

# THE BARRISTER

by S.B. Jain and Associates

*The latest legal updates, news and views*

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## What is Fashion Law?

Fashion law is a specific field of law that deals with legal issues that impact the fashion industry. Fundamental issues in fashion law include intellectual property; business and finance, with subcategories ranging from employment and labor law to real estate; international trade and government regulation, including questions of safety and sustainability; dress codes and religious apparel; consumer culture; privacy and wearable tech; and civil rights. Fashion law also includes related areas such as textile production, modeling, media, and the cosmetics and perfume industries.

# CORPORATE AFFAIRS



## MCA revises Form DPT-3/4

The Government has modified the Companies (Acceptance of Deposits) Rules, 2014. The amendment has been brought in rule 16. As per the amended norms, every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company and declaration to that effect shall be submitted by the Auditor in Form DPT-3.

## MCA notifies Companies (Incorporation) Third Amendment Rules, 2022

ROC has to prepare Physical Verification Report of the Registered Office of the company in the given format.

- Need to attach Photograph of the Registered Office of the company to his report.
- Copy of Agreement/ownership/rent agreement/NOC of the Registered Office of the company from owner/tenant/lessor-Self attested ID-card of the person available, if any 2 independent witness of the locality.
- Assistance of the local police for such verification.



# TAXATION



## **GST on Renting of Residential Property**

GST on rent in relation residential property to registered persons is leviable e.f. 18.07.2022 under reverse charge mechanism.

CBIC has further clarified by way of tweet that: Renting of residential unit is taxable only when it is rented to a business entity. No GST is leviable when residential unit is rented to a private person for personal use. No GST is leviable even if a proprietor or partner of firm rents residential property for personal use.

## **Introducing Single Click Nil Filing of GSTR-1**

Single click Nil filing of GSTR-1 has been introduced on the GSTN portal to improve the user experience and performance of GSTR-1/IFF filing. Taxpayers can now file NIL GSTR-1 return by simply ticking the checkbox File NIL GSTR-1 available at GSTR-1 dashboard.



# LEGAL

## Supreme Court Declares Section 3(2) Of Benami Transactions Prohibition Act as Unconstitutional

Prohibition of Benami Property Transactions Act, 1988; Section 3(2) - Benami Transactions (Prohibition) Amendment Act, 2016 - Section 3(2) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution.



## Insolvency and Bankruptcy Code will prevail over The Customs Act

The Supreme Court on Friday held that Insolvency and Bankruptcy Code (IBC) will prevail over the Customs Act, to the extent that once moratorium proceedings begin under the Code, the customs authority does not have the power to initiate any recovery actions for dues from the corporate debtor. The top court also held that the customs authority cannot claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated against the corporate debtor.





## INTRODUCTION

Fashion law is a broad concept that encompasses a variety of legal issues such as contract law, arbitration, labor law, intellectual property law, and so on. It is concerned with issues of privacy, consumer preferences, and rampant consumerism. The word "fashion" has evolved in today's fast-paced society with technological advancements; it has become a commonly accepted standard to identify an individual based on how they dress, extending to the quality of 'brands'. As once said, 'dress for the job you want, clearly establishes the importance of ideal apparel. Fashion, in the 21st century, is not just restricted to apparel is extended to nanotech, e-commerce, custom-fit clothing, innovative fabrics, wearable technology like smartwatches, Fitbit, smart clothing, etc.

Fashion is one of the factors in social and interpersonal relationships, as it stimulates and affects cultural understanding. Thus, there is a requirement for regulating it.

However, there is no such concept of trade dress in India one cannot protect the whole garment or the wearable technology; one needs to bifurcate it, pick a particular element and then protect it as copyright. Wearable Technology is the new normal,

but with its widespread adoption comes a great deal of responsibility. Because it collects so much data, it's important to keep track of it. When developing a 'trend,' one must consider Invention Rights, Data Rights, and Product Rights in order to have complete control over it.



## **HISTORY**

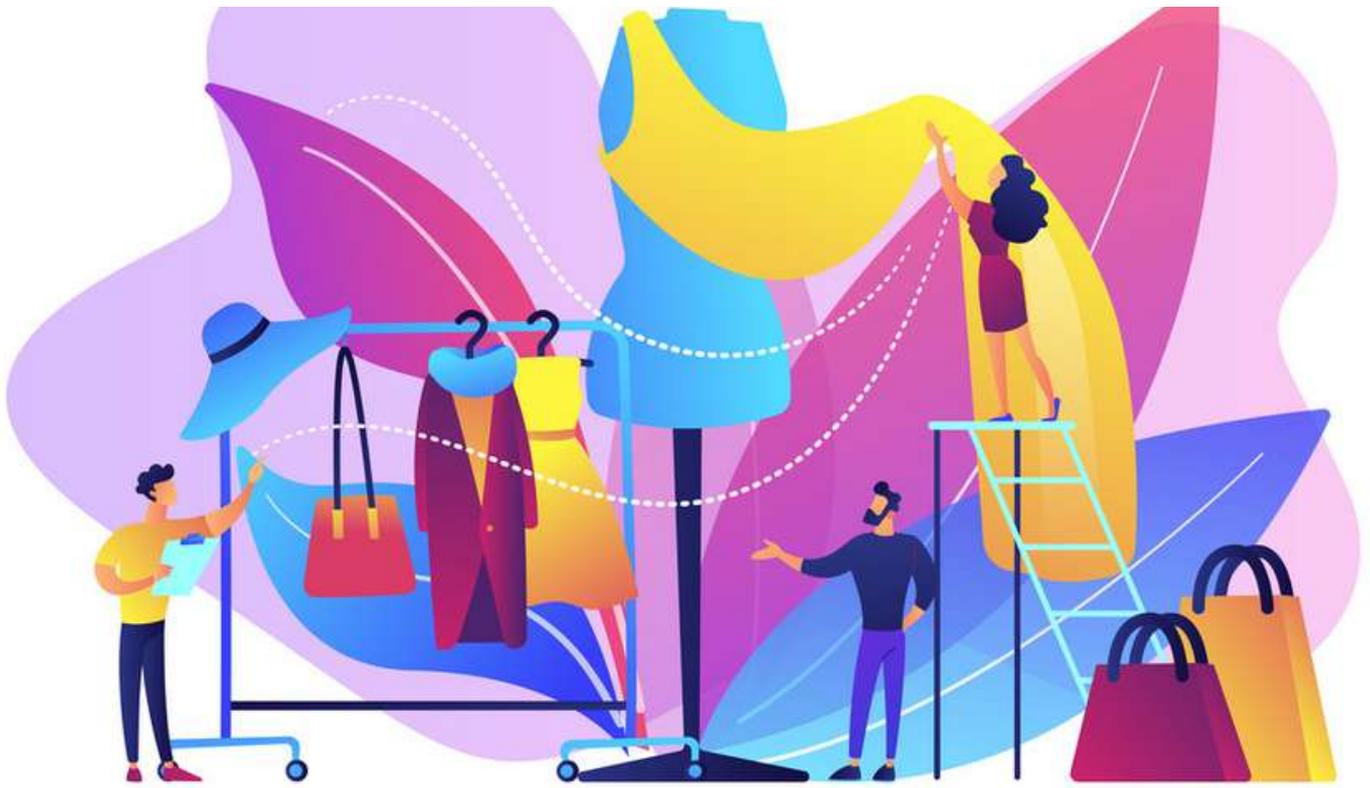
Fashion law is a field of law that covers the different intellectual property rights segments, including copyright, patent, trademarks, trade designs, and so on. Susan Scafidi, the United States law professor for the first time, in the year 2008, offered a course in fashion law and after that, this subject of fashion law has been recognized as a distinct field in the sphere of law. Fashion law is a rapidly growing area with the advancement of emerging technology, despite being a highly concentrated specialization.

In the 17th century, fashion was an integral part of the French way of life. Fabrics in less expensive versions have also been circulated as part of the trend. In the year 1920, when fashion was easier to copy and more available, changes were made. In the field of fashion, copying remained the most serious issue. The origins of copyright extensions can be traced back to the English and French Copyright systems, which cover fashion designs.

## **FASHION LAW IN INDIA**

Fashion has consistently been an inherent aspect of the Indian culture and now fashion law in India is developing step by step. Since there isn't one statute called "fashion Law", one needs to take shield under different enactments to get comprehensive security. The Indian fashion industry experiences the provisos of the law as the conventional laws for the security of intellectual property rights are not adequate to conceal the issues tormenting the style business rather than a portion of the Western nations.

In India we have developing economy and labour intensive economy so we have one of the biggest workforces working in fashion industry. The customers who buy the fashion accessory also form a part in the industry.



The Bigger brands that get sold in Europe and United States and all the bigger economies they are being veined in India so in terms of labour fashion industry does have one of the biggest industry. In fact with regards to human rights fashion has one of the biggest impacts on human rights. Fashion law as a part of Intellectual property rights come much later instead from a basic concern of human rights for an adequate labour practise. In India the fashion industry is growing very fast. The organisations that are working towards smoothening of fashion law are Fashion design council of India FDCI, Fashion foundation of India FFI, Apparel export promotion council AEPC.

## **Landmark cases of Fashion Law in India**

- Ritika Apparels v. BIBA, 2011, CS (OS) No. 182/ 2011, (India).
- Louis Vuitton Malletier v. Atul Jaggi, 2010, CS (OS) 1419 of 2009, (India).
- Christian Louboutin v. Mr. Pawan Kumar & Ors, (2018) 250 DLT 475, (India)

# FROM THE ARCHIVES

***M/s. Karam Chand Appliances Pvt. Ltd.***  
***versus***  
***Commissioner of Sales Taxes, Delhi***

*Present for the respondent: Mr. S.B. Jain*

*Date of order: 17.10.2001*

SUO-MOTO-REVISION-PROCEEDINGS WHETHER CORRECTLY INITIATED.

MOSQUITO KILLERS/REPELLANTS – LIQUID VAPORISERS-MARKETED UNDER TRADE NAME ‘ALL OUT’- WHETHER ELECTRONIC OR ELECTRICAL GOODS- HELD UNCLASSIFIED ITEM TAXABLE @2%.

ALLETHRIN – LIQUID USED IN MOSQUITO KILLERS/REPELLANTS-WHETHER PESTICIDES OR INSECTICIDE – COMMON PARLANCE & FUNCTIONAL TEST – RIGHTLY TAXED INSECTICIDES.

INTEREST – NO FINDING THAT RETURNS FILED BY THE APPELLANT ARE INCORRECT – NOT LEVIABLE.

## BRIEF FACTS OF THE CASE:

THE APPELLANT SELLS MOSQUITO KILLERS/REPELLANTS, TECHNICALLY KNOWN AS LIQUID VAPOURISERS, UNDER THE TRADE NAME ALL OUT AND ALSO SELLS THE AFORESAID LIQUID WHICH VAPOURISES UNDER THE HEAT PRODUCED BY THE VAPOURISERS. THE VAPOURISERS WERE TAXED AS ELECTRONIC GOODS AND THE FLUID AS PESTICIDES IN THE ASSESSMENT. SUBSEQUENTLY THE LD.AC ISSUED NOTICE FOR REVISION AND REVISED THE ABOVE, TREATING THEM AS ELECTRICAL GOODS AND INSECTICIDES RESPECTIVELY, TAXABLE AT A HIGHER RATE . INTEREST WAS ALSO CHARGED. IT WAS ARGUED THAT THE NOTICE UNDER SECTION 46 IS BAD IN SO FAR AS THE LD. AA HAD HIMSELF ADMITTED IN THE ASSESSMENT ORDERS THAT THE DEALER IS ENGAGED IN THE BUSINESS OF ‘ELECTRONIC GOODS’ AND THE LD. AC HAS NOT PLACED ON RECORD ANY MATERIAL AS TO WHY HE CONSIDERED

THE ORDER OF THE ASSESSING AUTHORITY AS ERRONEOUS AND PREJUDICIAL TO THE INTERESTS OF THE REVENUE. THE FIRST QUESTION, WHICH IS COMMON IN BOTH THE APPEALS IS THE RATE OF TAX ON MOSQUITO KILLERS REPELLANTS. THE ADDITIONAL DISPUTE IN 1995-96 IS THE RATE OF TAX ON ALLETHRIN - A LIQUID USED IN THESE MOSQUITO KILLERS / REPELLANTS.

**HELD:**

NOTICE U/S 46 FOR SUO-MOTO REVISION WAS NOT BAD SIMPLY BECAUSE THE AA HAD HIMSELF ADMITTED THAT THE APPELLANT WAS DEALING IN ELECTRONIC GOODS. SINCE SUCH ERROR DID NOT VITIATE THE NOTICE, THE TRIBUNAL DID NOT GO INTO THE QUESTION WHETHER THE NOTICE IS IN FACT VAGUE OR NOT.

MOSQUITO KILLERS / REPELLANTS – LIQUID VAPOURISERS MARKETED UNDER THE TRADE NAME ALL OUT WAS NEITHER AN ELECTRONIC GOODS NOR AN ELECTRICAL GOODS AS HELD BY LOWER AUTHORITIES. IT WAS PROPERLY TAXABLE AS UNCLASSIFIED / GENERAL GOODS. ALLETHRIN IS THE LIQUID USED IN MOSQUITO KILLERS/REPELLANTS IS AN INSECTICIDE AS IT LEANS MORE TOWARDS HUMAN ENVIRONMENT & WINGED CREATURES. INTEREST U/S 27(1) ON TAX IS NOT LEVIABLE AS THE AA DID NOT RECORD A FINDING THAT RETURNS FILED BY THE APPELLANTS WERE NOT HELD TO BE INCORRECT.

**CASES REFERRED TO/RELIED UPON:**

MALABAR INDUSTRIES CO. 2 SCC 15 (SC)

BOMBAY CHEMICALS P.LTD. 99 STC 339 (SC)

SONIC ELECTRONIC P.LTD. 92 STC 117 (ORISSA)

EMPIRE TRADING AGENCY 1999 STI 828 (PB-TRIB)

KASTURI LAL JAIN TRUST 123 STC 505 (WBTT)

CST VS. STAT 10 SALES TAX TODAY 53 (DELHI)



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