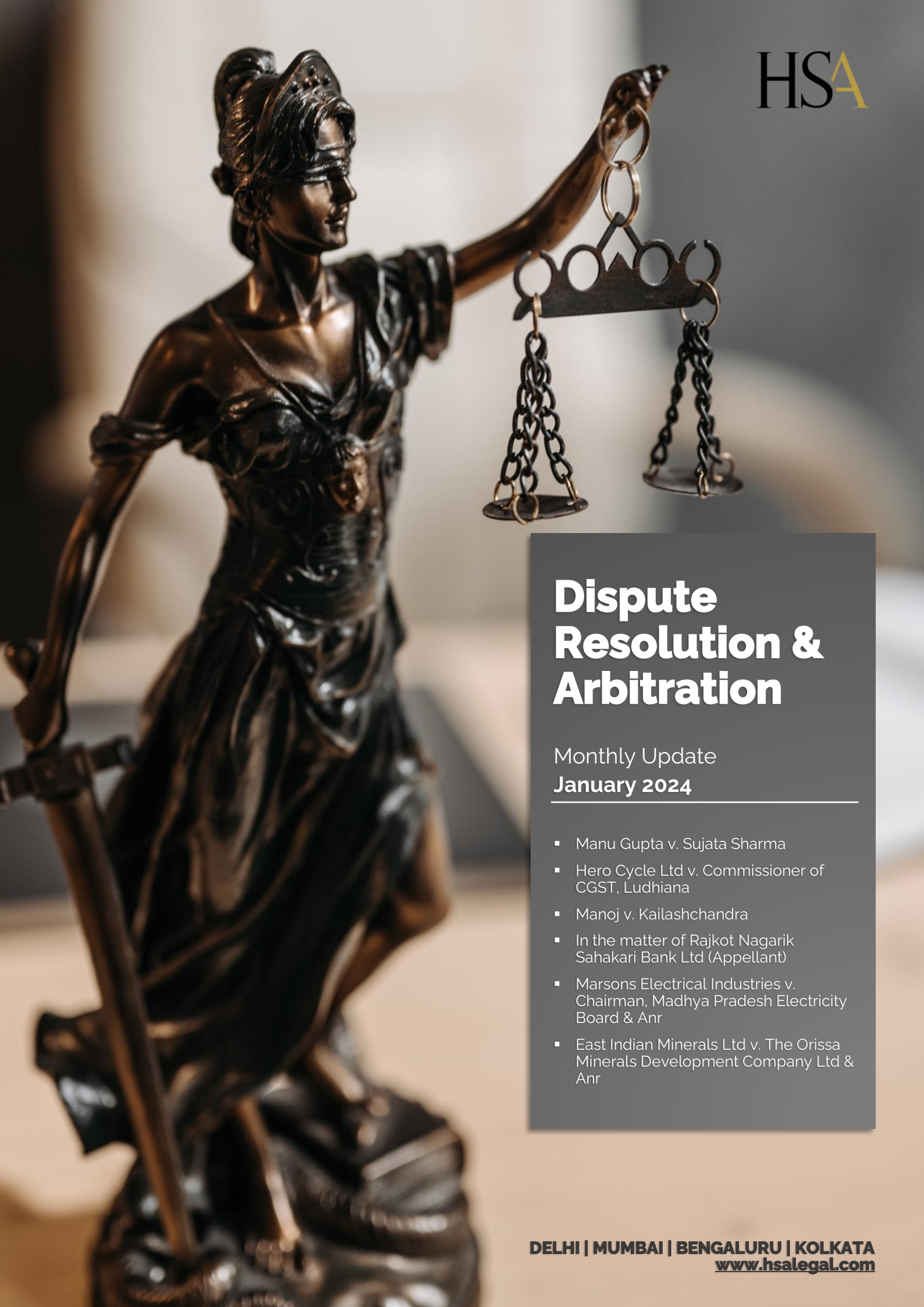

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Dispute Resolution & Arbitration

Monthly Update

January 2024

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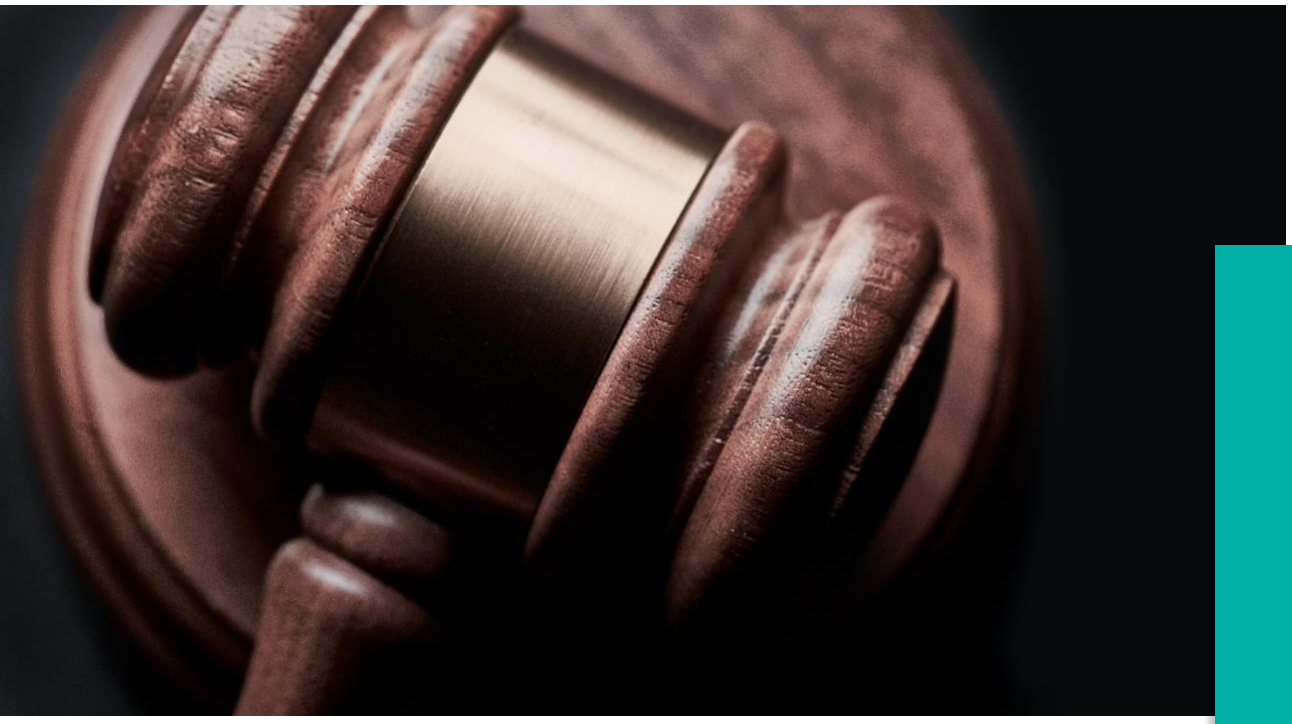
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Manu Gupta v. Sujata Sharma

Delhi High Court | 2023 SCC OnLine Del 7722

Background facts

- The Appellants and Respondents of this case are the descendants of Late Shri DR Gupta, son of Late Shri Sunder Gupta, who expired on October 01, 1971. They are Hindus and are governed by the Mitakshara law. Late Shri DR Gupta had constituted a Hindu Undivided family (**HUF**) Business known as 'DR Gupta and Sons HUF' on January 05, 1963 comprising of himself and his five sons, namely Late Shri KM Gupta, Late Shri MH Gupta, Late Shri RN Gupta, Late Shri BN Gupta and Late Shri JN Gupta, as members.
- Late Shri DR Gupta had voluntarily executed an Affidavit dated January 05, 1963 declaring that all his properties shall belong to the HUF, of which he will be the Karta with right of survivorship and all other incidents of undivided coparcenary on his wife and his five sons. DR Gupta's properties included an immovable property which was in Delhi and moveable properties which consisted of shares of Motor and General Finance Ltd, deposits with Motor and General Finance Ltd, and bank accounts in Bank of India and Vijaya Bank, Ansari Road. All the moveable assets that belonged to the HUF were disposed of by the Gupta Family in the 1980s.
- All the sons of Late DR Gupta passed away over time and the last Karta of DR Gupta & Sons HUF was Shri RN Gupta who passed away on February 14, 2006. After the demise of Shri RN Gupta, Respondent No. 1 and other members of the 'DR Gupta & Sons HUF' corresponded via email regarding Respondent No. 01's claim to be the next Karta of the group because she is the eldest coparcener and the daughter of the late Shri KM Gupta. This claim was raised by her with regard to the laws amended in the Hindu Succession (Amendment) Act, 2005.
- Respondent No. 01 becoming the Karta was accepted by the majority of coparceners; however, Mr. Manu Gupta (Appellant), Mr. Vasu Gupta (Respondent No. 2), Ms. Gita Lal (Respondent No. 3), and Ms. Aditi Desai (Respondent No. 17) objected to her becoming Karta in HUF. Initially, they had filed an affidavit agreeing to the Court's decision of the Karta. Later on, they disputed Respondent No. 1's legal status as a coparcener in order to assert their eligibility for the Karta position.
- The Appellant, in response to Respondent No. 1's claims, identified himself as the Karta of HUF. This was the main reason behind Respondent No. 1, Sujata Sharma, filing the Civil Suit in 2006 in the Delhi High Court, seeking a declaration proving she is the Karta of 'DR Gupta & Sons HUF.'

- In this suit, Respondent No. 1 contended that being a lady cannot be a primary reason for her being denied the position of the Karta. She had also further contended that as per the new amendment, a coparcener's daughter can have the same rights as a coparcener's son in a HUF. The single-judge bench decided the case in favor of Mrs. Sujata Sharma.
- Subsequently, Manu Gupta filed an appeal challenging the decision of the single-judge bench, arguing that daughters do not obtain managerial powers over HUF property but rather coparcenary rights similar to those of male members under Section 6 of the Hindu Succession Act, 1956 (**Act**). In addition, the defendant contended that the Plaintiff was married and thus she cannot be deemed as an important part of the HUF.

Issues at hand?

- Whether the suit for declaration, is maintainable in its present form?
- Whether there exists any coparcenary property or HUF at all?
- Whether the Plaintiff is a member of DR Gupta and Sons HUF? And if so, to what effect?
- Whether the interest of the Plaintiff separated upon the demise of her father in 1984?
- Assuming the existence of a DR Gupta and Sons HUF, whether the Plaintiff can be considered to be an integral part of the HUF, particularly after her marriage in 1977, and whether the Plaintiff has ever participated in the affairs of the HUF as a coparcener, and its effect?
- Assuming the existence of DR Gupta and Sons HUF, whether the Plaintiff is a coparcener of and legally entitled to be the Karta?
- What is the effect of the amendment in the Hindu Succession Act, in 2005 and has it made any changes in the concept of Joint Family or its properties in the law of coparcenary?

Decision of the Court

- The Court, while dealing with the issue of the effect of the 2005 amendment in the Hindu Succession Act, delved into the concepts of Joint Hindu Family, coparcenary, and managership under the traditional Hindu Law. The Court rejected the appellant's argument that the legislative intent was solely to codify the law on succession and emphasized the explicit language of Section 6, which grants daughters the same rights as sons, including rights in coparcenary property. The Court concludes that the amendment redefines coparcenary, making it inclusive of all incidents, including the right to be a Karta.
- In essence, the Court holds that denying daughters the right to be Karta would be contrary to the legislative intent of providing equal property rights to women. Further, it opined that the right to manage property is intrinsic to ownership, and the amendment aims to rectify historical gender-based discrimination within the joint family system.
- The Court rejected the argument that spiritual efficiency is an indispensable requirement for becoming a Karta under Mitakshara law. It underscores that with the 2005 amendment conferring daughters with coparcenary rights, spiritual efficiency cannot be a prerequisite for Karta's position. The Court held that spiritual efficiency is only relevant when a question of preference arises, and in this case, overt seniority by age of Respondent No. 1 eliminates the need for such consideration.
- Moreover, the Court addressed the contention of the Appellant that the husband of the female Karta would have indirect control over the activities of the HUF of her father's family and opined that under Section 14 of the Act, women have absolute ownership in a property. Hence, she can't be denied a right to manage the property on this parochial mindset.
- The Court while dismissing the concerns raised by the Appellant about societal acceptance of a woman as Karta, held that the 2005 legislative amendment aimed to promote equality in society, and hence, Respondent No. 1 has every right to be the Karta of the HUF.
- Turning to the issue of the coparcener's status and entitlement to Karta, the Court rejected the Appellant's contention that Respondent No. 1 was not the daughter of a surviving coparcener when the 2005 amendment came into force and hence, she can't be the coparcener. The Court cited the clarifications made in the landmark case of ***Vineeta Sharma v. Rakesh Sharma***[1], where it was emphasized that the key factor is birth within the degrees of the coparcenary and not the survival of the father.
- The Court also stated that in cases of joint ownership, a Suit for Declaration on the status of being the Karta of HUF is maintainable without seeking consequential possession relief.
- The Court declared Respondent No. 1 as Karta for representing 'DR Gupta & Sons HUF' before the Competent Authority and dismissed the present appeal.

HSA
Viewpoint

The issue in this case revolves around the interpretation of Section 6 of the Hindu Succession Act, 1956 as amended in 2005, and its impact on the concept of Hindu Undivided Family properties, specifically in terms of the position of Karta (manager) within the family. The Court highlights the significant change brought about by the 2005 amendment which confers equal coparcenary rights on daughters, thereby challenging the traditional understanding. This ruling establishes a progressive interpretation of the amended Hindu Succession Act, reinforcing gender equality in coparcenary rights and challenging traditional notions regarding the eligibility of daughters to assume the position of Karta in a HUF. Overall, the decision reflects a commendable commitment to gender equality, justice, and a nuanced interpretation of legal provisions, setting a precedent for the recognition of women's, rights in coparcenary property and managerial roles within the HUF.

[1] SLP (C) No.684 of 2016

Hero Cycle Ltd v. Commissioner of CGST, Ludhiana

Customs, Excise and Service Tax Appellate Tribunal Chandigarh | Excise Appeal No. 59084 of 2013

Background facts

- The Appellant is engaged in the manufacturing of e-bikes and parts thereof and also imports e-bike parts and e-bikes in completely knockdown unit (**CKD**) condition. Importation of such goods falls under the Central Excise Tariff Act, 1985. The e-bikes were chargeable to duty as per Section 4 of the Central Excise Act, and the e-bike parts on a MRP basis as per Section 4A of the Central Excise Act, 1944 (**Act**).
- A show cause notice dated November 19 2010 was issued to the Appellant, alleging that the Appellant imported e-bike parts and e-bikes in CKD condition, and the Appellant was supposed to show the production and clearance of e-bikes in the relevant columns of Form ER-1. Further, the allegation against the Appellant in the Show Cause Notice was that they did not file any mandatory return in the format prescribed under the Automobile Cess Rules, 1984, and suppressed the production, clearance, and value of e-bikes from the Department with intent to evade payment of automobile cess.
- The Appellant filed a detailed reply to the Show Cause Notice and submitted that they imported e-bikes in CKD condition and e-bike parts, and that further, they assembled e-bikes from e-bike parts imported and also assembled e-bikes imported in CKD condition. The Appellant had submitted that e-bikes were exempted from the payment of excise duty vide a notification dated April 29, 2008 issued by the Government of India. It was further submitted that e-bikes imported in CKD condition, which were cleared after assembling without payment of central excise duty, as the goods imported and cleared from factory premises and the processes undertaken on the goods by the Appellant did not amount to 'manufacture' as per Section 2(f) of the Central Excise Act, as no new or distinct product came into existence.
- Moreover, the Appellant submitted that the clearance of e-bikes imported in CKD condition was not reflected in the ER-1 return as there was no manufacturing activity involved. In light thereof, the Appellant was of the view that the demand for automobile cess again was incorrect as the same had already been discharged at the time of the importation of e-bikes in CKD condition. The classification at the time of importation and at the time of clearance for home consumption are same.
- After due process, the Additional Commissioner, vide an Order dated May 30 2011 demanded the automobile cess of INR 13,15,692 from the Appellant under Section 11A. The Additional Commissioner did so by invoking the extended period of limitation along with interest under Section 11AB and also imposed equal penalty under Section 11AC of the Act.
- Aggrieved by the said Order, the Appellant filed an appeal before the Commissioner (Appeals), who, vide the impugned Order dated May 08 2013, held that there is need to work out automobile cess on amount of value addition and accordingly the matter will require a fresh computation to re-look, no finding with regard to the interest and penalty.
- Hence, the present appeal.

Issue at hand?

- Whether the classification of the e-bikes at the time of importation by the Appellant and at the time of clearance for home consumption would not be the same, in light of the Appellant undertaking assembly of the e-bikes, thereby attracting automobile cess on such e-bikes again at time of clearance from the factory of the Appellant?

Decision of the Tribunal

- The Customs, Excise, and Service Tax Appellate Tribunal (**CESTAT**) observed that the Appellant merely assembled e-bikes imported in CKD condition and cleared the same without payment of duty, and the same was in consonance with the exemption given in the notification dated April 29, 2008 issued by the Government of India.
- Furthermore, the CESTAT held that the e-bikes imported in CKD condition after assembly were rightly cleared without payment of duty, because the goods that were imported and cleared, fall under the same sub-heading and the processes undertaken by the Appellant subsequent to importation do not amount to 'manufacture' as per Section 2(f) of the Act (as no new/distinct product came into existence).
- The CESTAT held that in the instant case, the classification of the goods at the time of importation and at the time of clearance for home consumption are the same, therefore there cannot be a demand for automobile cess again. The CESTAT observed that since the Appellant had already paid

HSA
Viewpoint

The CESTAT has correctly held that in the instant case, the Appellant would not be liable to pay automobile cess a second time. The goods imported by the Appellant, on which it has already paid sufficient duty, should not be chargeable to automobile cess once more on the sole ground of the Appellant undertaking assembly of parts and components. Assuming that cess was applicable in this case, the CESTAT has rightly noted that the demand of automobile cess is barred by limitation. Extension of limitation period, without fulfilling the ingredients required to do so is unjust and arbitrary.

the automobile cess at the time of customs clearance, therefore, the Appellant is not required to pay the automobile cess again.

- The CESTAT also noted that the entire information regarding the clearance of e-bike was reflected in the ER-1 return submitted by the Appellant to the concerned department periodically, and the department never raised any objection regarding the non-deposit of automobile cess. This clearly shows that automobile cess was paid as per the concurrence of the concerned department.
- On the aspect of the Assistant Commissioner extending the period of limitation, the CESTAT held that the entire demand raised in the present matter was time-barred, as the show cause notice demanding payment for a period between 2006 and 2008 was issued on November 19 2010 which is beyond the period of limitation. The CESTAT opined that the department had invoked the extended period of limitation without showing that the ingredients for invoking the extended period of limitation is present in the case.
- In view of thereof, the CESTAT held that the demand for automobile cess from the Appellant was barred by limitation and set aside the impugned Order on meris as well as on limitation. Accordingly, the subject Appeal was allowed.

Manoj v. Kailashchandra

Rajasthan High Court | S.B Civil Second Appeal No. 280/2022

Background facts

- In the year 1968, two shops were let out to two brothers Moolchand and Lilaram jointly at INR 56 per month by the joint owners of the property namely, Jaganath, Babulal and Banshilal. When the tenants committed default in payment of rent, a suit for eviction and arrears of rent was filed against both of them jointly by all the three owners.
- During the pendency of the suit, a settlement was arrived into between three owners of the property and the two shops in question came in the share of Babulal. Therefore, the names of the other two owners was prayed to be struck off and the consequential order was also passed.
- In the said suit, written statement was filed by one of the tenants Lilaram only wherein he specifically stated that Moolchand had nothing to do with the rented premise as he was just a helper to Lilaram. Further, Moolchand has left Bhilwara since long and hence, he cannot be termed to be a tenant of the premise in question. It was also the specific averment of Lilaram that the rent of both the shops was being paid by him only and he is only running business in the said shops.
- In terms of the above averments as made by Lilaram in his written statement, an application under Order I Rule 10 of the Code of Civil Procedure was preferred by the Plaintiff landlord Baluram with a submission that as Moolchand is no more a tenant in the premise and his whereabouts are not being found since more than last seven years, his name be deleted from the array of defendants. No reply to the said application was filed by any of the defendants. It is relevant to note here that both Lilaram and Moolchand were represented by the same counsel in the said suit.
- The application under Order I Rule 10, CPC as preferred by the Plaintiff landlord was allowed on March 05, 1984 and the name of Moolchand was ordered to be deleted. However, the said suit No. 390/1977 was ultimately withdrawn by the Plaintiff landlord on March 19, 1985 with liberty to file a fresh suit.
- Thereafter, a fresh suit was filed by the landlord Baluram for eviction and recovery of arrears of rent impleading only Lilaram. In the said suit, it was specifically averred by the Plaintiff that as Moolchand has not been heard of or seen for more than seven years, he no more being a tenant, is not impleaded. However, the fact of Moolchand not been heard from last seven years was denied by the defendant Lilaram.
- Vide judgment and decree dated September 26, 2001, the suit was partly decreed and a decree for eviction was passed only qua the eastern side shop. However, the standard rent qua both the shops was fixed @ INR 750 per month each and a decree for arrears of rent was also passed.
- The first appeal preferred against the said judgment by Lilaram was dismissed on October 30, 2003 and the second appeal against the same was dismissed by this Court on January 14, 2004. However, vide the said judgement, the Defendant tenant was granted one year time to handover the vacant possession of the east side shop to the landlord. The Defendant was directed to file an undertaking to the said effect within 2 weeks.
- In pursuance to the said directions, the tenant Lilaram did file an undertaking before the learned Trial Court on January 27, 2004. Vide the same, he undertook to handover the vacant possession of the premise on December 13, 2015 qua which the decree for eviction was passed.

- However, before the undertaking as given by the tenant Lilaram to vacate the premise could be complied with, the present suit was preferred by Moolchand on January 07, 2005 for declaration of the decree dated September 26, 2001 to be void and ineffective qua him. Moolchand preferred the said suit with a submission that he was the joint tenant in the premise in question and was running his business in the eastern side shop. Lilaram, in connivance with the Plaintiff landlord, got the decree of eviction qua the shop in which he was running his business. It was further averred that he was very much alive and running his business in the shop and the Plaintiff did not implead him in the present suit on the wrong and incorrect premise that he was not being heard of from last 7 years. Therefore, the decree as passed qua his shop in a suit wherein he was not impleaded, cannot be said to be binding on him and hence, deserves to be declared as null ineffective qua his interests.

Issues at hand?

- Whether the decree regarding increase of INR 750 per shop per month was obtained with malicious and dishonest intentions and whether there was any sort of collusion with respect to the same?
- Whether the Plaintiffs can get the decree passed declared as void, ineffective and revocable?

Decision of the Court

- At the outset, the High Court was of the clear opinion that the present suit was a stark example of a collusive suit of a highest degree and the most disdainful attempt of abuse of process of the Court.
- The High Court further held that the situation was very painful as a landlord was not able to seek possession of get the vacant possession for the last 50 years due to the collusive nature of the Defendants. Also, the High Court observed that the present case was a classic example whereby mischievous litigants attempt to make a mockery of the process of the High Court and have unfortunately even succeeded in doing the same.
- With respect to the matter at hand, the High Court held that the accrued right of tenancy, even if any, had been waived/surrendered by Moolchand. It was clear on record that the same was waived/surrendered by acquiescence. Further, the High Court also observed that by all and any means, Moolchand cannot be held to be a tenant and hence, the finding of both the learned Courts below holding him to be disentitled to get the decree dated September 26, 2001 annulled cannot be interfered with, being totally in consonance with the law and deserved to be affirmed.
- Most importantly, the Court opined that if the version of Moolchand, he being the joint tenant, is admitted, he ipso facto, would be bound by the decree dated September 26, 2001. Moreover, as is the settled proposition of law, once it is held that the tenancy was joint, a notice to one of the joint tenants is sufficient and further, even the suit against one of the tenants would be good. The High Court also stated that the aforesaid proposition of law was reiterated and affirmed by the Supreme Court thereby solidifying the position of law substantially.
- Furthermore, the High Court reiterated the established legal proposition that where a party to the suit does not appear in the witness box and state his case on oath and does not offer himself to be cross-examined, a presumption would arise that the case set up by him is not correct.
- In view of the above mentioned observations, the High Court dismissed the appeal as no substantial question of law arose therefrom.

HSA
Viewpoint

By way of this judgement, the High Court of Rajasthan has once again reiterated the stand taken by numerous High Courts of the country as well as the Supreme Court with respect to eviction suits involving two or more joint tenants. It is well established that in case of joint tenancy, a suit for eviction against any one tenant will be deemed to include the other tenancy holders as well. Not only that, the judgement has harped upon the importance of identifying collusive suits which are maliciously designed to take extraneous amounts of time and use the judicial process for personal gains.

In the matter of Rajkot Nagarik Sahakari Bank Ltd (Appellant)

Gujarat Appellate Authority for Advance Ruling, GST (GAAAR) | GUJ/GAAAR/Appeal/2023/07

Background facts

- Rajkot Nagarik Sahakari Bank Ltd. (**Appellant**) is registered with the Goods and Service Tax Department (**Department**).
- The State Government of Gujarat announced the 'Atma Nirbhar Gujarat Sahay Yojna' (Yojna) as per which Nagar Sahakari Banks and Cooperative Credit Societies were to provide loans to small traders, middle class businessmen, individual artisans and working class, without any securities up to INR. 1,00,000.
- The interest on loans provided by Nagar Sahakari Banks and Cooperative Credit Societies were to be charged at 8%. Out of the 8% interest, only 2% interest was to be paid by the borrower while the remaining 6% interest was to be borne by the Gujarat State Government.

- Additionally, based on the performance of the Nagar Sahakari Banks in disbursing the loans under the Yojana, they were to be granted one-time incentive by State Government of Gujarat depending on their total lending. This incentive was over and above the 6% percent interest borne by the State Government of Gujarat.
- On the belief that the incentive so received under the scheme is akin to a subsidy and hence is not leviable to Goods and Service Tax (**GST**), the Appellant sought a ruling from the Gujarat Authority for Advance Ruling (**GAAR**). Vide its Order dated August 11 2021, the GAAR held that the incentive mentioned above cannot be considered as subsidy and hence is not excluded from valuation under Section 15(2)(e) of Central Goods and Service Tax Act, 2017 (**Act**) and is liable to GST.
- Being aggrieved by the said ruling, the Appellant preferred the said Appeal before the GAAAR.

Issue at hand?

- Whether the amount received by the Appellant under the heading 'incentive' under the Yojana is akin to subsidy and hence not liable to GST?

Decision of the Authority

- At the outset, the GAAAR stated that the Yojna purposefully uses two words, one being a vernacular word 'vyaj sahay' (which basically mean interest subsidy) and the other being 'incentive', and held that the submission of the Appellant that both the words mean the same is neither factually correct nor legally tenable. Further the GAAAR held that that there is no bar on including the incentive received under consideration as far as definition of 'consideration' as defined under Section 2(31) of the Act.
- The GAAAR held that the Appellant has not explained how incentive so received by them under the Yojna would fall under Section 7(2) or schedule III of the Act and be exempted from GST.
- The GAAAR relied on the Judgement of the Supreme Court in the case of ***Sunrise Associates***[2] and held that one-time incentive received by the banks would not fall under the ambit of actionable claims so as to fall within the exclusion as per Sr. No. 6 of Schedule III of the Act.
- The GAAAR further relied on the judgement of the Supreme Court in the case of ***Dilip Kumar & Company***[3] and held that claim for exemption notification is to be strictly interpreted and hence the Appellant's contention of falling within the ambit of Notification No. 12/2017-CT (rate) is not legally tenable.
- The GAAAR finally held that the judgement of the Authority on Advance Ruling, Karnataka in the case of ***Rashmi Hospitality Services Pvt Ltd***[4] and the judgement of the Supreme Court in the case of ***Ponni Sugars & Chemicals Ltd***[5] as relied upon by the Appellant, was not applicable in the present case.
- In view of the above, the GAAAR rejected the Appeal filed by the Appellant.

HSA
Viewpoint

This decision clarifies that one-time incentive received under the Yojna cannot be considered as subsidy. The judgment removes all ambiguities and makes it clear that the incentives received by banks and Cooperative Credit Societies under the Yojna are liable to GST.

Marsons Electrical Industries v. Chairman, Madhya Pradesh Electricity Board & Anr

Allahabad High Court | (2023) 12 AHC CK 0017

Background facts

- Marsons Electrical Industries (**Appellant**) was engaged in the business of manufacturing transformers of various capacities and had set up a small-scale manufacturing industry in Agra. It held a small-scale industry certificate since February 09, 1971, under the Industrial Development and Regulation Act, 1951 (**1951 Act**). In continuation of the 1951 Act, the Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993 (**1993 Act**) was enacted, which is now known as the Micro, Small and Medium Enterprises Development Act, 2006 (**MSMED Act**). It was in continuation to the small-scale industry certificate, on the enactment of the MSMED Act, a certificate was issued to the Appellant on October 29, 2007. Further, a fresh Udyog Aadhar Number was issued to the Appellant in continuation to the small-scale industry certificate.
- The Appellant entered into a contract with Madhya Pradesh State Electricity Board (**Respondent**) and in pursuance to the contract, various work orders were issued to the Appellant for supply of transformers. The Appellant supplied the goods in the stipulated time; however, the payment was not made by the Respondent as per the terms of Clause 8(5) of the said contract even after repeated representations and reminders made by the Appellant.

[2] CA No. 4552/1998
[3] 2018 (361) ELT 577 (SC)
[4] KAR ADRG 61/2019
[5] 2008 (9) TMI 14

- Upon demand of interest on delayed payment, the Appellant was blacklisted by the Respondent. Being aggrieved by such blacklisting, the Appellant filed a Writ Petition before Jabalpur High Court. Subsequently, the State of UP on January 22, 2000, notified the establishment of the U.P. Industry Facilitation Council at Kanpur (Council) under the 1993 Act.
- The Appellant then filed a claim petition for delayed payment before the Council. During the pendency of the claim petition, the Respondent offered to enter into a negotiation regarding the claim. In pursuance to this offer, the Appellant filed a withdrawal application on May 17, 2002. However, during the pendency of the withdrawal application, the MSMED Act was enacted and the 1993 Act was repealed.
- Hence, the Appellant preferred a fresh claim application on December 19, 2006, before the Council requesting to restart the proceedings of the said claim. On June 19, 2007, the Council under the MSMED Act rejected the said claim petition of the Appellant with the liberty to file a fresh claim under the MSMED Act.
- Accordingly, the Appellant filed another claim petition under the MSMED Act before the Council on July 31, 2007, against which an Award was passed by the Facilitation Council on July 02, 2009, which was signed on July 09, 2011, and published on February 03, 2012 (**Impugned Award**).
- The Respondent challenged the Impugned Award under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) before the District Judge, Kanpur Nagar, which was further transferred to Commercial Court, Kanpur. Vide Order dated June 23, 2023, the Commercial Court allowed the appeal of the Respondent on the ground of jurisdiction (**Impugned Order**).
- Being aggrieved by the Impugned Order, the Appellant filed the present appeal under Section 37 of the Arbitration Act before the Allahabad High Court (HC**).**

Issue at hand?

- Whether MSMED Act prevails over the statutory provisions/Arbitration Act and any agreement entered between parties?

Decision of the Court

- At the outset, the HC observed that the Appellant was acknowledged and registered as a small-scale industry since February 09, 1971, and it is considered to be continued registration under the MSMED Act as well.
- The HC further observed that Section 32 of the MSMED Act clearly provides that the actions taken under the 1993 Act would be deemed to be taken under the provisions of the MSMED Act. The HC relied on the case of ***Silpi Industries v. Kerala State Road Transport Corporation***[6], which held that MSMED Act being a Special Act will have overriding effect on the Arbitration Act, and if the seller comes under the ambit of MSMED Act, he can approach the competent authority and file his claim under the said Act.
- Thus, the HC held that MSMED Act being Specific Act would prevail over the contract. Therefore, the Commercial Court would have jurisdiction to entertain an application under Section 34 of the Arbitration Act.
- The HC highlighted that once the registration is achieved, it only affects the provision of goods and services after the registration date, and it will not have any retrospective effect. The Court also acknowledged that the Appellant has been, and continues to be, registered as a small-scale industry and notably, the start date mentioned in the re-registration certificate is February 09, 1971, as well. Thus, HC held that there cannot be any prospective application since it relates to an ongoing registration rather than a fresh one.
- Further, the HC noted that the Impugned Order which was passed placing reliance on Clause 20 of the agreement wherein it was stated that only the Courts at Jabalpur will have jurisdiction, is incorrect.
- The HC held that the parties to an arbitration have the autonomy to decide not only on the procedural law to be followed but also on the substantive law. Thus, it held that once the statutory mechanism under Section 18(1) of the MSMED Act is triggered by any party, it would override any agreement entered into between the parties.
- In view of the above, the HC allowed the Appeal, restored the Impugned Award and quashed the Impugned Order as the Commercial Court had merely held that Courts of Jabalpur would have exclusive jurisdiction to entertain the disputes.

HSA
Viewpoint

This judgment clarifies that MSMED Act being a specific legislation would prevail over the Arbitration Act as well as the clauses envisaged in a contract. Moreover, whenever, a legislation is replaced by another legislation, the status provided by the previous legislation would continue to exist in the newly enacted legislation as well. The HC highlighted that the Commercial Court had jurisdiction to deal with the appeal of the Arbitral Award; however, as it was passed merely on the ground of jurisdiction, it was unsustainable, and the Award of the Facilitation Council was upheld. This judgment reaffirms the legislative intent to ensure timely payments to micro, small, and medium enterprises. This decision serves as a significant precedent, reinforcing the statutory authority of the MSMED Act in disputes involving small-scale industries. It highlights the importance of considering the chronological sequence of events, especially in cases where legislation undergoes changes.

[6] 2021 SCC Online SC 439

East Indian Minerals Ltd v. The Orissa Minerals Development Company Ltd & Anr

Calcutta High Court | AP No. 667 of 2022

Background facts

- The Petitioner being a Joint Venture Company and Respondent No. 1 being a company holding iron mines under lease from the Government of Orissa, entered into an agreement on October 4, 1993 for a period of 20 years for setting up crushing and processing plant and for sale of iron ore.
- Respondent No. 1 was unable to materialize the objective of the agreement and hence dispute arose between the parties. Accordingly, the Petitioner invoked arbitration vide a letter dated December 15, 2006 whereby it nominated Senior Advocate Mr. Ahin Choudhury as its Nominee Arbitrator. Similarly, Respondent No. 1 nominated Senior Advocate Mr. R.N. Das as its Nominee Arbitrator. The two Arbitrators then appointed Dr. Tapan Banerjee as the Presiding Arbitrator.
- The arbitration proceedings began but could not be completed due to the death of the Presiding Arbitrator and a reconstituted Arbitral Tribunal was appointed with Mr. R.N. Ray being the Presiding Arbitrator, who also expired after the 32nd sitting was concluded.
- During the pendency of the Application filed under Section 16 of the Arbitration and Conciliation Act, 1996 (Act) before the Arbitral Tribunal, criminal proceedings were initiated against the Petitioner which culminated on December 18, 2021. The last arbitration sitting was conducted on February 4, 2016 after which there have been no developments in the arbitration proceeding.
- Thereafter, vide letter dated May 23, 2022, the Petitioner requested the two Arbitrators to appoint a new Presiding Arbitrator, which they could not comply with.
- Consequently, the Petitioner inter alia filed the instant Petition before the Calcutta High Court (HC) for termination of mandate of the deceased arbitrator and appointment of a Presiding Arbitrator under Sections 14 & 15 r/w Section 11 of the Act.

Issues at hand?

- Whether a delay/lapse of more than 7 years in resuming the arbitral proceedings would render arbitration infructuous?
- Whether the arbitration cannot proceed owing to applicability of Section 29A of the Act?

Decision of the Court

- At the outset, the HC held that the issue whether a delay of 7 years in filing of a Section 14 and 15 application since the last sitting of the arbitration would make the claims barred by limitation, is an issue which has to be decided by the Arbitrator.
- The HC relied on its decision in the case of ***Subrata Mitra v. Shyamali Basu***[7] and Anr and held that once the reference has been made before the Arbitral Tribunal and the proceedings have been commenced, the delay in the resumption of such arbitral proceedings would not wipe out the arbitral reference. It was further held that arbitral proceedings cannot be rendered inoperative by dismissal of the said application as the reference of the issue of limitation must also be raised before the Arbitral Tribunal and adjudicated by the same.
- The HC observed that the arbitration clause in the instant case was invoked on December 15, 2006 and remarked that it is no longer res integra that purely procedural provisions are to be applicable retrospectively. But it is also settled law that such applicability can be ousted if specified in any statute.
- It is also to be seen if Section 29A of the Act is purely procedural in nature. Accordingly, the HC relied on the judgement of the Supreme Court in the case of ***BCCI v. Kochi Cricket Pvt Ltd***[8] and held that Section 29A of the Act shall apply prospectively to arbitration proceedings commenced in accordance with Section 21 of the Act, unless the parties otherwise agreed.
- Additionally, the HC relied on the judgement of the Supreme Court in the case of ***SP Singla Constructions Pvt Ltd v. State of Himachal Pradesh***[9] and held that the Respondent's contention that arbitration agreement provided for import of statutory modification and hence the Amended Act of 2015 shall apply retrospectively to the parties, cannot be sustained.
- In view of the above, the High Court terminated the mandate of the Late Arbitrator, Justice R.N. Ray and appointed Justice Asok Kumar Ganguly, Former Judge, Supreme Court of India, as the Presiding Arbitrator to resolve the dispute between the parties and thereby disposed of the Petition.

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Viewpoint

This decision clarifies that the issue of limitation and delay in filing an application under Section 14 and 15 of the Act should be decided by an Arbitrator. The significance of the judgment is that it makes it clear that delay in the resumption/conclusion of arbitral proceedings would not wipe out the arbitral reference and render it inoperative. This judgment removes all ambiguities relating to retrospective application of Section 29A of the Act and makes it clear that the same applies prospectively to arbitration proceedings.

[7] AP 67 of 2020
[8] (2018) 6 SCC 287
[9] (2019) 2 SCC 488

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