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-LAW IN ACTION



Legal Updates

The Delhi High Court in the case of *Ram Niwas v. Commissioner of Central Goods and Services Tax & Anr, W.P.(C) 13450/2024* has adjudicated on the legality of cancelling a taxpayer's GST registration with retrospective effect. In this case, the High Court found the cancellation order flawed due to its lack of reasoned justification. The ruling underscores the importance of due process, especially when an order has far-reaching effects on both the taxpayer and other businesses dependent on input tax credits (ITC).

Background and Facts of the Case:

The taxpayer in question was part of a GST verification drive, during which anti-evasion officers visited his registered business premises and reported it as non-existent. Consequently, a Show Cause Notice (SCN) in Form GST REG-17 was issued, leading to the retrospective cancellation of his GST registration. The core issue raised by the taxpayer was his absence from the business premises during the visit due to family health reasons, specifically traveling to Rajasthan to care for his ailing father.

Under Section 29(2) of the Central Goods and Services Tax (CGST) Act, a proper officer may cancel a GST registration if conditions such as non-existence of the taxpayer are met. While this section allows for cancellation from a date deemed appropriate by the officer, the High Court emphasized that this power does not automatically include retrospective effect without sufficient reasoning and objective satisfaction of the officer.

The following procedural aspects were scrutinised as under:

Delhi High Cour holds that retrospective GST Registration Cancellation is invalid in the absence of sufficient grounds

1. **Defective SCN and Lack of Clarity in Procedure:** The notice failed to mention the officer's name or specify the venue for appearance, thereby denying the taxpayer an effective opportunity to defend himself. This omission was deemed a violation of the principles of natural justice, as it left the taxpayer without essential information to respond meaningfully to the charges.
2. **Absence of Objective Satisfaction:** The Court emphasized the requirement for objective satisfaction by the proper officer, meaning that any decision to cancel registration should be backed by a thorough assessment of circumstances. The order issued against the taxpayer lacked any clear rationale, particularly regarding the retrospective nature of the cancellation.
3. **Impact of Retrospective Cancellation on Third Parties:** The High Court recognized the cascading effect of retrospective cancellation, noting that it would nullify the ITC claimed by third parties who had previously conducted business with the taxpayer. This outcome, the Court found, would unfairly penalize these third parties who had relied on the taxpayer's valid GST registration at the time of their transactions.
4. **Temporary Suspension of Business not sufficient ground to draw assumptions:** The taxpayer's temporary absence due to personal reasons was insufficient for concluding that the business was non-existent. The Court, therefore, observed that the suspension of activity should not automatically lead to cancellation, especially without a proper enquiry or due consideration of the taxpayer's response.

This judgment reiterates the judicial safeguards that protect taxpayers against arbitrary and retrospective administrative actions under GST law. By invalidating the retrospective cancellation of GST registration, the Delhi High Court reaffirmed the importance of transparency, objective satisfaction, and adherence to principles of natural justice in administrative proceedings. The Court's ruling serves as a reminder to GST authorities that procedural compliance is essential, not only to maintain taxpayer rights but also to ensure confidence in the fairness of the tax administration system.

The Hon'ble High Court of Delhi in the case of **Naresh Kumar Bajaj v. Bunge India Pvt. Ltd**, O.M.P. (COMM) 228/2019 examined the scope of patent illegality in the context of challenges to arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996, particularly in cases where alleged legal errors by the tribunal were raised.

The Petitioners, directors of Amrit Bansapati Company Limited (**ABCL**), entered into a Non-Compete Agreement (**NCA**) and Business Transfer Agreement (**BTA**) with the Respondent, Bunge India Pvt. Ltd., for the transfer of ABCL's edible oil business. After receiving payment, an assessment order demanded service tax on fees paid under the agreements. The petitioners contended that the respondent was responsible for indirect tax liabilities, as per the agreements, and invoked arbitration to resolve the dispute. The CESTAT quashed the assessment order, and the Arbitral Tribunal issued a Nil Award, rendering the dispute "academic." The Petitioners then challenged the award, citing patent illegality and procedural impropriety.

The High Court dismissed the petition, affirming that the tribunal's award did not meet the threshold for patent illegality or fundamental breach of law. Patent illegality is limited to violations of substantive Indian law, the Arbitration Act, or rules directly impacting the substance of the dispute. It does not apply to every legal error made by the arbitral tribunal. The arbitral award, therefore, stood as justified and enforceable.

The Delhi High Court in the case of **Airports Authority of India vs. Delhi International Airport Ltd. & Anr.**, O.M.P. (COMM) 17/2023 addressed petitions under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the Airports Authority of India (AAI). The AAI challenged arbitral awards that clarified the calculation of the "Annual Fee" payable under the Operation,

**Delhi HC
observes that patent
Illegality is limited to
Substantive Law violations
in Arbitral Awards**



Delhi HC dismisses AAI's challenge to Arbitral Award, Upholds Tribunal's Interpretation of "Revenue" in OMDA

Management, and Development Agreement (OMDA) with joint venture companies (JVCs) operating Delhi and Mumbai airports.

AAI contended that the term "Revenue" in the OMDA should be interpreted as "gross receipts," while the JVCs (DIAL and MIAL) argued that only specific components, excluding certain costs, should count as "Revenue." After initially paying based on gross receipts, the JVCs claimed overpayment and sought restitution. The arbitral tribunal, with a majority opinion, held that "Revenue" should be determined based on certain exclusions and awarded a refund for excess payments made from 2015.

AAI primarily sought to argue that tribunal's interpretation of "Revenue" deviated from the OMDA's definition, particularly by relying on "Projected Revenue" from the business plan, which neither party had explicitly argued. Further, the tribunal's appointment of an independent auditor to recalculate the Annual Fee was argued to be an improper delegation of judicial functions.

The Bench while dismissing the petition emphasized that under Section 34, courts exercise a supervisory, not appellate, role and are constrained to intervene only if the award is found patently illegal, perverse, or contrary to fundamental legal policy. The court supported the majority's plausible interpretation of "Revenue" and its reliance on "Projected Revenue," ruling that AAI's argument of procedural violations and exceeding the mandate were unfounded. It clarified that the independent auditor's role was merely to quantify the amounts payable, without making additional judicial determinations.

Bombay High Court re affirms that Arbitration proceedings cannot be initiated against parties who are not signatory to the Arbitration Agreement

The Bombay High Court in a batch of three appeals filed by Avenues Seasons Properties LLP (**the Appellant**) under Section 37 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) has held that arbitration proceedings cannot be commenced against third parties who have not signed the Arbitration Agreement. The batch of three appeals were filed by the Appellant challenging the common judgement and order dated 23.09.2021 passed by a Single Judge of the Bombay High Court thereby dismissing applications filed under Section 8 of the Arbitration Act which sought that the issues raised in the suits filed by the Respondent/Original Plaintiff be referred to arbitration as per the Dispute Resolution clause as mentioned in the Development Agreement (**the Agreement**) to which the Respondent was not a signatory. The case of the Appellant was that since the Housing Society, of which the Respondent is a member, has signed the Agreement, all members of the Society are bound by the Agreement. The Respondent pleaded that they have not signed the Agreement unlike other members of the Housing Society and therefore they are not bound by the said Agreement. Therefore, the issue before the Hon'ble High Court was whether the Respondent would be bound by the Development Agreement in light of the fact that the Respondent was not a signatory to the Development Agreement.

The Appellant had relied on the judgement of *Girish Mulchand Mehta vs. Mahesh Mehta 2009 SCC OnLine Bo 1986* which lays down preposition of law that interim measures of protection may be granted against the third parties who are not parties to the Arbitration Agreement in a Petition under Section 9. However, reliance on this judgement was not accepted by the Hon'ble Court as the said judgement did not extend its ratio to hold that arbitration proceedings can be commenced against third parties who are not parties to the arbitration agreement.

Bombay High Court observes that Arbitral Tribunal's Award however, erroneous, must be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 and the Court cannot exercise Writ Jurisdiction

The Hon'ble High Court of Bombay (**"the Court"**) vide its order dated 22.10.2024 in the case of *M/s Duro Shox Pvt. Ltd. Vs. State of Maharashtra & Ors.* has given an observation that Arbitral Tribunal's Award however, erroneous, must be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 and the Court cannot exercise Writ Jurisdiction under Articles 226 and 227 of the Constitution of India, only to avoid the aggrieved party from the hardship of deposit of 75% of the award amount in terms of Section 19 of the Micro Small and Medium Enterprises Development Act, 2006 (**"MSMED Act"**).

The Petitioner contended that there was no notice regarding termination of conciliation proceedings and the commencement of arbitration proceedings and that the Respondent No. 2 violated the provisions of Section 18(3) of the MSMED Act, which mandates that in case of failure of the conciliation proceedings, arbitration in accordance with the Arbitration Act must be conducted. It was further contended that the impugned award was in violation of Section 18(2) and (3) of the MSMED Act. As per Section 18(3) of the MSMED Act, if conciliation is not successful, the said proceedings stand terminated and, thereafter, the Council is empowered to take up the dispute for arbitration on its own or can refer the dispute to any other institution. The Petitioner further contended that the impugned order was passed in violation of Sections 65, 67, 76 and 80 of the Arbitration Act and that the Respondent had not conducted the conciliation as contemplated under Section 65 to 81 of the Arbitration Act.

The Bench while dismissing the petition observed that it will not go into the issue whether sufficient opportunity was given to the Petitioner to lead evidence. The impugned 'Award' in the said case is passed under Section 18 of the MSMED Act. The Court further observed that the aggrieved party may challenge the award before the court under Section 34 of the Arbitration Act and that the court would not exercise the writ jurisdiction to obviate the requirement of deposit as contemplated under Section 19 of the MSMED Act.

The Central Electricity Regulatory Commission (“**CERC**”), on 09.10.2024, had issued the Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Fourth Amendment) Regulations, 2024 (“**Draft 4th Amendment**”). Key amendments include:

1. Sub-clauses (aa-i) and (aa-ii) have been added to Regulation 2 as ‘Tariff Regulations, 2024’ and ‘Terminal Bay’ for clarity and consistency with the General Network Access (GNA) Regulations.
2. Regulation 12 is proposed to be amended to provide that for generating stations with dual connectivity (both inter-State and intra-State), transmission deviation shall be computed based on net metered ex-bus injection, considering GNA to inter-State and connectivity with the STU system.
3. The Draft 4th Amendment further proposes modifications to the waiver of transmission charges under Regulation 13. For Hydro Pumped Storage Plants (PSP) Energy Storage Systems (ESS) that award the construction contract on or before 30.06.2025, a 25-year waiver is being proposed, provided specific conditions are met. Similarly, offshore wind Renewable Energy Generating Stations (REGS) that achieve commercial operation before 31.12.2032, would be eligible for a 25-year waiver from the COD.
4. It further revises the eligibility periods for waivers based on various energy projects, such as Battery ESS, hydro projects, and green hydrogen plants, detailing variation according to the COD and the construction work award dates.
5. Under Regulation 13(2)(h), in cases where REGS projects are eligible for waivers and are scheduled for commissioning by 30.06.2025, projects may receive an extension of up to six months, on account of Force Majeure events, provided COD is achieved within the extended period.
6. Under Regulation 13(3), the Connectivity Grantee or the Renewable Power Park Developer shall pay Yearly Transmission Charges for the Terminal Bay(s) corresponding to the Connectivity capacity which has not achieved COD, in situations where augmentation occurs without an Associated Transmission System (ATS) and where the Terminal Bays at ISTS substations have already achieved COD.
7. A new clause, namely Regulation 13(13), has been introduced which specifies that the availability of transmission systems shall be calculated in accordance with the Tariff Regulations.

The CERC has invited stakeholders to provide comments, suggestions, or objections on the draft regulations. Submissions can be made online via the SAUDAMINI Portal, or through written communication addressed to the secy@cercind.gov.in and shilpa@cercind.gov.in by 11.11.2024.

CERC issues Explanatory Memorandum to the Draft CERC (Sharing of Inter-State Transmission Charges and Losses) (Fourth Amendment) Regulations, 2024

The explanatory memorandum to the Draft 4th Amendment explaining the proposed amendments can be accessed from the following [link](#).

**BERC notifies BERC
(Multi Year Transmission
Tariff and SLDC
Charges) Regulations,
2024**

The Bihar Electricity Regulatory Commission (“BERC”), vide Notification No. BERC-SMP No-16/2024-03 dated 30.10.2024, notified BERC (Multi-Year Transmission Tariff and SLDC Charges) Regulations, 2024. These regulations, effective from 01.04.2025, will govern the tariff determination framework applicable to all transmission licensees and the State Load Despatch Centre (“SLDC”) in Bihar, until FY 2027-28. Key highlights are as follows:

1. Regulation 2 provides that it will be applicable where the cost based/ Aggregate Revenue Requirement (ARR) based tariff is determined and not where tariff has been discovered through tariff based competitive bidding.
2. Regulation 4 provides the Multi-Year Tariff framework which mandates transmission licensees to file ARR forecasts, expected revenue, and detailed business plans. Transmission licensees are required to submit forecasts and undergo a regulatory review process for each control period i.e. FY 2025-26 to FY 2027-28.
3. Regulation 9 outlines a pass-through mechanism for gains or losses incurred due to uncontrollable factors, such as change in law, taxes and duties, etc., as provided under Regulation 8. It enables transmission licensees to recover unforeseen costs through tariff adjustments, protecting them from financial risks arising from factors beyond their control.
4. Regulations 15 to 19 provide the norms of operation such as charges for auxiliary energy consumption in the Sub Stations, Normative Annual Transmission System Availability Factor, additional capitalisation, etc.

The BERC MYT Transmission Tariff regulations can be accessed from the following [link](#).

The Bihar Electricity Regulatory Commission (“BERC”), vide Notification No. BERC-SMP No-17/2024-04 dated 01.11.2024, notified BERC (Multi Year Distribution Tariff) Regulations, 2024 (“MYT Regulations 2024”). The MYT Regulations 2024, effective from 01.04.2025, will govern the tariff determination framework for all distribution licensees operating within the State of Bihar, until FY 2027-28. Key highlights of the MYT Regulations 2024 are as follows:

- Regulation 2 provides that it will be applicable where the cost based/ Aggregate Revenue Requirement (ARR) based tariff is determined.
- Regulation 4 provides the Multi-Year Tariff framework which mandates distribution licensees to file ARR forecasts, expected revenue, and detailed business plans. Distribution licensees are required to submit forecasts and undergo a regulatory review process for each control period i.e. FY 2025-26 to FY 2027-28.
- Regulation 5 obligates distribution licensees to file detailed projections on category-wise sales, demand projections, power procurement plans, and infrastructure requirements.
- Regulation 10 outlines a pass-through mechanism for gains or losses incurred due to uncontrollable factors, such as change in law, taxes and duties, etc., as provided under Regulation 9. It enables distribution licensees to recover unforeseen costs through tariff adjustments, protecting them from financial risks arising from factors beyond their control.

The MYT Regulations 2024 can be accessed from the following [link](#).

The Punjab State Electricity Regulatory Commission (“PSERC”), vide Gazette Notification No. PSERC/Secy./Regu.191 dated 23.10.2024, notified the PSERC (Electricity Supply Code, Standards of Performance and Related Matters) Regulations, 2024 (“Supply Code 2024”).

**PSERC notifies
PSERC (Electricity
Supply Code, Standards
of Performance and
Related Matters)
Regulations, 2024**

2024, effective from 14.11.2024, will apply to all licensees and consumers in Punjab. Key highlights of the Supply Code 2024 are as follows:

1. Chapter II of the Supply Code 2024 specifies the frequency (50 Hz) and voltage levels for electricity supply, classified into low, high, and extra-high-tension categories based on consumer requirements:
 - o Low Tension (LT): Single-phase 230V or three-phase 400V for smaller loads.
 - o High Tension (HT): Three-phase supply at 11 kV or 33 kV.
 - o Extra High Tension (EHT): Supply exceeding 33 kV.
2. Chapter III outlines the procedure for applying for new connections, including the required documentation, fee / charges, and timelines for processing applications based on connection type and load requirements.
3. Chapter IV specifies duty of licensees to adopt safety measures, inspect consumer premises before connection / supply, and standards of apparatus in consumer premises.
4. Chapter V provides that every distribution licensee is entitled to recover from an applicant/consumer requiring new connection or additional load/demand, any expenses reasonably incurred by the distribution licensee for providing or making available any electric line and/or electrical plant for catering to the load/demand of the applicant/consumer. It also provides that such expenses shall be computed in accordance with Regulations 32 and 33 of the Supply Code 2024.

The Supply Code 2024 can be accessed from the following [link](#).

**HERC invites
comments/objections from
stakeholders/ general
public for finalization of
draft 6th amendment to
HERC (Electricity Supply
Code) Regulation, 2014**

The Haryana Electricity Regulatory Commission (“**HERC**”) has issued a public notice and accompanying discussion paper concerning the draft 6th Amendment to the HERC (Electricity Supply Code) Regulation, 2014, inviting written comments from stakeholders and the general public by 11.11.2024. The proposed amendments include:

- Regulation 4.4.3(2)(c): Consumers will now have the option to execute specific electrical work at their own expense through a Licensed Electrical Contractor. If they choose this route, they shall ensure that all materials and equipment conform to BIS standards or international equivalents and are in line with the licensee’s specifications. The licensee will charge a supervision fee of 1.5% of the estimated project cost, applicable to works handed over to the licensee.
- Regulation 4.10.1: For Agricultural Power connections, the cost of relocating a connection within a 60-meter radius on the same owner’s land will now be borne by the licensee rather than the applicant. This cost will be claimed by the licensee through the Annual Revenue Requirement (ARR).

Interested parties may submit 10 copies of their comments / objections along with supporting documents, if any, to the Secretary along with an affidavit and soft copy of the same may be addressed to secretary.herc@nic.in, on or before 11.11.2024 till 05:00 PM. A public hearing is scheduled for 13.11.2024, at the HERC office in Panchkula.

The Public Notice can be accessed from the following [link](#), and the draft amendment can be accessed from the following [link](#).

The Meghalaya State Electricity Regulatory Commission (**MSERC**) issued an official order on the Aggregate Revenue Requirement (**ARR**) and Distribution Tariff for the Meghalaya Power Distribution Corporation Ltd. (**MePDCL**) for the fiscal years 2024-25 to 2026-27. The petition was filed under the MSERC Multi-Year Tariff Regulations, 2014, for approval of the ARR and distribution tariff for FY 2024-25. MePDCL's petition was publicly announced, inviting objections and suggestions from stakeholders, including industry associations like Byrnihat Industries Association (BIA) and Jaintia Hills Cement Manufacturers Association (JHCMA). A public hearing

MSERC issues an order on the Aggregate Revenue Requirement and Distribution Tariff for the (MePDCL)

process took place to gather input and address stakeholder concerns regarding tariff changes and power purchase costs.

Various stakeholders raised objections on issues like energy sales, power purchase costs, capital costs, gross fixed assets, return on equity, and interest on loans. Specific suggestions were made, such as maintaining a separate tariff category for Ferro Alloy industries and reviewing power purchase costs based on actual bills and reconciliation.

An order has been issued whereby MePDCL proposed an ARR for the MYT control period (FY 2024-25 to FY 2026-27) and detailed projections on energy sales, power purchase, distribution losses, and revenue gaps. The MSERC evaluated the petition by considering energy requirements, power purchase costs, distribution losses, renewable purchase obligations (RPO), and other financial parameters. Further, an emphasis was placed on meeting regulatory obligations, such as the reduction of cross-subsidies and compliance with RPOs.

The order includes details on the projected revenue gap and tariff adjustments for FY 2024-25. Various categories, such as low-tension, high-tension, and extra-high-tension tariffs, were analysed for adjustments.

The commission approved wheeling charges and cross-subsidy surcharges, which are fees applied to open access customers.

MSERC further issued directives on improving billing efficiency, reducing technical and commercial losses, and ensuring timely filings and regulatory compliance.

The Order also includes a detailed tariff schedule covering various consumer categories, adjustments for electric vehicle charging stations, and a "Time of Day" tariff option. It further outlines measures for the recovery of arrears and the conditions under which arrears can be billed to consumers. The Order can be accessed from the following [link](#).

KSERC extends the validity of the current Tariff Order

The Kerala State Electricity Regulatory Commission (**KSERC**) issued an order dated 29.10.2024 in the matter of Schedule of Tariff and Terms and Conditions for Retail Supply of Electricity by KSEB Ltd and all other Licensees in the State of Kerala whereby it has extended the validity of the prevailing tariff schedule until November 30, 2024, since KSERC is in the final stages of determining the new tariff schedule for the Multi-Year Tariff (MYT) Control Period (2024-25 to 2026-27). The Order can be accessed from the following [link](#).

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