

Rajput Jain & Associates Chartered Accountants

RJA



15 CRITICAL OBSERVATIONS BY H'BLE
APEX COURT AND HIGH COURTS!

New Delhi / Mumbai / Noida / Faridkot / Varanasi

RJA About us



Offers its clients a full range of services. the company has been setup by a group young ,enthusiastic highly skilled and motivated professional who has taken experience from the top consulting firm and are extensively experienced in their chosen fields has providing a wide array of consultancy in the field of accounting. ,taxation assurance and business advisory service to various clients and other stakeholder

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Overview!



LETS DIVE IN!

1. 'Mission-Impossible' not possible in law!

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

Para 7.1 to 7.3

* SVLDR Scheme

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

2. Interpretation cases – No penalty!

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

Para 25

* Service Tax

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

3. Exemption – Road includes toll plaza as well!

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

Para 5

* Service Tax

- ... we hold that construction like **toll plaza**, cattle/pedestrian crossing facilities, parking bay for buses/trucks, rest room for staff and common public at large, etc. **are also part of the road**, as these are meant for exclusive use by the highway staff and the people using these roads.

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

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

Para 55

* Service Tax

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

5. Contract – Separate activities, separate tax treatment!

Shilpa
Construction Pvt
Ltd [2010 (19) STR
830 (Tri. Ahmd.)]*

Para 7

* Service Tax

- ... the Board's Circular No. B1/6/2005-TRU dated 27-7-05 is to the effect that - ... **If the contract recognizes the two activities as separate activities**, even though the construction of the road is in connection with the commercial complex, the benefit has to be allowed.

6. Sale – If distinct, separate tax treatment!

Cerebral Learning
Sol. Pvt. Ltd [2018
(37) GSTL 37 (Tri.
Del)]*

Para 3

- Affirmed by SC [2022 (67) GSTL 4
- Service Tax

- *The transaction in the appellant before us is a clear transaction of **sale of study material** by the assessee-appellant to its coachees/trainees. Its a **distinct transaction** for which “as concurrently found by the primary and appellate authority, **separate value is receipted, documented and recorded**”. In any event, the exemption notification engrafts no restrictive condition other than those set out therein which are satisfied in the present case.*

7. Composite supply – Cannot be split and taxed!

Jyoti Ltd [2022 (64)
GSTL 129 (S.C.)]*

Para 4

* Service Tax (for period prior to
Dec. 2000)

- *However, considering the various services rendered by the assessee like erection/installation/commissioning of goods at customers' site and incidentally they may also be providing the services of drawing, design etc., ... The contract can be said to be **'works contract'**. Hence, the assessee **cannot be said to be rendering the services as a consulting engineer** and therefore liable to pay the service tax.*

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

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

Para 2/3

* Excise/ CCR

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

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

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

Para 2

* Service Tax

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

10. Profit share – Not renting service!

Grand Royale Entp.
Ltd. [2019 (31)
GSTL 453 (Tri.
Chennai)]*

Para 5.2

- *It appears to reason that not just the immovable property portion of the hotel, but also, the employees and other staff, goodwill and other paraphernalia ...there is no “fixed rent” that is payable ...the consideration for license to run, conduct and operate the hotel is a “license fee” equivalent to 15%/20% of the annual ...the transaction between the appellant and IHCL is definitely **not one of “renting of immovable property” but a business transaction***

* Affirmed by SC [2022 (63) GSTL 412 (SC)]

* Service Tax

11. Tender - Bidder must make an informed decision!

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

Para 38

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

* GST

12. No arrest if accused co-operated and did not disobey summons!

Siddharth [2022
(64) GSTL 34
(S.C.)]*

Para 12

* CrPC

- *A distinction must be made between the existence of the power to arrest and the justification for exercise of it. [Joginder Kumar ... - (1994) 4 SCC 260]. ...If the Investigating Officer has **no reason to believe** that the accused will **abscond or disobey** summons and has, in fact, **throughout co-operated** with the investigation we fail to appreciate **why there should be** a compulsion on the officer to **arrest** the accused.*

13. DIN – Likely to be implemented by States as well!

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

Para 7

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

* GST

14. Recovery - No recovery from purchaser if transfer of property bonafide !

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

Para 5

* UP Trade Tax Act, 1948

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

15. Principle of '*Stare decisis*' applied in works contract case !

Total Env. Building
Systems Pvt Ltd
[2022 (63) GSTL
257 (SC)]*

Para 12

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

* Service Tax

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