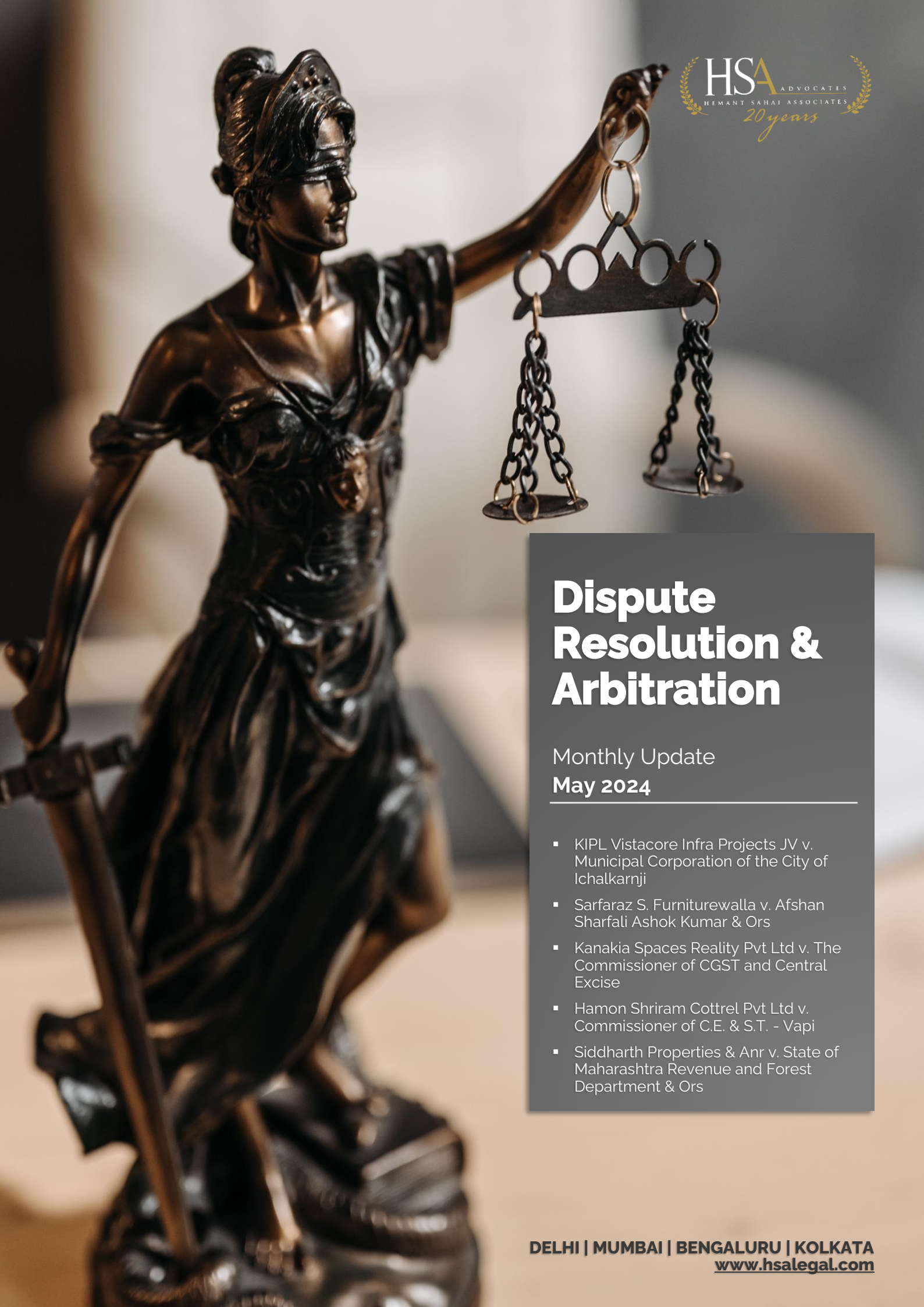

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Dispute Resolution & Arbitration

Monthly Update
May 2024

- KIPL Vistacore Infra Projects JV v. Municipal Corporation of the City of Ichalkarnji
- Sarfaraz S. Furniturewalla v. Afshan Sharfali Ashok Kumar & Ors
- Kanakia Spaces Reality Pvt Ltd v. The Commissioner of CGST and Central Excise
- Hamon Shriram Cottrel Pvt Ltd v. Commissioner of C.E. & S.T. - Vapi
- Siddharth Properties & Anr v. State of Maharashtra Revenue and Forest Department & Ors

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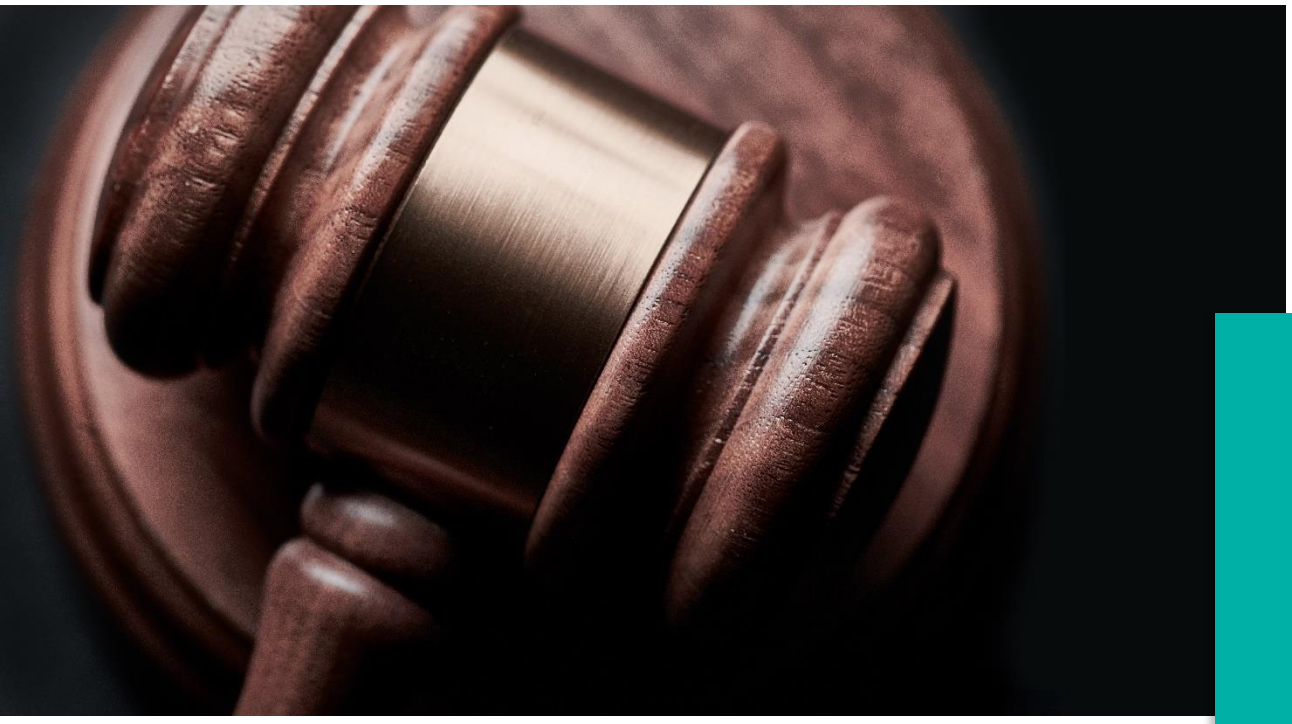

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KIPL Vistacore Infra Projects JV v. Municipal Corporation of the City of Ichalkarnji

Bombay High Court | MANU/MH/0513/2024

Background facts

- The Municipal Corporation of Ichalkarnji (**Respondent**) proposed construction of a project for 2 sewage treatment plants under the Urban Infrastructure Development Scheme for Small and Medium Towns Scheme Mission (UIDSSMT), funded by the Government of India and the State of Maharashtra. Pursuant to the tender floated by the Respondent in 2021, the bid of KIPL Vistacore Projects JV (**Petitioner**) was accepted and the Work Order was issued in its favor.
- By the year 2019, the Petitioner claimed to have completed 55% of work and the delay was attributed to the Respondent as the possession of the land was handed over belatedly along with the drawings for Sewage Treatment Plants (STP).
- The Petitioner was blacklisted by the Respondent and hence, it approached the Bombay High Court (HC) in a Writ Petition. The same was withdrawn as the Respondent by its resolution, extended the time for completion of the work by 6 months, which was later stayed. The Petitioner then filed another Writ Petition challenging the termination, prompting arbitration proposed by the Respondent, which the Petitioner agreed to.
- Thereafter, an Arbitrator was appointed by the HC to decide the disputes between the parties, and pursuant thereto, the arbitral proceedings were affected due to COVID-19, which led to a mutual extension. When the mandate of the Arbitrator expired, the Petitioner filed an Application under Section 29A of the Arbitration and Conciliation Act, 1966 (**Act**) before the HC. The Respondent opposed the same contending that the HC does not have authority to grant extension of mandate of an Arbitrator.

Issues at hand?

- Whether the authority to grant extensions under Section 29A (4) of the Arbitration and Conciliation Act, 1996, should lie with the High Court, in accordance with the definition of 'Court' in Section 2(1)(e), or if it should be vested in the principal Civil Court of original jurisdiction?

Decision of the Court

- The court emphasized that it was the HC which appointed the arbitrator, directed the filing of a disclosure statement, issued further instructions to the arbitrator, and determined the arbitrator's costs, therefore, the HC had authority to grant the extension.
- The HC also analyzed ***DDA v. Tara Chand Sumit Construction Co***[1]. which addressed the controversy regarding the authority to extend the mandate of an arbitrator under Section 29A of the Arbitration and Conciliation Act. The Court held that while Section 2(1)(e) defines 'Court' differently for international commercial arbitration and other arbitration cases, the court noted that a rigid interpretation could conflict with the powers of courts under Section 11 of the Act. The court emphasized that the term 'Court' in Section 29A should be interpreted differently, considering the context of the provision. It noted that Section 2(1) itself provides flexibility with the phrase 'unless the context otherwise requires.' Therefore, despite the definition in Section 2(1)(e), the court held that the power to extend the mandate of an arbitrator under Section 29A lies with the High Court in cases of domestic arbitration. This interpretation avoids complications and aligns with the broader powers of courts under the Act.
- The HC further placed reliance on ***Cabra Instalaciones Y. Services v. Maharashtra State Electricity Distribution Company Limited***[2], wherein it was specifically held that the High Court, exercising power under Section 29A, does not possess the authority to appoint a substitute arbitral tribunal or member. It emphasized that with regards to international commercial arbitration, such powers exclusively belongs to the Supreme Court. The judgment pointed out that the jurisdiction conferred upon the 'Court' by Section 29A precludes other courts from exercising similar powers.

HSA
Viewpoint

This ruling confirms that the High Court, not the District Court, is the sole appointing authority in domestic arbitration and the High Court has the power to extend the mandate of an arbitral tribunal or arbitrator under Section 29A of the Act when so appointed. It also differentiates between domestic and international commercial arbitration, where such powers lie with the Supreme Court. To summarize, the term 'Court' in Section 29A must be interpreted contextually. This judgment clarifies that the interpretation of the term 'Court' in the context of Section 29A of the Act, is to be a Court which has the power to appoint an Arbitrator under Section 11 of the Act.

Sarfaraz S. Furniturewalla v. Afshan Sharfali Ashok Kumar & Ors

Bombay High Court | Writ Petition No. 4958 OF 2024

Background facts

- A dispute arose between Sarfaraz S. Furniturewala (**Petitioner**) and his stepbrothers in relation to the rights and transit rent payable regarding their deceased father's property which underwent redevelopment in 2017. The dispute was pending before the Small Causes Court and the builder deposited the transit rent in the Small Causes Court. The Small Causes Court passed an order barring the Petitioner from withdrawing any transit rent deposited by the Developer.
- Aggrieved with the order of the Small Causes Court, the Petitioner approached the Bombay High Court (HC). The HC after considering the Petitioner's advanced age and financial condition permitted him to withdraw 50% of the transit rent.
- The advocate representing the Developer (**Respondent**) sought directions from the HC to get PAN Card details of all parties in order to deduct Tax Deducted at Source (**TDS**) from the amount payable to them as transit rent. The advocate for the Petitioner contested the same and cited 2 orders of the Income Tax Appellate Tribunal to substantiate his stand.

Issues at hand?

- Whether there should be deduction of TDS on transit rent payable by a Developer?

Decision of the Court

- The High Court first elucidated the ordinary meaning of rent, which is an amount payable by a Tenant/Licensee to a Landlord. The Court thereafter analyzed the common meaning of transit rent and observed transit rent to be a hardship allowance/rehabilitation allowance/ displacement allowance which is payable by the Developer to the Tenant who suffers hardship due to dispossession.
- The Court affirmed the law laid down in (i) ***Smt. Delilah Raj Mansukhani v. ITO***[3] , and (ii) ***Ajay Parasmal Kothari***[4] , wherein it was held that amounts received by the flat owner/tenant as compensation during redevelopment of a property for hardship, rehabilitation and for shifting is not liable to tax as transit rent is to be categorized as a capital receipt rather than a revenue receipt.

HSA
Viewpoint

This ruling sets a precedent for similar cases and clarifies the correct tax treatment for transit rent. This groundbreaking decision also liberates individuals/former flat owners from Tax Deducted at Source (TDS), assuring that redevelopment is in favor of both the developer as well as the affected residents.

[1] DDA vs. Tara Chand Sumit Construction Co., MANU/DE/1034/2020
[2] Cabra Instalaciones Y Servicios, S.A. vs. Maharashtra State Electricity Distribution Company Limited, MANU/MH/2097/2019
[3] ITA No. 3526/MUM/2017 (Assessment Year: 2010-2011)
[4] ITA No. 2823/MUM/ (A.Y: 2013-2014)

- The Court after delving into the provisions of Section 194 (I) of the Income Tax Act, 1961, the common meaning of transit rent and the aforesaid judgments concluded that since transit rent is not to be considered as a revenue receipt, the same is not liable to be taxed.

Kanakia Spaces Reality Pvt Ltd v. The Commissioner of CGST and Central Excise

Customs, Excise and Service Tax Appellate Tribunal, Mumbai | Service Tax Appeal Nos. 85860 of 2020, 85861 of 2020 and 85862 of 2020

Background facts

- Kanakia Spaces Reality Pvt Ltd (**Appellant**) is engaged in the business of providing construction services for residential complexes and had received bookings in respect of apartments being constructed by it.
- In view of the said booking, the Appellant collected the booking amount as well as the service tax amount from the allottees and deposited the service tax so collected in respect of the booking amounts with the Revenue Department (**Departmen**t).
- Thereafter, due to certain issues, 29 allottees who had pre booked the apartments with the Appellant decided to cancel their respective bookings.
- In lieu of the same, the Appellant refunded the allottees their advance booking amount as well as the service tax amount collected by them.
- Subsequently, the Appellant filed a refund claim for the refund of the service tax amount deposited by it with the department.
- Thereafter, the Appellant was issued with a deficiency memo and a show cause notice proposing to reject of its refund claim by the department.
- Subsequently, by a consolidated Order the refund claims of the Appellant were rejected.
- Being aggrieved by the said Order, the Appellant filed appeals before the Commissioner of CGST and Central Excise (**Respondent**). However, the Respondent rejected the said Appeals vide a common order.
- Being aggrieved by the order passed by the Respondent, the Appellant filed the present Appeal.

Issue at hand?

- Whether the refund applications filed by the Appellant were proper and accordingly, whether the refund of the amounts claimed by the Appellant ought to have been granted?
- Whether the Respondent was correct in observing that there is no provision under the GST Laws, which provides for refund of the service tax deposited by the Appellant?

Decision of the Tribunal

- At the outset, the Tribunal held that there are 2 conditions which are necessary to be fulfilled for a refund application i.e. 1) the refund application must be filed within the limitation period and 2) the incidence of duty should not be passed to any other person by the applicant making the application.
- Further, the Tribunal relied on the judgments in the case of ***Wave One Pvt Ltd v. Commissioner***[5] and ***Jai Mateshwaari Steels Pvt Ltd v. Commissioner, CGST Dehradun***[6] whereby it was held that limitation period prescribed under Section 11B of the Central Excise Act, 1994 cannot be invoked to reject a refund claim filed under Section 142(5) of the Central Goods and Service Tax Act, 2017 (Act) and held that the present matter is not bared by limitation.
- The Tribunal held that the allottees of the Appellant were entitled to booking amount as well as the service tax paid to the Appellant. Further, the Appellant was entitled to avail Cenvat Credit in respect of the service tax amount so deposited by it with the Department under Rule 6(3) of the Service Tax Rules, 1994 (**Rules**). Additionally, the Tribunal held that once the allottees of the Appellant cancelled the bookings, the Appellant could not have provided any services to the allottees.
- The Tribunal held that there is no mechanism that is provided under the Goods and Service Tax Regime for claiming credits as provided under Rule 6(3) of the Rules and hence the only remedy available with the Appellant was to file a claim for refund of the service tax.

[5] 2023 (11) TMI 1078 - CESTAT New Delhi
[6] 2022 (3) TMI 49 - CESTAT New Delhi

- Further, the Tribunal held that service tax is only to be paid when there is a service provided and such a service is taxable under the statute. Additionally, the Tribunal held that an assessee cannot be saddled with service tax if no service has been provided and, in such cases, if tax has been deposited by the assessee with the exchequer will be considered as a mere 'deposit'. The Tribunal also held that if the department withhold the amount given to them as 'deposit' then they will violate Article 265 of the Constitution of India.
- The Tribunal held that according to Rule 6(6)(e) of the Rules, in construction services, service tax is required to be paid on payments received from buyers for flat bookings before receiving a completion certificate. If a buyer cancels the booking before taking possession of the flat and the consideration is returned, the service contract terminates and hence, it's proven that no service was provided and therefore a refund of tax is applicable. In view of the same, the Respondent was wrong to assume that cancelling a flat booking doesn't negate the existence of a service.
- Finally, the Tribunal held that refund of the excess service tax paid by the Appellant was a right that had accrued in favor of the Appellant and therefore, as per Section 174 of the Act, such right of the Appellant ought to be upheld and protected. Further Section 142 (5) of the Act provides for situation for refund of taxes paid under the erstwhile laws as applicable in the present case.
- Hence in view of the above the Tribunal allowed the Appeal and held that the Appellant is entitled for refund of the service tax paid by them.

HSA
Viewpoint

This decision clarifies that in case an allottee cancels the booking of a flat made with the builder/developer before taking possession of the flat, then it would not result in any service being provided and therefore no service tax will be payable. As the builder/developer collects the service tax along with the booking amount at the time of booking the flat in favor of an allottee and further deposits the service tax in the Revenue Department, the builder/developer has the right to claim refund of service tax paid by them from the Revenue Department in case the allottee cancels the booking. This is because the builder/developer is required to pay back the entire booking amount along with the service tax amount to the allottee.

Hamon Shriram Cottrel Pvt Ltd v. Commissioner of C.E. & S.T. - Vapi

Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad I Service Tax Appeal No. 12657 of 2013

Background facts

- Hamon Shriram Cottrel Pvt Ltd. (**Appellant**), is an Indian company, engaged in, inter alia, the manufacturing of cooling towers and parts. At the same time, the Appellant also provides consulting engineers, maintenance & repairs, erection, commissioning and installation services, works contract services etc. In the general course of business, the Appellant enters into one of 3 types of the contract, i.e. either for the supply of parts of cooling towers or a work contract for erection, installation and commissioning of cooling towers at designated work sites.
- Regardless of the contract type the Appellant engages in, distinct values for the goods provided and the costs associated with erecting, commissioning, and installing cooling towers are identifiable. These values are clearly delineated in the contracts and invoices, establishing a clear separation between the provision of goods and the provision of services. While the Appellant manufactures certain parts of the cooling towers, other parts are procured by the Appellant from independent suppliers, which are supplied directly to the customer's work site.
- The Appellant invoiced separate amounts for goods and installation services, even for goods obtained from independent suppliers. Taxes for these distinct transactions, including Sales Tax, VAT, and Service Tax, were duly paid by the Appellant. Subsequently, during an EA-2000 Audit covering September 2010 to October 2011, it was noted that the Appellant hadn't paid Service Tax on the total taxable value, which included additional charges to customers for goods obtained from independent suppliers and delivered to their sites.
- Accordingly, service tax was demanded on the profit margin—the difference between sale and purchase prices of these goods. Show cause notices were issued, alleging that this supply of goods constituted part of the works contract undertaken by the Appellant. The Adjudicating Authority, in its Orders-in-Original, confirmed the service tax demand along with interest and penalties. This decision was upheld by the Commissioner (**Appeals**), who also affirmed the service tax demand, interest, and penalties. Therefore, the Appellant moved the present appeal before the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad Bench (**Tribunal**).

Issue at hand?

- Whether service tax can be demanded on sale of goods or by way of including value of goods in the service?

Decision of the Court

- The primary contention raised by the Appellant was that the contracts in question were not works contracts, as they did not satisfy the definition of 'works contract' under the Finance Act, 1994 (**Act**). Furthermore, the Appellant contended that there was no service element involved in the supply of goods, and that the Appellant, in its contracts, clearly bifurcates the goods and service portion which is required to be executed. Accordingly, the Appellant argued that once the value of

the contract is bifurcated into the sale and service portions, no service tax can be levied on the sale portion of the contract which does not involve any service element.

- After taking into the consideration the submissions made by both the sides, the Tribunal found that the entire case of the department was that the Appellant should have included the cost of material for which they have raised the separate bill in providing the services, for the reason that the service is classifiable under 'works contract service'. Accordingly, all the goods used for providing such 'works contract service' should be included in the gross value of the service under the composition scheme.
- The Tribunal further stated that in the present case, clear contracts exist between the Appellant and the service recipient, separately for the sale of goods and for erection, commissioning, and installation services. The supply of goods is distinctly separate from the provision of services. Since goods were sold, bills were issued, and VAT on the goods sale was paid by the Appellant, the transaction of supplying goods is independent and unrelated to service provision. Property transfer of goods occurred before the execution of the service contract.
- Additionally, the Tribunal, with regards to service tax, opined that the Appellant has already paid it at the applicable rate for erection, commissioning, and installation. The allegation that the Appellant didn't include the value of goods in the works contract service is incorrect. This matter aligns with the judgment in ***BSNL v. Union of India***[7], where the Supreme Court permitted the separation of service and supply in works contracts if discernible as two distinct contracts.
- Accordingly, the Tribunal held that in the present case, the distinct values of goods and services are clear, with goods sale invoices issued before contract execution. Given the separate transaction of goods sale and VAT/CST discharge by the Appellant, the sale of goods cannot be subjected to service tax. The settled legal position dictates that no service tax can be demanded on the sale of goods or by including their value in the service.
- Therefore, the Tribunal set aside the impugned orders in favor of the Appellant and allowed consequential relief as well.

HSA
Viewpoint

In the present matter, the Tribunal has rightly decided that no service tax can be demanded on sale of goods or by way of including value of goods in the service itself. Following the principles laid down in precedents in this regard, the Tribunal has taken note of the fact that the splitting of the service and supply, as done by the Appellant, was constitutionally permitted. This final order passed by the Tribunal goes a long way in clarifying lingering doubts in the levy of service tax with respect to 'works contracts'.

Siddharth Properties & Anr v. State of Maharashtra Revenue and Forest Department & Ors

Bombay High Court | Writ Petition No. 815 of 2024

Background facts

- In the present case, the Siddharth Properties (**Petitioner**) had preferred an Application to State of Maharashtra Revenue and Forest Department (**Respondent**) under the Conversion Rules, 2019 for conversion of the Suit Land from Occupancy Class-II to Occupancy Class-I. This Application of the Petitioners was rejected by Respondent by the impugned communication holding that the Suit Land, being allotted/granted under the Agricultural Ceiling Act, 1961, there was no provision in the said Act for conversion of the Suit Land from Occupancy Class-II to Occupancy Class-I.
- Aggrieved by the impugned communication issue by the Respondent, the Petitioner filed a Writ Petition before the Bombay High Court (**HC**) seeking quashing of the communication dated October 25, 2023 passed by Respondent No. 2 under which the conversion of the Petitioners land from Occupancy Class-II to Occupancy Class-I was rejected on the ground that the Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold lands into Occupancy Class-I lands) Rules, 2019, (**Conversion Rules, 2019**) are not applicable because there is no provision in the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (**Agricultural Ceiling Act**) permitting such conversion.

Issues at hand?

- Whether Suit Land can be converted from Occupancy Class-II to Occupancy Class-I under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961?

Arguments of the Parties

- The Petitioner argued that although there is no prohibition in the Agricultural Ceiling Act for converting a land allotted under the said Act from Occupancy Class-II to Occupancy Class-I, the same has now been made explicitly clear by virtue of an amendment to the Agricultural Ceiling Act on January 19, 2024.
- Section 29A has been inserted in the Agricultural Ceiling Act under which it is specifically stated that notwithstanding anything contained in Section 29, the Collector may convert lands granted under Section 27 on Occupancy Class-II basis into Occupancy Class-I, subject to (i) the land being

[7] 2006 (2) STR 161 (SC)

held for 10 years and (ii) there is no breach of the conditions of the grant; and (iii) if there is a breach of any such conditions, then after regularization of such breach, on payment of such conversion premium and after following such procedure and subject to such other terms and conditions as may be prescribed.

- The Petitioner further argued that now by virtue of the said amendment, which explicitly stipulates that lands granted under Section 27 of the Agricultural Ceiling Act can be converted from Class-II Occupancy to Class-I Occupancy, the impugned communication must be set aside, and Respondent No. 2 be directed to consider the Application of the Petitioner [for conversion] afresh.
- State of Maharashtra (**Respondent**) argued that, under the Agricultural Ceiling Act, as it stood prior to its amendment, there was no provision for conversion of lands allotted under Section 27 of the said Act. However, the position in law has now changed by virtue of the amendment carried out on January 19, 2024. The Respondent fairly submitted that now by virtue of Section 29A of the Agricultural Ceiling Act, the Collector has the power to convert lands granted under Section 27 on Class-II Occupancy basis into Class-I Occupancy, subject to the terms set out in the said Section

Decision of the Court

- At the outset, the HC delved into what is impugned in the present Petition is the communication dated October 15, 2023 issued by the Respondent rejecting the Application of the Petitioners for conversion of the Suit Land from Occupancy Class-II to Occupancy Class-I. This rejection is on the basis that the said land was allotted to the erstwhile allottee under the provisions of the Agricultural Ceiling Act, and therefore, the Conversion Rules, 2019 are not applicable. The HC held that they are not going into this issue at all because in the facts of the present case and considering the change in law, the same does not arise for their consideration.
- The HC noted that the fact of the matter remains that as on today the Agricultural Ceiling Act has been amended by inserting Section 29A which reads thus;

  "29A. Notwithstanding anything contained in section 29, the Collector may convert lands granted under section 27 on Class-II Occupancy into Class-I Occupancy,-

  (i) after lapse of ten years from the date of grant of such land; and

  (ii) if there is no breach of any of the conditions for grant of such land; or if there is a breach of any of such conditions, then after regularization of such breach,

  on payment of such conversion premium and after following such procedure and subject to such other terms and conditions as may be prescribed. "
- The HC observed that on a plain reading of the Section, it is now clear that notwithstanding anything contained in Section 29 of the Agricultural Ceiling Act, the Collector may convert a land granted under Section 27 on a Class-II Occupancy basis into Class-I Occupancy subject to the conditions laid in the said Section as well as the premium that would have to be paid.
- The HC noted that after the amendment of the Agricultural Ceiling Act, the impugned communication rejecting the Application of the Petitioners, even if justified on the date when it was passed, would have to be set aside [because of Section 29A] and the Application of the Petitioners would have to be considered afresh after taking into account the amended provisions of the Agricultural Ceiling Act.
- The HC while disposing off the Writ Petition held that the impugned communication be set aside and directed the Respondent to decide the Petitioners' Application for conversion of the Suit Land from Occupancy Class-II to Occupancy Class-I as per the amended provisions of the Agricultural Ceiling Act. The Application of the Petitioners shall be decided within a period of 12 weeks from today and the decision shall be communicated to the Petitioners immediately thereafter.

HSA
Viewpoint

This judgment is a step in the right direction as it is the need of the hour to have clarity with regards to the conversion of Suit Land from Occupancy Class-II to Occupancy Class-I under Section 29A of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. In this precedential judgment which sets to rest various open questions, HC has held that the provisions of Section 29 of the Agricultural Ceiling Act, the Collector may convert a land granted under Section 27 on a Class-II Occupancy basis into Class-I Occupancy. This judgment facilitates the elimination of any conflicts or inconsistencies that may arise.

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