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18% GST on Legal Fees?

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EDITORIAL



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When legal fee meets GST

Entry 2(zm) of the notification no.12/2017 dated 28.06.2017 from the Ministry of Finance **defines legal service as “any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority”.**

Further in notification no.13/2017 (Serial no.2) the Ministry of Finance clarified that legal services would come under the reverse charge mechanism in the following cases **“Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity”.**

Therefore, GST on legal fees for lawyers are to be borne by clients on an RCM (Reverse Charge Mechanism) basis. Reverse charge is a mechanism where the recipient of goods and services is liable to pay GST instead of the supplier; in our case, the clients are bound to pay GST on the legal services availed. **Section 9(3) of the GST Act 2017** empowers the government to notify certain categories to be taxed on an RCM basis.

Legal services come under the 18% GST slab. GST is chargeable when a lawyer or law firm provides legal services to a business entity having an aggregate annual revenue of Rs.20 lakhs or more in the previous financial year. However, there are certain exemptions provided under Entry 45 of notification no. 12/2017 by the Ministry of Finance, which are as follows: -

- i) Legal services to an individual other than a business entity
- ii) A business entity with a combined annual revenue of less than 20 lakhs in the previous financial year
- iii) Legal services by advocates or partnership of advocates to other advocates and partnership of advocates.

An advocate individually earning legal fees above Rs.20 lakhs in a given financial year comes under the ambit of GST and must register himself. If an advocate is undertaking legal services inter-state, GST registration is mandatory, irrespective of the threshold limit.

Advocates providing legal services for the Government or Courts or Tribunals need not register themselves under GST as special exemption is provided to them. Further advocates charging less than Rs.1000 as legal fees to any person per day is exempt from registration.

It is important for lawyers and advocates to maintain proper records and invoices of their transaction with clients to avoid any dispute with the GST authorities. If legal service is a noble service, shouldn't GST be removed or at least reduced? It would be time to consider the importance of legal services and remove significant taxation on legal services.





LEGAL CRISPS

Leniency in punishing bigamy?

-Seethala B

The Supreme Court of India recently, in the case of ***Baba Natarajan Prasad Versus M. Revathi [2024 INSC 523]***, ordered the sentence for a man and a woman convicted of bigamy under Section 494 of the Indian Penal Code, 1988, which was initially sentenced to imprisonment till the rising of the Court, the bench increased their sentence to six months, taking into account the seriousness of the offence.

The Court emphasized that punishment must be directly proportionate to the nature and the magnitude of the offence. It rejected the argument that Courts could impose leniency in punishment rather than prescribing the minimum sentence for bigamy. The Court cited ***State of Karnataka v. Krishna alias Raju [(1987) 1 SCC 538]***, highlighting the punishment as unconscionably lenient or a 'flea-bite' sentence. Courts must take into consideration the nature of the offence, circumstances, the degree of deliberation and the offender's antecedents, etc.,

The Bench observed that **Bigamy is a serious offence, and the original sentence did not align with the rule of proportionality in punishment.** The Court stated that excessively lenient sentences undermine public confidence in the criminal justice system and result in a marriage of justice. While sentencing discretion exists, it must align with the offence's severity to maintain societal order and civic sense.

The Court modified the sentence as the couple has a 6 year old child, to six months of simple imprisonment each and reduced the fine from Rs.20,000/- to Rs. 2,000/-. The accused must surrender to serve their remaining sentence, with the second accused surrendering first, followed by the first accused, within two weeks of the second's release, considering their 6 year old child. Hence, it allowed the appeal and stated that **this arrangement should not be treated as a precedent as it was ordered in these special circumstances.**





Is it fair to sing only to one music company?

-Nithyaparvathy R G

Case: Sajjan Kumar Duhan and another v. Shehnaz Kaur @ Shehnaaz Gill

Citation: [2024 LiveLaw (PH) 254]

The Punjab and Haryana High Court upheld the appellate court's decision that singer Shehnaz Gill cannot be compelled to sing exclusively for one music studio under a contract signed in 2019. After considering the arguments, the Court stated, "It is established principle of law that negative covenants, operative during the period of employment when the employee is bound to serve the employer exclusively, are not to be regarded as restraint of trade, and therefore, do not fall under **Section 27 of the Indian Contract Act, 1872.**"

It is also widely recognized that the freedom to enter into contracts should be based on equality and the parties' bargaining power. The court highlighted the inequality in bargaining power between Gill, a budding singer, and the music label with a more substantial reputation.

The Court noted that the defendants did not respond to Gill's termination notice of the contract in December 2020. "As per terms of the agreement, the defendants were to make four official Audios and Videos of plaintiff in each year. Defendants neither took any steps nor gave any notice to the plaintiff for performing her part of the contract. The defendants seemed to have acquiesced in December 2020 to the notice of the plaintiff, whereby the plaintiff informed the defendants that she had rescinded the agreement. Defendants did not directly and indirectly interfere in the working of the plaintiff for the said period and allowed the plaintiff to work independently. The silence of defendants prima facie establishes that they took the Agreement to have been rescinded, as conveyed by the plaintiff."

The court dismissed the music company's appeal against the appellate court's decision, stating that the contract terms were unjust and unenforceable. **The judgement emphasized the significance of equality in contractual arrangements and the adverse consequences of unfair conditions on the weaker party.**





CASE CHRONICLE

Advocates cannot indulge in consciously misstating or concealing material facts within their knowledge

-Sowmiya R K

The case of ***NKGSB Bank Ltd. vs Subik Chakravarty***, [2022 LiveLaw (SC) 212] highlights the longstanding role of advocates as court officers. As noted in the Virginia Law Review, “The duties of the lawyer to the Court spring directly from the relation that he sustains to the Court as an officer in the administration of justice. The law is not a mere private calling but a profession that has the distinction of being an integral part of the state’s judicial system. As an officer of the Court, the lawyer is, therefore, bound to uphold the dignity and integrity of the Court; to exercise at all times respect for the Court in both words and actions; to present all matters relating to his client’s case openly, being careful to avoid any attempt to exert private influence upon either the judge or the jury and to be frank and candid in all dealings with the Court”.

The main issues involved in this case were that: Can District Magistrates (DM) or Chief Metropolitan Magistrates (CMM) appoint advocates to take possession of secured assets under **Section 14(1A) of the SARFAESI Act, 2002 (“The Act”)**? and the interpretation of "officer subordinate to him" in Section 14(1A) of the Act. The Bombay High Court ruled against such appointments, interpreting "subordinate" in an administrative sense. Conversely, the High Courts of Madras, Kerala, and Delhi have allowed these appointments, viewing advocates as judicially subordinate to the DM/CMM.

The concept of Advocate Commissioners is not novel. Both the Code of Civil Procedure and the Code of Criminal Procedure provide for appointing advocates as Court Commissioners for various administrative and ministerial tasks. This precedent supports the argument for allowing advocate appointments under the SARFAESI Act.

It is argued by the appellant’s Advocate that taking possession is a ministerial act delegable to an advocate commissioner and that the DM/CMM's powers include implied authority to use all reasonable means to execute their mandate effectively. Advocates for the opponent argued that strict adherence to the statutory language, arguing the legislature intended to limit appointments to administrative subordinates.

The Supreme Court's ruling will significantly impact the implementation of the SARFAESI Act, defining the scope of advocate involvement in secured asset recovery and potentially affecting the efficiency of debt recovery processes for financial institutions.





BEYOND THE OBVIOUS

Formal equality and proportional equality

-Sri Sai Kamalini M S

The Concept of Equality is essential for every country's success. The concept of equality is enshrined in Article 14 of the Indian Constitution. There are various concepts of equality that have been developed based on the precedents. Though everyone is equal in law, "there are certain differential classifications allowed when there is a classification founded on intelligible differentia". This was also stated in the case of ***Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar, 1958 AIR 538.***

The distinction between Formal equality and proportional equality, as elucidated in the case of ***M. Nagaraj & others Vs. Union of India, (2006) 8 SCC 212***, is crucial. Proportional equality is equality "in fact", while formal equality is equality "in law". This distinction is fundamental to understanding the nuances of equality in the Indian legal context.

The idea of formal equality states that there should be no differences; everyone must be treated in a similar way and must be provided with the same opportunities irrespective of any differences like gender, caste, and religion. This cannot be applied in India even though Article 14 guarantees equality, as there are reservations made in various aspects of people's lives, like employment opportunities and access to educational institutions, for the benefit of minority communities and economically weaker sections.

The concept of proportional equality is important for the development of society, and according to this concept, "the State is expected to take affirmative steps in favour of disadvantaged sections of the society within the framework of liberal democracy." This concept was also discussed in the case of ***Janhit Abhiyan v Union of India, WP (C) 55/2019.***

MEET THE TEAM



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