

Part-68-One Pager Snapshot to the Cases- What really does rejection of SLP Means in Legal Context

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Recently, Hon'ble Apex Court in the matter of Commissioner of CGST and Central Excise v. Flemingo Travel Retail Ltd. [2023] 153 taxmann.com 492 (SC) decided to review its earlier order in **Commissioner of CGST And Central Excise, Mumbai East v. Flemingo Travel Retail Ltd. (2023) 5 Centax 173 (S.C.) dated 10th April 2023. One of the observations in Para 6 of the Judgement was** "In its judgment dated 10 April 2023, this Court affirmed the judgment of the CESTAT noting that against a judgment of the High Court of Bombay dated 28 November 2018 in Al Cuisine Pvt Ltd v Union of India , **a Special Leave Petition was dismissed by an order dated 14 December 2018 of this Court.**"

Whether reliance can at all be placed upon Rejection of SLP and if yes then to what extent and what is the binding precedent of the rejection of SLP.

S.N.	Case	Held
1.	Kunhayammed v. State of Kerala, (2000) 6 SCC 359	<p>a) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.</p> <p>b) Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.</p> <p>c) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.</p> <p>d) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.</p> <p>e) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.</p> <p>f) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC."</p>
2.	P. Singaravelan & Ors. Versus The District Collector, Tiruppur and DT & Ors.	<p>The Apex Court observed that the earlier orders of the Court were passed at the stage of admission itself. Even the order dated 25.02.2015, passed by a 3-Judge Bench of the Court while dealing with a batch of appeals having SLP (C) No. 35969/2009 as the lead matter, stated as follows: "UPON hearing the counsel the Court made the following ORDER Dismissed. The Apex Court thus observed that there was no pronouncement by this Court constituting the law of the land as to the interpretation of G.O. Ms. No. 162. In such a situation, it was open for them to proceed to decide the instant appeals uninfluenced by the prior orders of the Court dismissing SLPs.</p>
3.	Khoday Distilleries v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., (2019) 4 SCC 376	<p>Against this judgment of the High Court, the appellant preferred the special leave petition. This special leave petition was dismissed by this Court on December 04, 2009 with the following order: "Delay condoned. Special Leave Petition is dismissed." The Apex Court observed that since special leave petition was dismissed in limine without giving any reasons, the review petition filed by the appellant in the High Court would be maintainable and should have been decided on merits.</p>
4.	Gojer Bros. Pvt. Ltd vs Ratan Lal Singh on 1 May, 1974 1974 AIR 1380	<p>In the given case, High, Court had taken the view that in cases where appellate court merely dismisses the appeal, the principle of merger has no application in cases of execution of the original decree except as to limitation and will not affect an executable decree passed by an inferior court, in so far as its execution is concerned. The position would be otherwise if the decree is modified or varied by such appellate authority as, in such event, the original decree, will be in executable. The Apex Court rejected the view and held that the conclusion is clearly opposed the view taken by this Court and High Court was in error in making a distinction between an appellate judgment whereby an appeal is dismissed and an appellate judgment modifying or reversing the decree of the lower court. This distinction is unsound and is based on no discernible principle.</p>