

Doctrine of 'Impossibility' - A foray into tax matters

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Lex non cogit ad impossibilia. It is indeed Latin but a very important and significant legal maxim. The Bombay High Court in the case of **ACIT Vs. NGC Networks India Pvt. Ltd. [TS-41-HC-2018(BOM)]** has held that even though explanation 6 to Section 9(1)(vi) of the Income Tax Act, 1961 was introduced in 2012, with retrospective effect from 1976, Section 40(a)(i) of the Income Tax Act, 1961 cannot be applied to disallow the expenditure for non-deduction of TDS, since *the amendment could not have been contemplated by the respondent when he made the payment.*

The Court followed its earlier decision in the case of **CIT Vs. Cello Plast [TS-602-HC-2012(BOM)]** wherein the Court had applied the legal maxim *lex non cogit ad impossibilia* (*law does not compel a man to do what he cannot perform*). In the said case, the Court observed that

Lex non cogit impossibilia (law does not compel a man to do that which he cannot possibly perform) and impossibilum nulla obligatio est (law does not expect a party to do the impossible) are well known maxims in law and would squarely apply to the present case. The statute viz. Section 54EC of the Act provides for exemption from tax to long term capital gain provided the same is invested in bonds of Rural Electrification Corporation Limited or National Highway Authority of India. However, as the bonds were not available, it was impossible for the respondent-assessee to invest in them within six months of the sale of their factory building. Therefore, in the circumstance one would have to interpret Section 54EC of the Act to ensure that it does not lead to injustice."

This maxim was applied by the Larger Bench of the Tribunal in the case of **Hico Enterprises Vs. Commissioner of Customs [(2005) 189 ELT 135]**, where the Tribunal held that the maxim has to be read from the point of view of performance of an act by the transferee of license to fulfil the condition which is allegedly not discharged by the transferor but certainly not from the point of view of the applicability of the notification. Therefore, from that point of view, it is an impossible act on the part of the transferee where fraud is subsequently detected by the authorities concerned. The appeal against this decision has been dismissed by the Supreme Court in the case of **Commissioner of Customs (Imports) Vs. Hico Enterprises [(2008) 228 ELT 161]**.

The Supreme Court in the case of **State of MP Vs. Narmada Bachao Andolan [(2011) 7 SCC 639]**, applied this maxim and held that *thus, where the law creates a duty or a charge and the party is disabled to perform it without any fault on his part and has no control over it, the law will in general excuse him.*

The Delhi High Court in the case of **Arise India Ltd. Vs. Commissioner of Trade and Taxes [TS-314-HC-2017(Del)-VAT]**, has held that *therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.*

The legal maxim *lex non cogit impossibila* can come into play in the following scenarios:

- (i) Where a retrospective amendment creates a compliance obligation like the case of amendment to Section 9(1)(vi) expanding the scope of royalty , the assessee cannot be considered to be in default.
- (ii) If an assessee had not applied ICDS since it was struck down by the Delhi High Court, can he be considered to have not disclosed the transactions covered by ICDS based on the retrospective amendment proposed in Finance Bill, 2018?
- (iii) Whether late fee or penalty can be imposed on assesses who are not able to file their GST returns due to system failure and access issues which have found a mention in the recent decision of the Bombay High Court in the case of **Abicor and Binzel Technoweld Pvt. Ltd.** [\[TS-32-HC-2018\(BOM\)-NT\]](#)?
- (iv) Whether an assessee can be denied the benefit of transitional credit claims merely on account of non-filing of FORM GST TRAN 1 when the system was down even on the due date?
- (v) Whether the provisions of Section 16(2) of the CGST Act, 2017 is valid based on this doctrine since it compels an assessee to verify whether his supplier has actually paid the tax to the Government which is an impossible act?