SABKA GST

BEING READY FOR TOMORROW

Monthly News Bulletin

For February 2025

For CAs and Finance Professionals

IGST NOT TO BE LEVIED UNDER CUSTOMS ON REPAIR SERVICE

- The Division Bench of the Delhi High Court in *INTERGLOBE AVIATION LTD Vs PRINCIPAL COMMISSIONER OF CUSTOMS ACC (IMPORT) NEW CUSTOM HOUSE NEW DELHI & ORS. (W.P.(C) 934/2023, W.P.(C) 7845/2023, W.P.(C) 4673/2024 PRONOUNCED ON 04.03.2025)* has confirmed that levy of IGST u/s 3(7) of Customs Tariff Act on re-import of goods repaired abroad, as well as compensation cess, over and above the levy of IGST u/s 5(1) of Integrated Goods & Services Tax Act 2017 on repair services performed, would be unconstitutional and ultra vires IGST law.

- It has declared the Explanation to clause (d) inserted in notification 45/2017 Customs, as introduced by the notification 36/2021 Cus., as invalid and set aside the same. Circular No. 16/2021 issued by the CBIC has also been consequentially quashed.

IGST NOT TO BE LEVIED UNDER CUSTOMS ON REPAIR SERVICE

- The issue here was levy of integrated tax and cess on fair cost of repairs carried out including cost of materials used in repairs (whether such costs were actually incurred or not), insurance and freight charges, both ways on goods i.e. aircraft engines sent abroad to MRO facility for repair, and received back after repair. This was under serial 2 of Notification 45/2017 Customs. It has confirmed that both Sections 5(1) of the IGST and Section 3(7) of the CTA are indelibly connected to the levy and collection of the tax contemplated under the former and that it was not possible to construe or interpret Section 3(7) as envisaging an independent levy.

IGST NOT TO BE LEVIED UNDER CUSTOMS ON REPAIR SERVICE

- An integrated tax on the import of services could only be imposed under Section 5(1) of the IGST. A supply of service once so classified could not be recharacterized. The Constitution Amending Act read along with the provisions contained in the CGST and the IGST left no doubt that an import of service could have only been taxed by virtue of a legislation referrable to Articles 246A and 269A and not under entry 83 of List I to the Seventh Schedule of the Constitution of India.

- The transaction remained that of supply of services in the shape of repair or refurbishment. It clearly did not constitute a supply of goods. The levy and collection of a tax under Section 3 of the CTA would only apply to imported goods and would have no application whatsoever to the import of service.

DISAGREEMENT ON CLASSIFICATION NEED NOT LEAD TO SUPPRESSION CHARGE

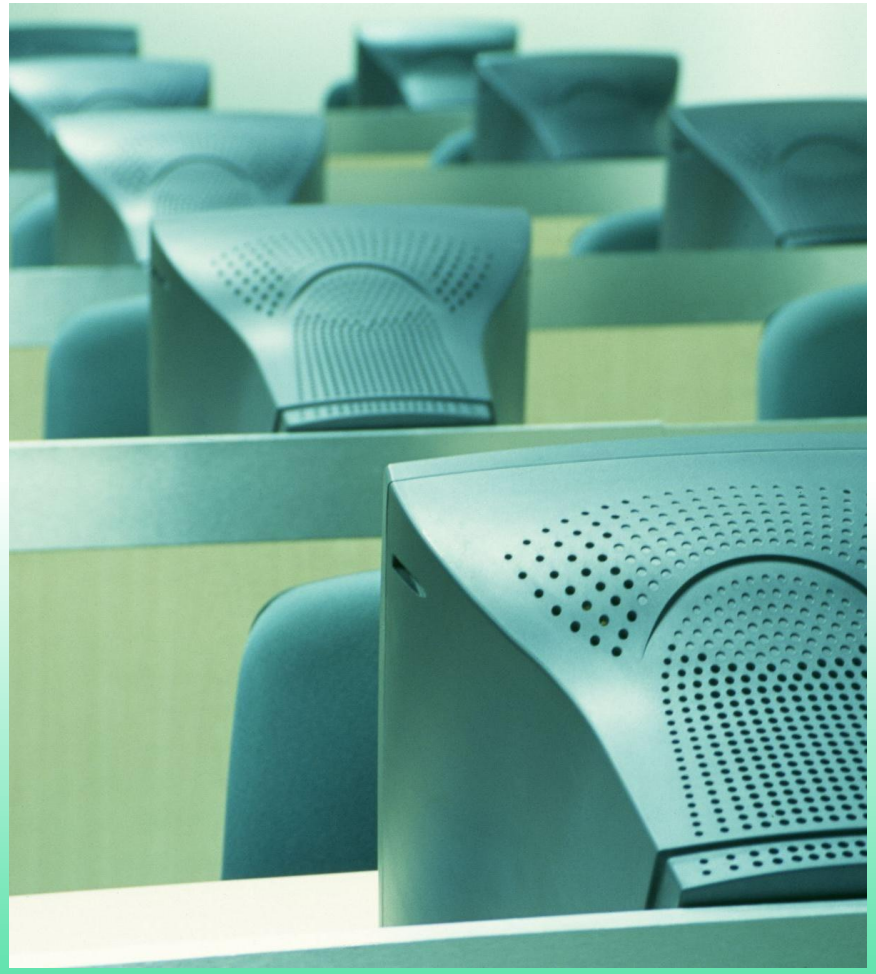
- The *Delhi High Court in M/s Ismartu India Pvt Ltd Vs UOI & Ors.,* has confirmed that a genuine disagreement, between assessee and the Department on the classification of the goods cannot possibly be elevated to "*suppression*"
- Section 28 of the Act, by its very nature posits, in a given set of facts and circumstances, the issuance of a SCN either under Section 28(1) or under Section 28(4) of the Act and not under both. Second SCN under section 28(4) of the Act issued based on the same facts, post the issuance of the first SCN under Section 28(1) could not be termed a "*Supplementary Notice*". The issue involved was dispute on classification of imported goods between assessee and the Department leading to a differential duty demand.
- For a change of opinion, a nexus requires to be established between the "change of opinion" and the material present before the assessing authority. Discovery of an inadvertent mistake or non-application of mind during assessment earlier would not be a justified ground to initiate proceedings on the basis of change in subjective opinion.

LIMITATION UNDER CUSTOMS FOR REFUND OF DUTY NOT APPLICABLE TO REFUND OF EDD

- The Delhi High Court in ***Sentec India Company Pvt Ltd Vs Asst. Commissioner of Customs Delhi & Ors***., has confirmed that a perusal of Section 27 would show that the same deals with refund of customs duty. It is abundantly clear that EDD is not in the nature of customs duty.
- The deposit of the EDD is itself to secure any customs duty which may later on be found to be payable, due to the allegation of under declaration of value on imports. However, when the said allegation of under valuation has been disproved by SVB after investigation and the Department has taken a view that there was no under-declaration, the substratum of the deposit of EDD itself no longer exists. This would then have to be refunded.
- The amount that was collected by the Assessing Officer in view of the Special Valuation Branch (SVB) proceedings is not a customs duty as is contemplated under Section 12 of the Customs Act, 1962, although such deposit was eligible to be appropriated towards the duty liability of the petitioner after final assessment of the Bill of Entry.
- The period of limitation for seeking refund of customs duty under Section 27 of the Customs Act, 1962, would not apply *with regard to* EDD

SCN AND ORDER TO BE SIGNED FOR THEM TO BE VALID

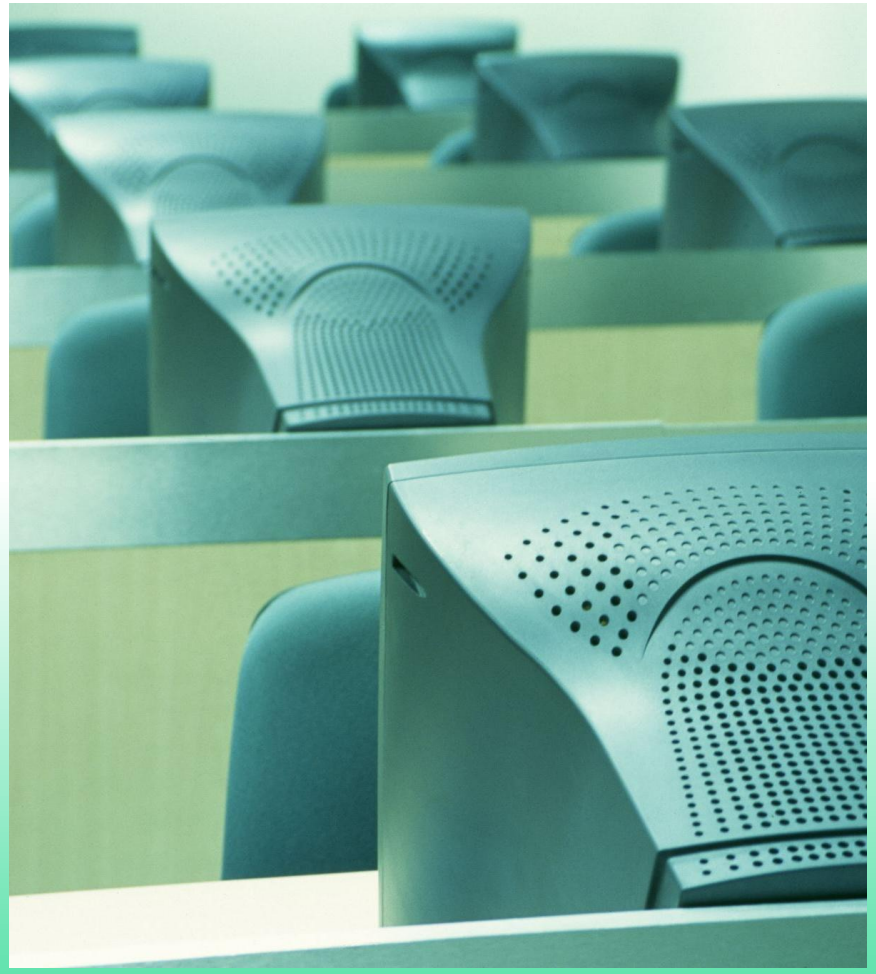
- The Telangana High Court in *M/s. Bigleap Technologies and Solutions Pvt. Ltd. and others Vs The State of Telangana and others* has confirmed that in both the statutory Forms namely DRC-01 and DRC-07, it is imperative to provide signature, name, designation, jurisdiction and address.
- When there is no difference between the Sections 73/74 and the Rules/Forms to carry out the provisions of those sections, the Rules supplement the Sections and do not supplant it. Therefore, once there exists a specific column earmarked for the signature on the forms, the said requirement becomes a statutory requirement.
- In every sub-rule of Rule 142 of the GST Rules, the law makers have used the word ‘shall’ for issuance of Statutory Forms which makes the issuance of Forms in prescribed form as mandatory. Since prescribed Forms as per Rule 142 need signature, such requirement must be held to be mandatory. In absence of signature, notice/order cannot be held to be a valid notice/order.



SCN AND ORDER TO BE SIGNED FOR THEM TO BE VALID

- When in the tax matters which are governed by all India statute, there is a decision of another High Court on the interpretation of a statutory provisions, it would be a wise judicial policy and practice not to take a different view barring, of course, certain exceptions.

- From the viewpoint of *comity* also, the provisions of the GST Act, GST Rules and Statutory Forms prescribed thereunder have to be interpreted in the same manner different High Courts have considered it. This is more-so, when Revenue could not make out any exception based on aspects of *per incuriam, sub silentio, obiter dicta* or concession, etc.



CONDITIONS FOR ARREST UNDER GST AND CUSTOMS – REASONS TO BELIEVE

- The Supreme Court in Radhika Agarwal Vs UOI & Ors., has confirmed that the there is a higher threshold for arrest of a person under Customs and GST as compared to powers under Section 41 of Code of Criminal Procedure. A person is said to have a “reason to believe” a thing, if they have sufficient cause to believe that thing but not otherwise. This represents a more stringent standard than the “mere suspicion” threshold provided under Section 41.
- The reasoning must weigh in why an arrest is being made in a specific case, particularly given the specific severity assigned to the offence by the legislature. The reasoning must also state how the monetary thresholds outlined in the Act are met.
- The “reasons to believe” must include a computation and/or an explanation, based on factors such as the goods seized, from which a conclusion of guilt can be drawn. This level of detail is crucial, as it facilitates judicial review of the exercise of the power to arrest.

CONDITIONS FOR ARREST UNDER GST AND CUSTOMS – REASONS TO BELIEVE

- The reasons to believe must be explicit and refer to the material and evidence underlying such opinion. There has to be a degree of certainty to establish that the offence is committed and that such offence is non-bailable. The principle of benefit of doubt would equally be applicable and should not be ignored either by the Commissioner or by the Magistrate when the accused is produced before the Magistrate.
- The “material” must be admissible before a court of law. This is because the designated officer is required to arrive at a conclusion of guilt based on the “material” examined and such guilt can only be based on admissible evidence.
- The arrest is to be made on the formulation of the opinion by the Commissioner, which is to be duly recorded in the reasons to believe. The reasons to believe **must be based on the evidence** establishing – to the satisfaction of the Commissioner – that the requirements of sub-section (5) to Section 132 of the GST Act are met. Failure to do so would result in an illegal arrest.

CONDITIONS FOR ARREST UNDER GST AND CUSTOMS – REASONS TO BELIEVE

- The power to grant anticipatory bail arises when there is apprehension of arrest. This power, vested in the courts under the Code, affirms the right to life and liberty under Article 21 of the Constitution to protect persons from being arrested. It is not essential that the application for anticipatory bail should be moved only after an FIR is filed, as long as facts are clear and there is a reasonable basis for apprehending arrest.

- The authorities must exercise due care and caution as coercion and threat to arrest would amount to a violation of fundamental rights and the law of the land. It is desirable that the Central Board of Indirect Taxes and Customs promptly formulate clear guidelines to ensure that no taxpayer is threatened with the power of arrest for recovery of tax in the garb of self-payment.

CONDITIONS FOR ARREST UNDER GST AND CUSTOMS – REASONS TO BELIEVE

- GST Acts ***are not a complete code*** when it comes to the provisions of search and seizure, and arrest, for the provisions of the Code would equally apply when they are not expressly or impliedly excluded by provisions of the GST Acts.

- A penalty or prosecution mechanism for the levy and collection of GST, and for checking its evasion, is a permissible exercise of legislative power. The GST Acts, in pith and substance, pertain to Article 246-A of the Constitution and the powers to summon, arrest and prosecute are ancillary and incidental to the power to levy and collect goods and services tax.

CONDITIONS FOR ARREST UNDER GST AND CUSTOMS – REASONS TO BELIEVE

- The Third Member on the Bench i.e. Justice Bela M Trivedi has however sought to temper down the power of Judicial Review by seeking to restrict it to exceptional cases where there appear to be misuse of power by concerned Officers or arrest is with malafide intent or without jurisdiction or contrary to law.

- She was of the view that sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review.

- One can only hope that the view of one Member on the Bench is not used as a pretext by Revenue to continue to arrest even where such arrest is not mandated by law.

SELF ASSESSMENT NOT AN EXCUSE TO INVOKE EXTENDED PERIOD OF LIMITATION

CESTAT Allahabad in **M/s U. P. State Construction & Infrastructure Development Corporation Ltd Vs Commissioner of Central Goods & Service Tax, Kanpur** has confirmed that Self-assessment on the part of the taxpayer **is only a facility and cannot and must not be treated as a dilution of the statutory responsibility** of the Central Excise Officers in ensuring correctness of duty payment. No doubt, audit and anti-evasion have their roles to play, but assessment or confirmation of assessment should remain the primary responsibility of the Central Excise Officers.

Intentional and willful suppression of facts cannot be presumed because (a) the Appellant was operating under self-assessment or (b) because the Appellant did not agree with the audit; or (c) because the Appellant did not seek any clarification from the Revenue; or (d) because the officer did not conduct a detailed scrutiny of the Returns.

Note: This will come as a relief to taxpayers as suppression or intent to evade is alleged many a time just to sustain demand within extended periods.

CONSOLIDATED SCN CANNOT REDUCE TIME TO ASSESSEE TO RESPOND

- The Kerala High Court in *JOINT COMMISSIONER (INTELLIGENCE & ENFORCEMENT) THIRUVANANTHAPURAM & ANR. Vs M/S. LAKSHMI MOBILE ACCESSORIES* has confirmed that the statutory period available for an assessee to put forth its contentions against the show cause notice in an effective manner cannot be curtailed by an unnecessary act on the part of the Department in issuing a consolidated show cause notice that includes therein a financial/assessment year in relation to which the period for passing a final order expires earlier.
- Issuing a consolidated show cause notice covering various financial/assessment years would cause prejudice to an assessee who would not get the full period envisaged for adjudication under the Statute, if that period is circumscribed by the limitation period prescribed in relation to an earlier financial/assessment year.

CONSOLIDATED SCN CANNOT REDUCE TIME TO ASSESSEE TO RESPOND

- Where a consolidated notice for various financial/assessment years is issued, the total amount of tax, penalty etc. determined as payable by the assessee would be in respect of all the financial/assessment years put together.
- That would go against the provisions of sub sections (9) and (10) of Section 74 which specifically refer to the "financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates" while stipulating the last date for passing the adjudication order. In the event of consolidated Order being adverse to the assessee, the fee/pre-deposit required to be paid by an assessee for preferring a statutory appeal would also be higher. This could not have been the Scheme of the statutory provisions which are expected to adhere to principles of fairness in taxation.

BAGGAGE RELATED RESTRICTION ON IMPORT NOT APPLYING TO JEWELLERY WORN

- The *Madras High Court in Thanushika Vs The Principal Commissioner of Customs (Chennai)* has confirmed that the jewellery worn on person will not come under the purview of baggage.
- A Rule Making Authority has to make the Rules within the scope of the parent Act and no Rules shall exceed beyond the scope of the parent Act since it would be ultra vires. The Baggage Rule, 2016 will apply only to the baggage and the Rule made to the extent that the article “carried on the person” (in Rule 3) will not include baggage, was in excess of powers conferred by the Rule making Authority and would be ultra vires provisions of Section 79 of Customs Act 1962.
- Moreover, when an affidavit contains a positive averment of facts or other details, the counter affidavit should explain as to why such a fact or detail pleaded in the affidavit ought not to be accepted.

BAGGAGE RELATED RESTRICTION ON IMPORT NOT APPLYING TO JEWELLERY WORN

- The case pertained to confiscation of Thaalikodi or Mangalsutra of the passenger, a Citizen of Srilanka, by Customs Officers at Chennai airport on the ground that value exceeded limits indicated in Rule 3 of Baggage Rules 2016. While affidavit filed by petitioner had allegations against the customs officer , there was only a general denial from customs without the counter affidavit going into specifics of each allegation.

- The confiscation order was said to have been passed purely in violation of principles of natural justice and hence, the same was quashed.

REFUND TIMELINE RUNS FROM DATE OF CLARIFYING CIRCULAR

The Government of India has clarified (vide Circular No.178/10/2022-GST dated 03.08.2022) that the forfeiture of salary or payment of bond amount in the event of an employee leaving the employment before the minimum agreed period, was not taxable, in as much as, there was no supply of service by the employer in this situation and therefore, the recovery of notice pay by the employer was not taxable under the CGST Act.

The period of two years, for filing a claim, within the meaning of Section 54 of the CGST Act has to be computed from the date of the Circular i.e. from 03.08.2022 where the refund is claimed by taxpayer based on this circular, in respect of tax paid earlier from his own pocket.

Just as citizens have to diligently pay tax which are legally due to the State, equally, as a corollary of the aforesaid statement, the State is not entitled to unjustly enrich itself with amounts collected from citizens which are not sanctioned as “Tax” within the meaning of Article 265 of the Constitution of India.

AVAILING GST ITC UNDER WRONG HEAD DOES NOT RESULT IN REVENUE LOSS

The Kerala High Court has taken a view that the input tax credit available in the electronic credit ledger should be considered as a pool of funds designated for different types of taxes, such as IGST, CGST and SGST. The said credit ledger represents a wallet with compartments for IGST, CGST and SGST funds and the entire wallet has to be taken into consideration, instead of individual compartments.

Section 73 of the GST Act is attracted only when tax has not been paid or when there is a short payment or when any amount has been erroneously refunded, or where any input tax has been wrongly availed or utilised for any reason.

Where CGST/SGST was availed instead of IGST, the mistake committed by the petitioner was at the most a technical one. The alleged excess claim of CGST and SGST was due to the availability of eligible IGST credit. Since the GST system treats the electronic credit ledger as a unified source, there cannot be a wrongful availing or utilization of input tax credit in the instant case. There cannot also be any loss of revenue as well, arising from the utilization of CGST/ SGST instead of IGST.

OWNERSHIP OVER CAPITAL GOODS NOT A CONDITION TO CLAIM EXEMPTION ON IMPORT BY 100% EOU

- There can be no doubt that the word ‘removal contemplated shifting of a thing from one place to another. In other words, it contemplates physical movement of goods from one place to another.”
- Where there was no shifting of the goods/moulds invoiced to customer in Indonesia from the factory i.e. 100% EOU, with the goods remaining in the factory for use in manufacture of goods i.e. automotive lightings for export, there is no removal.
- There is no deeming provision regarding sale or change of title as also amounting to removal. Accordingly, sale of capital goods imported under Notification 52/2003 Customs without physical removal from the EOU cannot be treated as deemed removal of the goods as per CESTAT Chennai.
- Where there has been no physical movement of goods outside the EOU, no removal / clearance of the impugned capital goods took place. No duty is required to be paid. A deeming provision should be express and cannot be assumed.

NOTIFICATIONS AND CIRCULARS

Reference	Particulars
Notification 11/2025 Customs (NT) Dated 17.02.2025	Introduces Customs (On Arrival Movement for Storage and Clearance at Authorised Importer Premises) Regulations, 2025. Indicates the conditions and procedure to be followed by the Importer who seeks to avail the facility of clearance of goods at Authorised Importer Premises.
Instruction 01/2025 – Customs Dated 28.02.2025	Clarifies that it is not open to the field formations to probe whether or not certain exempted inputs have been used in the manufacture of the export goods in sanctioning AIR Duty drawback to exporters.
Notification 09/2025 CT Dated 11.02.2025	- Application for Enrolment in Form GST ENR 03 under Rule 138(3) effective from 11.02.2025 - Table 6.1 of Form GSTR 3B substituted effective from 11.02.2025 (adjustment on negative liability of previous tax period allowed) - Rule 39(1) on ISD credit distribution substituted effective from 01.04.2025

NOTIFICATIONS AND CIRCULARS

Reference	Particulars
Notification 09/2025 CT Dated 11.02.2025	- Changes made to Form GSTR 7 effective from 01.04.2025 - Changes made to Form GSTR 8 effective from 01.04.2025
Instruction 02/2025 GST Dated 07.02.2025	Clarifies that where the taxpayer has paid the full amount of tax and only interest and/or penalty is in disputed by the taxpayer, then he is eligible to avail the benefit of Section 128A of the CGST Act. On the similar pattern, it is felt that just because the department has gone in appeal or is in the process of filing an appeal (on interest or penalty issue), a taxpayer who is otherwise eligible for availing the benefit of section 128A, should not be denied the benefits. Further the intention of the said provision is to reduce litigation and a taxpayer should not be denied the benefit of the provision on mere technicalities.

NOTIFICATIONS AND CIRCULARS

Reference	Particulars
Trade Notice 29/2024-25 (DGFT) Dated 11.02.2025	Clarifies that Replies to Show Cause Notices and other information requests during proceedings under the FTDR Act such as the process of Adjudication, Appeal and Review may be compulsorily made online through the DGFT portal. Paper-based submissions will no longer be entertained. Payment of penalties levied by orders under the FTDR Act shall be mandatorily made against the corresponding online ECA/Appeal or Review file as applicable. The use of the Miscellaneous payments feature may be avoided to ensure proper accounting of penalties paid and to avoid unintended future action. Applicants may refer ECA related help manuals available on the DGFT website -- > Learn -- > Application Help & FAQs to comply with the above requirements of digital submissions.

RERA REGISTRATION CANNOT BE AVOIDED WHERE COMPLETION CERTIFICATE WITHHELD

The Maharashtra REAT in ***Nirmal Ujwal Credit Co-operative Society Limited Nagpur Vs Pranali W/o Ravindra Putterwar (Appeal U-7/2019 in SC100000728/2019 Decided on 24.02.2025)*** has levied a penalty on the promoter for failing to register under RERA.

While the promoter had claimed completion of project on 24.03.2012 based on certificate of completion from its Architect, the Nagpur Municipal Corporation had not issued any certificate in this regard despite the promoter having applied for it.

The promoter had sought protection under Section 263(2)(b) of Maharashtra Municipal Corporation Act 1949 which indicated that certificate is deemed to be granted if the commissioner had failed to indicate his refusal to grant the same within 21 days of receipt of notification of completion. The Promoter had continued to sell units after introduction of RERA.

The REAT relied on the reply by Corporation which had indicated unauthorised construction by promoter contrary to law.

The REAT confirmed penalty on promoter u/s 59 of RERA law as the completion certificate was pending from NMC.

SECTION 18 RELIEF ON DELAY ON POSSESSION AND PAYABLE EVEN ON PROJECT COMPLETION

- The Maharashtra REAT in *Mr. Mikunj Kiran Joshi vs Proper Developers Pvt Ltd (Appeal AT No. AT006000000021265 of 2019 decided on 3rd February 2025)* has confirmed that Section 18 relief on delayed possession of unit to allottee cannot be denied just because project has been completed and allottee has taken possession of his unit.

- Relief not just restricted to incomplete projects.

- Date of possession indicated on agreements can only be altered or moved with consent of allottee and giving letters which seek from the allottee the option of choosing to exit project or accept delayed possession would not be valid and would still involve interest liability for the promoter for delay.

SECTION 18 RELIEF ON DELAY ON POSSESSION AND PAYABLE EVEN ON PROJECT COMPLETION

- Delay in seeking approvals of competent authorities or difficulty in sourcing materials for construction, would not result in waiver of interest liability (SBI Highest MCLR + 2%) in the hands of the promoter as these would not be *force majeure* factors.

- The REAT also ordered refund of additional amount collected from allottee by promoter towards increase in carpet area as the promoter had included deck area and flower bed area in carpet area which was against mandate in RERA and also because no consent had been obtained from allottee for any change in sanctioned plans. Moreover, there was no increase in carpet area of flats in this case, if open areas were excluded.

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End of Presentation

Thank You!!

Contact Details:

CA. Srikantha Rao T – Mob. 9986406333

BO: 4/93Q, Veera Towers, Krishnaswamy Road, Coimbatore, Tamil Nadu, 641012

HO: No. 458 & 459, Second Floor, MP Arcade, 18th Main Rd, 4th T Block East, Jayanagar, Bengaluru, Karnataka 560041

Case laws can be accessed by clicking on underlined headings on each slide.