



SAGA LEGAL

COMMUNIQUE

APRIL 2023



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COURTS THIS MONTH

- The Supreme Court in the case of *M/s. Saraf Exports vs. Commissioner of Income Tax, Jaipur-III (Civil Appeal No. 4822 Of 2022)* has ruled that under Section 80-IB of the Income Tax Act, 1961 (“**ITA**”) the assessee is not entitled to deductions on the profit earned from Duty Entitlement Pass Book (“**DEPB**”) and the Duty Drawback Schemes. The Bench comprising of Justice M.R. Shah and Justice B.V. Nagarathna upheld the decision of the Rajasthan High Court that the assessee was not entitled to the deductions under Section 80-IB on the profit from DEPB and the Duty Drawback claims since such income cannot said to be an income derived from the industrial undertaking. The Court noted that *“...the object behind DEPB entitlement, as has been held by this Court, is to neutralise the incidence of customs duty payment on the import content of the export product which is provided for by credit to customs duty against the export product. In such a scenario, it cannot be said that such duty exemption scheme is derived from profits and gains made by the industrial undertaking or business itself.”*
- The Supreme Court in the case of *the State of Gujarat and Anr. vs. M/s Saw Pipes Limited (Civil Appeal No. 3481 Of 2022)* has held that the Commissioner or Assessing Officer has no discretionary powers other than as prescribed on levying of penalty and interest leviable under Sections 45(6) and 47(4A) of the Gujarat Sales Tax Act, 1969 since those are statutory and mandatory sections. The Bench of Justice M.R. Shah and Justice B.V. Nagarathna heard an appeal filed by the revenue department challenging the decision of the High Court which had set aside the levy of penalty and interest on the grounds that the assessee was under a bonafide opinion as to its tax liability and the amount of enhanced tax imposed by the Assessing Officer had already been paid by the assessee. The Court observed that *“...the word used in Section 45(6) is “shall be levied”. The dealer shall be liable to pay the penalty not exceeding one and one-half times of the difference of the tax as mentioned in sub-section (5) of Section 45 of the Act, 1969. The language used in Section 45 is precise, plain, and unambiguous...The courts cannot aid the legislatures’ defective phrasing of an Act; they cannot add or mend, and by construction makeup deficiencies which are left there.”*
- In the case of *Security Printing & Minting Corporation of India Ltd. & Ors. etc. vs. Vijay D. Kasbe & Ors. etc. (Special Leave Petition (Civil) Nos. 1891-1900 Of 2019)* the Supreme Court has ruled that the government employees cannot claim double overtime allowance as per the Factories Act, 1948 and as such the provisions are not part of the Rules which regulate their service. The Bench comprising of Justice V. Ramasubramanian and Justice Pankaj Mithal has set aside the order of the High Court which observed that the appointment either to a civil post or in the civil services of the Union or the State, is one of status and that it



is not employment governed strictly by a contract of service or solely by labor welfare legislations. The Court observed that *"...Persons holding civil posts or in the civil services of the State enjoy certain privileges and hence, the claim made by the respondents ought to have been tested by the Tribunal and the High Court, in the proper perspective to see whether it is an attempt to get the best of both the worlds."*

- The Supreme Court in the case of *Sabir Ali Khan vs. Syed Mohd. Ahmad Ali Khan and Others (Civil Appeal Nos. 7086-7087 Of 2009)* have clarified that a beneficiary of waqf, being neither a trustee nor a co-owner of waqf property, can acquire title through adverse possession even if it is the property of the waqf. The Bench comprising of Justice K.M. Joseph and Justice Hrishikesh Roy stated that *"...The beneficiary of a waqf is endowed with rights in terms of the waqf deed. We are unable to cull out any duty, as such, to protect the interest of another. No doubt, it could be said that as the property in a waqf, vests in the Almighty, there must be a concern and, undoubtedly, a moral duty to act in a manner that the object of the wakf is fostered. But a beneficiary is not like a Trustee, who assumes possession in his character as a Trustee, coming under the restraint of discarding his character as Trustee and donning the robes of an encroacher or a person asserting hostile title."*
- The Supreme Court in the matter of *M/s. N.N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Ltd. And Ors. (CA No. 3802-03 of 2020)* has stated that an arbitration agreement without stamp duty having been paid or paid insufficiently as per the Indian Stamp Act, 1899, is not enforceable and invalid in law. The Constitutional Bench of Justice K.M. Joseph, Justice Ajay Rastogi, Justice Aniruddha Bose, Justice Hrishikesh Roy, and Justice C.T. Ravikumar have decided this by 3:2 majority. The majority Bench concluded that *"An Arbitration Agreement, within the meaning of Section 7 of the Act, which attracts stamp duty and which is not stamped or insufficiently stamped, cannot be acted upon, in view of Section 35 of the Stamp Act, unless following impounding and payment of the requisite duty, necessary certificate is provided under Section 42 of the Stamp Act...Sections 33 and the bar under Section 35 of the Stamp Act...would render the Arbitration Agreement contained in such instrument as being non-existent in law unless the instrument is validated under the Stamp Act."*
- In the matter of *Seethamal and Anr. vs. Narayanasamy and Ors. (Civil Appeal No. 6300-6301 of 2016)* the Supreme Court has clarified that a first appeal and a second appeal arising out of two proceedings cannot be clubbed and disposed of by a common judgment even though the parties and the dispute are essentially the same. The Bench comprising of Justice AS Bopanna and Justice Hima Kohli remanded back two



- suits back to the Madras High Court which had disposed of both by a common judgment. The Court observed that “...in a normal circumstance, to avoid contradicting decrees, the Courts would be justified in considering the matters together, we note that in instant proceedings the nature of consideration in the Second Appeal as against a consideration to be made in the First Appeal were entirely different in as much as the reappraisal of the evidence and interference with the finding of the fact would arise only in the First Appeal and not in the Second Appeal.”
- The Supreme Court in the case of *R. Hemalatha vs. Kashthuri (Civil Appeal No. 2535 of 2023)* has held that an unregistered agreement to sell is a shred of admissible evidence in a suit for specific performance in terms of Proviso to Section 49 of the Registration Act, 1908 (“**the Act**”). The Bench comprising of Justice M.R. Shah and Justice Krishna Murari upheld the order passed by the High Court which observed that the unregistered Agreement to Sell can be received in evidence as the suit in question was a suit for specific performance, which falls within the first exception carved out in the Proviso to Section 49 of the Act. The Court noted that despite the insertion of Section 17(1)(g) and omission of “explanation” to Section 17(2), no corresponding amendment has been made to Section 49 of the Act.
 - The Delhi High Court in the case of *Seema Devi vs. Ranjeet Kumar Bhagat (MAT. APP.(F.C.) 189 of 2022)* has ruled that even in case of an ex parte decree of divorce it shall be lawful for either party to the marriage to marry again if no appeal is filed against such decree within the period of limitation within the meaning of section 15 of the Hindu Marriage Act, 1955. The Division Bench comprising of Justice Sanjeev Sachdeva and Justice Vikas Mahajan observed that “...no appeal was preferred within the period of limitation or even thereafter. The application under Order 9 Rule 13 CPC was also filed after seventeen months from the date of the ex parte decree as against a limitation period of thirty days from the date of the decree as provided under Article 123 of the Limitation Act, despite the appellant having been duly served with summons. In the circumstances, it was lawful for the respondent-husband to solemnize another marriage.”
 - The High Court of Bombay in the case of *Prasanna Laxmikant Joshi and Anr. vs. State of Maharashtra and Ors. (Writ Petition (ST) No. 9276 Of 2023)* has held that a spouse’s consent is not a mandatory requirement for organ donation under the Transplantation of Human Organs and Tissues Act, 1994 especially if the consent is being withheld unreasonably or for extraneous reasons. The Division Bench of Justice Gautam Patel and Justice Neela Gokhale has set aside an order of the Maharashtra State Government refusing to allow an organ donation on the ground that the donor's



estranged wife refused to grant consent for her husband's voluntary kidney donation. The Court observed that *"...Whatever be the marital issues between Shreya and Dinesh, we do not see how these can be allowed to come in the way of what is undoubtedly Prasanna's fundamental right to life under Article 21. This is an aspect that both authorities have completely overlooked and utterly lost sight of. They have chosen instead to give primacy to a private, unstated, unspecified concern of the spouse."*

- In the case of *Burger King Company Llc vs. Virendra Kumar Gupta & Anr. and other connected matters (C.O. (COMM.IPD-TM) 686 of 2022)*, the High Court of Delhi in two separate orders has refused to cancel the mark 'Burger King' registered in favor of a multi-national fast food chain Burger King and further stayed the operation of a registered trademark 'Burger King Family Restaurant' with a considered view that it is likely to create confusion in the market. A Single-Judge Bench comprising of Justice Amit Bansal observed that *"it is clear that the impugned trademark has been adopted by the respondent no.1 dishonestly to trade upon the established goodwill and reputation of the petitioner. The nature of the impugned mark is such that it is likely to deceive the public and create confusion in the market as regards the source of the goods manufactured and sold under the impugned trademark."*

In the case of *Gaurav Bir Basnet @ Gaurav Basnet vs. The State of West*

Bengal & Anr. (CRA 26 of 2020) the High Court of Calcutta has ruled that in order to invoke the provision of Section 415 of the Indian Penal Code, 1860, the prosecution is under obligation to prove that the accused person induced the victim to indulge in any such sexual relationship with him. A Single-Judge Bench comprising of Justice Siddhartha Roy Chowdhury was dealing with an appeal challenging the Trial Court's decision to convict a man accused of inducing a woman to have sexual relation with him on the promise to marry her after the dissolution of his previous marriage. The Court observed that *"...Victim was aware of the situation and decided to live together with the accused. Accused person did not have the competence to dissolve the marriage, either his wife would have to agree or he would have to make out a case for decree for divorce. Therefore, element of uncertainty was there since inception of such relationship. Victim, consciously accepted such risk of uncertainty. The 'changed man' could not go for divorce. Therefore, the promise of marriage, after divorce, by itself does not amount to cheating."*

- In the matter of *Dharmendra M. Jani vs. Union of India and Ors. (Writ Petition No. 2031 of 2018)*, the High Court of Bombay has upheld the constitutional validity of taxing intermediary services under Section 13(8)(b) and Section 8(2) of the Integrated Goods and Services Tax Act, 2017 ("**IGST Act**"). A referral Third Judge Bench comprising of Justice G.S. Kulkarni observed that *"...there can be no doubt that no law*



made by the Parliament would be invalid on the ground that it has an extraterritorial operation as Clause (2) of Article 245 would provide. The present case, in my opinion, does not involve any extra-territorial operation of law made by the Parliament inasmuch as the subject matter of legislation purely pertains to inter-State trade and commerce in respect of which goods and services tax can be levied in the spheres as covered by the legislation. Further, in the context of the transaction in question to say that a law has been enacted to have an extra-territorial operation, would be a complete misnomer inasmuch as the IGST Act under Section 13(8)(b) has treated the transaction as undertaken by the intermediary who are dealing in export of services as an intra-State trade and commerce.”

- The High Court of Allahabad in the case of *Pawan Garg vs. State of U.P. and Another (Application u/s 482 No.-28748 of 2022)* has held that a husband cannot be summoned as an accused for the offense of cheque bounce under Section 138 of the Negotiable Instruments Act, 1881 (“**NI Act**”) where a cheque was issued by the wife as sole proprietor of a firm. A Single-Judge Bench of Justice Umesh Chandra Sharma observed that “...There is no paper to establish that the applicant is authorized signatory, agent or co-proprietor of the Firm. In the eye of the law, wife and husband have separate entity. It is also not a case that the wife, sole proprietor of the Firm had provided the cheque signed by or on behalf of

the applicant...Hence, the applicant cannot be summoned as accused under Section 138 of the NI Act and the summoning order in respect of the applicant is bad in law in light of the above facts and circumstances of the case. ”

- The High Court of Gujarat in the case of *Bimlakumari Lajpatraj Hurra vs. Income Tax Officer (R/Special Civil Application No. 16884 of 2018)* has stated that the Income Tax Assessment cannot be reopened without any foundation. The Division Bench of Justice N.V. Anjaria and Justice Devan M. Desai was dealing with a plea challenging notice issued by the assessing officer under Section 148 of the Income Tax Act, 1961, seeking to reopen the assessment. The Court observed that “Neither there existed foundational facts, nor it could be said that any tangible material was available with the assessing officer to justify exercise of power. It could be said that the basis for reopening was absent. When the foundation was missing, there could not have been erection of ground to seek reopening of assessment...”
- The High Court of Delhi in the case of *The Commissioner of Income Tax (International Taxation) vs. Brandix Mauritius Holdings Limited (ITA 163 of 2023)* has held that an assessment order issued without a Document Identification Number (“**DIN**”) is invalid under Section 292B of the Income Tax Act, 1961. The Division Bench comprising of Justice Rajiv Shakdher and Justice Tara Vitasta Ganju has



upheld the order of the Income Tax Appellate Tribunal (ITAT) where it had set aside the assessment order issued by the Income Tax Department without DIN. The Court observed that *“Paragraph 4 of the 2019 Circular, as extracted hereinabove, decidedly provides that any communication which is not in conformity with paragraph 2*

and 3 shall be treated as invalid and shall be deemed to have never been issued. The phraseology of paragraph 4 of the 2019 Circular fairly puts such communication, which includes communication of assessment order, in the category of communication which are non-est in law.”



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular no. 04 of 2023 and F. No. 370142 / 06 / 2023 - TPL dated 05.04.2023, the Central Board of Direct Taxes (“**CBDT**”) has provided clarification regarding deduction of TDS under section 192 read with sub-section (IA) of section 115BAC of the Income-tax Act, 1961 (“**the Act**”). Accordingly, it has been directed that a deductor, being an employer, shall seek information from each of its employees having income under section 192 of the Act regarding their intended tax regime and each such employee shall intimate the same to the deductor, being his employer, regarding his intended tax regime for each year and upon intimation, the deductor shall compute his total income, and deduct tax at source thereon according to the option exercised.
- The Securities and Exchange Board of India, 1992, (“**SEBI**”) has observed that few investment advisers and research analysts are using the brand name / trade name / logo more prominently in their advertisements, websites, publications, correspondence with clients, and various documents while marketing their services rather than their name as registered with SEBI. Accordingly, vide Circular No. SEBI / HO / MIRSD / MIRSD-PoD-2 / P / CIR / 2023 / 52 dated 06.04.2023, SEBI has issued certain guidelines to investment advisers and research analysts in order to ensure the transparency in the usage of brand name/trade name/logo.
- Vide Circular no. SEBI / HO / IMD / IMD-RAC-2 / P / CIR / 2023 / 60 dated 25.04.2023, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has released Modifications in the requirement of filing of Offer Documents by Mutual Funds. Accordingly, it has been decided that the Asset Management Companies shall file the final SID and final KIM only digitally by emailing the same to a dedicated email id. viz: imdsidfiling@sebi.gov.in from the mandate of submitting soft copies along with the requirement of filing physical copies of the same with SEBI.
- Vide Notification Ref. no. RBI / 2023-24 / 22 of FIDD.CO.LBS.BC.No.5 / 02.08.001 / 2023-24 dated 26.04.2023, the Reserve Bank of India (“**RBI**”) assigned Lead Bank Responsibility for Merger of Districts in the state of Assam. The Government of Assam vide Gazette Notification dated 31.12.2022 had notified the merger of Biswanath, Hojai, and Bajali districts with the original undivided districts of Sonitpur, Nagaon, and Barpeta respectively, in the state of Assam. Accordingly, RBI has decided that the existing Lead Banks continue with the lead bank responsibility of the original undivided districts (including merged back districts).
- Vide Notification Ref. no. RBI/2023-24/21 of A.P. (DIR Series) Circular No.03 dated 26.04.2023, the Reserve Bank of India has issued Remittances to International Financial Services Centres (“**IFSCs**”) under the Liberalised



Remittance Scheme (“**LRS**”). On a review and with an objective to align the LRS for IFSCs set up under the International Financial Services Centres Authority Act, 2019, it has been decided to amend the directions under para 2 (ii) of the A.P. (DIR Series) Circular dated 16.02.2021, as – “*Resident*

Individuals may also open a Foreign Currency Account in IFSCs, for making the above permissible investments under LRS.” Thus, the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt is withdrawn with immediate effect.



DEALS THIS MONTH

- BetterPlace, a Blue-collar workforce management Software-as-a-Service (“SaaS”) platform has acquired TROOPERS, Malaysia’s flexi talent solutions technology player for an undisclosed amount. founded in 2017, TROOPERS offers on-demand, pre-screened, part-time frontline workers to enterprises, enabling them to scale up their gig workforce based on operational demands. The acquisition will integrate TROOPERS' automated gig matching and rostering features into BetterPlace's comprehensive SaaS platform.
- Gurugram-based insurtech startup InsuranceDekho has acquired Verak, a Mumbai-based SME insurance distribution startup. Founded in 2016, InsuranceDekho allows consumers to compare different insurance policies based on their requirements and buy the most suitable plan for life, property, and casualty insurance. With this acquisition, InsuranceDekho will have a stronger foothold and presence in the SME insurance vertical and micro-business insurance schemes.
- Edtech startup Toprankers has acquired New Delhi-based career guidance platform ProBano for an undisclosed amount. ProBano provides guidance to high school students, facilitates students to make informed career choices, and helps them develop the necessary skills to achieve their career goals. With the inclusion of ProBano's expertise in career guidance and counselling, Toprankers aims to design a career discovery and experience platform that will enable high school students to explore their passions and offer skill-building opportunities across diverse career domains.
- SaaS-based video editing platform VideoVerse has acquired the US-based, AI-enabled content generation startup Reely.ai for an undisclosed amount. Started in 2016 VideoVerse offers an AI-based video-editing suite for individual content creators and enterprises across industries, including video streaming players, broadcasters, sports clubs and leagues, marketing agencies, and online gaming platforms. Post this acquisition, VideoVerse will provide advanced tools to players, streamers, and content creators looking to develop, share, and extend the reach of high-quality video content.
- Conversation platform Nextiva has acquired Simplify360, an AI customer experience platform based in India for an undisclosed amount. Simplify360 uses AI and automation in global businesses to deliver customer support across multiple channels, including email, live chat, social media, online reviews, and e-commerce. With this acquisition, Nextiva aims to become the most robust end-to-end business communications platform that enables teams to do more and deliver amazing experiences for customers along the way globally.



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