

M/s. Sumitomo Heavy Industries Limited v. Oil & Natural Gas Company

Civil Appeal No. 3185 of 2002

[2010] 9 SCR 176 | 2010-07-28

Contractual reimbursement of retrospective section 44BB tax as change-in-law cost; limits on interference with an arbitral award

Income-tax Act, 1961: section 44BB | Arbitration Act, 1940: section 30 | Indian Contract Act, 1872: section 124 | Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976: sections 6(6) and 7(7)

Two-judge Bench; judgment delivered by H. L. Gokhale, J. | R. V. Raveendran, J. | H. L. Gokhale, J.

Contract and arbitration holding

The Supreme Court upheld a possible construction of this contract's change-in-law clause. It did not create a general statutory right to reimbursement of another person's tax.

Historical section 44BB setting

Section 44BB's retrospective insertion and the assessment years 1984-85 and 1985-86 supplied the change-in-law facts. The Court did not independently recompute or finally adjudicate the subcontractor's tax assessment.

No current-law clearance

The award arose under the Arbitration Act, 1940 and contract wording agreed in 1983. Verify current statutes, the actual change-in-law clause and later judicial treatment before reliance.

01 FACTS OF THE CASE

ONGC engaged Sumitomo on a tax-protected turnkey contract for an offshore production platform, and Sumitomo used McDermott International Inc. as the approved principal subcontractor under a back-to-back arrangement. When the bid closed in October 1982, the offshore work lay beyond the then fiscal reach of Indian income-tax law. A March 1983 notification extended the Income-tax Act to the continental shelf and exclusive economic zone, and the Finance Act, 1987 inserted section 44BB retrospectively from 1 April 1983. The subcontractor was reassessed for AYs 1984-85 and 1985-86, paid the resulting tax and obtained reimbursement from Sumitomo. ONGC rejected Sumitomo's claim under clause 17.3, which required compensation for necessary and reasonable extra cost caused by a post-bid change in law. The umpire allowed the claim, but the Bombay High Court set the award aside.

Source: [Contract, statutory change, reassessments and arbitration history / PDF pp. 8-13](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court read the commercial contract as a whole. Clause 13.2.7 left Sumitomo responsible for payments to subcontractors, clause 23 protected Sumitomo's own Indian income-tax position, and clause 17.3 separately required ONGC to compensate necessary and reasonable extra cost caused by a later legal change. The approved subcontractor had participated in bid clarification and its tax-protected role was known to ONGC. The retrospective section 44BB liability therefore affected Sumitomo economically through its back-to-back reimbursement obligation; the payment was not voluntary and had the required nexus with the head contract. Clause 17.3 was not an indemnity for loss caused by another's conduct and did not require the narrow construction applicable to an insurance exclusion. The umpire's commercially meaningful reading was a possible, reasoned view. A court reviewing the award could not replace it merely because another contractual construction might also be available, and the award was not perverse.

Source: [Change-in-law clause, tax nexus and arbitral-review analysis / PDF pp. 16-28](#)

03 JUDICIAL DECISION

The umpire acted within jurisdiction and gave a well-reasoned construction to clause 17.3. The retrospective tax change caused the subcontractor's liability, Sumitomo was contractually obliged to reimburse it, and that reimbursement was necessary and reasonable extra cost affecting Sumitomo economically. The High Court therefore erred in treating the award as impossible or perverse. The Court found it unnecessary to decide the separate argument that a specific question of law had been referred to arbitration.

Source: [Application, award review and final determination / PDF pp. 24-29](#)

04 OUTCOME / IN WHOSE FAVOUR

The Supreme Court allowed the appeal, set aside the single-judge and Division Bench judgments, upheld the umpire's award and directed a decree in its terms. ONGC's arbitration petition stood dismissed with costs.

Source: [Operative allowance, restoration and costs / PDF p. 29](#)

05 AKHB REVIEW POINT

AKHB analysis: a tax change does not by itself shift liability between contracting parties. Trace the bid date, effective date and retrospectivity of the tax rule, then map the assessed person, any back-to-back tax-protection promise, the head contract's change-in-law language and the proof that the payment was necessary rather than voluntary. In an award challenge, keep the substantive tax event separate from the limited question whether the arbitrator's contractual construction was possible and within jurisdiction. This decision does not establish that every section 44BB assessment, subcontractor reimbursement or change-in-law claim must be accepted.

Source: [Primary tax-change and contractual reasoning underlying AKHB analysis / PDF pp. 11-29](#)

SOURCE & VERIFICATION

Supreme Court Reports scan - public eSCR mirror

The complete 29-page report was read. The reporter headnote and authorities occupy SCR 176-182 / PDF pp. 1-7; counsel and the judicial reasons begin at SCR 183 / PDF p. 8 and continue through the operative order at SCR 204 / PDF p. 29. Reporter summaries, party submissions, quoted contractual provisions and the Court's own findings were distinguished. No adjoining judgment is included.

Open cited source rendition

The downloaded 29-page source exactly matches catalogue SHA-256
0ec987d9cfa2fd3a43e42723358046e95d673b2f863adcf3acb722c4b0872ae.

The complete judicial text was read in contiguous page-preserving ranges; the reasons begin on PDF p. 8 and the operative order appears on PDF p. 29.

Published corpus and reviewed-release searches found no matching party identity, Civil Appeal No. 3185 of 2002, decision date or exact source hash. The reconciliation register listed no possible published match.

The section 44BB event is substantive to the contractual result: the Court treated the retrospective tax liability and the contractor's back-to-back reimbursement as the change and extra cost within clause 17.3.

The judgment does not determine the proper section 44BB computation or provide a general tax-indemnity rule; the note preserves those limits.

No comprehensive later-treatment or current-law conclusion has been inferred from the primary source.

STATUTORY SCOPE

The judgment uses the retrospective insertion of section 44BB and its application to the subcontractor as the change-in-law event in a commercial arbitration. It does not independently determine the subcontractor's taxable receipts, recompute section 44BB income, or validate every assessment made under that provision. Verify the applicable contractual language, historical tax law and later arbitral-review law before reliance.

LATER TREATMENT

Source checked 2026-10-13. No comprehensive later-treatment or current-law check has been completed. The note reports the contractual and arbitral holding in the historical section 44BB setting considered on 28 July 2010; it does not certify present section 44BB law, current arbitration law or the continuing effect of the contract clauses.

AI DISCLOSURE

This AKHB research note was prepared with AI assistance from the identified primary source; independent human review is not represented.

PROFESSIONAL DISCLAIMER

General legal and tax research only; not legal or tax advice. Verify the complete judgment, applicable statutory version and subsequent judicial treatment before reliance. The AKHB REVIEW POINT is editorial analysis, not the Court's holding. No current-law clearance is claimed.