Dimensions – 27th Edition

Rulings / Judgments under GST era:

1. M/s Bajaj Finance Limited - Maharashtra[1]	
Issue for Consideration	Whether the bounce charges collected by the Appellant should be treated as a supply under the GST regime?
Discussion & Order	**Discussion:** • The Appellant is a Non-Banking Financial Company ('NBFC') and is engaged in providing various types of loans to the customers. • The repayment of outstanding dues / Equated Monthly Instalments ('EMI') is done through cheque / Electronic Clearing System ('ECS') / National Automated Clearing House ('NACH'). In case of dishonour, the Appellant collects bounce charges from defaulting customers. • The Authority for Advance Ruling ('AAR') held that the bounce charges collected by the Appellant amounts to supply of services under entry 5(e) of Schedule II to the CGST Act and are liable to GST. Aggrieved by the said ruling, the Appellant approached the Appellate Authority. • The Appellant contended that bounce charges should not be regarded as supply on the following grounds: - The bounce charges are merely damages for the breach of contract and therefore the same cannot be treated as a consideration. Thereby, the same do not amount to a supply under section 7 of the CGST Act; - The entry 5(e) of Schedule II is not applicable since there is no obligation upon the Appellant to tolerate the act of non-payment or delayed payment by the borrower;

[1] Order No. MAH/AAAR/SS-RJ/25/2018-19 dated March 14, 2019

	- In terms of section 15(2)(d) of the CGST Act, penalty for delayed payment of consideration is to be included in the value of supply. Therefore, bounce charges would be treated at par with interest on loans and hence, the said charges would also be exempt from GST; - Reliance was placed upon various international rulings wherein it was held that damages received by way of compensation for termination or breach of a contract should not be treated as a supply. • The Appellate Authority observed the following: - The act of tolerating the dishonour of EMI / cheque would be construed as supply of service in terms of section 7(1)(d) of the CGST Act read with Schedule II; - Various clauses of the loan agreement stipulate that the Appellant has the right to recall loan / cancel the agreement / initiate legal proceedings against the defaulter. However, the Appellant instead of taking recourse to remedial provisions is tolerating the act of bounce / dishonour of cheque / ECS / NACH which is covered by entry 5(e) of Schedule II; - As per clause 3(a) of the said agreement, the Appellant is entitled to recover bounce charges from defaulters whenever there is an act of dishonour. Hence, it can be said that the activity of tolerance is against consideration; - As per entry 5(e) of Schedule II, *'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'* shall be treated as supply of service. All the three expressions of the aforesaid entry are separated with semicolon followed by the word 'or' which shows that they are not inextricably connected. Therefore, the Appellant's interpretation by connecting the expression *'agreeing to obligation'* with rest of the two expressions is not a correct legal interpretation; - Interest is exempt under GST vide sl. no. 27 of notification no. 12/2017-C.T.(Rate) dated June 28, 2017. The term 'interest' as defined under the said notification does not include any service fees or other charges in respect of the money borrowed or debts incurred. Accordingly, the bounce charges are not covered under the definition of 'interest'; - The various international rulings relied by the Appellant are not binding on the Authority. **Order:** The bounce charges recovered by the Appellant from their borrowers on account of dishonour of the payment instruments will attract GST and therefore there is no reason to interfere with the ruling pronounced by the AAR.
Dhruva Comments / Observations	• The Appellate Authority has examined the subject transaction under section 7(1)(d) of the CGST Act. However, it is relevant to note that the said subsection was omitted along with insertion of section 7(1A) retrospectively w.e.f. July 1, 2017, vide the Central Goods and Services Tax (Amendment) Act, 2018. On this sole ground, it needs to be

	deliberated as to whether the Order requires a reconsideration being an error apparent on record. • The Appellate Authority has stated that the expressions mentioned under the entry 5(e) of Schedule II are separated by a semicolon and therefore they are not inextricably connected. However, reference to the Schedule II indicates that the expressions under the said entry are separated by a **comma** and not a semicolon. Interestingly, from an interpretation perspective, the Education Guide issued under erstwhile Service tax regime has read the prefix *'agreeing to the obligation'* as applicable to all the three expressions. • A similar ruling was given by the Maharashtra Appellate Authority [Order No. MAH/AAAR/SS-RJ/24/2018-19 dated March 14, 2019] in the Appellant's own case wherein it was held that the penal charges cannot be construed as interest on the following basis: - The Appellant recovers penalty for delayed payment of EMI under the term 'Penal Charges' which does not get covered under the term 'interest' as defined under the aforesaid notification; - Interest cannot be levied on interest but only penalty can be levied on interest; - The penalty charges are penal in nature since the agreement provides for prosecution in case of non-compliance of the agreement. • Interestingly, recently the CBIC vide circular no. 102/21/2019-GST dated June 28, 2019 clarified that: - With respect to lending activity, levy of additional interest / penal interest on account of delay in payment of instalments should get covered under sl. no. 27 of notification no. 12/2017-Central Tax dated June 28, 2017 and should be exempt from GST; - Levy of any service fee / any other charges does not qualify as interest and should be subjected to GST.

2. M/s HP India Sales Private Limited - Maharashtra[2]	
Issue for Consideration	Whether supply of ElectroInk along with consumables used in HP Indigo digital printing press machines is a composite supply or mixed supply?
Discussion & Order	**Discussion:** • The Appellant is engaged in providing printing supplies to be used in HP's Indigo press machines ('machines'). The Appellant imports ElectroInk along with consumables (i.e. oil, binary ink developer, bib, blanket, etc.) to be used in the machines. • The Appellant has appointed reseller/ distributors for supply of ElectroInk with consumables to the customers of the machines. • The value for supply of the said goods is based on a "per click basis" i.e. the number of prints taken from the machines.

[2] Order no. MAH/AAAR/SS-RJ/21/2018-19 dated February 19, 2019

- The Appellant had made an application to the Authority for Advance Ruling ('AAR') seeking clarification for the classification of ElectroInk with consumables and determination of time and value of supply of the said goods. The AAR had ruled that:
  - The goods supplied constitute mixed supply and not composite supply since the supply of the goods are not naturally bundled and they are not supplied in the ordinary course of business, one of which is a principal supply;
  - The said supply is a continuous supply of goods where the time of supply should be the successive issue of account statements and the value should be as declared in the statement.
- The Appellant being aggrieved by the ruling given in respect of mixed supply has approached the Appellate Authority. The Appellant contended that the supply of ElectroInk along with consumables used in machines is a composite supply on the following grounds:
  - The reseller / distributor has the option to select the 'Tier (click)' or 'A-la-Carte' business model. Under the Tier model ElectroInk and consumables are to be supplied together. Such a supply under the Tier model cannot be regarded as compulsorily bundled but is naturally bundled. It is a normal business practice to supply such goods together;
  - The charges for the Tier model are recovered on a per click basis. Thus, the supplies will qualify as naturally bundled since a single price is recovered for all the goods supplied;
  - The supplies under the Tier model are naturally bundled in the ordinary course of business since 99.14% of the sales are of such models;
  - Reliance was also placed upon the CBIC flyer on 'composite supply' wherein various parameters were provided to determine the whether a supply can be regarded as a composite supply;
  - ElectroInk supplied is predominant element in the bundle and hence, it is the principal supply;
  - Supply of ElectroInk and consumables cannot be regarded as mixed supply since these are not individual supplies and are required to be consumed together to obtain desired print output.
- The Appellate Authority observed as follows:
  - All the products are important for the printing to take place and the printing cannot only happen with ink and thereby ink cannot be regarded as principal supply;
  - The Appellant has not given any evidence that the said model is an industry practice. Merely giving an option to customer of Tier model does not make it an industry practice.

Order:

Supply of ElectroInk with consumables is a mixed supply and not a composite supply.

Dhruva Comments / Observations	Taxability of a transaction as a mixed supply or composite supply is a vexed subject and needs to be examined on a case-to-case basis and would depend upon several aspects like market recognition of products / services, customer preference, industry practice, etc.

3. M/s Indian Institute of Corporate Affairs - Delhi[3]	
Issues for Consideration	• Whether GST would be leviable on the money received in order to discharge Corporate Social Responsibility ('CSR')? • If yes, whether the said activities could be exempted from payment of GST under the specific entries of the notification no.12/2017-Central Tax (Rate) dated June 28, 2017 ('exemption notification')?
Discussion & Ruling	**Discussion:** • The Applicant is an entity registered under section 12AA of the Income-tax Act, 1961. It conducted a comprehensive survey in villages of specified states and submitted a detailed project report to Agriculture Insurance Company of India ('AICL') for the broad activities to be undertaken for discharge of their CSR, namely: - Installation, transportation, maintenance and upkeep of solar lights / water pumps; - Construction of toilets as per Government's Swachh Bharat Gramin Abhiyan; - Healthcare encompassing doctor consultancy and basic medicine supply. • AICL gave consent for installation of solar water pumps / lights and construction of toilets by entering into a Memorandum of Understanding ('MoU') with the Applicant. AICL would pay ₹ 20.35 crores to the Applicant for the execution of the project. This amount would include the actual cost and additional compensation for management of the project. • The Applicant contended as follows: - There is only movement of money between the Applicant and AICL and money has been excluded from the definition of 'goods' under the GST law; - The movement of money cannot be construed as 'consideration' under the GST law as no supply is being made in return to AICL, since all the facilities / structures / benefits arising out of these activities would be used and owned by the beneficiaries and not by AICL; - Reliance was placed upon circular no. 127/09/2010-ST dated August 16, 2010 wherein it was stated that when grant-in-aid are received by charitable organisation for imparting training to poor youth, then, such grants cannot be regarded as consideration since such grants are not specifically meant for a person receiving the training but are for a charitable cause. Further, there is no relation between the donor and the trainee, other than of humanitarian interest; - The activity being undertaken is without any consideration and accordingly, would not fall within the definition of 'supply';

[3] Order no. 08/DAAR/2018 dated June 28, 2019

	- Even if these activities were regarded as 'supply', they would be exempt from payment of GST under sl. no.1 (i.e. services by way of 'charitable activities') and sl. no. 76 (i.e. *services by way of public conveniences such as provision of facilities of toilets*) of the exemption notification. • The Authority observed as follows: - The definition of 'consideration' under GST law includes any payment made by the recipient or any other person, hence, it would include the amount paid by AICL, even if the supplies are received by beneficiaries and not by AICL; - The MoU specifies the details of beneficiaries and the guidelines to ensure that the services are provided to them; - There is a direct link between the amount paid and the supply of taxable services by the Applicant to AICL, as the MoU clearly provides that the amount is to be paid for installation of solar pumps/lights and for construction of toilets. Hence, AICL has not donated a lump sum amount to the Applicant for carrying out the activities which the Applicant may be perusing; - The aforesaid activities are not specifically covered within the said paras of the exemption notification. **Ruling:** The amount received would be leviable to GST and the activities would not be covered within the exemption notification.
Dhruva Comments / Observations	• At present, various charitable organisations receive funds from corporate houses under their CSR obligations. It would be incumbent on the charitable organisations to undertake a detailed review of grants received / activities undertaken and assess whether or not the same amounts to "supply" so as to trigger GST implications. • Further, various rulings have already asserted that exemption would not be merely available over registration under section 12AA of the Income-tax Act, 1961 but need to satisfy the defined parameters for 'charitable activities' in order to claim exemption.

4. M/s Sabre Travel Network India Pvt Limited - Maharashtra[4]	
Issue for Consideration	Whether marketing, promotion and distribution services provided by the Appellant qualify as intermediary services?
Discussion & Order	**Discussion:** • The Appellant is a subsidiary of Sabre Asia Pacific Pte. Ltd. ('Sabre APAC'). Sabre GLBL Inc., affiliate of Sabre APAC, and Sabre India have developed a global distribution system which uses a Computer Reservation Software ('CRS') for airline seat reservations, scheduling, booking of air, car and hotel services, automated ticketing and fare displays etc.

[4] Order No. MAH/AAAR/SS-RJ/30/2018-19 dated April 10, 2019

- Sabre GLBL Inc. has granted Sabre APAC a non-exclusive right to market and promote the CRS for specified Asia Pacific jurisdiction. The Appellant has obtained a non-exclusive, royalty free right and license from Sabre APAC to distribute CRS software in India by virtue of a Marketing Agreement. Following services are provided by the Appellant under the Marketing Agreement:
  - Marketing services including advertising, identifying potential customers and business opportunities, demonstrating offerings;
  - Consultancy and provision of information services;
  - Marketing support services including PR, promotions, sponsorships, events etc.;
  - Any other service necessary to be performed under the said agreement.
- The Appellant raises a consolidated monthly invoice (cost *plus* mark-up) for all the services provided to Sabre APAC. Fee is received in convertible foreign exchange in accordance with the local transfer pricing laws.
- The Appellant had sought an Advance Ruling to determine the taxability of services rendered under the Marketing agreement. The Authority for Advance Ruling ('AAR') answered in negative, ruling that the marketing, promotion and distribution services are subject to GST. Aggrieved by the said ruling, the Appellant approached the Maharashtra Appellate Authority for Advance Ruling ('Appellate Authority').
- The major grounds of appeal taken by the Appellant to negate intermediary services are as under:
  - The contours of digital marketing are different from conventional marketing and sales activity. Further, the activities of sales promotion and marketing support are undertaken to advance business of Sabre APAC in India. Use of digital infrastructure for marketing cannot be construed to be an activity undertaken as an agent or broker and cannot be regarded be as facilitation of service;
  - The Marketing Agreement clearly states the relationship between the Appellant and Sabre APAC is on principal to principal basis. Further, the reimbursement is dependent on the entire cost of operation and not on the generation of sales;
  - The Appellant doesn't participate in the negotiation process and only acts as a communication channel. The acceptation and rejection of a potential customer/ subscriber is at the sole discretion of Sabre APAC;
  - Role of the Appellant is to popularise the brand of Sabre APAC by making use of the advertising and promotion techniques and to induce the potential customers to show interest in the product;
  - The term 'Intermediary' is intended for participation of three parties i.e. supplier, recipient and a facilitator. The relationship between Appellant and Sabre APAC is on a principal to principal basis, and limited promotion and marketing of CRS in India. Ownership of the software cannot be the basis to decide whether services provided can be covered within the ambit of intermediary or otherwise;

- The services provided by Appellant confirms or satisfies the conditions laid down to qualify as an export of services;
- A bundle of services is provided by the Appellant in an integrated manner. The supplies of consultancy and support services are supplementary to the main supply of marketing and promotion services. Considering the nature of services, it falls within the ambit of composite supply of services wherein marketing of CRS is the principal activity. Further, various services provided under the Marketing Agreement are naturally bundled and supplied in conjunction with each other.

- The Appellate Authority observed as under:
  - The marketing and promotional activities are aimed at creating customer base for Sabre APAC to augment business in India by identifying the potential customers, thereby enhancing the business opportunities for Sabre APAC;
  - The scope of marketing and promotional services casts responsibility on the Appellant to identify potential subscribers for Sabre APAC. Marketing support and consultancy services for the CRS shall arise when Sabre APAC accepts the potential subscriber based on the analysis provided by the Appellant;
  - Perusing the nature of services provided it was observed that the Appellant is merely facilitating supply of Online Information and Database Access and Retrieval ('OIDAR') services provided by Sabre APAC to the end subscribers in the capacity of an agent since it is the Appellant who identifies the subscriber and arranges provision of such OIDAR services. On the contrary, had the Appellant not played its role in the given arrangement, there shall be no provision of OIDAR services by Sabre APAC to the end subscribers;
  - Placing reliance on the definition of Intermediary and examining the term 'agent', the Appellate Authority also observed that the Appellant is not providing OIDAR services on its own account but is actually providing them on behalf of Sabre APAC, the owner of the CRS. Further, it is acting as an '*agent'* of Sabre APAC and arranging such services between the customer and Sabre APAC, thereby falling within the ambit of intermediary services;
  - It was also observed that the Marketing Agreement was drafted in a way to negate the principal-agent relationship and the nature of services indicate that the Appellant is acting as an intermediary in the instant transaction;
  - The arguments of the Appellant i.e. provision of digital infrastructure, fixed consideration, etc. being parameters to judge whether services are provided in capacity of an intermediary, are not relevant since the Appellant has been classified as an intermediary solely based on the services provided by them;
  - Appellate Authority agreed with the Appellant to consider the activities undertaken as Composite supply. Further, the activities i.e. advertising, PR, promotions, sponsorship, events etc. are ancillary to the principal nature of supply i.e. intermediary services.

	Order: The services provided by Appellant is in nature of Composite supply with the principal supply being that of intermediary services.
Dhruva Comments / Observations	• A similar ruling was pronounced by the Maharashtra Appellate Authority in the case of *Asahi Kasei India Pvt. Ltd.* [Order No. MAH/AAAR/SS-RJ/01/2019-20 dated June 19, 2019] reversing the Order passed Advance Ruling authorities and held that the services of liaising with customers, connecting customers with representatives of the service recipient and notifying service recipient of any consumer complaints are in the nature of 'Intermediary services'. The remaining services were classified under two categories namely – 'Research and Development services' and 'Other professional, technical and business services'. Further, since the aforesaid services can be supplied separately and independently, it should be construed as a mixed supply as they are not naturally bundled. • In recent times, there have been series of advance rulings evaluating the applicability or otherwise of transactions being categorised as an 'intermediary service'. Further, there has been a recent circular clarifying the scope of intermediary service in the context of ITeS. It would be critical to revisit such arrangements in light of these recent developments.

Rulings / Judgments under Pre-GST era:

5. M/s Brahmaputra Metallics Limited, Ranchi v. the State of Jharkhand and 3 Others[5]	
Issues for Consideration	• Whether the Petitioner is entitled to claim Input Tax Credit ('ITC') for tax paid on purchase of coal used for captive generation of electricity which in turn is used for manufacture and processing of finished goods? • Would the Petitioner be entitled to claim ITC in absence of statutory declaration in form JVAT 404?
Discussion & Judgment	**Discussion:** • The Petitioner is engaged in manufacture of Sponge Iron and MS Billet and has an integrated manufacturing unit comprising of - Direct reduced iron unit (DRI unit), Steel melting shop or Induction furnaces and Captive thermal power plant. • The Petitioner was denied benefit of ITC on coal purchased and utilized for generation of electricity, which in turn, was utilized for carrying out the manufacturing activity. It was held by the authorities that the Petitioner is not entitled for benefit of ITC on the purchase of coal since electricity is not goods basis the definition contained in the Jharkhand Value Added Act, 2005 ('JVAT Act'); • Against the aforesaid Order by the Appellate Authority, the Petitioner filed a Revision Application before the Hon'ble Commercial Taxes Tribunal, Jharkhand relying on decisions by the Hon'ble Supreme Court of India in the case of *J.K. Cotton Spinning & Weaving Mills Co. Ltd* v. *Sales Tax Officer, Kanpur* [AIR 1965 SC 1310] and

[5] TS-526-HC-2019(JHAR)-VAT – The High Court of Jharkhand

Commercial Taxation Officer, Udaipur v. *Rajasthan Taxchem Ltd* [(2007) 3 SCC 124]. However, the application was dismissed distinguishing the contentions of the Petitioners on an erroneous reasoning that ITC is only available in respect of such goods when sold generate tax liability and if the goods do not generate any output tax liability, then ITC shall not be admissible.

- Aggrieved by the aforesaid order, Petitioner filed a Writ-Application and made following submissions:
  - The Petitioner relied on various judicial decisions to support its contentions that if a process or an activity is integrally related to the manufacture, the goods used in such process or activity, would be categorized as raw material intended for manufacture of ultimate finished goods;
  - On the second issue, the Petitioner was in possession of original tax invoices for which the JVAT 404 forms were not supplied.
- The condition under rule 35(2) of the Jharkhand Value Added Tax Rules, 2006 ('JVAT Rules') cannot be treated as mandatory in nature since section 18(6) of the JVAT Act does not provide for furnishing of such forms for the purpose of claiming ITC and only contemplates production of tax invoices in original. The Hon'ble High Court observed as under:
  - The manufacturing process undertaken by the petitioner is a continuous process and the manufacture of the final product is not possible in absence of electrical energy;
  - Reliance was placed on the decision in J.K. Cotton Spinning & Weaving Mills Co. Ltd. (*supra*) wherein it was held that when a process or activity is so integrally related to the ultimate production that without the said process or activity, manufacture would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods";
  - On the contention of inadmissibility of ITC on electricity, it was clarified that the petitioner is claiming ITC on tax paid on purchase of coal, which falls under the definition of "Goods" as per section 2(xxii) of the JVAT Act. Further, there is no stipulation under the JVAT Act that ITC shall be allowed only in respect of goods enumerated in the certificate of registration;
  - Section 18(6) of the JVAT Act does not contemplate the production of JVAT-404 Forms as a condition for availing ITC and such additional requirement is prescribed by rule 35(2) of the JVAT Rules. Hence, rule 35(2) of the JVAT Rules was held to be merely directory in nature and not mandatory.

Judgment:

- Coal used for generation of electricity and in turn used for manufacture of finished goods should be treated as raw material for the finished goods and qualifies for the benefit of ITC as per section 18(4) of the JVAT Act.

	• On the second issue, the respondent was directed to re-examine the claim of ITC by verifying the original tax invoices.
Dhruva Comments / Observations	The judgment re-emphasises the aspect of availing ITC on goods which are captively consumed. Further, circular no. 79/53/2018-GST dated December 31, 2018 issued under the GST regime also clarifies that the benefit of ITC cannot be denied on coal used for captive generation of electricity, which is directly connected with the business of the registered person.

6. M/s Harkaran Dass Vedpal v. Union of India and Others[6]	
Issue for Consideration	Whether the amendment in section 28(9) / section 28(9A) of the Customs Act, 1962 will have retroactive effect and will apply to notices pending adjudication as on March 28, 2018?
Discussion & Judgment	**Discussion:** • The Appellant is *inter alia* importing non-edible oil which is used to manufacture soap. During the period 2003 – 2006, the imported non-edible oil was cleared on payment of applicable Customs Duty post assessment by the proper officer under section 17 read with section 48 of the Customs Act, 1962. • The DRI initiated an investigation against the importers alleging mis-declaration of (i) palm fatty acid distillate, palm acid oil as mixed fatty acid and mixed fatty oil and (ii) value of imported goods. After completion of the investigation, the DRI issued show cause notice (SCN) on the Appellant, which notice is challenged by way of writ petition on (i) the ground of lack of jurisdiction and (ii) the ground of limitation and delayed adjudication. • During the pendency of the petition, the Hon'ble Court in *GPI Textiles Limited* v. *UOI* [2018 (362) ELT 388 (P&H)] quashed the SCN issued under section 11A of the Central Excise Act, 1944 on the ground that authorities are bound to decide SCN within a reasonable period and thereby making it mandatory to adjudicate pending SCNs within a reasonable period of time. Meanwhile, *vide* the Finance Act 2018, section 28(9) of the Customs Act, 1962 was amended whereby the phrase "*where it is possible to do so*" has been omitted and it has been made mandatory to adjudicate SCN within stipulated time. • The Appellant argued that the present case is squarely covered by judgment of this Hon'ble Court in GPI Textiles (supra) and therefore the SCN is liable to be set aside. It was alternatively argued that applying the principles of retroactive amendment, the amended section 28(9) of the Customs Act, 1962 should be made applicable in the present case. • The Department argued that in view of pending writ petitions and to avoid multiplicity of litigation and in view of the pendency of petitions before the Hon'ble Supreme Court on the issue of jurisdiction of DRI to issue SCN, the department chose to keep the adjudication of SCN pending. It was further pleaded that the amended section 28(9) is

[6] 2019 (7) TMI 1307 – Punjab and Haryana High Court

	prospective in nature and Explanation 4 to section 28 specifically provides that notice issued prior to date of amendment of 2018 would be governed by old section 28 of the Customs Act, 1962. • The Hon'ble High Court after analysing the facts and the various provisions observed as follows: - The provisions of section 11A of the Central Excise Act, 1944 involved are *pari materia* to section 28 of the Customs Act, 1962. Relying on the decision of Hon'ble Gujarat High Court in *Sidhi Syntex Private Limited* v. *UOI* [2017 (352) ELT 455)] it was held that issuance of SCN even under unamended section 28 of the Customs Act, 1962 could not be kept pending beyond a reasonable period and authorities were / are duty bound to pass orders within reasonable period of time; - The plea of the department that their SLP is pending before the Hon'ble Supreme Court was not accepted because the underlying rationale, reasoning and *ratio decidendi* remains operative; - The SCNs were issued in 2009 and are still pending adjudication inspite of no stay on continuing of proceedings / liberty granted to proceed with the adjudication of the show cause notices; - In terms of the decision in GPI Textiles, SCN deserves to be quashed if it is pending adjudication beyond a reasonable period and in the present case, notice(s) are pending for more than 10 years which by no stretch of imagination can be held as reasonable period; - Relying on the decision in *Ballarpur Industries Limited* v. *State of Punjab* [2010 (35) PHT 5 (P&H)], it was held that the amendment in section 28(9) of the Customs Act, 1962 will have retroactive effect and hence the Department was bound to pass an order within one year i.e. by March 28, 2019 in terms of section 28(9)(b) of the Customs Act, 1962; **Judgment:** It was held that the present petition deserves to be allowed on both counts namely (i) decision in GPI Textiles (*supra*) and (ii) retroactive application of section 28(9) / (9A) of the Customs Act, 1962.
Dhruva Comments / observations	The decision of the Hon'ble Punjab and Haryana High Court is in line with the decision of Hon'ble Bombay High Court in *Hindustan Lever Limited* v. *UOI* [2010 (10) TMI 423 (Bom)] wherein it was held that: *"15. …. It is well settled that the adjudicatory proceedings have to be culminated within a reasonable time and if not done so they stand vitiated on the said ground."*

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