

Itc Limited & Anr vs Union Of India & Ors on 14 October, 2026

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 19248 of 2023

With

W.P.A. No. 17065 of 2024

With

W.P.A. No. 9004 of 2026

ITC Limited & Anr.

Vs.

Union of India & Ors.

Mr. J.P. Khaitan, Sr. Adv.
Mr. Dhrubo Ghosh, Sr. Adv.
Mr. Sarathi Dasgupta
Ms. Ajeyaa Choudhury
Mr. Dipendra Nath Chunder
Mr. Jishnujit Roy
Mr. Shourjya Samanta

....For the petitioners.

Mr. Arijit Chakraborty
Mr. Debsoumya Basak

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Ms. Swati Kumari Singh

....For the Enforcement Directorate.

Hearing concluded on : 29.09.2026

Order passed on : 14.10.2026

Order uploaded on : 14.10.2026

Krishna Rao, J.:

1. The preliminary issue raised by Mr. Arijit Chakraborty, Learned Advocate, representing the Enforcement Directorate that the writ petitions filed by the petitioners are connected with Group-IV and are not of Group-IX.
2. The petitioners have filed the present writ petitions challenging the Memorandum dated 5th December, 2001, issued by the Special Director, Enforcement Directorate, Ministry of Finance, Government of India, under Rule 3 of the Adjudication Proceedings and Appeal Rules, 1974 read with Sub-Sections (3) and (4) of [Section 49](#) of the Foreign Exchange Management Act, 1999.
3. Mr. Chakraborty submits that under Rules relating to Computerization of the Cause List of the Original Side of this Court, in Chapter- XXXIXA, Appendix-I, Table III, Subject Classification, Group-A (Writ Matters), in Sub-Group Serial No. 23 under the heading "Revenue" in Clause (v) "Foreign Exchange" having Computer Code No. 123050 is 3 mentioned. By referring the same, he submits that under the Computerization Rules, "Foreign Exchange" is coming under "Revenue".
4. Mr. Chakraborty submits that as per Rule 8A, all petitions under [Article 226](#) of the Constitution of India shall contain all the particulars as detailed in the proforma as specified in the Rules relating to computerized listing and as per Rule 8B, all petitions for the issuance of high prerogative writs under [Article 226](#) of the Constitution shall also contain the particulars as detailed in the proforma being Schedule A to these Rules mentioning the Group and Head according to the classification list of different types of writ proceedings as specified in Schedule B to these Rule.
5. Mr. Chakraborty submits that by a Notification dated 11th November, 2005, "PART 20" is added in the Original Side Rules of this Court and in Rule 1 under the heading "Short title, application and commencement" [Section 35](#) of the Foreign Exchange Management Act, 1999, is added.
6. Mr. Chakraborty submits that the matter relating to [Foreign Exchange Management Act, 1999](#), is coming under Revenue that is Group IV but the petitioners have filed the present writ petitions before this Court under Group IX which is not maintainable.
7. Mr. J.P. Khaitan, Learned Senior Advocate, representing the writ petitioners submits that Group IX related to Residuary Matters. Under Schedule-B, Classification list of different types of writ proceedings are 4 provided but in none of the Groups, that is Group I to Group VIII, Foreign Exchange Matters are not specified and thus, Foreign Exchange Matters will come under Group IX (Residuary matters).
8. Mr. Khaitan submits that the Rules relating to Computerization of the Cause List of the Original Side under Chapter XXXIXA, in Table-III, Subject Classification of Group A (Writ Matters) is provided. Under Group A (Writ Matters), there are altogether 26 Sub-Groups have been categorized including Residuary. Mr. Khaitan Pointed out that Sub Group-5 relating to Contracts and Tenders, Sub Group-8 is Essential Services i.e. Electricity, Post and Telegraph, Telephone, Railway and Miscellaneous. Sub Group-10 is Freedom Fighters' pension, Sub-Group 19 is Police, Sub-Group 23 is Revenue, in which at Serial No. (v) Foreign Exchange is mentioned and Sub-Group 26 is Residuary. By referring the said Sub-Groups, Mr. Khaitan submits that all the said Sub-Groups is taken up by the Hon'ble Court having determination of Group-IX (Residuary matters), thus the Foreign Exchange matters also covered under Group IX and not Group-IV.
9. Mr. Khaitan submits that Part 20 is amendment of Original Side Rules relating to Appeal and Application etc. to the High Court under [Sections 260A](#) and [256](#) of the Income Tax Act, 1961, [Sections 35G](#) and [35H](#) of the Central Excise Act, 1944, [Sections 130A](#) and [130](#) of the Customs Act, 1962, and [Sections 27A](#) and [27](#) of the Wealth Tax Act, 1957 and [Section 35](#) of the Foreign Exchange Management Act, 1999 and Service Tax References under the [Finance Act, 1994](#). He referred 5 "Savings" Clause 15 of the amended Rules and submits that the Rules under the [Income Tax Act](#) as contained in Appendix I, Part I, Appendices (Part-I) of the Rules of the High Court, Calcutta 1914, Original Side (5th Edition), Vol. II, as applicable to all corresponding proceedings under the [Income Tax Act, 1961](#) and other revenue laws shall continue to govern the references to the High Court under [Section 256](#) of the Act and the other revenue laws so far those are not inconsistent with these Rules.

10. Mr. Khaitan submits that "Foreign Exchange" is not connected with "Revenue". He referred to aims and objects as well as the definition of Foreign Exchange provided in the [Foreign Exchange Regulation Act, 1973](#) (hereinafter referred to as "FERA") and [Foreign Exchange Management Act, 1999](#) (hereinafter referred to as "FEMA") and submits that under FEMA, if any, person or persons committed any offence under the said Act, there is a provision of Penalty and not for recovery of any Tax.

11. This Court called for report from the Learned Registrar IT whether the writ petitions filed by the petitioners are the matters of Group IX or Group IV. The Registrar IT is of the view that the matters in question falls within the category contemplated in Group IV of the Appellate Side Rules.

12. The Special Director of the Enforcement Directorate, Ministry of Finance, Government of India, issued a Show Cause Notice to the 6 petitioners for violations of [Section 8\(1\)](#) and [Section 9\(1\)\(a\)](#) of the Foreign Exchange Regulation Act, 1973, and directed to file show cause within 30 days from receipt of the Memorandum as to why adjudication proceedings as contemplated under [Section 51](#) of the Foreign Exchange Regulation Act, 1973, read with Sub-Sections (3) and (4) of [Section 49](#) of the Foreign Exchange Management Act, 1999, shall not be held against the petitioners.

13. [Sections 8, 9, 50](#) and [51](#) of the Foreign Exchange Regulation Act, 1973, and [Section 49](#) of the Foreign Exchange Management Act, 1999, reads as Follows:

"8- Restrictions on dealing in foreign exchange.- (1) Except with the previous general or special permission of the Reserve Bank, no person other than an authorised dealer shall in India, and no person resident in India other than an authorised dealer shall outside India, purchase or otherwise acquire or borrow from, or sell, or otherwise transfer or lend to or exchange with, any person not being an authorised dealer, any foreign exchange:

Provided that nothing in this sub-section shall apply to any purchase or sale of foreign currency effected in India between any person and a money- changer.

Explanation.- For the purposes of this sub- section, a person, who deposits foreign exchange with another person or opens an account in foreign exchange with another person, shall be deemed to lend foreign exchange to such other person.

(2) Except with the previous general or special permission of the Reserve Bank, no person, whether an authorised dealer or a money-changer or otherwise, shall enter into any transaction which provides for the conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of exchange other than the rates for the time being authorised by the Reserve Bank.

(3) Where any foreign exchange is acquired by any person, other than an authorised dealer or a money-changer, for any particular purpose, or where any person has been permitted conditionally to acquire foreign exchange, the said person shall not use the foreign exchange so acquired otherwise than for that purpose or, as the case may be, fail to comply with any condition to which the permission granted to him is subject, and where any foreign exchange so acquired cannot be so used or the conditions cannot be complied with the said person shall, within a period of thirty days from the date on which he comes to know that such foreign exchange cannot be so used or the conditions cannot be complied with, sell the foreign exchange to an authorised dealer or to a moneychanger.

(4) For the avoidance of doubt, it is hereby declared that where a person acquires foreign exchange for sending or bringing into India any goods but sends or brings no such goods or does not send or bring goods of a value representing the foreign exchange acquired, within a reasonable time or sends or brings any goods of a kind, quality or quantity different from that specified by him at the time of acquisition of the foreign exchange, such person shall unless the contrary is proved, be presumed not to have been able to use the foreign exchange for the purpose for which he acquired it or, as the case

may be, to have used the foreign exchange so acquired otherwise than for the purposes for which it was acquired.

(5) Nothing in this section shall be deemed to prevent a person from buying from any post office in accordance with any law or rules made thereunder for the time being in force, any foreign exchange in the form of postal orders or money orders.

9 - Restrictions on payments.-(1) Save as may be provided in, and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in, India shall- 8

(a) make any payment to or for the credit of any person resident outside India;

(b) receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India;

Explanation. --For the purposes of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised dealer) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised dealer;

(c) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside India;

(d) make any payment to, or for the credit of, any person by order or on behalf of any person resident outside India;

(e) place any sum to the credit of any person resident outside India;

(f) make any payment to, or for the credit of, any person or receive any payment for, or by order or on behalf of, any person as consideration for or in association with-

(i) the receipt by any person of a payment or the acquisition by any person of property outside India,

(ii) the creation or transfer in favour of any person of a right (whether actual or contingent) to receive payment or acquire property outside India;

(g) draw, issue or negotiate any bill of exchange or promissory note, transfer any security or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (f).

(2) Nothing in sub-section (1) shall render unlawful-

(a) the making of any payment already authorised either with foreign exchange obtained from an authorised dealer or a money-changer under [section 8](#) or with foreign exchange retained by a person in pursuance of an authorisation granted by the Reserve Bank;

(b) the making of any payment with foreign exchange received by way of salary or payment for services not arising from any business in, or anything done while in, India. (3) Save as may be provided in, and in accordance with, any general or special exemption from the provisions of this sub-section, which may be granted conditionally or unconditionally by the Reserve Bank, no person shall remit or cause to be remitted any amount from any foreign country into India except in such a way that the remittance is received in India only through an authorised dealer.

(4) Nothing in this section shall restrict the doing by any person of anything within the scope of any authorisation or exemption granted under this Act.

(5) For the purposes of this section and [section 19](#), "security" includes coupons or warrants representing dividends or interest and the life or endowment insurance policies.

50. Penalty.- If any person contravenes any of the provisions of this Act [other than [section 13](#) , clause (a) of sub-section (1) of [[section 18](#) , [section 18](#) A] and clause (a) of sub-section (1) of [section 19](#)] or of any rule, direction or order made thereunder, he shall be liable to such penalty not exceeding five 10 times the amount or value involved in any such contravention or five thousand rupees, whichever is more as may be adjudged by the Director of Enforcement or any other officer of Enforcement not below the rank of an Assistant Director of Enforcement specially empowered in this behalf by order of the Central Government (in either case hereinafter referred to as the adjudicating officer).

51. Power to adjudicate.- For the purpose of adjudging under section 50 whether any person has committed a contravention of any of the provisions of this Act (other than those referred to in that section) or of any rule, direction or order made thereunder, the adjudicating officer shall hold an inquiry in the prescribed manner after giving that person a reasonable opportunity for making a representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty as he thinks fit in accordance with the provisions of that section."

[Section 49](#) of the Foreign Exchange Management Act, 1999, reads as follows:

"49. Repeal and saving.--(1) [The Foreign Exchange Regulation Act, 1973](#) is hereby repealed and the Appellate Board constituted under sub- section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

(2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

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(3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.

(4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.

(5) Notwithstanding such repeal,--

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

(c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement:

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Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

(6) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-

sections (2), (4) and (5) shall not be held to prejudice or affect the general application of [section 6](#) of the General Clauses Act, 1897 with regard to the effect of repeal."

14. [The Foreign Exchange Regulation Act, 1973](#) (hereinafter referred to as "Act of 1973"), came into force on 19th September, 1973 and the object of the said Regulation reads as follows:

"[An Act](#) to consolidate and amend the law regulating certain payments, dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency¹ [* * * *], for the conservation of the foreign exchange resources of the country and the proper utilisation thereof in the interest of the economic development of the country."

15. [The Foreign Exchange Management Act, 1999](#) (hereinafter referred to as "Act of 1999"), came into effect from 29th December, 1999, and the object of the said Act reads as follows:

"[An Act](#) to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India."

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16. Definition of "Foreign Exchange" is provided under [Section 2\(h\)](#) of the Act of 1973, which reads as follows:

"(2)(h) "foreign exchange" means foreign currency and includes--

(i) all deposits, credits and balances payable in any foreign currency and any drafts, traveller's cheques, letters of credit and bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency;

(ii) any instrument payable, at the option of the drawee or holder thereof or any other party thereto, either in Indian currency or in foreign currency or partly in one and partly in the other."

Definition of "Foreign Exchange" is provided under [Section 2 \(n\)](#) of the Act of 1999, which reads as follows:

"(2)(n) "foreign exchange" means foreign currency and includes,--

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency."

17. Rule 8A of this Court relating to Applications under [Article 226](#) of the Constitution of India was substituted by a Notification dated 18th November, 1999, and which reads as follows:

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"8A. All petitions under [Article 226](#) of the Constitution shall contain the particulars as detailed in the proforma as specified in the Rules relating to computerized listing on the Appellate/ Original Side as applicable.

A petition which does not contain the necessary details as prescribed shall not be accepted by the department."

Rule 8B is inserted by a Notification dated 28th February, 2005, which reads as follows:

"8B. All petitions for the issuance of high prerogative writs under [Article 226](#) of Constitution shall also contain the particulars as detailed in the proforma being Schedule A to these Rules mentioning the Group and Head according to the classification list of different types of writ proceedings as specified in Schedule B to these Rules."

18. Rule 8A relates to computerized listing. Rule 8B provides proforma as provided in Schedule-A mentioning the Groups and Heads according to classification list of different types of writ proceedings as specified in Schedule-B of these Rules. Schedule-B consisting of IX Groups. The dispute in the present proceeding is whether the writ petitions filed by the petitioners are coming under Group "IV" or Group "IX". Group "IV" matters relating to Revenue and Tax Laws (excluding land revenues). The following subject-matters falls under Group IV:

"Group IV.- Matters relating to Revenue and Tax Laws (excluding land revenues):

- (a) Assessment/Re-opening of Assessment,
- (b) Stay of recovery
- (c) Refund,
- (d) Declaration forms,
- (e) Appeal/ Revision, 15
- (f) Liability to pay tax/ registration and cancellation thereof,
- (g) Exemptions/ deductions,
- (h) Classification of Tariff items and entries of the Schedule-I,
- (i) Search and seizure,
- (j) Adjudication proceedings,
- (k) Levy and short levy of duties,
- (l) Miscellaneous."

Group IX relates to Residuary Matters.

19. The object of the [Foreign Exchange Management Act, 1999](#) of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. The definition of

"Foreign Exchange" means foreign currency and includes

(i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency and (iii) drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

20. The authorities have issued the Show Cause Notice against the petitioners on 5th December, 2001 for contravention of certain provisions of FERA in respect of transactions allegedly carried out by the petitioners in the year 1992-1993.

21. [Foreign Exchange Regulation Act, 1973](#), came into force with effect from 1st January, 1974. The purpose of introducing FERA, the country was struggling with low foreign exchange reserves. As a result, FERA 1973 operated on the assumption that any foreign exchange earned by Indian residents was rightfully the property of the Government of India and had to be collected and handover to the Reserve Bank of India. The bill was formulated with the aim of regulating certain kinds of payments and dealings in foreign exchange. [FERA Act](#) had become incompatible with the pro-liberalization policies of the Government of India and become redundant and was repealed in the year 1998 and replaced by the [Foreign Exchange Management Act](#) in the year 1999, which liberalized foreign exchange controls and restrictions on foreign investment. FEMA is the legislation that governs foreign exchange transactions in India. It facilitates activities such as sending and receiving money across borders, making overseas investments, and acquiring property outside India. The purpose of the Act to integrate and amend the law relating to foreign exchange with the object of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

22. [The FEMA Act](#) gives authority to the Reserve Bank of India to establish the categories of capital account dealings and exchange restrictions applicable to such dealings in consultation with the Government of India. The FEMA empowers the Central Government to regulate foreign exchange activities in India. All transaction must be carried out through "Authorized Person". This group includes authorized dealers, money changer and offshore banking units, among others. 17

23. The Reserve Bank of India may on application authorize any person to be known as authorize person to deal with foreign securities, as an authorized dealer, money changer or offshore banking unit or any other manner as it deem fit.

24. Non-compliance with provisions of FEMA can attract significant financial penalties. A person found in contravention may be liable to pay up to three times the amount involved in the violation or rupees two lakhs, whichever is higher. If the default continues, an additional penalty of Rs. 5,000/- per day may be imposed for the ongoing breach. These stringent provisions underline the importance of adhering to FEMA Regulation and ensuring proper compliance in all foreign transactions.

25. FEMA is essential for businesses and individuals engaged in international transactions to ensure compliance with law and facilitate smooth cross-border activities. Foreign exchange transactions or earning from exports and services are recorded as revenue in a company's profit and loss statement when they arise from regular trading or business operations. Foreign currency received from selling goods or rendering services to overseas customers is recognized as core revenue at the spot exchange rate on the date of transaction. "Revenue" in an Appellate Side determination refers to cases involving Income Tax, Sales Tax, Cess, Customs, Foreign Exchange, Excise and Miscellaneous.

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26. Considering the above, this Court finds that the matter relates to Foreign Exchange is covered under Group IV (matters relating to Revenue and Tax Laws (excluding land revenues)).

27. In view of the above, W.P.A. No. 19248 of 2023, W.P.A. No. 17065 of 2024 and W.P.A. No. 9004 of 2026 are released from the list of this Court with the liberty to the parties to mention before the appropriate Court having

determination.

Parties shall be entitled to act on the basis of a server copy of the Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Order, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.) Later:

1. Learned Counsel for the petitioners submits that though this Court has released the matter but the interim order is still November 19, 2026 and prays for extension of interim order.

2. Interim order is extended till December 3, 2026 or until further order whichever is earlier.

(Krishna Rao, J.)