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Supreme Court Upholds Economic Stability over Judicial Rigidity Amid Precedent Conflict and Economic Losses Over Ex Post Facto Clearance

Introduction

In a seminal 2:1 verdict delivered on November 18, 2025, the Supreme Court of India allowed the Review Petition filed by the Confederation of Real Estate Developers of India (CREDAI) and recalled the its previous judgment dated May 16, 2025, in the case of *Vanashakti v. Union of India*, which had previously struck down the mechanisms allowing for the grant of ex post facto Environmental Clearance for projects that had commenced construction or expansion without prior statutory approval. This review decision essentially reopens the debate on the legality of ex post facto Environmental Clearance (EC) and grants a temporary lifeline to developers and public sector units (PSUs) seeking regularization for projects started without the requisite prior EC. The original *Vanashakti* judgment had deemed the concept of ex post facto EC “illegal” and struck down both the 2017 Notification and the 2021 Office Memorandum (OM) that facilitated it. By recalling the Judgment Under Review (“JUR”), the Supreme Court has now restored all the original writ petitions and the connected appeal to the file for fresh consideration.

Background

- The Challenge to Ex Post Facto
 - The requirement for prior EC is rooted in the Environment Impact Assessment (EIA) Notification of 2006, issued under the Environment (Protection) Act, 1986 (EP Act). However, recognizing ground realities and outstanding violations, the Ministry of Environment, Forest and Climate Change (MoEF & CC) issued the 2017 Notification and the subsequent 2021 OM (Standard Operating Procedure) to provide a mechanism for granting EC to projects that had commenced construction or operation without prior approval.
 - The original *Vanashakti* judgment (JUR) held that the concept of ex post facto or retrospective EC is “completely alien to environmental jurisprudence” and violative of fundamental rights under Article 21, relying on precedents like *Common Cause* and *Alembic Pharmaceuticals Limited*.

Key Legal Issue

- Judicial Discipline and Public Interest
 - The core issue in the Review Petition was whether the original *Vanashakti* judgment (JUR) was flawed by failing to consider or correctly apply binding judicial precedents and whether its implementation would cause disproportionate harm to the public interest.
 - The review petitioners, including CREDAI, argued that the JUR overlooked crucial aspects of earlier judgments like *Common Cause*, *Alembic Pharmaceuticals Limited*, and *Electrosteel Steels Limited* which, while deprecating ex post facto EC generally had ultimately adopted a “balanced approach” allowing offending industries to continue operations subject to heavy penalties and

environmental safeguards. Further, they contended that the JUR was *per incuriam* as it failed to notice the coordinate bench rulings in *D. Swamy v. Karnataka State Pollution Control Board* and *Pahwa Plastics Private Limited v. Dastak NGO*, which had expressly upheld the validity of the 2017 Notification and 2021 OM.

- Furthermore, the review petitioners also highlighted the grave public and economic implications of enforcing the JUR, which had suggested that projects lacking EC must be stopped and demolished, even after penalties had been imposed. They argued that such an outcome would cause irreversible public loss and environmental harm, thereby undermining the very objectives of environmental regulation.

Supreme Court Review Judgment and Reasoning

The majority opinion, delivered by CJI B.R. Gavai and concurred with by Justice K. Vinod Chandran, held that recalling the JUR was “imperative and expedient”. The Court found that the JUR was flawed on several grounds and largely agreed with the submissions of the review petitioners. It emphasized two principal justifications for recalling the JUR: first, that it failed to follow binding precedents; and second, that its enforcement would result in immense public waste and create an “environmental paradox”.

- Precedent Conflict (*Per Incuriam*)
 - The Court observed that JUR was *per incuriam* primarily because it was passed in ignorance of and was contrary to binding judgments precedents like *D. Swamy v. Karnataka State Pollution Control Board* and *Pahwa Plastics Private Limited v. Dastak NGO* which had, in unequivocal terms, upheld the validity of the 2017 Notification and the 2021 OM as being within the Central Government’s statutory powers under the EP Act. Further the Court reiterated the findings from *Electrosteel Steels Limited* and *D. Swamy* that the EP Act does not prohibit ex post facto EC and that such approvals could be granted in “exceptional circumstances”.
 - Furthermore, the court held that the JUR failed to consider subsequent paragraphs in *Common Cause*, *Alembic Pharmaceuticals Limited*, and *Electrosteel Steels Limited* where the Court had ultimately permitted the regularization or continuation of non-compliant projects upon payment of compensation and compliance with statutory requirements. The majority noted that even these key environmental rulings, though deprecating ex post facto clearance in principle, had ultimately adopted a balanced approach, permitting continued operation subject to payment of compensation and statutory compliance, rather than mandating unconditional closure.
- Devastating Public Consequences and Misreading of Section 15 of EP Act
 - The majority opinion stressed that upholding the original judgment (JUR) would yield “serious consequences” and be “counter-productive” to the public interest. This was primarily because it would necessitate the demolition of various completed or nearly completed projects constructed from public funds, valued at nearly Rs. 20,000 crore.

- The specific public projects facing demolition included the construction of a 962-bed AIIMS Medical College and Hospital in Odisha, a greenfield airport in Vijayanagar, Karnataka, and several common effluent treatment plants.
- The Court observed that forcing the demolition of these structures, which were “otherwise permissible in law,” merely so that proponents could obtain a fresh Environmental Clearance (EC) under the 2017 Notification and 2021 OM and then reconstruct the identical project, would be a “counterproductive remedial intervention”. This process would, ironically, cause further environmental degradation from the demolition debris, creating an “environmental paradox”. Given these factors, the majority concluded that imposing penalties on the builders based on the Polluter Pays Principle while allowing completion was a more balanced and rational approach than mandating demolition and reconstruction.
- Furthermore, the majority also rejected the JUR’s interpretation of Section 15 of the EP Act, and held that Section 15 deals only with penalties and neither permits nor prohibits the regularization of the underlying project, refuting the observation that demolition is mandatory after penalty payment.

The Dissenting View on Non - Regression

Justice Ujjal Bhuyan issued a strong dissenting opinion, arguing the review petition should be dismissed as the grounds advanced were untenable. He maintained that the JUR correctly followed the binding ratio of the earlier environmental judgments, namely Common Cause and Alembic Pharmaceuticals, which established that ex post facto EC is “completely alien” to and an “anathema” and “in derogation” of environmental jurisprudence.

Justice Bhuyan asserted that the later decisions in the case of Electrosteel, Pahwa, and D. Swamy were, in fact, the judgments that were truly per incuriam because they deviated from the ratio of the foundational cases, particularly the declaration that no concept of ex post facto EC exists. He distinguished the concessions granted in Alembic and Common Cause as either being based on peculiar facts or issued under Article 142 of the Constitution, which do not constitute binding ratio decidendi.

The dissent vehemently rejected the reliance on economic and pollution-related arguments, stating that “it does not lie in the mouth of law violators to advance such a kind of justification to sustain the illegality”. He argued that recalling the judgment would violate the principle of non-regression, which requires the State including the Judiciary not to reverse or weaken existing environmental protection standards, labeling the recall a “step in retrogression” that overlooks the fundamentals of environmental jurisprudence.

Analysis and Opinion

The Supreme Court's decision in the review petition of Credai v. Vanshakti demonstrates a judicious exercise of its powers within the permissible boundaries of precedent and established legal doctrines. By revisiting its earlier judgment, which was held to be per incuriam, the Court has reaffirmed its commitment to the principles of legal certainty and the rule of law.

A key aspect of the Court’s approach lies in its adherence to the *doctrine of public interest* or public good. The Court recognised

that the earlier decision, if left uncorrected, would have resulted in significant economic implications, potentially disrupting ongoing and future development projects. In doing so, the Court balanced environmental concerns with the broader economic and social interests of the public, thereby aligning its judgment with the doctrine that judicial decisions must serve the greater public good.

The Court's reliance on the doctrine of *per incuriam* is particularly significant. By acknowledging that the previous judgment was rendered in ignorance of relevant law or precedent, the Court has ensured that errors do not perpetuate within the legal system. This is further complemented by the *doctrine of judicial review*, which empowers the Supreme Court to revisit and rectify its own decisions, thereby maintaining the integrity and credibility of the judicial process.

Additionally, the Court’s approach reflects the *doctrine of proportionality*, as it carefully weighed the environmental impact against the economic consequences, ensuring that its decision was balanced and not excessive in relation to the objectives sought to be achieved.

In conclusion, the Supreme Court's judgment in this case is not only in harmony with established legal doctrines but also reflects a pragmatic and principled approach to adjudication. By acting within the scope of its powers and established boundaries, the Court has reinforced public confidence in the judiciary's ability to adapt and uphold justice in the face of evolving challenges.

Conclusion

The Supreme Court decision to allow the review petition in the case of Confederation of Real Estate Developers of India (CREDAI) v. Vanashakti and Another signals that the absolute bar on *ex post facto* EC is once again subject to rigorous judicial scrutiny. This provides immediate relief to project proponents, including members of CREDAI, who had applications pending or were operating based on the relaxation measures.

However, the ultimate outcome will ultimately hinge on how the Court reconciles the clear principle of “prior EC” enshrined in environmental jurisprudence with the practical necessity of proportionality and safeguarding public economic investments.

By recalling the JUR in the present review petition, the Supreme Court has reinforced its clear preference for a balanced proportionality based remedial approach over a rigid application of penal demolition, particularly in cases involving large-scale economic and social consequences.

Analysis of the U.S. Supreme Court Judgement Striking Down Emergency Tariffs

Introduction

In 2025, the President of the United States declared national emergencies relating to cross-border narcotics trafficking and persistent structural trade deficits. Acting under the International Emergency Economic Powers Act, 1977 (“IEEPA”), the administration imposed sweeping tariffs on imports from multiple countries. These measures included country-specific “reciprocal” tariffs, broad ad valorem duties across sectors, and withdrawal of certain de minimis customs exemptions (shipments valued at \$800 or less per person per day were historically exempt from duties, taxes, and formal entry requirements).

IEEPA (1977) was enacted to empower the Executive to address “unusual and extraordinary threats” originating outside the United States. Under Title 50 of the United States Code (U.S.C.) Section 1702(a)(1), the President may regulate, block, prohibit, or nullify certain transactions involving foreign interests during a declared emergency. Historically, the statute has been used to impose financial sanctions, freeze assets, and restrict specific commercial transactions. It has not functioned as a primary tariff statute.

The tariffs imposed in 2025 differed materially from trade measures adopted under long-standing statutory frameworks such as Section 232 of the Trade Expansion Act of 1962, Section 301 of the Trade Act of 1974, Section 201 of the Trade Act of 1974, Section 122 of the Trade Act of 1974, and Section 338 of the Tariff Act of 1930. Those statutes contain defined investigative procedures, evidentiary thresholds, and structural safeguards. The IEEPA-based tariffs were not preceded by investigations into economic threats or formal findings of the kind that ordinarily form the basis for executive action under these trade statutes.

Importers and affected commercial entities challenged the measures shortly after their implementation. A petition to challenge these tariffs was initially filed before the United States District Court, which granted injunctive relief, holding that the plaintiffs had demonstrated a likelihood of success on the merits and that the Executive’s reliance on IEEPA for tariff imposition raised serious statutory and constitutional concerns. This was subsequently challenged before the United States Court of International Trade (CIT), which upheld the injunction granted by the District Court and held that IEEPA does not provide express authority for the imposition of customs duties.

The US Government further appealed, and the United States Court of Appeals for the Federal Circuit upheld the CIT’s decision, agreeing that tariff authority must rest on explicit congressional delegation and that IEEPA’s regulatory language could not be construed to include revenue-raising powers. Given the constitutional significance of the dispute and the nationwide economic impact of the tariffs, the case was granted certiorari by the Supreme Court, culminating in *Learning Resources, Inc. v. Trump*, 607 U.S. ____ (2026).

The central question before the Supreme Court was therefore not merely one of statutory interpretation, but of constitutional structure, whether the Executive may impose tariffs under a

general emergency statute, or whether such fiscal authority remains firmly within Congress’s domain under Article I, Section 8, Clause 1 of the U.S. Constitution.

Following the Supreme Court’s judgement, President Trump publicly stated that the administration would comply with the ruling and cease reliance on the IEEPA for tariff imposition. However, almost immediately thereafter, the administration invoked Section 122 of the Trade Act of 1974, imposing a temporary global import surcharge within the statutory cap of 15 percent and subject to the 150-day limitation. After the 150 day period, this surcharge will undergo a Congressional review for it to continue. This move signalled formal compliance with the Court’s constitutional holding while simultaneously shifting tariff policy into an expressly delegated statutory framework.

Issues:

- The Supreme Court was required to determine whether IEEPA (1977) authorizes the President to impose tariffs as part of emergency economic regulation. The statutory question was whether the authority to “regulate” or “prohibit” importation under Title 50 of U.S.C. Section 1702(a)(1) includes the power to levy revenue-generating customs duties.
- The constitutional issue required examination of Article I, Section 8, Clause 1 of the U.S. Constitution, which grants Congress the power to “lay and collect Taxes, Duties, Imposts and Excises.” Since customs duties are historically understood as taxes, the Court had to examine whether Congress had clearly delegated such authority through IEEPA.
- The case also raised the applicability of the Major Questions Doctrine, under which courts require clear congressional authorization when executive action has vast economic and political significance.

Summary of the Findings

By a 6–3 majority, the Supreme Court held that IEEPA (1977) does not authorize the US President to impose tariffs. The Court concluded that customs duties are taxes within the meaning of Article I, Section 8, and that any delegation of such authority must be explicit.

The majority emphasized that IEEPA authorizes regulation or prohibition of transactions but does not accord power to impose duties, impost, or taxation. The Court distinguished between prohibiting imports and taxing imports, noting that a tariff is fiscally distinct because it raises revenue and operates as a tax.

The majority further observed that when Congress intends to delegate tariff authority, it does so expressly and within defined procedural frameworks:

- Under Section 232 of the Trade Expansion Act of 1962, the Secretary of Commerce must conduct a national security investigation and submit findings to the President before tariffs may be imposed.
- Under Section 301 of the Trade Act of 1974, the United States Trade Representative must investigate unfair trade practices, hold hearings, and determine appropriate responsive measures.

- Under Section 201 of the Trade Act of 1974, safeguard measures follow a formal US International Trade Commission (ITC) injury determination.
- Under Section 122 of the Trade Act of 1974, temporary surcharges are limited in duration and percentage.

The Court reasoned that the existence of these detailed statutory schemes demonstrates that Congress is expressly empowered to confer tariffs. The absence of comparable language in IEEPA was therefore decisive in coming to the conclusion that the US President had no power to impose tariffs.

Applying the Major Questions Doctrine, the Court held that sweeping tariff authority affecting global supply chains and domestic prices cannot be inferred from general regulatory language.

Conclusion

The Supreme Court concluded that IEEPA (1977) cannot serve as a source of tariff authority and that customs duties remain within Congress's exclusive power under Article I, Section 8 of the US Constitution. The ruling reinforces separation of powers and clarifies that emergency statutes cannot be used as open-ended tariff instruments.

The decision does not eliminate executive tariff authority. Rather, it confines such authority to statutes that explicitly provide it, most notably Section 232 of the Trade Expansion Act of 1962, Sections 201, 301, and 122 of the Trade Act of 1974, and Section 338 of the Tariff Act of 1930.

Implications

The immediate implication concerns potential refund claims for duties collected under IEEPA prior to the Supreme Court's invalidation of the tariff measures. Because the Court held that the Executive lacked statutory authority to impose the duties, affected importers may seek recovery of amounts paid. However, refund entitlement is governed not by constitutional doctrine alone, but by the procedural framework set out in Title 19 of the United States Code, which regulates customs administration.

Under U.S. customs law, the party legally entitled to challenge the assessment of duties is the "importer of record." Pursuant to 19 U.S.C. § 1514, only the importer of record may file a protest against a liquidation decision of U.S. Customs and Border Protection (CBP) within the prescribed statutory timelines. If liquidation has already occurred and the protest period has lapsed, recovery may depend on alternative procedural mechanisms, including post-summary corrections, reliquidation under limited statutory grounds, or judicial action where entries remain unliquidated. Accordingly, the availability of refunds may vary depending on the procedural posture of each entry and whether statutory deadlines have been preserved.

Foreign exporters, manufacturers, or overseas suppliers generally lack standing to directly seek refunds unless they were designated as the importer of record. In most commercial arrangements, the U.S. buyer assumes importer-of-record status and is therefore the party entitled to file protests and receive any refunded duties. This creates an immediate need for contractual coordination. The allocation of refunded amounts will depend on the underlying commercial agreements, including tariff pass-through clauses, indemnity provisions, and pricing adjustment

mechanisms. In the absence of clear contractual language, disputes may arise over whether the economic burden of the tariff was absorbed by the importer, passed on to downstream purchasers, or borne indirectly by the foreign supplier through price renegotiations.

In addition to the concerns for possible refunds, henceforth, the tariff measures are likely to proceed under structured statutory pathways.

Section 232 of the Trade Expansion Act of 1962 allows the President to impose tariffs or quotas if imports threaten national security. The process begins with an investigation by the Secretary of Commerce, includes consultation with the Department of Defense, and requires a formal report before presidential action. Although the national security concept is broad, the statute imposes procedural discipline and defined timelines.

Section 301 of the Trade Act of 1974 permits retaliatory tariffs against unfair or discriminatory foreign trade practices. It requires investigation by the USTR, opportunities for hearings and public comment, and consultations with the foreign government concerned. This pathway is enforcement-driven and typically country-specific.

Section 201 of the Trade Act of 1974 provides safeguard relief when increased imports cause serious injury to a domestic industry. The ITC conducts an evidentiary investigation, and any tariffs imposed are temporary and designed to allow industry adjustment.

Section 122 of the Trade Act of 1974 authorizes temporary import surcharges to address balance-of-payments concerns, but the surcharge is capped at 15 percent and limited to 150 days unless extended by Congress.

Section 338 of the Tariff Act of 1930 allows retaliatory duties of up to 50 percent against countries that discriminate against U.S. commerce, though it has been used sparingly in modern practice.

For Indian exporters, the removal of IEEPA-based tariffs reduces uncertainty, but exposure remains under these alternative statutes. Businesses must monitor investigations, engage during comment periods, and ensure compliance with customs classification and origin rules.

Our Analysis: Navigating Tariffs in the Post-Judgement Environment

The Court's reasoning suggests that tariff policy will now operate within clearer statutory boundaries. Countries navigating U.S. trade measures must therefore align their strategies with the investigative and procedural frameworks embedded in these statutes.

Engagement during Section 232 investigations can shape national security assessments, particularly where economic interdependence mitigates perceived risks. Participation in Section 301 consultations allows governments to contest allegations and negotiate settlements before retaliatory tariffs are finalized. In safeguard investigations under Section 201, submission of economic data may influence injury determinations. Even temporary measures under Section 122 are subject to congressional oversight, creating opportunities for diplomatic engagement.

Beyond legal participation, countries should prioritize diversification of export markets and deeper regional trade integration. Strengthening domestic value chains ensures compliance with rules of origin under Free Trade Agreements, reducing exposure to unilateral tariff measures. Transparent trade practices and alignment with international norms may also mitigate the likelihood of enforcement-driven tariffs.

Contractual risk management is equally important. Businesses should incorporate tariff-adjustment clauses, clarify importer-of-record responsibilities, and adopt flexible pricing structures. Continuous monitoring of U.S. statutory investigations allows early anticipation of potential exposure.

Finally, the application of the Major Questions Doctrine introduces a measure of legal predictability. Sweeping executive measures lacking explicit statutory grounding are vulnerable to judicial scrutiny. Countries and enterprises should therefore evaluate not only the economic impact of new tariffs but also their statutory basis.

This judgement reshapes the constitutional architecture of U.S. trade authority. By limiting reliance on the International Emergency Economic Powers Act, 1977, and reaffirming Congress's exclusive taxing power under Article I, Section 8 of the US Constitution, the Supreme Court has narrowed executive emergency tariff authority while preserving structured statutory pathways.

Trade uncertainty remains a defining feature of the global economic environment. However, tariff action must now proceed through defined legislative frameworks. For countries and exporters, this shift offers greater procedural clarity, predictable points of engagement, and opportunities for strategic navigation within the bounds of U.S. trade law.

The Tiger Global Judgement: Legal Implications and Key Takeaways

Brief Facts

- The respondents are three Tiger Global companies incorporated in Mauritius, namely Tiger Global International II, III and IV Holdings, set up as investment entities with the aim of earning long term capital appreciation and investment income. They hold required business licenses issued by the Mauritius Financial Services Commission and claimed that their business is managed and controlled in Mauritius, with two Mauritian directors, local office space, employees, accounts and audits based in Mauritius. They also hold Mauritius Tax Residency Certificates (“TRC”) and PAN in India and therefore assert eligibility for Double Tax Avoidance Agreement (“DTAA”) protection between India and Mauritius.
- All three assesseees had invested in Flipkart Private Limited (“Flipkart”), a Singapore company, between 2011 and 2015, acquiring around twenty six million shares, aggregating to 17% of the total paid up capital of Flipkart. Flipkart held investments in Indian operating companies, and the value of its shares was derived substantially from assets situated in India. In 2018, as part of the global takeover of Flipkart by Walmart Inc. (“Walmart”), the assesseees sold their Flipkart shares to a Luxembourg company Fit Holdings S.A.R.L. for substantial gains, receiving sale proceeds of approximately USD 1.89 billion (Tiger II), USD 181.78 million (Tiger III) and USD 8.43 million (Tiger IV) respectively.
- Before completing the sale, the said entities applied under Section 197 of the Income Tax Act, 1961 (“Act”) seeking nil withholding certificates, claiming exemption under the India-Mauritius DTAA. However, on 17 August 2018, the tax authorities denied treaty benefit, stating that the companies were not independently controlled from Mauritius and that real decision-making occurred outside Mauritius. The department issued certificates requiring withholding tax at 6.05%, 6.92% and 8.47% for the three entities.
- The assesseees approached the Authority for Advance Rulings (“AAR”) under Section 245Q(1) of the Act seeking advance ruling on the issue - whether gains arising to the assesseees from selling Flipkart shares were taxable in India under the Act read with India-Mauritius DTAA. The AAR refused to rule, and on 26 March, 2020, dismissed all three applications, holding that *the structure appeared prima facie designed for tax avoidance and was therefore hit by the bar in proviso (iii) to Section 245R(2)*.
- The assesseees challenged that decision by filing W.P.(C) Nos. 6764, 6765 and 6766 of 2020 before the Delhi High Court. The High Court allowed the petitions on 28 August, 2024, quashed the AAR’s order, held that the assesseees were entitled to India-Mauritius DTAA benefits, and ruled that their capital gains were not taxable in India.
- The AAR, dissatisfied with this outcome, filed the present appeals before the Supreme Court.

Legal Issues

- Whether capital gains arising from the transfer of shares of Flipkart Singapore, deriving substantial value from Indian assets, are taxable in India under Section 9(1)(i) of the Act?
- Whether the respondents are entitled to claim treaty benefits under the India-Mauritius DTAA on the basis of Tax Residency Certificate?

Findings and Analysis

Findings of the AAR

- The AAR concluded that the head and brain of the Mauritius entities did not reside in Mauritius but were instead situated in the USA. While board meetings were formally held in Mauritius, the AAR found that real control over significant financial transactions (exceeding USD 250,000) was vested in Mr. Charles P. Coleman, a U.S. resident, who was also the authorized signatory for the entities’ bank accounts.
- The AAR ruled that the India-Mauritius DTAA was never intended to exempt capital gains from the sale of shares in a non-resident company. The AAR held that the treaty’s benefits, specifically Article 13, apply only to the alienation of shares of an Indian resident company. Since the transaction involved shares of a Singapore-incorporated entity (which merely derived value from Indian assets), the AAR ruled that the transaction fell outside the scope of treaty protections. The exemption from capital gains tax on the sale of shares of a company not resident in India was never intended under either the original or the amended India-Mauritius DTAA.
- It held that it was not the holding structure alone that was relevant; rather, *the holding structure, coupled with the prima facie management and control of the holding structure, including the management and control of the applicants, was a relevant factor for determining the design for avoidance of tax. The commercial structure of the present transaction was a mere conduit and lacked commercial substance.*
- The AAR determined that the arrangement was prima facie designed for the avoidance of income tax, thereby triggering the jurisdiction bar under Section 245R(2)(iii) of the Act.

Findings of the High Court

- The Delhi High Court held that the AAR exceeded its statutory jurisdiction by rejecting the application under section 245R(2) on the ground of tax avoidance. The High Court clarified that at the admission stage, the AAR is only required to form a prima facie view and cannot render conclusive findings on disputed facts. By conclusively determining issues relating to control, beneficial ownership, and tax avoidance, the AAR effectively conducted a final adjudication, which was impermissible. Relying on settled principles of administrative law, the High Court held that such premature findings would unfairly bind subordinate authorities.
- The High Court, regarding control and management, observed that the presence of directors connected to the broader Tiger Global Group did not prove that the Mauritian entities were puppets. It found that board resolutions and meeting minutes evidenced deliberative, collective decision-making by the full board in Mauritius, and that the authority granted to Mr. Charles P. Coleman for large expenditures was a collective board decision requiring counter signatures by Mauritian-based directors.
- The AAR further argued that the Mauritius entities were used solely to obtain treaty benefits and that the real control lay

with the US-based Tiger Global entity. The High Court rejected this contention, reaffirming the ratio of *Union of India v. Azadi Bachao Andolan*¹, which reiterated that the mere fact that an entity is located in Mauritius, or that investments were routed through that jurisdiction, cannot by itself lead to an adverse inference. The High Court further found that Mauritius has long been recognised as a favourable investment destination and that “treaty shopping” per se is not impermissible unless it is clearly shown to be a device for tax evasion or contrary to the intent of the treaty. The issuance of a tax by the Mauritian authorities was held to be sacrosanct and to establish a presumption of legitimate tax residency and beneficial ownership.

- The High Court rejected the finding that the respondents lacked economic substance, noting they were structured as legitimate pooling vehicles for over 500 (five hundred) investors from 30 (thirty) jurisdictions. The mere presence of Directors connected with the Tiger Global Group, such as Mr Charles P. Coleman and Mr Steven Boyd, did not justify an inference of subservience or loss of independent agency. The High Court further found that the minutes of Board meetings, when read holistically, evidenced deliberative and collective decision-making rather than unilateral action.
- The High Court also held that the Limitation of Benefits (“LOB”)² clause is the primary mechanism under the India-Mauritius DTAA to address treaty abuse and is determinative once its conditions are satisfied. Where the LOB clause is met, the tax authorities cannot impose additional hurdles or rely on mere suspicion; any denial of treaty benefits must be supported by clear evidence of fraud, sham, or intent to defeat the Treaty.
- The High Court quashed the AAR’s order by holding that the transaction was a legitimate, non-tax-avoidant arrangement protected by the grandfathering provisions of Article 13(3A) of the India-Mauritius DTAA. Paragraph 3 of CBDT Circular No. 682 dated 30.02.1994 unequivocally declared that gains derived by a resident of Mauritius from the sale or transfer of shares would be taxable only in that country. The circular further proclaimed that even if a resident of Mauritius were to derive income from the alienation of shares of Indian companies, such income would be liable to capital gains tax only in Mauritius, in accordance with the tax laws prevalent in that country. Therefore, it was held that such an entity would not face a capital gains tax liability arising or accruing in India

Findings of the Supreme Court

- The Supreme Court identified the core question as *whether the AAR was justified in rejecting the advance ruling applications at the threshold stage under proviso (iii) to Section 245R(2) of the Act, by treating the transaction as prima facie designed for tax avoidance*. The Supreme Court clarified that it was not deciding the final tax liability at this stage, but only whether the AAR acted within its jurisdiction

in refusing to entertain the applications. The Supreme Court held that AAR is not required to conduct a full-scale trial or reach a conclusive finding of tax avoidance; instead, it only needs to form a prima facie opinion that the transaction was designed for tax avoidance to trigger the jurisdiction bar, thereby reversing the High Court’s view that the AAR had exceeded its authority.

- The Supreme Court gave a purposive interpretation to the expression “prima facie designed for the avoidance of income tax”. It held that the term does not require conclusive proof of tax evasion at the admission stage. Instead, where the case reasonably indicates that the dominant purpose of the transaction is an impermissible avoidance undertaken with the objective of obtaining a tax benefit, the statutory bar under proviso (iii) to Section 245R(2) of the Act is attracted. The Supreme Court found that the AAR had correctly identified indicators of tax avoidance, including the layered structure, concentration of decision-making power outside Mauritius, and lack of meaningful commercial independence.
- The Supreme Court rejected the reliance upon the TRC, as the TRC is only evidence of residence. It does not grant permanent immunity from an inquiry into the beneficial ownership. The Supreme Court further held that when the AAR provides prima facie evidence that an entity is a mere conduit controlled by non-residents (in this case, US-based decision-makers), the authorities are entitled to look behind the certificate to prevent treaty shopping and the abuse of international law.
- The Supreme Court placed considerable emphasis on Chapter X-A of the Act, which introduces the General Anti-Avoidance Rule (“GAAR”) framework. The Supreme Court held that the introduction of GAAR marked a fundamental shift in Indian tax jurisprudence, moving away from formalistic treaty interpretation towards substance-based scrutiny. It held that once a prima facie case of an impermissible avoidance arrangement is established, Section 96(2) shifts the burden of proof to the taxpayer. In the present case, *the Supreme Court found that the assessee failed to rebut the presumption that the structure was designed predominantly to avoid tax*.
- The Supreme Court also addressed the conflict between the grandfathering provisions and the GAAR, holding that the 2016 protocol³ did not provide a blanket exemption for all pre-2017 investments. It analysed that GAAR is a *codification of the substance over form principle intended to tackle impermissible avoidance arrangements. Therefore, even if an investment was made before the cut-off date, the specific arrangement of using a Mauritian shell company to exit a Singaporean entity could still be scrutinised and taxed if its main purpose was tax avoidance*.
- The Supreme Court noted that the 2016 protocol⁴ fundamentally altered the character of the treaty by shifting capital gains taxation from a residence-based regime to a source-based regime, clearly signalling the intention of the contracting States to curb abuse.

¹(2004) 10 SCC 1

²Article 27A of Income Tax Act, 1961

³ CBDT Press Release, 10th May 2016

⁴*Id*

- The Supreme Court accepted the findings of the AAR that the real control and management of the Mauritian entities did not lie in Mauritius. The Court noted that key financial powers, including authority over significant bank transactions and investment decisions, were exercised by individuals based outside Mauritius. Although board resolutions were formally passed in Mauritius, the Supreme Court held that formal compliance cannot override economic reality. It concluded that the “head and brain” of the entities was effectively located in the United States of America, thereby undermining the claim of Mauritian residence.
- While acknowledging that the entities had investors and financial activity, the Supreme Court held that *economic substance must be examined in relation to the specific transaction under scrutiny*. The Court found that the Mauritian entities functioned primarily as *conduit vehicles created to access treaty benefits rather than to undertake independent commercial risk*. *The Supreme Court clarified that the presence of capital or multiple investors does not automatically confer substance if decision-making authority and risk assumption are absent*.
- The Supreme Court recognised that tax treaties override domestic law under Section 90 of the Act. However, it held that *treaty protection is available only to lawful transactions*. The Supreme Court ruled that the LOB clause and the GAAR provisions must be read together as part of a coherent anti-abuse framework. Although Article 27A of the India-Mauritius DTAA provides for grandfathering of investments made prior to 1 April 2017, *the Supreme Court held that grandfathering cannot shield transactions that are found to be impermissible avoidance arrangements*. *In other words, grandfathering protects only genuine investments, not abusive structures*. By characterizing the Tiger Global structure as a ‘preordained’ and ‘colourable’ device, the Supreme Court affirmed that the AAR was correct to conclude that the capital gains were taxable in India.
- The Supreme Court conclusively held that the transactions in question constituted impermissible tax avoidance arrangements within the meaning of Chapter X-A of the Act. It upheld the AAR’s rejection of the advance ruling applications under proviso (iii) to Section 245R(2). Consequently, the judgment of the Delhi High Court was set aside, and the appeals filed by the tax authorities & AAR were allowed.

Final decision of the Supreme Court

In the view of the Supreme Court, once it is factually found that the unlisted equity shares, on the sale of which the assesseees derived capital gains, were transferred pursuant to an arrangement impermissible under law, the assesseees are not entitled to claim exemption under Article 13(4) of the India-Mauritius DTAA. The AAR has proved that the transactions in the instant case are impermissible tax-avoidance arrangements, and the evidence prima facie establishes that they do not qualify as lawful. Consequently, Chapter X-A becomes applicable. The applications preferred by the assesseees relate to a transaction designed prima facie for tax avoidance and were rightly rejected as being hit by the threshold jurisdictional bar to maintainability. Accordingly, capital gains arising from the transfers effected after the cut-off date, i.e., 01.04.2017, are taxable in India under the Act read with the applicable provisions of the India-Mauritius

DTAA. The judgment of the High Court therefore deserves to be set aside.

Contributors

Amaresh Kumar Singh
Partner

Soyansu Dash
Associate

Nayonika Sharma
Intern

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CONTACT US

 www.hsalegal.com

 mail@hsalegal.com

 HSA Advocates

PAN INDIA PRESENCE

New Delhi

Mumbai

Bengaluru

Kolkata