CS NEWS
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GOODS AND SERVICES TAX

An Overview:

The Goods and Service Tax (herein after referred to as "GST") is a comprehensive Indirect Tax, that intends to create a harmonized system of taxation by including all indirect taxes under one tax. It seeks to address challenges with the current indirect tax regime by broadening the tax base, eliminating the cascading effect of tax, increasing compliance and reducing economic distortions caused by inter-state variations in taxes.

The taxes which will be included into GST are central excise duty, services tax, additional customs duty, surcharges and state-level value added tax. Other levies which are currently applicable on inter-state transportation of goods are also likely to be done away with in GST regime.

The introduction of GST is a significant step in the reform of indirect taxation in India. The simplicity of the tax should lead to easier administration and enforcement as GST would be levied and collected at each stage of sale or purchase of goods or services based on the input tax credit method, which allows businesses to claim tax credit to the value of GST they paid on purchase of goods or services as part of their normal commercial activity.

What is the status of the GST Bill?

The bill, after ratification by the States, received assent from President Mr. Pranab Mukherjee on September 8, 2016.

It is proposed by the Government to make GST applicable from April 1, 2017 and the provisional registration has commenced.

The rates of tax, period of levy of additional tax, principles of supply, special provisions to certain states etc. will be recommended by the GST Council comprising of the Union Finance Minister, Union Minister of State for Revenue, and state Finance Ministers.

Impact of GST:

Easy Compliance: All tax payer services such as registration, returns, payments etc. will be available to the taxpayers online, which will make compliance easy and transparent.

Uniformity of Tax rates and Structures: The Tax rate and structure across the country will remain uniform, ensuring certainty and ease of doing business.

Removal of the Cascading effect: The system of seamless tax credit throughout the value-chain and across boundaries of states will ensure removal of hidden costs and double taxation.

Gain to manufacturers and exporters: Cost of locally manufactured goods and services will reduce as multiple taxes are replaced by one uniform tax. The uniformity in tax rates and procedures across the country will help in reducing the compliance cost.

Relief in overall Tax burden: Because of efficiency and prevention of leakages, the overall tax burden on most commodities will reduce.

Reduces Transaction Cost: Since all tax payer services will be available to the taxpayers online and a single registration for both State and Centre levied GST will suffice, transaction costs and unnecessary incidental costs may reduce.

Eliminates multiplicity of taxation: Elimination of various taxations at different levels involved in a chain of transactions will help in reduction of paper work and repetitive formalities required under the current Indirect Taxation Laws.

Another good initiative from the Government of India.

Corporate Development Judicial

CASE LAW	MORGAN STANLEY MUTUAL FUND V. KARTICK DAS [SC]
DECIDED ON	May 20, 1994
LEGISLATION	Consumer Protection Act, 1985 read with Sale of Gods Act, 1930
BRIEF FACTS	Consumer protection Act, 1985 read with Sale of Gods Act, 1930- goods- whether shares before allotment is goods-Held, No.

Facts: Though this case relate to consumer protection qua unfair trade practice with respect to the issue of shares/debentures/ units etc., the crucial and interesting question which arose, to decide the correctness or otherwise of the decision of the High Court, was "When the shares/ debentures/ units etc., become 'goods' so as to maintain a consumer complaint". We are concerned with this aspect of law laid down by the Supreme Court of India.

The appellant made a public issue inviting subscription from the public to its mutual fund scheme "Morgan Stanley Growth Fund". The respondent moved the Calcutta District Consumer Disputes Redressal Forum seeking to restrain the public issue from being floated. The principal grounds taken were that the appellant's Offering Circular was not approved by the SEBI. There are several irregularities in the same. The basis of allotment is arbitrary and unfair. The appellant was seeking to collect money by misleading the public. The consumer forum passed and interim order restraining the appellant to raise funds from the public on the scheme. Aggrieved by this order, civil appeal arising out of SLP (C) No. 272 of 1994 has come to be preferred.

Decision: Appeal allowed

Reason: The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or Consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer.

In the light of this, we will have to examine whether the 'shares' for which an application is made for allotment would be 'goods'. Till the allotment of shares takes place, "the shares do not exist". Therefore, they can never be called goods. Under the Sale of Goods Act, all actionable claims and money are excluded from the definition of goods since Section 2(7) of the Sale of Goods Act, 1930 is as under:

"(7) 'goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

It will be useful to refer to clause (6) of Section 2 of the Sale of Goods Act, 1930. That reads: "(6) 'future goods' means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale."

As to the scope of this clause, reference may be made to Maneckji Pestonji Bharuclia v. Wadilal Sarabhai & Co. AIR 1926 PC 38. It was observed thus: "The Company is entitled to deal with the shareholder who is on the register, and only a person who is on the register is in the full sense of the word owner of the share. But the title to get on the register consists in the possession of a certificate together with a transfer signed by the registered holder. This-is what Bharucha had. He had the certificates and blank transfers, signed by the registered holders. It would be an upset of all Stock Exchange transactions if it were suggested that a broker who sold shares by general description did not implement his bargain by supplying the buyer with the certificate and blank transfers, signed by the registered holders of the shares described. Bharucha sold what he had got. He could sell no more. He sold what in England would have been choses in action, and he delivered choses in action. But in India, by the terms of the Contract Act, these choses in action are goods. By the definition of goods as every kind of moveable property it is clear that not only registered shares, but also this class of choses in action, are goods. Hence equitable considerations not applicable to goods do not apply to shares in India."

Again, in Madholal Sindhu of Bombay v. Official Assignee of Bombay AIR 1950 FC 21 it was held thus:

"A sale according to the Sale of Goods Act (and in India goods include shares of joint stock companies) takes place when the property passes from the seller to the buyer." Therefore, at the stage of application it will not be goods. After allotment different considerations may prevail. A fortiori, an application for allotment of shares cannot constitute goods. In other words, before allotment of shares whether the applicant for such shares could be called a consumer?

In CIT v. Standard Vacuum Oil Co. AIR 1966 SC 1393 while defining shares, this Court observed: "A share is not a sum of money; it represents an interest measured by a sum of money and made up of diverse rights contained in the contract evidenced by the articles of association of the Company." Therefore, it is after allotment, rights may arise as per the contract (Article of Association of Company). But certainly not before allotment. At that stage, he is only a prospective investor (sic in) future goods. The issue was yet to open on 27-4-1993. There is no purchase of goods for a consideration nor again could he be called the hirer of the services of the company for a consideration. In order to satisfy the requirement of above definition of consumer, it is clear that there must be a transaction of buying goods for consideration under Section 2(1) (d) (i) of the said Act. The definition contemplates the pre-existence of a completed transaction of a sale and purchase. If regard is had to the definition of complaint under the Act, it will be clear that no prospective investor could fall under the Act.

What is that he could complain of under the Act?

This takes us to the definition of complaint under Section 2(1) (c) which reads as follows:
"2. (1)(c) 'complaint' means any allegation in writing made by a complainant that-

i. as a result of any unfair trade practice adopted by any trader, the complainant has suffered loss or damage;
ii. the goods mentioned in the complaint suffer from one or more defects;
iii. the services mentioned in the complaint suffer from deficiency in any respect;
iv. a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods, with a view to obtaining any relief provided by or under this Act."

Certainly, clauses (iii) and (iv) of Section 2(1) (c) of the Act do not arise in this case. Therefore, what requires to be examined is, whether any unfair trade practice has been adopted. The expression 'unfair trade practice' as per rules shall have the same meaning as defined under Section 36-A of Monopolies and Restrictive Trade Practices Act, 1969. That again cannot apply because the company is not trading in shares. The share means a share in the capital. The object of issuing the same is for building up capital. To raise capital, means making arrangements for carrying on the trade. It is not a practice relating to the carrying of any trade. Creation of share capital without allotment of shares does not bring shares into existence. Therefore, our answer is that a prospective investor like the respondent or the association is not a consumer under the Act. There is an increasing tendency on the part of litigants to indulge in speculative and vexatious litigation and adventurism which the for a seem readily to oblige. We think such a tendency should be curbed. Having regard to the frivolous nature of the complaint, we think it is a fit case for award of costs, more so, when the appellant has suffered heavily. Therefore, we award costs of Rs 25,000 in favour of the appellant. It shall be recovered from the first respondent. C.A. No. 4584 of 1994 arising out of SLP (C) No. 272 of 1994 is allowed accordingly.

CASE LAW	IDBI TRUSTEESHIP SERVICES LTD v. HUBTOWN LTD [SC]
DECIDED ON	November 15, 2016
LEGISLATION	The General Laws
BRIEF FACTS	Investment in debentures- appointment of debenture trustee- failure to pay interest- Enforcement of corporate guarantee- summary suit filed against the guarantor- court allowed unconditional leave to defend – whether correct Held, No.

Facts: The present appeal arises out of a Summons for Judgment in a summary suit filed on the original side of the Bombay High Court, by the Petitioner, a debenture trustee, to enforce rights that arise out of a Corporate Guarantee executed by the Respondent defendant.

Nederlandse Financierings – Maatschappij voor Ontwikkelingslanden N.V. ("FMO") invested in certain equity shares and compulsorily convertible debentures (hereinafter referred to as the "CCDs") of Vinca Developer Pvt Ltd ("Vinca"). The value of this investment is about Rs.418 crore. Vinca invested this sum in certain optionally partially convertible debentures ("OPCDs") issued by Amazia Developers Pvt Ltd ("Amazia") and Rubix Trading Pvt Ltd ("Rubix"). Securing the above investment, Amazia and Rubix executed two debenture trust deeds where the Petitioner is the debenture trustee.

In order to secure the said OPCDs, and to ensure the due and punctual payment by Amazia and Rubix of all dues to Vinca under the debenture trust deeds, the Respondent had issued an unconditional, absolute and irrevocable corporate guarantee in favour of the Petitioner for the benefit of Vinca ("Guarantee"). Consequent upon the Defaults by Amazia and Rubix in payment of interest on the OPCDs, the petitioner issued redemption notice which was not responded. Therefore, the Petitioner issued demand certificate notice on the Respondent enforcing the corporate guarantee, which was also not responded. In these circumstances the Petitioner filed a summary suit before the Bombay High Court for the enforcement of the corporate guarantee in which the court has granted leave to defend the suit. Hence the appeal.

Decision: Appeal allowed.

Reason: It is clear that a sum of Rs. 418 crores has been paid by FMO, the Dutch company, to Vinca for purchase of shares as well as compulsorily convertible debentures. This transaction by itself is not alleged to be violative of the FEMA regulations.

The suit is filed only on invocation of the Corporate Guarantee which on its terms is unconditional. It may be added that it is not the defendant's case that the said Corporate Guarantee is wrongly invoked. Payment under the said Guarantee is to the debenture trustee, an Indian company, for and on behalf of Vinca, another Indian company, so that prima facie again there is no infraction of the FEMA Regulations. Since FMO becomes a 99% holder of Vinca after the requisite time period has elapsed, FMO may at that stage utilise the funds received pursuant to the overall structure agreements in India. If this is so, again prima facie there is no breach of FEMA Regulations.

At the stage that FMO wishes to repatriate such funds, RBI permission would be necessary. If RBI permission is not granted, then again there would be no infraction of FEMA Regulations. The judgment in Immami Appa Rao v. G. Ramalingamurthi, (1962) 3 SCR 739 would be attracted only if the illegal purpose is fully carried out, and not otherwise.

Based on the aforesaid, it cannot be said that the defendant has raised a substantial defence to the claim made in the suit. Arguably at the highest, as held by the learned Single Judge, even if a triable issue may be said to arise on the application of the FEMA Regulations, nevertheless, we are left with a real doubt about the Defendant's good faith and the genuineness of such a triable issue. Rs.418 crores has been stated to be utilized and submerged in a building construction project, with payments under the structured arrangement mentioned above admittedly being made by the concerned parties until 2011, after which payments stopped being made by them. The defence thus raised appears to us to be in the realm of being 'plausible but improbable'. This being the case, the plaintiff needs to be protected.

In our opinion, the defendant will be granted leave to defend the suit only if it deposits in the Bombay High Court the principal sum of Rs.418 crores invested by FMO, or gives security for the said amount of Rs.418 crores, to the satisfaction of the Prothonotary and Senior Master, Bombay High Court within a period of three months from today. The appeal is accordingly allowed, and the judgment of the Bombay High Court is set aside. We further direct that the suit be tried expeditiously, preferably within a period of one year from the date of this judgment, uninfluenced by any observations made by us herein.

From the Government

Amendments to Schedule II of the Companies Act, 2013

G.S.R. 1075(E). —In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following further amendments to amend Schedule II to the said Act, namely: -

1. In the Companies Act, 2013, in Schedule II, under Part 'A', in para 3, in sub-paragraph (ii), for the brackets, letters and words starting with "(ii) For intangible "and ending with the words "force shall apply", the following brackets, letters and words shall be substituted, namely: - "

(ii) For intangible assets, the relevant Indian Accounting Standards (Ind AS) shall apply. Where a company is not required to comply with the Indian Accounting Standards (Ind AS), it shall comply with relevant Accounting Standards under Companies (Accounting Standards) Rules, 2006."

2. This notification shall be applicable for accounting period commencing on or after 01st April, 2016.

Source: http://www.mca.gov.in/Ministry/pdf/Noti_18112016.pdf

National Advisory Committee on Accounting Standards.

[Issued by the Ministry of Corporate Affairs vide [F.No. 01/16/2013CL-V (Pt-I)) dated 07.11.2016. To be published in Gazette of India, Extraordinary, Part-II, Section (3) Sub-section(i)]

In exercise of the powers conferred by sections 396, 398, 399, 403 and 404 read with sub-sections (1) and {2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Rules further to amend lhc Companies (Registration Offices and Fees) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Registration Offices and fees) Second Amendment Rules, 2016. (2) They shall come into force from the date of their publication in the Official Gazelle. 2. In the Companies (Registration Offices and Fees) Rules, 2014, (herein after refer to as the principle rules), in the principle rules, in rule 8, in sub-rule (12), in clause (b) (for sub-clause (iv), the following shall be substituted, namely: - "(iv) AOC-4 certification by the Chartered Accountant or the Company Secretary or as the case may be by Cost Accountant, in whole-time practice."

3. In the principal rules, in the Annexure, in item II, for sub-item (vi), the following sub-item shall be substituted, namely; -

For Application made	Other than OPC and small companies	OPC and small companies
(vi) For allotment of Director Identification Number (DIN) under section 153 of the Act	500	500
(vii) For surrender of Director Identification Number under rule 11(f) of the Companies (Appointment and Qualification of Directors) Rules 2014	1000	1000

Notification of Sick Industrial Companies (Special Provisions) Repeat Act, 2003

[Issued by the Ministry of Finance Vide S.O. 3568(E) and S.O. 3569(E) dated 25.11.2016. Published in G.O.I. Extraordinary Part – II Section – 3 Sub Section – (ii) dated 28.11.2016]

In exercise of powers conferred by sub-section (2) of section 1 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (1 of 2004), the Central Government hereby appoints the 1st day of December, 2016, as the date on which the provisions of the said Act shall come into force.

In exercise of powers conferred by clause (b) of section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 (1 of 2004), the Central Government hereby notifies the 1st day of December, 2016, as the date for the purposes of clause (b) of section 4 of the said Act.

SAVE OUR ENVIRONMENT

Mumbai Trans Harbour link v. Sewri Mangroves: Economic Proliferation v. Environmental Protection

Mumbai, Maharashtra is one of the world's top 10 centres of commerce in terms of global financial flow. Mumbai accounts for slightly more than 6.16% of India's economy contributing 10% of factory employment, 30% of income tax collections, 60% of customs duty collections, 20% of central excise tax collections, 40% of foreign trade and Rupees 40,000/- crore (US $10 billion) in corporate taxes to the Indian economy.

Headquarters of number of Indian financial institutions such as the Bombay Stock Exchange, Reserve Bank of India, National Stock Exchange, the Mint, as well as numerous Indian companies such as the Tata Group, Essel Group, Aditya Birla Group and Reliance Industries are located in Mumbai. Most of these offices are located in downtown South Mumbai which is the nerve Centre of the Indian economy.

Mangrove forests are one of the few ways for a city starved of open spaces to breathe. They need to be safeguarded instead of destroyed under the guise of development. However, the proposed Mumbai Trans Harbour Link project, a 22-km road bridge connecting the island city with Navi Mumbai to be implemented by the Mumbai Metropolitan Region Development Authority (MMRDA), envisages construction of six lanes road bridge to ease congestion and reduce pollution in Mumbai. The Maharashtra government plans to issue a tender in March and complete the crucial link by 2019.

The Mumbai Trans Harbour Link (MTHL), is finally set to be constructed with the Bombay High Court granting MMRDA permission to cut mangroves and construct on mangrove plots. The MTHL will impact around 47.4 hectares of forest land, including 38.6 hectares of land that is covered with mangroves at Sewri and on the Navi Mumbai side.

In October 2005, the High Court had banned cutting of mangroves or construction and dumping of debris on mangroves and its buffer zone. Subsequently, the court had granted exemptions and allowed cutting of mangroves for important public development projects. For MMRDA, the High Court nod is one of the final approvals it needs to go ahead with the project.

We all are in support of 'Make in India', but what about 'Mangroves in India'?

Source: http://articles.economictimes.indiatimes.com/2016-01-25/news/70065167_1_crz-clearance-forest-land-mmrda