgment explicitly relied on these two circumstances to establish the appellant's common intention, yet he was never given an opportunity to explain them.

The Court rejected the State's argument based on State of Punjab v. Swaran Singh (2005) 6 SCC 101, which suggested that if an accused had the opportunity to cross-examine witnesses but did not avail the same then omission to question him later under Section 313 would not cause prejudice. The Court distinguished the present case, noting that the very charge framed against the appellant was based on these unquestioned circumstances. Importantly, the Court considered the passage of time since the incident (over 29 years) and the fact that the appellant had already served more than 12 years in prison. Citing its recent decision in Raj Kumar @ Suman v. State (NCT of Delhi) 2023 SCC OnLine SC 609, the Court deemed it unjust to remand the case for a fresh Section 313 examination after such a long period.

The Court concluded that the failure to question the appellant on these crucial circumstances was not a curable defect but a patent illegality that vitiated the trial against him. It was held that this omission had resulted in material prejudice and a clear miscarriage of justice. Based on these findings, the Supreme Court allowed the appeal and set aside the judgments of both the trial court and the High Court in respect of the appellant. The Court acquitted the appellant of all charges against him and ordered his immediate release if not required in connection with any other case. However, the Court was careful to limit the scope of its decision. It explicitly stated that this judgment would not disturb the conviction of the other accused and should not be taken as confirmation of his conviction, leaving open the possibility of a separate appeal by him.

The Court's ruling underscores the necessity of giving accused persons a fair opportunity to explain all incriminating circumstances, failing which the very foundation of a fair trial may be compromised. By prioritizing the right of the accused to explain every incriminating circumstance, the Court has reaffirmed the foundational principles of natural justice and fair trial. The decision is likely to have far-reaching implications for the Indian criminal justice system.

Frank Vitus v. Narcotics Control Bureau (SLP (Crl.) No. 6339-6340/2023)

The Supreme Court in a landmark decision involving an appeal filed by a foreign national prosecuted for offenses under Sections 8, 22, 23, and 29 of the NDPS Act, against bail conditions imposed by the High Court. This judgment addresses two critical issues pertaining to the legality of imposing a condition requiring the accused to "drop a PIN on Google Maps," and the necessity of obtaining a certificate of assurance from the relevant embassy or high commission for foreign nationals.

The case involved the interpretation of Section 437(3) of the Code of Criminal Procedure, 1973, which allows courts to impose conditions while granting bail "in the interests of justice." The scope of this provision and the extent to which it allows curtailment of an accused's rights was a key issue. Section 37 of the NDPS Act, which places additional restrictions on granting bail in certain NDPS cases, was also relevant. The interplay between the NDPS Act's bail provisions and the general bail provisions in the CrPC needed to be considered. Article 21 of the Constitution, guaranteeing the right to life and personal liberty, was central to the appellant's arguments against the bail conditions. Previous Supreme Court judgments recognizing that even convicted prisoners retain certain fundamental rights were cited to argue that an accused on bail should have even greater protection of their Article 21 rights.

The Supreme Court delivered a detailed decision addressing the two main issues raised regarding the bail conditions imposed on Frank Vitus. Regarding the condition of dropping a PIN on Google Maps, the Court found this condition to be problematic and ultimately ordered its deletion. They reasoned that:

Imposing any bail condition that enables constant tracking of an accused's movements would violate the right to privacy guaranteed under Article 21 of the Constitution. Based on the affidavit submitted by Google LLC, the Court noted that dropping a PIN on Google Maps does not actually enable real-time tracking of a user or their device. The user has full control over sharing PINs, and the pinned location is static, not dynamic. Therefore, the condition as imposed was technically ineffective and redundant. The Court emphasized that bail conditions cannot be fanciful, arbitrary, or freakish. They should not be so onerous as to frustrate the order of bail itself. While courts may impose conditions like periodically reporting to police or seeking permission for international travel, they cannot impose conditions that allow constant surveillance of the accused's movements. The Court further stated that the object of bail conditions cannot be to keep constant vigil on the movements of the accused, as this would infringe on their right to privacy and effectively amount to a form of confinement even after release on bail.

Regarding the condition of furnishing a certificate from the Embassy/High Commission, the Court provided a nuanced interpretation of this condition, originally stemming from the 1994 Supreme Court Legal Aid Committee case. The Court clarified that the directions in the 1994 case were meant as one-time measures for pending cases at that time. They were not intended to be mandatory in all future cases involving foreign nationals. It was held that it is not necessary to incorporate this condition in every case where bail is granted to a foreign national in an NDPS case on grounds of long incarceration. The need for such a condition should depend on the facts of each case.

Further, the Court recognized that obtaining such a certificate is beyond the control of the accused. Therefore, if the Embassy/High Commission declines or fails to issue the certificate within a reasonable time (suggested as seven days), the Court has the power to dispense with this condition. Emphasis was placed on the point that an accused cannot be denied bail due to non-compliance with a condition that is impossible for them to fulfill. In cases where the certificate is not obtainable, the Court suggested alternative conditions like surrendering the passport and regularly reporting to the local police station or trial court.

The Court took the opportunity to lay down some broader guidelines on bail conditions:

a) Bail conditions must be within the framework of Section 437(3) of the Criminal Procedure Code and consistent with the object of imposing conditions.
b) The constitutional rights of an accused released on bail can be curtailed only to the minimum extent required.
c) Courts must show restraint while imposing bail conditions, ensuring they do not violate fundamental rights or amount to a form of punishment.
d) The Court reiterated that even convicted prisoners retain certain fundamental rights, so accused persons who are presumed innocent should have even stronger protection of their rights.

Consequently, the Court noted that bail was granted to the appellant partly on merits, based on the inadmissibility of certain evidence as per TofanSingh v. Stateof Tamil Nadu (2021) 4 SCC 1 Given this, the Court found no justification for imposing all the onerous conditions from the 1994 Legal Aid Committee case.

Hence, the Supreme Court ordered the deletion of both the Google Maps condition and the Embassy certificate condition from the appellant's bail order. They declined to refer the matter to a larger bench for reconsideration of the 1994 judgment and instead provided a clarified interpretation of how those guidelines should be applied in current cases.

The Supreme Court's decision in this case is particularly noteworthy as it intersects with contemporary concerns about digital privacy and the use of technology in law enforcement. By examining these issues through the lens of constitutional rights and established legal principles, the Court has set a precedent that is likely to have far-reaching implications for bail proceedings, especially those involving foreign nationals and technologically enabled surveillance. This landmark judgment by the Supreme Court of India offers a nuanced and progressive view on bail conditions, particularly for foreign nationals accused under the NDPS Act.

TAX

M/S Trelleborg India Private Limited V. State Of Karnataka & Ors. [2024 (7) TMI 1108]

In the present case of M/S Trelleborg India Private Limited, a Writ Petition was filed before the Hon'ble Karnataka High Court challenging the notices/endorsement in Form GST DRC-01 issued for different tax periods to a non-existent entity i.e., M/s. Trelleborg Sealing Solutions (India) Private Limited.

The Hon'ble High Court observed that the aforementioned entity was amalgamated with the Transferee Company M/s. Trelleborg Industrial Products Private Limited resulting in the creation of a new entity M/s. Trelleborg India Private Limited. It was the contention of the respondents that the tax liability would stand transferred to the transferee company. It was also observed by the Hon'ble High Court that the scheme of amalgamation was approved by NCLT, Bengaluru vide the order dated 13.06.2017, subsequent to which an application for cancellation of registration was passed in Form GST REG-19 and the registration was cancelled on 29.11.2021.

The Hon'ble Karnataka High placed its reliance upon the Hon'ble Supreme Court's decision in Principal Commissioner of Income Tax vs. Maruti Suzuki (India) Limited[1] wherein it was held that once an amalgamating entity ceases to exist upon an approved scheme of Amalgamation, the question of continuing the proceedings as regards the non-existent company cannot be permitted. A similar view was also taken by the Karnataka High Court in M/s. Rajdisle Private Limited v. The Income Tax Officer and Another[2]. Accordingly, the proceedings initiated by virtue of show cause notices/endorsement were set aside.

[1] [TS-429-SC-2019]
[2] [W.P. No. 14156/2024]

W&B Comments: Historically, under the Income Tax regime, initiating assessment proceedings against a non-existent entity has been deemed held to be jurisdictionally flawed and substantively illegal. However, under GST regime, it is the first case providing a precedent for taxpayers whose entities have ceased to exist due to amalgamation or other reasons. This judgment will be beneficial for addressing similar issues under GST.

Sai Manikanta Electrical Contractors V. The Deputy Commissioner, Special Circle, Visakhapatnam-II & Ors [2024 (6) TMI 1158]

The present Writ Petition was filed before Hon'ble Andhra Pradesh High Court challenging orders of the Deputy Commissioner, Special Circle, Visakhapatnam-II dated 10.05.2024 requesting the Executive Engineer, Operation Division, Vizianagaram to stall the payment if any payable to the petitioner.

It was contended that that Respondent No. 1 initiated the impugned proceedings without the electronically generated the Document Identification Number (DIN). Issuance of such proceedings without generating the DIN/unique identification number generated through BO portal was contrary, not only to Circular No. 122/41/2019-GST, dated 05.11.2019 issued by the Central Board of Indirect Taxes, but also to Circular No. 2 of 2022 dated 01.08.2022 issued by the Government of Andhra Pradesh. The Hon'ble High Court observed that the Respondents did not dispute the contentions of the petitioner that any such communication contrary to the aforementioned circulars is invalid and shall be deemed to have never been issued. Accordingly, the impugned proceedings were set aside with the at liberty to the department to proceed in accordance with law of completion of the Assessment proceedings.

W&B Comments: The failure to adhere to administrative requirements has been a recurring issue, as seen in this case. The CBIC Circular No. 122/41/2019-GST dated 05.11.2019, Circular No. 128/47/2019 dated 23.12.2019, and Instruction No. 03/2022-23 (GST Investigation) dated 17.08.2022 mandate the use of the DIN system to ensure transparency and accountability in communication with taxpayers. The Hon'ble Jharkhand High Court in ESL Stell Ltd.[1] has previously ruled that show cause notices and refund rejection orders lacking a DIN are invalid, rendering subsequent proceedings null and void. This case reinforces the necessity for the department to generate a DIN for all relevant communications as stipulated by the circulars.

[1] 2024(83) G.S.T.L.339(Jhar.)

CA PJ Johney V. The GST Council Through Its Secretary [WP(C) No. 12267 of 2024]

The present case a Writ Petition was filed before the Hon'ble Kerala High Court praying for directions to expeditiously establish the GST Appellate Tribunal in the State of Kerala in accordance with the provisions of Section 112 of the CGST Act, 2017.

The Hon'ble Kerala High Court addressed two main issues raised by the petitioner. First, regarding the Appeal under Section 112 of CGST Act 2017, the Hon'ble Court observed that the process of establishing the GST appellate tribunal was already initiated and the selection process for the same is presently ongoing. As such the High Court was pleased to pass directions to complete the entire selection process within a period of four months.

Second, the petitioner raised their contention regarding service of notices under Section 169 of the Act, which provides for various methods by which any decision, order, summons, notice or other communication can be served to the taxpayer. The petitioner prayed that Section 169 of the CGST Act 2017 to be rectified by replacing the word "or" with "and". This change would ensure that notices and orders are served through at least three alternative modes, thereby enhancing compliance with the principles of natural justice. The Hon'ble High Court rejected the second prayer on the basis that such relief is not appropriate for public interest litigation and should be addressed through individual grievance procedures.

W&B Comments: The government had notified the appoint the president of GST Appellate Tribunal and vide Finance bill 2024 it has been proposed that the period of 3 months for filing appeal will start from a date yet to be notified. However, there are innumerable orders pending for appeals before GST Appellate Tribunal but there is no clear timeline specified by the government as to when the GST Appellate Tribunal will become functional, thereby resulting in blockage of working capital of the taxpayers by way of pre-deposits.

The present directions of the Hon'ble Kerala High Court directing the government for establishment of GSTAT within specified timeframe of 4 months is a welcome move, more so when the dockets of the High Courts across the country are flooded with the writ petitions in absence of GST Appellate Tribunal. In the event, GSTAT does not become functional within the specified time frame of 4 months, it will be interesting to see whether the Union Government will seek a review of the present order or challenge the same before the Hon'ble Supreme Court.

Mandarina Apartment Owners Welfare Association (Maowa) vs. Commercial Tax Officer/State Tax Officer [2024 (7) TMI 1158]

In the present case, two Wrtit Petitions were filed before the Hon'ble Madras High Court, (i) the petitioner claims that show cause notice dated 28.12.2023 was only uploaded on the GST portal but not actually communicated to him, as such he was unaware of the proceedings and couldn't participate in the same in the course of which order dated 11.04.2024 was issued. (ii), the petitioner also claims he received a notice for discrepancies in sales and purchase turnover, the petitioner informed the respondent that the sales turnover was reported in the subsequent month despite which order dated 23.12.2023 was issued. The petitioner contended that proceedings were initiated based on return scrutiny under Section 61 of applicable GST acts, which require a notice in Form GST ASMT-10.

As such by non-issuance of the notice the entire proceeding is vitiated and such absence prejudices the taxpayer. The respondent state contended that scrutiny, audit, or inspection are not prerequisites for adjudication under Sections 73 or 74 and that the procedures under Sections 61 and 73 operate independently. It was further contended that any procedural defects that do not cause prejudice to the assessee can be overlooked under Section 160 of applicable GST Acts.

It was held by the Hon'ble Madras High Court that issuing a notice in Form ASMT-10 is mandatory when discrepancies are found during return scrutiny.

However, non-issuance of this notice vitiates only the scrutiny process, not the adjudication under Section 73, as the latter can be based on other credible information. In the instant case it was found that, the absence of notice under Section 61 did not invalidate the adjudication proceedings under Section 73.

Accordingly, order dated 11.04.2024 was conditionally set aside on payment of 10% of the disputed tax and is remanded to subsequent adjudication as it was passed ex parte & order dated 23.12.2023 was set aside it was passed without considering the petitioner's reply.

W&B Comments: The Hon'ble Calcutta High Court in Amex Service[1] had emphasized that the proper officer must issue Form GST ASMT-10, outlining discrepancies noticed during return scrutiny, before passing any order under Rule 99 and Section 61. The present decision by the Hon'ble Madras High Court further explores the circumstances under which Section 61(1) can be invoked, clarifying that while procedural lapses like omission of Form GST ASMT-10 are critical, they do not necessarily invalidate the adjudication if the taxpayer has had a fair chance to address the issues.

[1] 2024(6) TMI 663

Articles

Analyzing the Impact of RERA Collections Exemption in the 53rd GST Council Meeting.

Introduction

In a significant move to address the long-standing demands of the real estate sector, the Goods and Services Tax (GST) Council, during its 53rd meeting, announced the exemption of statutory collections made by the Real Estate Regulatory Authority (RERA) from GST.[1] This exemption, which aligns with entry 4 of Notification No. 12/2017-Central Tax (Rate) dated June 28, 2017, is expected to have far-reaching implications for real estate developers, agents, homebuyers, and the broader regulatory framework. The decision to exempt RERA collections has been in demand for a long time. Stakeholders in real estate were often served notices for payment of GST on statutory levies, which they argue should not attract GST. For example, the indirect tax department has demanded GST on license fees paid by companies for government schemes such as Advance Authorization and Export Promotion for Capital Goods (EPCG).[2] They contend that this increases the financial burden on the already stressed real estate sector. There was ambiguity regarding GST on statutory fees collected by RERA, prompting frequent requests for clarification and relaxation. The recent GST exemption for RERA collections might set a precedent for other sectors and regulatory authorities to seek similar exemptions, as other statutory levies, such as license fees for telecom spectrum, and mining activities remain subject to GST.

Understanding the Exemption

Entry 4 of Notification No. 12/2017-Central Tax (Rate) provides an exemption to services provided by the Central Government, State Government, Union territory, or local authority where the consideration for such services does not exceed Rs. 5,000. RERA, established under the Real Estate (Regulation and Development) Act, 2016, collects various fees and charges from real estate developers and agents. These collections, being statutory in nature, are mandated by law and do not constitute commercial transactions.

The GST Council's decision to exempt RERA's statutory collections underscores RERA's role as a regulatory body rather than a commercial entity. This aligns with the broader intent of the GST framework to exclude statutory payments from the GST purview, thereby preventing additional tax burdens on regulated entities.

Clarification via Circular No. 228/22/2024-GST

In the exercise of the powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017, and on the recommendations of the 53rd GST Council in its meeting held on 22nd June 2024, the Ministry of Finance Department of Revenue issued clarifications. The ministry clarified that RERA, established under the Real Estate (Regulation and Development) Act, of 2016, performs regulatory functions for real estate development and construction. RERA is classified as a 'governmental authority' and falls under the exemption scope of entry at Sl. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017. Thus, as recommended by the 53rd GST Council, it is hereby clarified that statutory collections made by RERA are covered under the Sl. No. 4 of notification No. 12/2017-CT(R) dated 28.06.2017.

Implications for Real Estate Developers and Agents

1. Reduction in Compliance Burden: Real estate developers and agents frequently make payments to RERA, including registration fees, project extension fees, and penalties for non-compliance. Exempting these payments from GST reduces their compliance burden, simplifying accounting processes and reducing administrative overheads.
2. Cost Savings: The exemption directly translates to cost savings for developers and agents, reducing their overall financial outlay towards regulatory compliance without the added GST. This can lead to more competitive project pricing and potentially lower costs for end consumers.
3. Encouragement for Regulatory Compliance: The financial relief provided by the GST exemption serves as an incentive for developers and agents to comply with RERA regulations. This move fosters greater adherence to regulatory requirements, promoting a more transparent and accountable real estate sector.

Impact on RERA Operations

1. Streamlined Revenue Collection: RERA authorities across states can now collect statutory fees without the need to manage GST implications. This simplification allows RERA to focus on its primary mandate of regulating and promoting the real estate sector.
2. Enhanced Regulatory Efficiency: With the administrative burden of GST compliance removed, RERA can allocate more resources toward monitoring and enforcement activities. This can result in more effective regulation of the real estate sector, ensuring better protection for homebuyers and promoting fair practices among developers.

Benefits for Homebuyers

1. Potential Reduction in Project Costs: The exemption of GST on RERA collections can reduce costs for real estate developers, who may pass on these savings to homebuyers. Reduced regulatory costs can contribute to more affordable housing options, benefiting potential homeowners.
2. Increased Transparency and Accountability: The GST exemption encourages developers to comply with RERA regulations, fostering greater project approvals and transparency in timelines. Homebuyers can benefit from increased accountability in the real estate sector, reducing the risk of project delays and ensuring timely delivery of properties.
3. Improved Regulatory Environment: A more efficient and well-funded RERA can better protect the interests of homebuyers. The exemption allows RERA to focus on its regulatory duties without the distraction of managing GST collections, resulting in a more robust regulatory environment.

Challenges and Considerations

1. Clarification on Scope: While the exemption is a positive step, further clarification may be needed on the specific types of collections covered. RERA collects various fees, and a clear definition of statutory collections is essential to avoid ambiguity and ensure consistent exemption application.
2. Monitoring and Enforcement: Ensuring the exemption is not misused requires robust monitoring and enforcement mechanisms. Authorities must remain vigilant to prevent attempts to circumvent the exemption by misclassifying commercial transactions as statutory collections.
3. State-Level Variations: RERA operates at the state level, and the implementation of the exemption may vary across states. Ensuring uniform exemption application across different jurisdictions is crucial to maintaining consistency and fairness in the real estate sector.
4. Other Tax Obligations in the Real Estate Sector: Despite the GST exemption on RERA collections, the real estate sector in India remains subject to various other taxes, including:

- Stamp Duty
- Income Tax
- Property Tax
- Capital Gains Tax
- Development Charges
- Labor Cess
- GST on Construction Services
- TDS on Property Transactions
- Municipal Taxes
- Registration Fees
- Environmental Clearance Fees

Conclusion

The GST exemption on statutory collections made by RERA, as announced in the 53rd GST Council Meeting, represents a significant development for the real estate sector. It reduces the compliance burden on developers, encourages regulatory compliance, and promotes a more transparent and accountable industry. Homebuyers stand to benefit from potential cost savings and a more robust regulatory environment. While the decision is a positive step, careful implementation and monitoring are essential to fully realize its intended benefits. The GST Council's move aligns with the broader goal of fostering a transparent and efficient real estate sector, ultimately contributing to the industry's growth and development. This decision paves the way for exemption to other institutions performing statutory functions. It might also set a precedent for other sectors and regulatory authorities to seek similar exemptions, and other statutory levies, such as license fees for telecom spectrum, and mining activities which still remain subject to GST.

When Non-Disclosure Renders Exclusion Clauses Unenforceable: Unlocking the NCDRC Ruling

In the intricate landscape of consumer finance and insurance, non-disclosure often presents complex legal challenges. The Government of India has taken various steps to strengthen the Consumer Disputes Redressal Commission (CDRC) and improve the consumer dispute resolution mechanism and the commission remains one of the most preferred destinations for consumers to get their disputes resolved. The term "consumer" is given a wide interpretation by the courts which favours the aggrieved individual in getting compensation from the other party violating his rights. In New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. The Supreme Court emphasized the consumer-friendly nature of the consumer forum. Further, the Supreme Court in Today Homes And Infrastructure Pvt Ltd V. Ajay Nagpal And Ors. held that the Real Estate (Regulation and Development) Act, 2016 ('RERA Act') does not bar the 'consumer complaints' filed by the apartment allottees against builders under Consumer Protection Act. hence, the consumer can seek compensation in a wide range of claims. Government remains to play an active role in promoting the forum as an effective way of consumer redressal. In spite of its popularity and the number of complaints received, the pendency in the consumer commissions shows a declining trend from 5.55 lakhs in December 2022 to 5.45 lakhs in September 2023. In 2023 number of cases disposed of was 1.36 lakhs which is higher than the number of cases filed at 1.26 lakh. CONFONET 2.0 software provides a robust framework for filing complaints and making electronic tracing very easy.

National Consumer Disputes Redressal Commission remains to play an active role in the evolving landscape surrounding consumer disputes. The recent case before the National Consumer Disputes Redressal Commission (NCDRC) involving Bajaj Allianz Life Insurance Co. Ltd. and a policyholder, Bharti Mahaveer Jain, brings to light crucial issues of contract interpretation, disclosure obligations, and the boundaries of insurance coverage. This case not only underscores the importance of clear communication in financial products but also tests the limits of consumer protection in India's evolving insurance sector.

Facts:

The respondent, Bharti Mahaveer Jain, availed two home loans of ₹28,95,000 and ₹48,60,000 as a co-borrower with her husband from Bajaj Finance Ltd. Along with the loans, she obtained an insurance policy on October 8, 2013, under a scheme where Bajaj Finance Ltd. was the Master Policy Holder of a Group Master Policy from Bajaj Allianz Life Insurance Co. Ltd. This policy was valid until June 20, 2016.

The respondent was enrolled in the Group Insurance Scheme with a risk commencement date of December 21, 2013, for a sum assured of ₹71,49,174. On March 20, 2014, the respondent informed the insurance company that she had been diagnosed with carcinoma of the right breast and was hospitalized on March 15, 2014.

The insurance company rejected the claim based on Clause 15(iii)(a) of the Master Policy, which excluded "any critical illness which existed at or occurred within 6 months of the entry date or the date of revival." The Claim Review Committee also rejected the critical illness claim.

The respondent then approached the State Commission in Consumer Complaint 114 of 2020, seeking payment of the sum assured, interest, compensation for mental agony and harassment, and costs. The complaint was allowed.

Arguments of the Appellant (Insurance Company):

The appellant argued that the State Commission erred in not appreciating that a contract must be interpreted according to its terms and conditions. They cited the Supreme Court judgments in General Assurance Society Limited Vs. Chandumull Jain & Anr. and The Oriental Insurance Co. Ltd. Vs. Sony Cherian[1] to support their contention that insurance policies should be strictly construed to determine the insurer's liability.

The appellant claimed that the policy had a 15-day Free Look Period, and since no request for cancellation was received, the Certificate of Insurance (COI) stood confirmed. They maintained that the claim was rightly rejected under Clause 15(iii)(a) of the Master Policy, which excluded critical illnesses within 180 days from the date of risk.

The insurance company argued that the terms of the policy were clear and that they were justified in rejecting the claim based on these terms.

Arguments of the Respondent:

The respondent contended that the Master Policy containing the terms and conditions of the risk covered was not provided to her, and therefore, the exclusion clause relied upon by the insurance company was not in her knowledge. She argued that this violated the Guidelines, Rules, and Regulations of the Insurance Regulatory and Development Authority of India (IRDA).

The respondent claimed that the condition regarding the exclusion of the critical illness benefit was only produced before the State Commission for the first time in the Written Statement. She argued that since carcinoma of the right breast constituted a critical illness, the sum assured of ₹71,49,714 was payable by the appellant.

The respondent contended that due to the insurance company's failure to release the insurance amount, she had to pay 72 loan installments amounting to ₹65,03,832. She argued that the repudiation of her claim constituted a deficiency in service and unfair trade practice.

The respondent cited the Supreme Court judgments in Bharat Watch Company Vs. National Insurance Company[1] and Modern Insulators Ltd. Vs. Oriental Insurance Co. Ltd. to support her argument that it was the duty of the parties to disclose known facts, and in the absence of communication of the exclusion clause, the insurer could not claim its benefit.

Additionally, the respondent claimed that the appellant was not authorized to issue a certificate of insurance under the Master Insurance Policy, as it had already been withdrawn on October 8, 2013, as per the list of products with IRDA. She argued that the Master Policy dated October 21, 2015, issued to Bajaj Finance Ltd. had no legal validity.

The respondent also alleged that the appellant had violated IRDA guidelines and circulars issued under Section 34 of the Insurance Act, 1938. She claimed that the appellants had issued notices under Section 138 of the Negotiable Instruments Act and Section 25 of the Payment and Settlement Act, 2007 to coerce her.

The National Consumer Disputes Redressal Commission (NCDRC) delivered a detailed decision on this appeal, carefully considering the arguments from both parties. The NCDRC identified the core issue as whether the treatment of critical illness (carcinoma) was covered under the Certificate of Insurance (COI) issued as an add-on to the loan under the Master Policy, and whether the rejection of the claim constituted a deficiency in service. The Commission acknowledged the appellant's argument, based on Supreme Court judgments, that insurance contracts should be strictly interpreted. However, they also considered the respondent's contention that non-disclosure of policy terms constitutes a deficiency in service. The NCDRC noted that the appellant had not denied failing to communicate the policy terms and conditions to the respondent. They deemed this significant, as the respondent was not made aware that claims for critical illnesses couldn't be made within six months of the policy's start date. The Commission held that since the terms and conditions were not conveyed to the respondent, the appellant's argument about the 15-day free look period and subsequent confirmation of the policy was not sustainable. They upheld the State Commission's interpretation allowing the appeal for insurance cover for critical illness.

The NCDRC disagreed with the State Commission's order regarding the repayment of loan installments. They clarified that the Certificate of Insurance only covered specific items under the Group Insurance Scheme and did not extend to repayment of EMIs for the loan from Bajaj Finance Limited.

The Commission found no merit in ordering repayment of the loan amount, as it was not part of the insurance policy in question and was not properly pleaded in terms of deficiency of service regarding the loan account. The NCDRC partially allowed the appeal with the following directives: a) The appellant was ordered to pay ₹3,07,604 to the respondent as medical expenses under the insurance policy. b) This amount should be paid with 9% per annum interest from the date of admission, within eight weeks. If not paid within this timeframe, the interest rate would increase to 12%. c) The awards of ₹25,000 for mental agony and ₹15,000 as litigation costs were upheld. d) The State Commission's direction to refund ₹65,03,832 was set aside. The Commission clarified that in a claim related to critical illness, the appellant could only be held liable for the treatment of critical illness as claimed. They emphasized that the housing loan issue was separate and not related to the insurance claim for critical illness treatment.

Conclusion:

By partially allowing the appeal, the Commission has struck a careful balance between upholding contractual obligations and protecting consumer rights. This judgment highlights the need for clear delineation between different financial products, even when they are offered as part of a package. For insurers, this case serves as a stark reminder of their duty to ensure that all policy terms, especially exclusions, are clearly communicated to policyholders. For consumers, it reinforces the importance of thoroughly understanding the terms of their insurance policies and the specific coverages they provide.

Analysing recent SC judgment limiting the power of the High Court Not Having Original Civil Jurisdiction in Arbitral Award.

Introduction:

The government has taken initiatives to ensure that India becomes a preferred destination in terms of doing business and getting disputes resolved efficiently. To make arbitration a preferred mode of dispute resolution by making it more user-friendly, and cost-effective, and ensuring timely disposal of cases, the Arbitration and Conciliation Act, 1996. Then in 2015, the Arbitration and Conciliation (Amendment) Act, 2015 was enacted. To make arbitration process time efficient, a time limit of 12 months for the completion of arbitration proceedings was introduced. The 2019 Amendment established the Arbitration Council of India (ACI) for grading arbitral institutions and accreditation of arbitrators. Despite government efforts and the active role of the judiciary in ensuring the effectiveness of arbitration, the ground realities pose a concerning picture. As per a report, the Majority of the companies in India (91% of the companies surveyed in India), that have a dispute resolution policy, include arbitration (not litigation) for the resolution of future disputes.[1] However, the data for 2022[2] shows that of the pending arbitration cases in India, a majority of around 48 percent were pending for more than a year. Around 23 percent of cases stay pending for ten to twenty years. Nevertheless, Arbitration remains one of the most preferred ways of resolving disputes and the one that is evolving.

[1] PWC "Corporate Attitudes & Practices towards Arbitration in India", accessed on 21/7/2024, available at: https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towards-arbitration-in-india.pdf
[2] Statista "Age wise pendency of arbitration cases in India 2022", Dec 14, 2023, available at: https://www.statista.com/statistics/1356526/india-age-wise-pendency-of-arbitration-cases/

The case of Chief Engineer (NH) PWD (Roads) vs. M/S BSC & C and C JV[1], has brought into sharp focus the interpretation of Section 29A of the Arbitration and Conciliation Act, 1996. This landmark case not only challenges the conventional understanding of court jurisdiction in arbitration matters but also promises to reshape the contours of arbitral proceedings across India's diverse judicial landscape. As India continues its ascent as a preferred destination for international arbitration, the outcome of this case could have far-reaching implications for the country's arbitration regime. It raises pivotal questions about the powers vested in different levels of courts, particularly in regions where High Courts lack ordinary original civil jurisdiction.

On May 13, 2024, the Supreme Court of India deliberated on a significant case that brought to the forefront crucial questions about the interpretation and application of the Arbitration and Conciliation Act, of 1996. The case, arising from Special Leave Petition (Civil) No. 10544/2024, was heard by a division bench comprising Justice Abhay S. Oka and Justice Ujjal Bhuyan. This petition challenged an order dated April 22, 2024, passed by the High Court of Meghalaya at Shillong in CRP No. 2/2024.

The petitioner, in this case, was the Chief Engineer (NH) PWD (Roads). The respondent, M/S BSC & C and C JV. At the heart of this legal dispute lies the interpretation and application of Section 29A of the Arbitration and Conciliation Act, of 1996. This section, which deals with time limits for arbitral awards, was introduced to ensure the speedy resolution of arbitration proceedings.

Section 29A of the Arbitration and Conciliation Act, 1996 states:

"29A. The time limit for the arbitral award.—(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

[1] 2024 LiveLaw (SC) 425

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.
(3) The parties may, by consent, extend the period specified in sub-section (1) for making the award for a further period not exceeding six months.
(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this subsection, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order a reduction of fees of the arbitrator(s) by not exceeding five percent. for each month of such delay:

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:
Provided also that the arbitrator shall be given an opportunity to be heard before the fees is reduced.

(5) The extension of the period referred to in subsection (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in subsection (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of the arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavor shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."
This comprehensive section outlines several key aspects of arbitration proceedings. It sets a 12-month time limit for making awards in non-international commercial arbitrations, starting from the completion of pleadings. It allows for a 6-month extension by mutual consent of the parties. It empowers the Court to extend the time period if the award is not made within the specified or extended time. It gives the Court the authority to substitute arbitrators while extending the time. It allows the Court to reduce arbitrators' fees for delays attributable to the arbitral tribunal. It ensures that if arbitrators are substituted, the proceedings continue from the existing stage. It empowers the Court to impose actual or exemplary costs on any party. It directs courts to dispose of extension applications within 60 days.
The crux of the dispute in this case revolves around the interpretation of the term "Court" as used in Section 29A, particularly in relation to the powers vested under sub-sections (4) and (6). To understand this, it's essential to refer to Section 2(1)(e) of the Arbitration Act, which defines "Court" as:

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

The petitioner's argument, as presented by the senior counsel, centered on this definition. They contended that since the High Court of Meghalaya does not have ordinary original civil jurisdiction, it lacks the power under Section 29A(4) of the Arbitration Act to extend the time for making the arbitral award.

Furthermore, the petitioner argued that the power to substitute arbitrators under Section 29A(6) is only a consequential power vesting in the Court that is empowered to extend the time. They maintained that this power should be exercised only by the Court empowered to extend time as provided in Section 29A(4).

The Supreme Court's analysis centered on determining which "Court" has the power to extend time limits and replace arbitrators under Section 29A. The court clarified that this power vests in the "Court" as defined in Section 2(1)(e) of the Arbitration Act. According to this definition, the Court refers to the principal Civil Court of original jurisdiction in a district, which can include a High Court, but only if that High Court has ordinary original civil jurisdiction. Hence, in this particular case, the High Court of Meghalaya does not possess ordinary original civil jurisdiction. The Supreme Court emphasized that the power under Section 29A(6) to replace and substitute arbitrators is a consequential power that can only be exercised by the Court empowered to extend the time under Section 29A(4).

The Court's interpretation implies that the authority to extend time limits for arbitral awards and to replace arbitrators in case of delays rests with the principal Civil Court of original jurisdiction in the district, not with the High Court in this instance. This interpretation formed the basis for the Supreme Court's conclusion that there was no merit in the Special Leave Petition filed by the Chief Engineer.

As a result of this reasoning, the Supreme Court dismissed the Special Leave Petition.

Conclusion and analyses:

The judgment is significant as it provides clear guidance on the interpretation of Section 29A of the Arbitration Act, particularly in determining which court has the authority to extend time limits and replace arbitrators in arbitration proceedings. The outcome of this case could have significant implications for the arbitration landscape in India. It may affect how time extensions are granted and arbitrators are appointed or substituted in regions where the High Court does not exercise ordinary original civil jurisdiction.

GST Council Recommends Amendment to Rule 142: Simplifying Pre-Deposit Mechanism for Filing Appeals

53rd GST Council meeting recommended an amendment to Rule 142 of the Central Goods and Services Tax (CGST) Rules. This amendment introduces a mechanism for adjusting amounts paid towards a demand through Form GST DRC-03 against the pre-deposit amount required for filing an appeal.

I.Background: The Appeals Process Under GST

Under GST, appellants must pay 100% of admitted tax and a percentage of disputed tax as pre-deposit when filing appeals. This is typically done at the time of filing of Form GST APL-01 on the GST portal. Issues arise when taxpayers make payments during audits or face technical problems with APL-01 hence making them resort to Form GST DRC-03. Earlier the CBIC has clarified in CBIC-240137/14/2022-Service Tax Section-CBIC, dated 28.10.2022 that pre-deposits are neither duty nor arrears, and that DRC-03 is not a valid form for making pre-deposits. Later, vide CBIC-240137/14/2022-Service Tax Section-CBEC dated 18.04.2023 it was clarified that aforementioned restriction was exclusively intended for the cases of appeals belonging to the Central Excise/Service Tax only and not for appeals under GST. The Courts have also been addressing cases where appeals were rejected due to payment of pre-deposit made through Form GST DRC-03 in the case of technical error on the portal (Manjunatha Oil Mill v. Assistant Commissioner (ST) (FAC) [2024] 159 taxmann.com 514). These situations underscored the need for clearer guidelines and flexibility in the appeal process to address genuine technical challenges.

II. Rule 142 and Form GST DRC-03: Current Framework

Rule 142 of the CGST Rules outlines the process for issuing demand notices and recovering dues from taxpayers. Form GST DRC-03 is used by taxpayers to voluntarily make payments towards tax, interest, penalty, and other amounts before or after the issuance of a show-cause notice. There is no provision for adjusting amounts paid through Form GST DRC-03 against the pre-deposit required for filing an appeal. This often leads to duplication of payments and financial strain on taxpayers.

III.The Amendment: A New Adjustment Mechanism

The recommended amendment to Rule 142 and the issuance of a circular aim to address this issue by prescribing a mechanism for such adjustments. Accordingly, vide the Circular No. 224/18/2024 - GST dated 11.07.2024, a new mechanism is provided. Notification No. 12/2024- CT dated 10.07.2024, vide which sub-rule (2B) of Rule 142 and Form GST DRC-03A have been inserted to the CGST Rules, provides mechanism for cases where an assessee to pay tax, interest and penalty under relevant provisions (Section 52, 73, 74, 76, 122, 123, 124, 125, 127, 129, 130 of CGST Act) inadvertently through Form GST DRC-03 under sub-rule (2) of Rule 142.

Such assessee will have to file an application in Form GST DRC-03A, electronically on the GST portal, and the amount so paid and intimated through the Form GST DRC-03 will be adjusted as if the said payment was made towards the said demand on the date of such intimation through Form GST DRC-03. The amount so paid shall also be liable to be adjusted towards the amount required to be paid as pre-deposit under Section 107 and Section 112 of the CGST Act, if and when the taxpayer files an appeal against the said demand, before the appellate authority or the appellate tribunal, and the remaining amount of confirmed demand as per the order of the adjudicating authority or the appellate authority, as the case may be, will stand stayed as per Section 107 (6) and Section 112 (9) of CGST Act.

As the abovementioned functionality for filing of an application in Form GST DRC-03A, is currently unavailable on the GST portal, the assesses will have to intimate the proper officer about the same, and on such intimation, the proper officer shall not pursue any recovery till the time the said functionality of Form GST DRC-03A is made available on the GST portal.

Once the functionality of Form GST DRC-03A is made available on the GST portal, the assessee will have to file the application in Form GST DRC-03A, on the portal at the earliest, and on doing so, the amount paid vide Form GST DRC-03 will be adjusted against the pre-deposit under section 107 or section 112 of the CGST Act.

IV. Benefits of the Amendment

1. Financial Relief for Taxpayers: This change prevents the need for double payments for the same tax demand, easing the financial burden on businesses.
2. Encouragement for Genuine Appeals: The simplified process encourages taxpayers to pursue genuine appeals without the deterrent of additional financial strain.
3. Administrative Efficiency: For tax authorities, the amendment reduces redundancy and simplifies the process of tracking and managing payments.
4. Legal Clarity: The circular providing detailed guidelines on the adjustment mechanism will help eliminate ambiguities and ensure consistent application of the rules.
5. Under protest payment to arrest the interest meter: The mechanism also benefits where taxpayer voluntary paid the demand in full or in part under protest during the investigation stage to stop the interest meter. Through this new mechanism, such aggrieved taxpayers will now be able to seek by adjusting their voluntary under-protest payments against the mandatory pre-deposit while challenging the demand in appeal.

V. Conclusion

The recommendation to amend Rule 142 of the CGST Rules and introduce a mechanism for adjusting payments made through Form GST DRC-03 against pre-deposit amounts for appeals is a progressive step towards refining the GST framework. The amendment specifically addresses and provides a mechanism for adjusting amounts paid through Form GST DRC-03 against the pre-deposit required for filing an appeal. Therefore, taxpayers who have not utilized Form GST DRC-03 to make such payments will not benefit from this adjustment mechanism. They will need to follow the standard procedures and use the prescribed forms, such as Form GST APL-01, for making pre-deposits.

GST Council Recommends Amendments to Sections 73 and 74 of CGST Act: Streamlining Demand Notice Timelines and Penalty Provisions

In an effort to simplify and harmonize the Goods and Services Tax (GST) framework, the 53rd GST Council meeting proposed significant amendments to Sections 73 and 74 of the Central Goods and Services Tax (CGST) Act, 2017. These amendments, including the insertion of a new Section 74A, aim to standardize the time limits for issuing demand notices and orders, regardless of whether fraud or willful misstatement is involved. Additionally, the Council recommended extending the time limit for taxpayers to avail of reduced penalty benefits.

I. Background

The different time limits for issuance of show cause notices and adjudication of demands have led to confusion and legal disputes. There have been instances where notices issued under Section 74 (fraud cases) beyond the three years but within the five-year limit have been challenged. If the charges of fraud or suppression were not sustained, these notices had to be dropped as time-barred, resulting in legal uncertainty and numerous court cases. Garg Rice Mills v. State of Punjab [2024] challenged the legality of extending the due date for issuing notices under Section 73, arguing it was time-barred. In Titan Company Ltd. v. Joint Commissioner of GST & Central Excise [2024] where the department has issued show cause notices by bunching up notices for multiple assessment years, for a period for the time limit is already exhausted, the Hon'ble Madras High Court emphasized that the limitation period is applicable separately for each assessment year. The challenge in K. R. Pulp Papers Ltd. v. Goods and Services Tax Council [2024] regarding the extension of time for issuing notices reflects issues similar to those addressed by the proposed amendment.

II. Current Framework: Sections 73 and 74 of the CGST Act

Under the current provisions, Sections 73 and 74 of the CGST Act govern the issuance of demand notices and orders for tax, interest, and penalties:

- Section 73 deals with cases where there is no fraud, suppression of facts, or willful misstatement. The time limit for issuance of an order under the provision is three years from the due date for filing the annual return for the relevant financial year. Therefore, the show cause notice has to be issued at least three months prior to the expiry of time limit of passing of the adjudication order.
- Section 74 addresses cases involving fraud, suppression of facts, or willful misstatement. The time limit for issuance of an order under the provision is five years from the due date for filing the annual return for the relevant financial year. Therefore, the show cause notice has to be issued at least six months prior to the expiry of time limit of passing of the adjudication order.

III. Proposed Amendments: A Common Time Limit

The GST Council has recommended the following key changes:

1. Common Time Limit for Demand Notices and Orders: The proposed amendments seek to provide a common time limit for the issuance of demand notices and orders, irrespective of whether the case involves fraud, suppression, willful misstatement, or not. This change will apply to demands for the financial year 2024-25 onwards.
2. Extended Time Limit for Reduced Penalty: Currently, taxpayers must pay the tax demanded along with interest within 30 days to benefit from a reduced penalty. The proposed amendment extends this period to 60 days.
3. Insertion of New Section 74A: A new Section 74A will be introduced to streamline the implementation further, encapsulating the common time limit provisions

IV. Implications of the Amendments

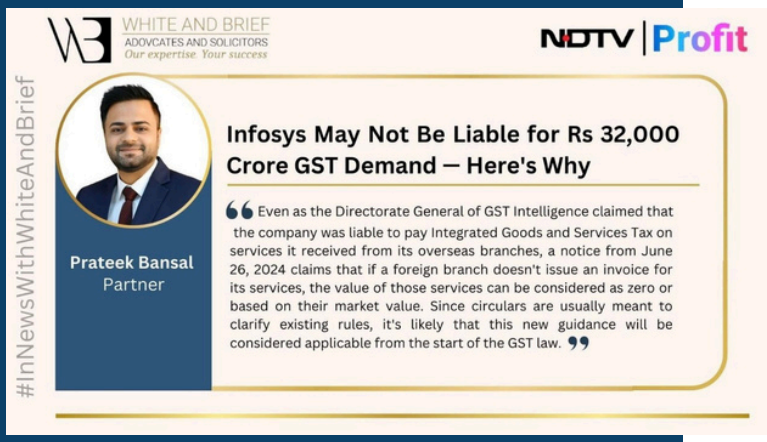
1. Clarity and Consistency: Introducing a common time limit simplifies the GST compliance framework, making it easier for taxpayers to understand and adhere to the timelines for demand notices and orders.
2. Ease of Compliance: The extended period for availing of reduced penalty benefits offers taxpayers additional time to settle their dues, easing the compliance burden and potentially reducing litigation.
3. Administrative Efficiency: A uniform timeline streamlines the process of issuing demand notices and orders for tax authorities, enhancing administrative efficiency and resource management.
4. Legal Certainty: Clear and consistent timelines help establish legal certainty and foster a more predictable tax environment. This can encourage better compliance and reduce the scope for disputes and litigations.

V.Conclusion

The proposed amendments to Sections 73 and 74 of the CGST Act, along with the introduction of Section 74A, represent a significant step towards simplifying the GST framework. With the amended provisions, the proper officer can determine fraudulent intent during proceedings. The recommendation is only to align the time limit of both provisions, however, it will bring a genuine taxpayer and a fraudulent one at par which is inconsistent with the legislative intent. A similar provision is also included in the Central Excise Bill, 2024. The time limit for taxpayers to avail reduced penalties is proposed to increase from 30 to 60 days, providing more time for compliance. It must be noted that Taxpayers with cases from financial years before 2024-25 will not benefit from the new common timeline and will be subject to the existing time limits. Taxpayers with notices already time-barred under the current law will not gain retroactive benefits from the new provisions. Taxpayers against whom fraud, suppression, or willful misstatement is proven will still face the prescribed penalties and consequences.

A Closer Look at Our Recent Features

Infosys May Not Be Liable for Rs 32,000 Crore GST Demand — Here's Why



We are delighted to share that our partner, Prateek Bansal was featured in today's NDTV Profit article titled "Infosys May Not Be Liable for Rs 32,000 Crore GST Demand — Here's Why."

In his comment, Prateek Bansal addresses how the new GST guidance might apply retroactively to clarify existing rules.

To read the full article, please click on the link :

https://www.ndtvprofit.com/profit-insights/infosys-tax-demand-why-the-company-may-not-be-liable-to-pay-rs-32000-crore

Companies Act to See Slew of Changes Soon.

We are delighted to share that our Managing Partner, Mr. NILESH TRIBHUVANN , is quoted in the Financial Express (India) article titled "Companies Act to See Slew of Changes Soon."

The article is available in both print and online editions.

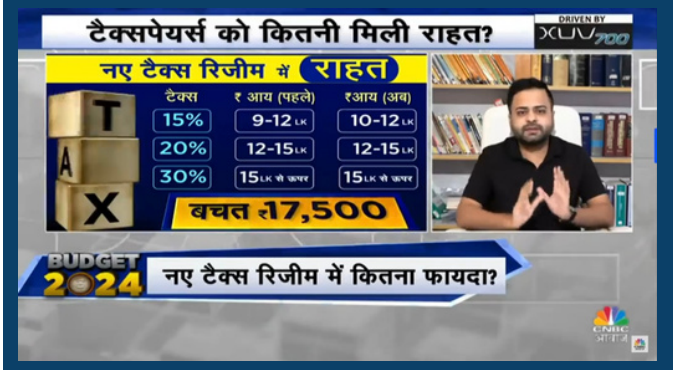
To read the full article , please click on the link :

https://www.financialexpress.com/business/industry-companies-act-to-see-slew-of-changes-soon-3568305/

Our Tax Partner Prateek Bansal Joins Neeraj Bajpai on CNBC_Awaaz for Another Special Episode

In the continuation of a series of special episodes, here's another participation by our Tax Partner, Prateek Bansal, on CNBC_Awaaz, anchored by Neeraj Bajpai.

Here's a preview of the episode;
How much relief did taxpayers get? How much will the new tax regime benefit you? How much has the tax burden increased on investors? What are the intricacies of capital gains tax? How much impact on market investments? What's the impact on your pocket?



Click on the link to see the full video

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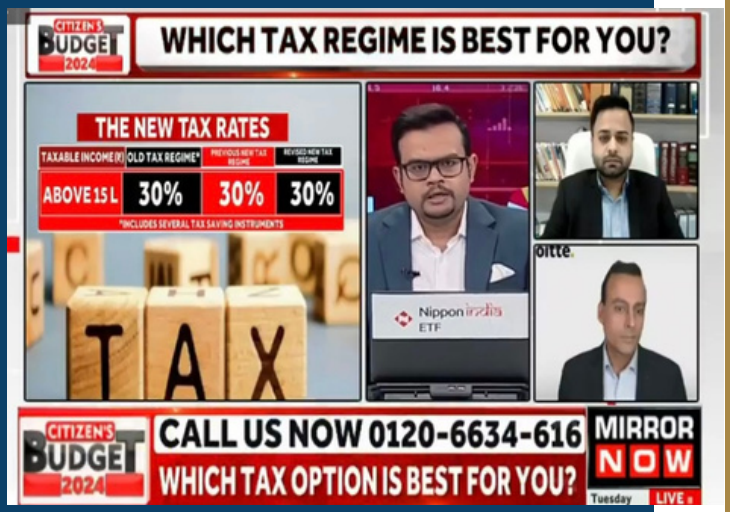


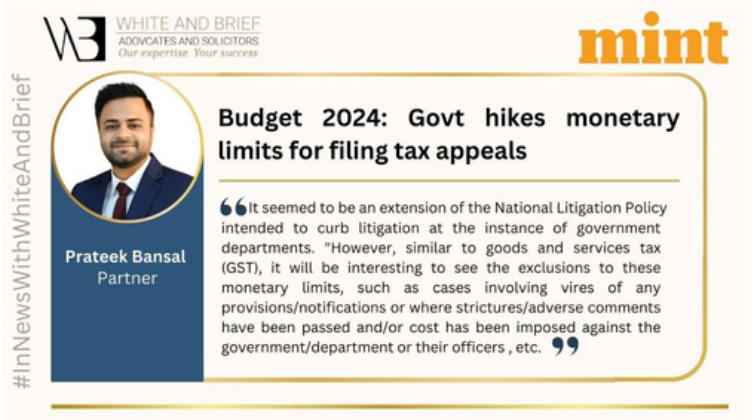
One Nation, Three Tax Options; Is This A Budget For Salaried Class?

#budget2024updates Our Tax Partner, Prateek Bansal shared his views with One Nation, Three Tax Options; Is This A Budget For Salaried Class? | Citizens' Budget 2024 | Debate on Mirror Now . Anchored by Ritangshu Bhattacharya.

Click on the link to see the full video :

https://www.linkedin.com/feed/update/urn:li:activity:7221538848021913604

Budget 2024: Govt hikes monetary limits for filing tax appeals.

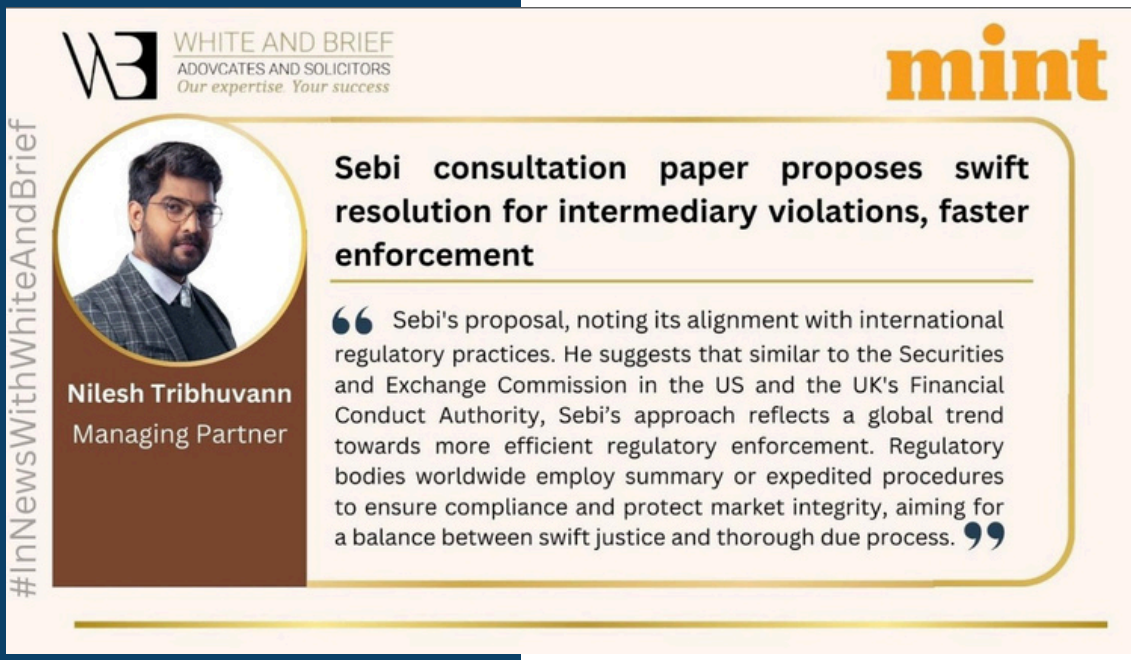


Budget 2024: Govt hikes monetary limits for filing tax appeals.

The article highlights the increased monetary thresholds for tax appeals aimed at reducing government-initiated litigation. Prateek Bansal comments on the potential impact, noting the importance of watching for exclusions, such as significant legal questions or adverse judgments against the government.

To read the full article click on the link:

https://www.livemint.com/budget/news/budget-2024-tax-disputes-tax-appeals-litigation-pending-cases-tax-tribunal-tax-cases-nirmala-sitharaman



SEBI Consultation Paper Proposes Swift Resolution for Intermediary Violations, Faster Enforcement.

We are delighted to share that our Managing Partner, Mr. NILESH TRIBHUVANN , has been featured in the LiveMint National Edition article titled "SEBI Consultation Paper Proposes Swift Resolution for Intermediary Violations, Faster Enforcement."

Mr. Tribhuvann highlights SEBI's proposal and its alignment with international regulatory practices, comparing it to the approaches of the US Securities and Exchange Commission and the UK's Financial Conduct Authority. He underscores the global trend towards efficient regulatory enforcement and advocates for heavier fines or penalties to enhance compliance and uphold market integrity.

This feature is also available in print.

To read his full comment, please click on the link.
https://www.livemint.com/market/sebi-consultation-paper-regulator-market-intermediary-violations-investors-stock-markets-sec-fca-11721623638128.html

GST Council Clarifies Valuation Rules For Import Of Services By Related Entities With Full Input Tax Credit.

We are pleased to share an insightful article authored by our partner, Prateek Bansal published in Outlook Money , titled "GST Council Clarifies Valuation Rules For Import Of Services By Related Entities With Full Input Tax Credit."

Key points discussed in the article include:

The GST Council has clarified the valuation of imported services between related entities when the recipient is eligible for a full input tax credit.

This clarification aims to streamline compliance and reduce the administrative burden on businesses involved in cross-border transactions within related entities.

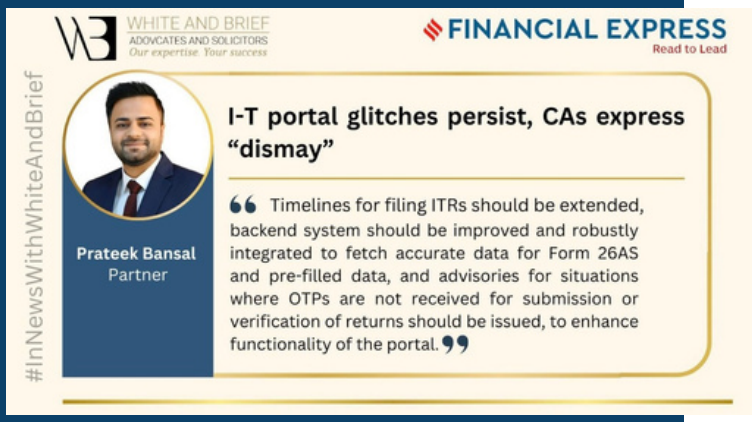
The Council recommended that the value declared in the invoice by the related domestic entity may be deemed the open market value.

The Council recommended that the value declared in the invoice by the related domestic entity may be deemed the open market value.

The CBIC's clarificatory Circular No. 210/4/2024-GST aligns with international practices and simplifies valuation rules for related party transactions.

This approach offers greater certainty and predictability in tax planning, reduces potential litigations, and fosters a more business-friendly environment in India.

For the full article, please click on the https://www.outlookmoney.com/outlook-money-spotlight/gst-council-clarifies-valuation-rules-for-import-of-services-by-related-entities-with-full-input-tax



I-T Portal Glitches Persist, CAs Express 'Dismay'

We are delighted to share that our partner, Prateek Bansal has been featured in the Financial Express (India) article titled "I-T Portal Glitches Persist, CAs Express 'Dismay'."

In his comment, Mr. Bansal addresses the ongoing issues with the I-T portal and suggests key improvements to enhance its functionality.

To read the full article, please click on the link.
https://www.financialexpress.com/money/i-t-portal-glitches-persist-cas-express-dismay-3557569/

Glimpse of the Budget 2024 discussions on CNN-News18

LIVE on Budget 2024 - White and Brief - Advocates & Solicitors is delighted to share a glimpse of the Budget 2024 discussions on CNN-News18.

Prateek Bansal, our Tax Partner, shared the panel with many other economists and experts, brainstorming on various aspects of the Budget. The panel was anchored by Zakka Jacob Rahul Shivshankar and Anand Narasimhan.

Preview 1/2

Click on the link to see the full video :
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Preview 2/2
Click on the link to see the full video :
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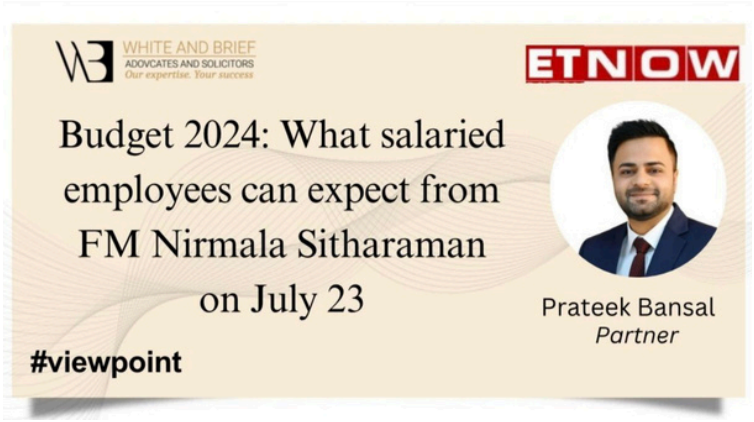
Budget 2024: What Salaried Employees Can Expect from FM Nirmala Sitharaman



Our Taxation Partner, Mr. Prateek Bansal has been quoted in the ETNow article titled "Budget 2024: What Salaried Employees Can Expect from FM Nirmala Sitharaman" on July 23.

He shares his expert insights on what might be in store for salaried employees.

To read his comments, please click on the link below.

https://www.etnownews.com/budget/budget-2024-what-salaried-employees-can-expect-from-fm-nirmala-sitharaman-on-july-23-article-111842645

GST Council Exempts RERA Collections: A Boost for Real Estate Compliance and Affordability

We are delighted to share an insightful article by our Tax Partner, Prateek Bansal titled "GST Council Exempts RERA Collections: A Boost for Real Estate Compliance and. Affordability" ,published by Republic World

Key points discussed in the article:

Understanding the Exemption : GST Council exempts statutory collections by RERA from GST, recognizing them as non-commercial transactions.

Implications for Developers and Agents:
- Reduction in compliance burden
- Cost savings
- Encouragement for regulatory compliance

- Impact on RERA Operations :
- Streamlined revenue collection
- Enhanced regulatory efficiency

- Benefits for Homebuyers :
- Potential reduction in project costs
- Increased transparency and accountability

- Challenges and Considerations :
- Clarification on scope of collections covered
- Need for robust monitoring and enforcement
- State-level variations in implementation

Click on the link to read the full article - https://www.republicworld.com/initiatives/gst-council-exempts-rera-collections-a-boost-for-real-estate-compliance-and-affordability

Section 11A in CGST Act: Government Empowered to Address GST Shortfalls from Common Trade Practices

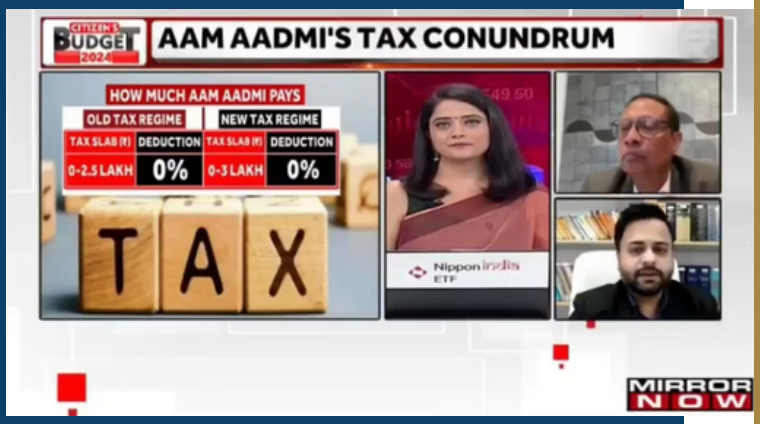
We are delighted to share that an insightful article by our Tax Partner, Prateek Bansal titled "Section 11A in CGST Act: Government Empowered to Address GST Shortfalls from Common Trade Practices," has been published by Outlook Publishing (India) Pvt. Ltd.

In the article, Prateek Bansal discusses the following key points:

- Introduction of Section 11A in the CGST Act to address non-levy or short-levy of GST due to common trade practices.
- Relief from retrospective tax demands for businesses.
- Reduction in litigation by regularizing GST shortfalls.
- Enhanced clarity and predictability in the GST framework.
- Improved administrative efficiency for tax authorities.
- Promotion of voluntary compliance and strengthening trust between businesses and tax authorities.

Click on the link to read the full article

https://www.outlookindia.com/hub4business/section-11a-in-cgst-act-government-empowered-to-address-gst-shortfalls-from-common-trade-practices



Preview 1/2

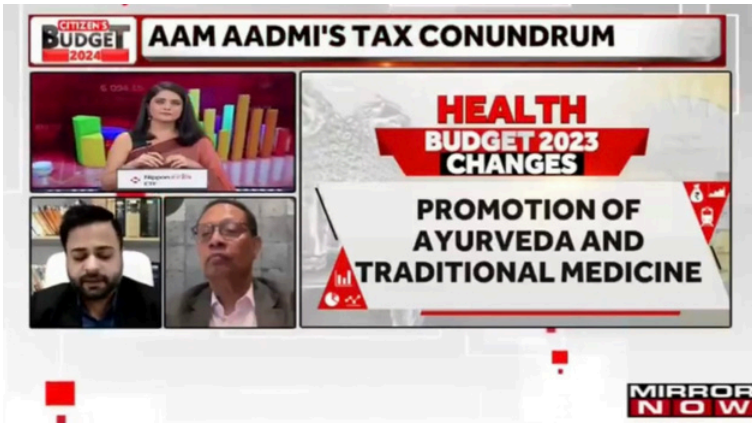
Union Budget 2024: All Eyes On Govt To Raise Tax Exemption Limit, Finance Minister To Axe The Tax?

Union Budget 2024: The Modi 3.0 government's maiden budget will be presented Next week. With a few days to go until the mega-economic event, various stakeholders, including taxpayers, have their eyes on Finance Minister Nirmala Sitharaman to see if she raises the tax exemption limit.

Prateek Bansal, our Tax Partner, joins S. Ravi, Former Chairman, BSE in the panel discussion on Mirror Now, anchored by Shreya Upadhyaya

Click here to access the full video : https://www.linkedin.com/feed/update/urn:li:activity:7219738315493666816

Preview 2/2



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Sell LIC Policy and Get Money in 48 Hours with Life Cover till Maturity: Looks Attractive

We are delighted to share that our Managing Partner, Mr. NILESH TRIBHUVANN has been quoted in The Economic Times article titled "Sell LIC Policy and Get Money in 48 Hours with Life Cover till Maturity: Looks Attractive? But Beware of Legal Aspects, Other Rules." He shared his expert insights on the matter.

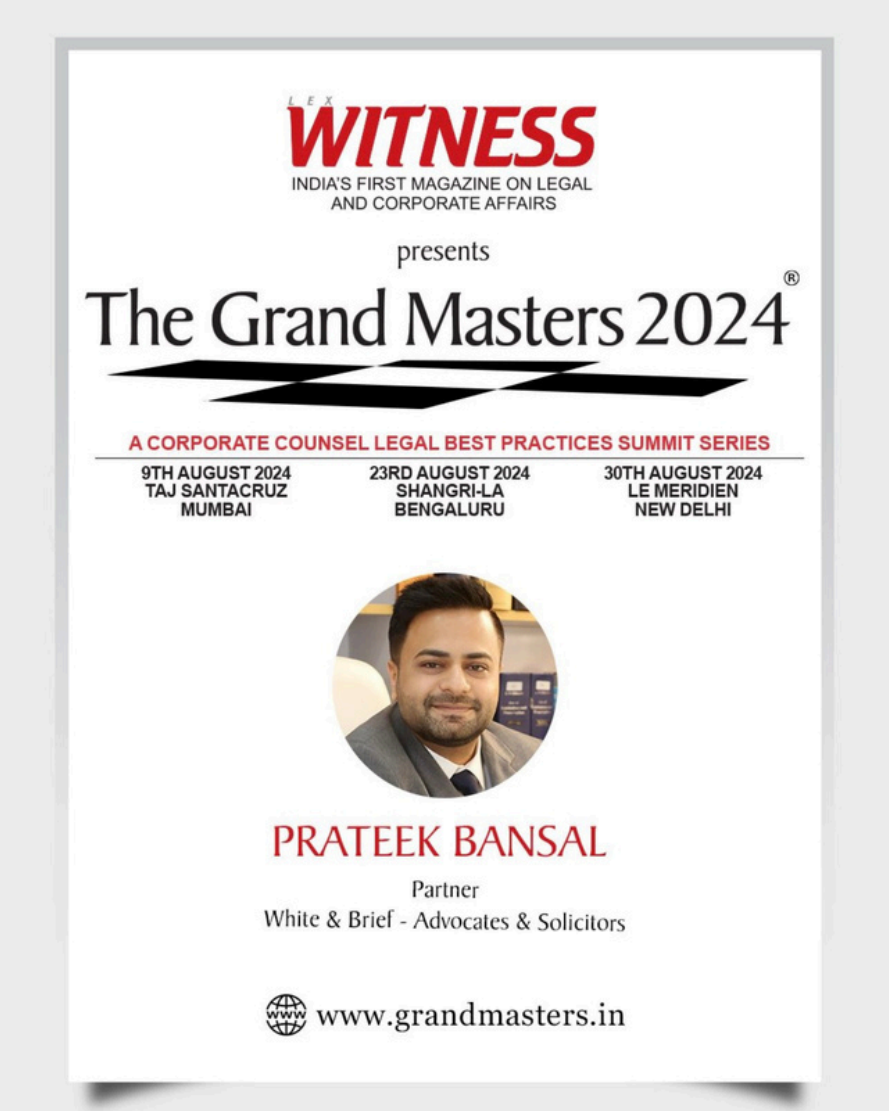
To read his comments, please click on the link below.
https://economictimes.indiatimes.com/wealth/insure/sell-lic-policy-and-get-money-in-48-hours-with-life-cover

An Unwelcome Sequel: Bane of Political Controversies Jumps from Screens to Streaming Platforms

We are delighted to announce that our Managing Partner, Mr. NILESH TRIBHUVANN , has been featured in LiveMint national editions. His quote is included in the article titled "An Unwelcome Sequel: Bane of Political Controversies Jumps from Screens to Streaming Platforms," which is also featured in print editions.

To read his insights, please click the link below.

https://www.livemint.com/industry/unreleased-titles-mount-at-ott-platforms-amid-political-controversies-11719731490752.html



We are pleased to share that our Partner, Prateek Bansal, will be attending the LexWitness Grand Master Summit 2024. This event, part of the Corporate Counsel Legal Best Practices Summit Series, will feature Prateek Bansal as a distinguished speaker.

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