



JUDGMENTS ♦ TRIBUNAL ♦ COUNCIL ♦ CONCEPTS

GST:

21 *Insights*

Twenty-one insights that matter. *Published on the 21st of every month.*

Judgments.

Tribunal Decisions.

Council Updates.

Concepts Explained.

SUPREME COURT
HIGH COURTS
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57th

GST COUNCIL REPORT

01

CONCEPT EXPLAINED

FROM THE EDITORIAL DESK

Preface

नमस्कार!

It is with professional satisfaction that we present the inaugural issue of ***GST: 21 Insights***, to be published on the ***twenty-first day of every month***. The title reflects both the date of release and the journal's central purpose: to deliver twenty-one carefully selected insights that matter most to practitioners, taxpayers, and the department.

Each month, ***GST: 21 Insights*** will bring together the developments that shape GST law — what the courts have decided, what the GST Council has proposed, and what those decisions mean in practice.

**Adv. Ashu Dalmia**FOUNDER
ADA LAW CHAMBERS

This first volume is a foundational issue. It presents:

- | | |
|---|---|
| <p>01 Five important topics that bring together the landmark and significant judgments of the Supreme Court and the High Courts which have defined and refined GST jurisprudence;</p> | <p>02 Twenty-one important decisions of the GST Appellate Tribunal (GSTAT), the newest forum in the GST dispute-resolution structure;</p> |
| <p>03 A special report on the 57th GST Council Meeting, summarising the matters considered and the changes proposed;</p> | <p>04 Contributions from fellow practitioners who have generously shared their insights with us; and</p> |
| <p>05 One Concept Explained, a section that examines one core concept of GST law in clear and accessible terms.</p> | |

Subsequent issues will continue to focus on the most consequential judgments, circulars, and developments, together with a rotating thematic examination of selected areas of GST law.

We welcome original articles and analytical contributions on GST-related subjects. Authors who wish to submit material may write to us at the address provided. Suitable contributions will be reviewed and, where appropriate, published in forthcoming issues. Suggestions for improvement are equally welcome.

We trust that ***GST: 21 Insights*** will serve as a practical and reliable resource in the ongoing interpretation and application of GST law.

This magazine is also available on our website, www.adalawchambers.com.

The compilation and presentation of this inaugural edition have been made possible through the dedicated efforts of
Adv. Ankita Jha, Adv. Anshu Kumar Upadhyay, Ishan Gupta, Ishu Jha, and Smita Raj.

WRITE TO US

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TOPIC I · JURISPRUDENCE

I Input Tax Credit under Section 16(2)(c) of the CGST Act

Judgments of the Supreme Court and the High Courts

SUPREME COURT

Bhandari Scrap Traders v. Union of India & Ors.

HIGH COURTS

Instakart Services Pvt. Ltd. — Karnataka

Sahil Enterprises — Tripura

Maruti Enterprise — Gujarat

Shaurya Alloys Pvt. Ltd. — Punjab & Haryana

The Statutory Framework

Section 16(2)(c) of the Central Goods and Services Tax Act, 2017 provides that a registered person shall not be entitled to input tax credit in respect of any supply of goods or services or both unless, subject to the provisions of Section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.

This provision thus makes the supplier's payment of tax to the Government a statutory condition for the recipient's entitlement to input tax credit.

The Contours of Controversy

The constitutionality of Section 16(2)(c) of the often come into question on the ground that the provision is contrary to the legal maxim *lex non cogit ad impossibilia*, i.e., a person cannot be asked to perform an impossible act, and, thus, it contravenes Articles 14, 19(1)(g), 21, 265, and 300A of the Constitution of India.

The provision places the entitlement of recipient to input tax credit conditional upon the actual payment of the corresponding tax to the Government by the supplier. This condition places the purchasing dealer at risk of losing ITC despite having paid the supplier the invoice value, including GST, and having otherwise complied with the statutory requirements, where the supplier subsequently defaults in depositing the tax.

Supreme Court Jurisprudence

1. Bhandari Scrap Traders v. Union of India & Ors.

Supreme Court of India · Date of Order: 24.07.2026

AGAINST ASSESSEE

CITATION GIB-SC-2026-105



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Constitutional validity of Section 16(2)(c) of the CGST Act, which denies ITC to a purchaser when the supplier fails to pay the tax, and whether it should be read down for bona fide purchasers.

2. BACKGROUND

Purchasing dealers challenged Section 16(2)(c) before the Gujarat High Court and sought a reading down on the lines of the Delhi VAT decisions, so that bona fide purchasers are not penalised for the supplier's default. The Gujarat High Court (01.05.2026) upheld the provision and refused to read it down. Before the Supreme Court, the petitioners relied on the Tripura High Court decision in Sahil Enterprises, which had read the provision down and against which a special leave petition has been entertained.

3. FINAL VERDICT

The Supreme Court dismissed the special leave petitions and affirmed the Gujarat High Court. It noted that the Tripura High Court had not undertaken the comparative exercise done by the Gujarat High Court. The detailed analysis of the two statutes showed that **there is no possibility of drawing parity between the provisions of the two enactments, so as to treat a purchasing dealer under the CGST Act on par with a purported bonafide purchasing dealer under the Delhi VAT Act** for ITC when the supplier fails to pay tax. The Court also relied on Section 41 and Sections 73 and 74, under which the purchaser can re-avail reversed ITC once the supplier is made to discharge the tax. It held that the High Court was fully justified in holding that no grounds were made out to declare Section 16(2)(c) unconstitutional or to read it down.

High Court Decisions

1. M/s Instakart Services Pvt. Ltd. v. Union of India & Ors.

High Court of Karnataka · Date of Order: 09.02.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-KHC-2026-28



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Validity of Section 16(2)(c) of the CGST/KGST Act and Rule 36(4) of the CGST/KGST Rules, and whether they should be read down so that bona fide recipients get ITC despite supplier default.

M/s Instakart Services Pvt. Ltd. v. Union of India & Ors.

CONTINUED

2. BACKGROUND

Instakart provides logistics, packaging, delivery and warehousing services to sellers on the Flipkart marketplace and is registered in several States. In 2021 it challenged Section 16(2)(c) and Rule 36(4) as violating Articles 14, 19(1)(g), 265 and 300A. It contended that these provisions cast an impossible burden on recipients to ensure that suppliers pay tax and file returns, which is beyond their control. In the alternative, it sought a reading down so that a recipient who satisfies all other conditions of Section 16(2) is not denied ITC for the supplier's lapse. It relied on On Quest, Arise India, Shanti Kiran India and National Plasto Moulding (Gauhati High Court). The Revenue opposed the petition.

3. FINAL VERDICT

The Single Judge framed the question as whether the provisions are unconstitutional or should be read down in favour of bona fide recipients. He referred to the Karnataka High Court's VAT-era rulings (Rajesh Jain, Jain Steels) that a purchaser who proves payment of tax to the seller cannot be deprived of credit, the Revenue's remedy being against the seller. He also extracted extensively from the Tripura High Court's judgment in Sahil Enterprises and expressed respectful agreement with it. The petition was disposed of in terms of National Plasto Moulding and Sahil Enterprises, and the Court directed that **the impugned provisions contained in Section 16(2)(c) of the CGST / KGST Act and Rule 36(4) of the CGST / KGST Rules are hereby read down in a manner that allows the benefit of ITC to bonafide recipients such as the petitioner** which have complied with all other conditions of Section 16(2), despite any fault, lapse or non-payment of tax by the suppliers. No specific demand order was under challenge, so the relief operates as a declaration on the provisions.

Subsequent development (interpretation): this order predates the Supreme Court's dismissal in Bhandari Scrap Traders (24.07.2026), which affirmed the Gujarat High Court's refusal to read down Section 16(2)(c).

2. M/s Sahil Enterprises v. Union of India & Ors.

High Court of Tripura · Date of Order: 06.01.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-TRIHC-2026-29


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Constitutional validity of Section 16(2)(c) of the CGST Act, and denial of ITC to a bona fide purchaser where the supplier collected GST but did not deposit it with the Government.

2. BACKGROUND

The petitioner, a trader in rubber products, bought goods from M/s Sentu Dey between July 2017 and January 2019 and paid GST of ₹1,11,60,830 to the supplier. The supplier reported these sales in GSTR-1 but filed "Nil" GSTR-3B returns and did not deposit the tax. The department blocked the petitioner's electronic credit ledger and issued an SCN under Section 73 on 07.01.2021. By order dated 17.05.2022 it confirmed the reversal of ₹1,11,60,830 with interest and penalty. The petitioner challenged that order and the vires of Section 16(2)(c) under Articles 14, 19(1)(g), 265 and 300A, contending that a purchaser has no mechanism to verify whether the supplier has paid the tax.

M/s Sahil Enterprises v. Union of India & Ors.

CONTINUED

3. FINAL VERDICT

The Division Bench held that Section 16(2)(c) is not unconstitutional, but read it down. It adopted the reasoning of the Delhi High Court in On Quest Merchandising (under Section 9(2)(g) of the DVAT Act), which the Supreme Court approved in Arise India and Shanti Kiran India. The Court reasoned that a purchaser cannot practically ensure that the seller deposits the tax, and that ITC exists to avoid double taxation. Nothing in the Act expressly permits taxing a purchaser twice by denying credit in all situations. The High Courts that upheld the provision without reading it down had not considered these Supreme Court-approved decisions or the practical impossibility involved. The Court held that **Section 16(2)(c) of the Act ought not to be interpreted to deny ITC to purchasers in a bona fide transaction like the petitioner and it should be read down and applied only where the transaction is found to be not bona fide or is a collusive transaction or fraudulent transaction to defraud the revenue.** As the department had invoked only Section 73 (not fraud under Section 74) and did not dispute that the GST had been paid to the supplier, the transaction was held to be bona fide. The order was set aside and the department was directed to allow ITC of ₹1,11,60,830 forthwith.

Subsequent development (interpretation): in Bhandari Scrap Traders (24.07.2026) the Supreme Court recorded that an SLP has been entertained against this judgment. It observed that the Tripura High Court had not undertaken the comparative DVAT/CGST analysis done by the Gujarat High Court, and upheld the Gujarat view that Section 16(2)(c) should not be read down. The precedential weight of this judgment should be assessed with that in mind.

3. Maruti Enterprise v. Union of India & Ors.

High Court of Gujarat at Ahmedabad (Division Bench) · Date of Order: 01.05.2026

AGAINST ASSESSEE

CITATION GIB-GUJHC-2026-151


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Constitutional validity of Section 16(2)(c) of the CGST Act – whether denial of ITC to a bona fide purchaser for the supplier's failure to deposit tax violates Articles 14, 19(1)(g), 265 and 300A, or whether the provision should be read down to cases of fraud or collusion.

2. BACKGROUND

In a large group of petitions, purchasing dealers denied ITC because their suppliers had not deposited the tax collected challenged Section 16(2)(c). They argued that the GST system gives a purchaser no means to verify the supplier's GSTR-3B or tax payment, invoked the maxim *lex non cogit ad impossibilia*, and relied on On Quest Merchandising (Delhi HC), which read down Section 9(2)(g) of the DVAT Act, and Sahil Enterprises (Tripura HC), which read down Section 16(2)(c). The Court confined itself to the question of vires and did not examine individual merits.

3. FINAL VERDICT

The Court held that the GST regime cannot be equated with VAT: it is destination-based, ITC crosses State lines, and under Section 53 the originating State would have to transfer tax it never received if credit were allowed without

Maruti Enterprise v. Union of India & Ors.

CONTINUED

payment. The purchaser is not left remediless, because the Revenue can recover from the supplier under Sections 73 and 74, and Section 41(2) with Rule 37A allows re-availment once the supplier pays; mere delay or hardship in availing ITC cannot be a ground for reading down Section 16(2)(c). ITC is a statutory concession, Section 155 places the burden of proving eligibility on the claimant, and the Court respectfully disagreed with the Tripura High Court. It held that **Section 16(2)(c) of the CGST Act is clear, self-explanatory, and unambiguous. Its plain reading does not give rise to any constitutional or legal infirmity**, and declined to read it down or declare it ultra vires.

In its final observations, the Court referred to the Axel Kittel principle that ITC may be denied only where the recipient knew or ought to have known of the fraud, and urged the Government to re-evaluate the position of honest purchasers, through legislative amendment or clarification, a real-time technology-driven mechanism to verify suppliers' tax payments against specific invoices, and prompt recovery from erring suppliers. The petitions were directed to be listed for decision on merits.

4. Shaurya Alloys Pvt. Ltd. v. State of Punjab & Anr. (and connected matters)

High Court of Punjab and Haryana at Chandigarh (Division Bench) · Date of Order: 01.10.2026

NEUTRAL

CITATION GIB-PHHC-2026-125


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Validity of Section 16(2)(c) read with Section 155 of the CGST Act, and the manner in which ITC may be denied to purchasing dealers for the supplier's default or the retrospective cancellation of its registration – guidelines for proper officers.

2. BACKGROUND

A large batch of writ petitions by purchasing dealers from Punjab, Haryana and Chandigarh challenged notices and orders reversing ITC, often with cancellation of their own registrations, founded mainly on the suppliers' non-payment of tax or the retrospective cancellation of the suppliers' registrations. The petitioners challenged the vires of Section 16(2)(c), and in the alternative sought its reading down to cases of fraud or collusion. The Revenue relied on Maruti Enterprise (Guj HC), Section 155 and the availability of alternative remedies.

3. FINAL VERDICT

The Court held that **Section 16(2)(c) of the Act of 2017 does not suffer from any constitutional infirmity warranting its invalidation**, since actual payment of tax is the very foundation of ITC; noting that the SLP against Maruti Enterprise was dismissed in Bhandari Scrap Traders, it declined, as a matter of judicial discipline, to read the provision down. It added, however, that the vice complained of lies not in the text of Section 16(2)(c) but in its being torn out of the statutory scheme and applied in a routine and mechanical manner. The provision must be applied in harmony with Section 41, Sections 73, 74, 75(12), 76 and 79, and Rules 36, 37A and 88C. Section 76 cannot be rendered toothless, and before 26.12.2022 there was no mechanism to re-avail reversed credit.

Shaurya Alloys Pvt. Ltd. v. State of Punjab & Anr. (and connected matters)

CONTINUED

It laid down binding guidelines. Cancellation of the supplier's registration, nil returns or alerts are only a starting point for inquiry. The officer must record satisfaction on the supplier's particulars, the nature of the default and the recovery steps taken against the supplier, and establish a direct link with the purchaser. The show cause notice must disclose the material and supply the relied-upon documents. Where Section 74 is invoked, the notice itself must state the foundational facts, and **the fraud of the selling dealer shall not be attributed to the purchasing dealer unless the notice discloses the facts connecting the purchasing dealer with such fraud.** The purchaser's registration cannot be cancelled on this ground alone. All matters were remitted for fresh adjudication, with eight weeks to reply and no coercive action meanwhile.

Conclusion

Section 16(2)(c) of the CGST Act, 2017 reflects a balance between the statutory requirement of actual payment of tax to the Government and the protection of bona fide purchasing dealers from the consequences of their suppliers' defaults. The constitutionality of the provision has been repeatedly affirmed by the Supreme Court and High Court.

The Karnataka High Court in *Instakart Services Private Limited* and the Tripura High Court in *Sabil Enterprises* read down Section 16(2)(c) to protect bona fide purchasers in genuine transactions.

In contrast, the later judgment of the Gujarat High Court in *Maruti Enterprise* declined to read down the provision, while urging legislative or administrative measures to address the difficulties faced by genuine purchasers. This decision was further affirmed by the Supreme Court by *Bhandari Scrap Trader*.

The latest legal position by the Punjab and Haryana High Court in *Shaurya Alloys Pvt. Ltd.* also affirmed the provision's constitutionality and clarified that Section 16(2)(c) cannot be invoked mechanically merely because the supplier defaults or its registration is retrospectively cancelled. It prescribed guidelines requiring proper investigation, disclosure of supporting material in show-cause notices, consideration of evidence establishing genuine transactions, examination of any connection between the recipient and alleged fraud, a personal hearing, and a reasoned order.

— End of Article —

TOPIC II · JURISPRUDENCE

II

Pre-Deposit under the GST Law: Computation, Scope and Distinction

Calculation in non-penalty matters and Calculation in penalty matters

PENALTY MATTERS

Gaurav Jain & Anr. — Delhi
Krishan Pal Singh — Delhi

NON-PENALTY MATTERS

M/s Ashirwad Food Industries — Jharkhand
Manoranjan Dash — GSTAT (Odisha)

The Statutory Framework

Section 107(6) of the CGST Act governs pre-deposit for an appeal before the Appellate Authority. The appellant must pay in full the admitted amount of tax, interest, fine, fee and penalty, and 10% of the remaining disputed tax, subject to the applicable statutory ceiling. Section 112(8) governs an appeal before the GST Appellate Tribunal and requires payment of admitted dues and a further 10% of the remaining disputed tax, in addition to the amount paid under Section 107(6), subject to the applicable statutory ceiling. The provisos introduced with effect from 01.10.2025 provide for a 10% pre-deposit of penalty in cases where an order demands penalty without involving a demand of tax.

The Contours of Controversy

The controversy in non-penalty matters is whether an assessee must make a further deposit under Section 112(8) when the amount already deposited under Section 107(6) exceeds the prescribed percentage of the reduced tax demand. Ashirwad Food Industries and Manoranjan Dash address this issue and treat pre-deposit as a portion of the disputed tax rather than an independent liability. In penalty-only matters, the controversy is whether the 10% penalty pre-deposit introduced with effect from 01.10.2025 applies to proceedings initiated before that date. Gaurav Jain and Krishan Pal Singh hold that the amended requirement cannot be applied retrospectively to the proceedings considered in those cases.

Penalty Matters

I. Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone & Anr.

High Court of Delhi (Division Bench) · Date of Order: 31.07.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-DHC-2026-130



SCAN TO READ THE
COMPLETE JUDGMENT

I. SUBJECT

Substituted proviso to Section 107(6) (10% pre-deposit on penalty-only orders, w.e.f. 01.10.2025) does not apply to appeals arising from an SCN issued before 01.10.2025.

Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone & Anr.

CONTINUED

2. BACKGROUND

An SCN dated 25.06.2025 under Section 122(1A) proposed penalties on the petitioners as alleged key persons behind fictitious entities passing on ITC. The Order-in-Original dated 16.12.2025 imposed penalties aggregating Rs.346,55,18,856/- on each petitioner with no tax demand, so the substituted proviso would require about Rs.34.66 crore each as pre-deposit. The Appellate Authority (09.03.2026) declined waiver for want of power. The petitioners contended that the right of appeal vests on commencement of the lis (the SCN date), when no percentage-based pre-deposit existed for such orders (the earlier proviso covered only Section 129(3) orders at 25%). The Department argued that the right arose only on the adjudication order and that the words “no appeal shall be filed” make the filing date decisive.

3. FINAL VERDICT

Relying on Hoosein Kasam Dada, Garikapati Veeraya and Videocon International, the Court held that the right of appeal is substantive, attaches to the lis at its commencement, and cannot be subjected to a more onerous condition except by express enactment or necessary intendment; here the lis commenced no later than 25.06.2025 and the substituted proviso diminishes the appellate package. Section 129 of the Finance Act, 2025 contains no such intention or transitional clause, the prohibitory words only fix the stage of compliance, and Hardeodas Jagannath, Surinder Singh Deswal and Chandra Sekhar Jha were distinguished. The Court agreed that the Appellate Authority has no power to waive an applicable pre-deposit, but that question did not arise.

Held: the substituted proviso does not govern appeals arising from proceedings initiated by the SCN dated 25.06.2025; the appellate remedy is governed by Section 107(6) as it stood on that date, and no 10% penalty pre-deposit is required (subject to Section 107(6)(a) for admitted amounts). The period from 20.03.2026 to the judgment was excluded for limitation, appeals were to be filed within four weeks with no coercive steps meanwhile, and the constitutional challenge was left open. The writ petition was allowed.

2. Krishan Pal Singh v. The Additional Commissioner, Delhi West Commissionerate & Anr.

High Court of Delhi (Division Bench) · Date of Order: 21.09.2026

IN FAVOUR OF ASSESSEE (PARTLY)

CITATION GIB-DHC-2026-129



SCAN TO READ THE COMPLETE JUDGMENT

1. SUBJECT

Writ against a penalty-only order arising from a pre-01.10.2025 SCN – merits relegated to appeal, but 10% penalty pre-deposit under the substituted proviso to Section 107(6) not insisted upon.

2. BACKGROUND

The petitioner sought quashing of the Order-in-Original dated 31.01.2025 (alleged to be non-speaking and in breach of natural justice) and of the SCN dated 26.07.2024, a declaration that the amended pre-deposit provisions under Sections 107(6) and 112(8) effective from 01.10.2025 cannot apply to proceedings arising from earlier SCNs, and alternatively waiver of pre-deposit. He was alleged to have created and controlled 13 firms through which ITC of Rs.30,50,13,190/- was passed on; a common order running into over 300 pages was passed against 81 noticees, and qua the petitioner it imposed penalty only, without any tax demand.

Krishan Pal Singh v. The Additional Commissioner, Delhi West Commissionerate & Anr.

CONTINUED

3. FINAL VERDICT

The Court declined to examine in writ jurisdiction whether the impugned order adequately dealt with the petitioner's contentions, as that requires examination of facts and merits and a statutory appeal under Section 107 of the CGST Act is available. On pre-deposit, however, the Court held the issue covered by Gaurav Jain (Delhi HC): **since the SCN was issued on 26.07.2024 (prior to 01.10.2025) and the order is penalty-only qua the petitioner, the appellate remedy is governed by Section 107(6) as it stood on the date of the SCN.** Accordingly, if the appeal is filed within two weeks, the Appellate Authority shall consider it in accordance with law without insisting on deposit of 10% of the disputed penalty under the substituted proviso. The writ petition was disposed of with these observations (challenge on merits not entertained; pre-deposit relief granted).

Non-Penalty Matters

1. M/s Ashirwad Food Industries v. Union of India & Ors.

Jharkhand High Court (Division Bench) · Date of Order: 09.02.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-JHC-2026-31


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

No fresh pre-deposit for an appeal before GSTAT where the amount already deposited at the first appellate stage exceeds the pre-deposit on the reduced demand; limitation protected while GSTAT was not functional.

2. BACKGROUND

The petitioner challenged Order-in-Appeal dated 30.06.2025 to the extent it confirmed the demand of the Order-in-Original dated 04.02.2025 along with interest and penalty, invoking writ jurisdiction because GSTAT did not appear to be fully functional. The original demand was about Rs.2.38 crore, against which the petitioner had made a pre-deposit of Rs.23,85,182/- at the first appellate stage; the first appellate authority scaled the demand down to about Rs.40 lakh, the 20% pre-deposit on which would be about Rs.8 lakh. The Department submitted that GSTAT members had been appointed and e-filing was permitted, and that no coercive measures are initiated once a 20% pre-deposit is made. The issue was whether any further pre-deposit was required for the GSTAT appeal and how limitation would be treated.

3. FINAL VERDICT

Having perused the record, the Court found substance in the petitioner's contention and **held that, considering the deposit of Rs.23.85 lakh already made at the first appellate stage, there was no question of making any further pre-deposit for instituting an appeal against the order dated 30.06.2025.** The Court further directed that if the appeal is filed within four weeks, GSTAT shall decide it on merits without adverting to limitation, since the petitioner was bona fide pursuing the writ and its impression that it could not file the appeal (the Tribunal not taking up appeals) was neither unreasonable nor lacking in bona fides. If the portal does not accept the appeal, physical filing is permitted and must be accepted without insisting on any fresh pre-deposit. All contentions on merits were left open and the writ petition was disposed of without costs.

2. Manoranjan Dash v. Commissionerate of CT & GST

GST Appellate Tribunal (Odisha) – Division Bench · Date of Order: 21.09.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-114



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether Section 112(8)(b) requires a fresh 10% pre-deposit before GSTAT when the pre-deposit made under Section 107(6) already exceeds the prescribed percentage of the tax surviving after the first appeal.

2. BACKGROUND

By order dated 08.07.2026 the Tribunal had admitted the assessee's appeal holding that no further pre-deposit under Section 112(8)(b) was required, relying on Ashirwad Food Industries (Jharkhand HC). The Department filed an interlocutory application to recall/modify that finding, contending that it was passed without hearing it and that the words "in addition to the amount paid under sub-section (6) of section 107" mandate a separate 10% deposit; it relied on Abhijit Nayak (Orissa HC, order dated 27.11.2025) and CIT v. Calcutta Knitwears (strict construction of taxing statutes). Admittedly, the assessee had deposited Rs.1,13,448/- under Section 107(6) against disputed tax of Rs.11,34,474/-, which the Appellate Authority reduced to Rs.1,02,012/-.

3. FINAL VERDICT

The Tribunal distinguished both authorities cited by the Department on facts and observed that the pre-deposit is not payment towards any separate or independent liability but a specified portion of the disputed tax itself; once the Appellate Authority reduces the demand, the surviving demand becomes the "tax in dispute" before the Tribunal, and a literal reading (illustrated by an assessee who pays the entire demand under protest) would yield an anomalous and unworkable result. **It held that the statutory requirement cannot be applied mechanically where the amount already deposited equals or exceeds the aggregate percentage of the tax remaining in dispute before the Tribunal.** Finding the facts identical to Ashirwad Food Industries, whose ratio on the same central legislation carries persuasive value, the Tribunal found no ground to interfere with the order dated 08.07.2026 and disposed of the IA without costs.

Conclusion

Pre-deposit requirements under Sections 107(6) and 112(8) of the CGST Act must be determined according to the nature of the demand, the disputed tax surviving after the first appeal, and the amount already deposited. In tax-demand matters, M/s Ashirwad Food Industries (Jharkhand High Court, 09.02.2026) and Manoranjan Dash (GSTAT, Odisha, 21.09.2026) support the position that no further pre-deposit is required where the earlier deposit exceeds the prescribed percentage of the reduced disputed tax liability.

In **penalty-only matters**, Gaurav Jain (Delhi High Court, 31.07.2026) and Krishan Pal Singh (Delhi High Court, 21.09.2026) hold that the amended requirement of a 10% penalty pre-deposit, effective from 01.10.2025, cannot be applied retrospectively to proceedings initiated through show-cause notices issued before that date.

TOPIC III · JURISPRUDENCE

III

Invocation of the Extended Period of Limitation under Section 74 of the CGST Act

Judgments of the Supreme Court and the High Courts

SUPREME COURT

M/s G.R. Infra Projects Ltd.
M/s Tata Steel Ltd.

HIGH COURTS

M/s Chandan Patra — Orissa
M/s Moral Pharmaceuticals Pvt. Ltd. — Patna
M/s Aparna Collection — Delhi

The Statutory Framework

Section 74 applies where tax has not been paid or has been short-paid, an erroneous refund has been made, or input tax credit has been wrongly availed or utilised by reason of fraud, wilful misstatement or suppression of facts to evade tax. It permits the department to proceed within an extended limitation period, but the facts and material of the case must support the statutory ingredients. A bare recital of the words “fraud”, “wilful misstatement” or “suppression” does not, by itself, establish that Section 74 is applicable.

How it differs from Section 73. Section 73 is the ordinary-period provision for cases not involving fraud, wilful misstatement or suppression to evade tax. Under the general framework applicable to periods governed by Sections 73 and 74, Section 73 ordinarily allows three years for the order, while Section 74 allows five years, calculated from the relevant statutory reference date; the show-cause notice must generally be issued at least three months before the Section 73 order deadline and six months before the Section 74 order deadline. Section 74 also carries a more stringent penalty framework, subject to statutory reductions where applicable.

These limitation periods are subject to the applicable statutory version, amendments and valid extensions. For supplies or tax periods governed by the later regime, the applicability of Section 74A must also be checked. The judgments below concern the requirement to disclose the factual basis for invoking Section 74 and the circumstances in which a High Court may decline writ interference where a statutory appellate remedy is available.

The Contours of Controversy

The central controversy is whether the mere use of expressions such as “fraud”, “wilful misstatement” or “suppression of facts” is sufficient to invoke the extended limitation period. The Supreme Court judgments in G.R. Infra and Tata Steel emphasise that the foundational facts must emerge from the notice itself. The High Court decisions also demonstrate that a challenge to a Section 74 demand does not automatically secure relief under Article 226, particularly where the dispute calls for examination of the record or evidence.

Supreme Court Jurisprudence

1. M/s G.R. Infra Projects Ltd. v. State of Madhya Pradesh & Ors.

Supreme Court of India · Date of Order: 19.08.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-SC-2026-95



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Section 74 SCN invalid where it merely recites “fraud or concealment of facts” without stating the facts leading to that inference; time-barred under Section 73.

2. BACKGROUND

The appellant challenged an SCN dated 13.06.2025 issued under Section 74 of the CGST Act read with the MPGST Act for FY 2018-19, which the Madhya Pradesh High Court had upheld. The appellant contended that Section 74 can be invoked only where fraud, wilful misstatement or suppression is alleged in the notice itself, and that the SCN was beyond the Section 73 limitation. The State sought to rely on its counter affidavit, which detailed the investigation (summons, inspection, statements, about 20 non-appearances, draft notice and intimation under Section 142(1A)) to justify invoking Section 74.

3. FINAL VERDICT

The Court refused to look at the counter affidavit, holding that the requirements for a valid notice must be contained in the notice itself and cannot be supplanted by an affidavit in court. On limitation, the annual return due date for 2018-19 stood extended to 31.12.2020, so the Section 73 period ended on 31.12.2023; adding the excluded COVID period (15.03.2020 to 28.02.2022) of 1 year and 2 months, it extended to 28.02.2025, and the SCN dated 13.06.2025 was clearly time-barred under Section 73. The SCN contained only a bland statement of “fraud or concealment of facts”, the use of “or” showing that the officer himself was unsure. **The allegations leading to an inference of fraud or suppression must emanate from the notice itself; a mechanical use of these words is not enough.** The High Court’s order and the SCN were set aside, the State was directed to desist from further proceedings, and the appeal was allowed.

2. M/s Tata Steel Ltd. v. Union of India & Ors.

Supreme Court of India · Date of Order: 25.08.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-SC-2026-98



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Section 74 SCN based on a CAG audit objection, without foundational facts of fraud or suppression and issued as a “protective” measure, set aside along with the consequential order.

2. BACKGROUND

An SCN dated 13.06.2025 was issued under Section 74 for FY 2018-19 to 2020-21 pursuant to a CAG audit objection on ITC mismatch and short payment of tax (2019-20). It was then transferred to the “call book” (27.06.2025) because the Department had contested the audit objection before the Public Accounts Committee, and was revived on 01.07.2025 as a protective

M/s Tata Steel Ltd. v. Union of India & Ors.

CONTINUED

demand since limitation was closing. The appellant argued there was no allegation of fraud, wilful misstatement or suppression and that protective assessment is alien to GST. The Department contended that proceedings began before Section 73 limitation expired and relied on Explanation 2 to Section 74 (suppression includes non-declaration).

3. FINAL VERDICT

Computing limitation from the extended annual return due dates and the COVID exclusion (15.03.2020 to 28.02.2022), the Court held that the Section 73 period for all three years expired on 28.02.2025, so the SCN was beyond it. Proceedings under Sections 73/74 require the Assessing Officer's own satisfaction even on audit objections, and under Section 74 satisfaction that fraud or suppression caused the mismatch or short payment; the PAC reference itself showed no such satisfaction. Explanation 2 was unavailable, having been omitted w.e.f. 01.11.2024, and the time limit in Section 73(10) relates to passing the order, not merely issuing notice. **The foundational facts leading to an inference of fraud, wilful misrepresentation or suppression must be evident from the notice itself; such words cannot be mechanically recited to secure the extended period.**

The SCN and the Order-in-Original dated 26.12.2025 were set aside and the appeal allowed. However, as the five-year period is not over, liberty was granted to the Department to initiate fresh Section 74 proceedings, with foundational facts stated in the notice, and to pass an order before 28.02.2027.

High Court Decisions

i. M/s Chandan Patra v. Union of India & Ors.

Orissa High Court, Cuttack (Division Bench) · Date of Order: 07.10.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-ORCH-2026-127



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Section 74 order passed ignoring a manually filed and acknowledged reply, and before the date allowed for documents, set aside for violation of natural justice.

2. BACKGROUND

The petitioner, a works contractor, did not charge GST for FY 2019-20 irrigation works tendered on the 2014 Schedule of Rates. A Section 74 Demand-cum-SCN dated 04.09.2025 proposed GST of Rs.8,83,021/- with interest. On 27.01.2026 the petitioner appeared and filed a detailed reply, which the Superintendent acknowledged on its face; it questioned the very invocation of Section 74 and claimed only Rs.26,36,189/- was received, covered by Notification No.31/2017-Central Tax (Rate) at 5%. Time was granted till 13.02.2026 to file Form 26AS and the bills, but the Order-in-Original dated 04.02.2026 recorded that the noticee never appeared or replied in DRC-06. The Department argued that procedure was followed and the petitioner should be relegated to appeal.

3. FINAL VERDICT

The Court found the writ maintainable under the natural justice exception (Radha Krishan Industries; T.N. Cements). Reading Section 74(9) with Rule 142(4), it held there is no bar on considering a reply merely because it was filed manually; DRC-06 is a procedural tool and not an absolute bar to the taxpayer's right of defence. **Ignoring a physically acknowledged reply, and passing the order before the date allowed for documents, amounts to a patent violation of natural justice; the**

M/s Chandan Patra v. Union of India & Ors.

CONTINUED

Proper Officer must deal with each point raised and give reasons. The order also did not show that the officer examined the requirements for invoking Section 74 (Tata Steel and G.R. Infra noted). The Order-in-Original dated 04.02.2026 was set aside and the matter remitted for fresh consideration of the reply and the jurisdictional objection; the petitioner is to appear within 15 days and the proceeding is to conclude within eight weeks. The pleas on limitation and on absence of Section 74 ingredients were left open, with no opinion on merits and no costs.

2. M/s Moral Pharmaceuticals Pvt. Ltd. v. Union of India & Ors.

Patna High Court (Division Bench) · Date of Order: 18.09.2026

AGAINST ASSESSEE

CITATION GIB-PHC-2026-128


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Challenge to CBIC Circulars assigning “proper officer” functions to central tax officers rejected; writ against an appealable Section 74 order not entertained.

2. BACKGROUND

On the basis of data received from DGA (Central), Lucknow, an SCN dated 12.07.2024 under Section 74 proposed GST of Rs.5,10,00,146/- (CGST and SGST Rs.2,55,00,073/- each) for July 2017–March 2018 for alleged false declaration of taxable value. After reply dated 07.08.2024 and a hearing, the order dated 13.11.2024 confirmed tax of Rs.2,91,39,160/- with interest and an equal penalty under Section 74(1) read with Section 122(2)(b), dropping Rs.2,18,60,986/-. The petitioner challenged Circulars No. 3/3/2017-GST, 31/05/2018-GST and 169/01/2022-GST as beyond the Board’s power (relying on Canon India), and also the SCN/order for want of digital signature, personal hearing, ASMT-10, the Section 74 pre-conditions and limitation.

3. FINAL VERDICT

Noting that the Bombay HC decision in Fomento Resorts & Hotels is under appeal but no Supreme Court direction restrains High Courts, the Court agreed with that view that Canon India is distinguishable, since the officers concerned are admittedly central tax officers appointed under Section 3 read with Section 5 via the notification dated 19.06.2017, and **held that the pleas questioning the three circulars have no basis to stand.** Finding that the order was passed after considering the reply and granting a personal hearing, and that none of the Chhabil Dass Agarwal exceptions applied, the Court declined to act as a fact-finding body and relegated the petitioner to the statutory appeal. Liberty was granted to appeal within 30 days; since the writ was filed on 07.03.2025, within 30 days after expiry of the three-month appeal period, the Appellate Authority would not oust the petitioner on limitation. The writ was disposed of accordingly.

3. M/s Aparna Collection v. Union of India & Ors.

High Court of Delhi (Division Bench) · Date of Order: 05.10.2026

AGAINST ASSESSEE

CITATION GIB-DHC-2026-126



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Later dates on Form GST DRC-01 and DRC-07 do not make a Section 74 SCN or order time-barred when the substantive SCN and Order-in-Original were issued within limitation.

2. BACKGROUND

Two writ petitions by the same proprietorship arose from Section 74 proceedings alleging inadmissible ITC availed on invoices of allegedly non-existent suppliers (Rs.23,06,264/- in the first matter and Rs.2,68,320/- in the second). The substantive SCNs were dated 11.07.2024 and 09.07.2024, but the DRC-01 summaries were dated 23.08.2024 and 28.08.2024; the Orders-in-Original were dated 27.01.2025 and 29.01.2025, with DRC-07 in the second matter dated 21.02.2025. The petitioner contended that the DRC-01/DRC-07 dates govern limitation, making the SCNs barred under Section 74(2) (cut-off asserted as 04.08.2024) and the order barred under Section 74(10) (cut-off asserted as 04.02.2025). It also argued that no fraud, wilful misstatement, suppression, knowledge or collusion was shown, so Section 74 could not be invoked.

3. FINAL VERDICT

The Court held that Section 74(2) and 74(10) attach to the issuance of the substantive notice under Section 74(1) and the order under Section 74(9), while Rule 142 treats DRC-01 and DRC-07 only as electronic summaries that follow them. Following *Rishi Enterprises and Suresh Kumar (Delhi HC)*, **the dates on Forms DRC-01 and DRC-07 cannot by themselves render the substantive SCN or adjudication order time-barred**; here both SCNs and both orders preceded the cut-off dates asserted by the petitioner, so no patent jurisdictional defect was shown. The pleas on fraud, suppression, knowledge, collusion and admissibility of ITC were held to be matters of fact for the Appellate Authority, and since the petitioner had participated in adjudication and no breach of natural justice was shown, the Court declined to convert writ jurisdiction into appellate jurisdiction (Commercial Steel). The petitions were disposed of with liberty to appeal under Section 107, all merits contentions left open, and any request to exclude the time spent in the writ to be considered by the Appellate Authority in accordance with law.

Conclusion

Section 74 is the extended-period provision for cases involving the specified elements of fraud, wilful misstatement or suppression of facts to evade tax, whereas Section 73 ordinarily governs cases without those ingredients. The extended period under Section 74 is not automatic: the notice must disclose the foundational facts supporting its invocation. The judgments also show that the High Court will not invariably grant writ relief. Where the dispute requires examination of evidence or the adjudicating authority's findings, the assessee may be directed to pursue the statutory appellate remedy.

The three favourable decisions should therefore not be treated as guaranteeing writ relief in every Section 74 challenge. *G.R. Infra* and *Tata Steel* concern deficiencies in the notices themselves, while *Chandan Patra* involved a recorded breach of natural justice. *Moral Pharmaceuticals* and *Aparna Collection* illustrate that the High Court may decline to decide the merits in writ jurisdiction and leave the assessee to the statutory appeal.

It may also be noted that Sections 73 and 74 govern demands relating to periods up to FY 2023-24 only. From FY 2024-25 onwards, both are merged into **Section 74A**, which lays down a common procedure for fraud and non-fraud cases.

TOPIC IV · JURISPRUDENCE

IV

Provisional Attachment under Section 83

Scope of Power, Misuse, and Judicial Restrictions

SUPREME COURT

M/s Radha Krishan Industries
Kesari Nandan Mobile

HIGH COURTS

M/s Narasimhan Engineering Contractors — Karnataka
M/s Soraza Recycling Pvt. Ltd. — Allahabad

The Statutory Framework

Section 83 of the Central Goods and Services Tax Act, 2017 confers upon the Commissioner the power of provisional attachment. This provision authorises the Commissioner to provisionally attach any property, including bank accounts, belonging to a taxable person during the pendency of proceedings under Chapters XII, XIV or XV of the Act, where such attachment is considered necessary for the purpose of protecting the interest of the government revenue. The attachment must be effected by a written order and, by operation of Section 83(2), automatically ceases to have effect upon the expiry of a period of one year from the date of the order.

The legislative intent underlying this provision is preventive rather than punitive. It seeks to safeguard the eventual recovery of tax, interest or penalty that may ultimately be determined, by preventing the dissipation or alienation of assets during the currency of the proceedings.

The Contours of Controversy

The power conferred by Section 83 has been characterised by the Supreme Court as “draconian” in nature. Its far-reaching consequences arise from the fact that attachment may be ordered even before the final adjudication of tax liability. Such an order can severely prejudice the taxable person by freezing bank accounts and other assets, thereby disrupting ordinary business operations and affecting the livelihood of employees and other stakeholders.

In view of these drastic consequences, the courts have consistently emphasised that the power must be exercised sparingly and only upon strict fulfilment of the statutory conditions. The Commissioner is required to form an opinion, founded on tangible material, that the attachment is necessary to protect the interest of revenue. Mere pendency of proceedings, or a general apprehension of default, does not by itself justify resort to this extraordinary measure.

Supreme Court Jurisprudence

1. M/s Radha Krishan Industries v. State of Himachal Pradesh & Ors.

Supreme Court of India · Date of Order: 20.04.2021

IN FAVOUR OF ASSESSEE

CITATION GIB-SC-2021-03



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Provisional attachment under Section 83 of the HPGST Act, 2017 (pari materia CGST Act) – pre-conditions for a valid opinion, the hearing mandated by Rule 159(5), and maintainability of a writ petition against an attachment order.

2. BACKGROUND

The appellant, a lead manufacturer at Kala-Amb, had claimed ITC of about Rs. 5.03 crore on invoices of its supplier GM Powertech, against whom a case of fake ITC was detected. An earlier attachment of the appellant's receivables was withdrawn on 30.01.2019. After the Commissioner delegated his Section 83 power on 21.10.2020, the Joint Commissioner on 28.10.2020 again provisionally attached the appellant's receivables from its customers Fujikawa Power and Deepak International. The appellant's objections were rejected on 06.11.2020 without a hearing, and the High Court of Himachal Pradesh dismissed the writ petition holding that an appeal under Section 107 was an alternative remedy.

3. FINAL VERDICT

The Supreme Court held that the Joint Commissioner acted as a delegate of the Commissioner, so no appeal lay under Section 107(1) and the writ petition was maintainable. On merits, it held that the power to order a provisional attachment is draconian in nature and the statutory conditions must be strictly fulfilled; the Commissioner **must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any**, and "necessary" postulates more than mere expediency, so pre-emptive strikes merely because property is available are impermissible. Under Rule 159(5) the assessee is entitled to dual safeguards – to file objections and to be heard – and the objections must be decided by a reasoned order. The attachment order disclosed no tangible material, showing clear non-application of mind; a second attachment on the same grounds after withdrawal of the first, without change in circumstances, was also impermissible; and once the final order under Section 74(9) was passed on 18.02.2021, the attachment had in any case to come to an end. The appeal was allowed and the attachment orders dated 28.10.2020 were set aside.

2. Kesari Nandan Mobile v. Office of Assistant Commissioner of State Tax (2), Enforcement Division – 5

Supreme Court of India · Date of Order: 14.08.2025

IN FAVOUR OF ASSESSEE

CITATION GIB-SC-2025-68



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether a fresh or "renewed" provisional attachment can be issued under Section 83(1) of the CGST Act after the earlier attachment has ceased to have effect on expiry of one year under Section 83(2).

Kesari Nandan Mobile v. Office of Assistant Commissioner of State Tax (2), Enforcement Division – 5

CONTINUED

2. BACKGROUND

The appellant’s bank accounts were provisionally attached by orders dated 17.10.2023 and 26.10.2023. Its objection dated 01.05.2024 under Rule 159(5) was never decided. When the attachments lapsed by efflux of one year, the respondent issued fresh attachment orders dated 13.11.2024 and 18.12.2024 describing them as a ‘renewal’, alleging large-scale fraud and apprehension of non-recovery. The Gujarat High Court dismissed the writ petition, holding that the law places no embargo on a second attachment after the first lapses.

3. FINAL VERDICT

Endorsing Radha Krishan Industries on Section 83(1), the Supreme Court held that an authority exercising this draconian power must be empowered by statute or by executive instructions; absence of a prohibition is no source of power. Unlike Section 11DDA of the Central Excise Act and Section 28BA of the Customs Act, Section 83 contains no provision for extension, and permitting a fresh order after lapse would render Section 83(2) otiose; a fresh order on substantially the same grounds would do indirectly what cannot be done directly – “old wine in a new bottle”. Provisional attachment is a pre-emptive measure, not a recovery tool, and one year is enough for the revenue to conclude its investigation. The Court held that **when a statute does not provide for an extension, renewal, re-issuance, revival – whatever be the nomenclature – the executive cannot overreach the statute**, approved the Kerala High Court in Ali K., and noted with concern that debit freezes continue after the statutory lapse, as also flagged in the GST Council’s 53rd meeting agenda. The impugned attachment orders were set aside and the bank accounts directed to be de-frozen forthwith; the investigation may continue in accordance with law.

High Court Decisions

3. Principal Commissioner of Central Tax, Bangalore East & Anr. v. M/s Narasimhan Engineering Contractors Pvt. Ltd. & Anr.

High Court of Karnataka at Bengaluru (Division Bench) · Date of Order: 10.09.2025

IN FAVOUR OF ASSESSEE

CITATION GIB-KHC-2025-69


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether a pre-decisional hearing is required before provisional attachment under Section 83 of the CGST Act, and whether summons under Section 70 amounts to “initiation of proceedings” enabling attachment.

2. BACKGROUND

The assessee, engaged in construction services, did not comply with summons under Section 70. Alleging misuse of ITC, the department provisionally attached its ICICI Bank account on 29.01.2025, reciting that proceedings under Sections 74 and 122 had been initiated. The learned Single Judge quashed the attachment for want of a pre-decisional hearing, relying on K-9 Enterprises. The Revenue appealed, confining the challenge to the bank attachment.

Principal Commissioner of Central Tax, Bangalore East & Anr. v. M/s Narasimhan Engineering Contractors Pvt. Ltd. & Anr. CONTINUED

3. FINAL VERDICT

On the first point, the Division Bench held that Section 83, read plainly in line with CIT v. Calcutta Knitwears, does not require a pre-decisional hearing even by implication; the statute provides a post-attachment hearing through objections under Rule 159(5), and K-9 Enterprises did not concern Section 83. To that extent the Revenue succeeded. On the second point, the Revenue produced no material showing initiation of proceedings under Sections 74 and 122, and argued that summons under Section 70 itself constituted proceedings. Applying Armour Security (India) Ltd. (SC), where summons was held to be only a step in an inquiry, the Court held that **the mere issuance of summons under Section 70 of the CGST Act is not sufficient to invoke provisional attachment under Section 83**. Even though the order-sheet showed an opinion supported by tangible material, provisional attachment in the absence of initiation of any proceedings under Chapters XII, XIV or XV of the Act is not sustainable. The writ appeal was allowed in part: the finding requiring a pre-decisional hearing was set aside, but the attachment of the bank account dated 29.01.2025 was quashed.

4. M/s Soraza Recycling Pvt. Ltd. v. Union of India & Ors.

High Court of Judicature at Allahabad (Division Bench) · Date of Order: 22.09.2025

IN FAVOUR OF ASSESSEE

CITATION GIB-AHC-2025-70



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Validity of provisional attachment of bank accounts under Section 83 of the CGST Act where the only reason recorded is that Section 74 proceedings “have been launched”, though no show cause notice had been issued; and blocking of the electronic credit ledger.

2. BACKGROUND

By attachment orders dated 23.07.2025, the Commissioner, CGST Noida provisionally attached the petitioner’s accounts with Canara Bank and Indian Overseas Bank, Kotdwar, and all other accounts linked to its PAN. On 28.07.2025 its electronic credit ledger was blocked to the extent of Rs. 1,95,57,339. The petitioner stated that no show cause notice under Section 74 had been issued. The Revenue submitted that a search had been carried out, investigation was ongoing, Section 74 proceedings would be initiated at the earliest, and the petitioner might alienate the money lying in its accounts.

3. FINAL VERDICT

Relying on Radha Krishan Industries (SC) and its own decision in R.D. Enterprises, the Court held that Section 83 is to be applied only on a proper opinion based on adequate reasons. Examining the attachment letter, it found that the only reason given was that Section 74 proceedings had been launched, and that **there is not a whisper of any specific requirement or ground at the present stage or formation of any reasoned opinion for provisionally attaching the said bank accounts**; moreover, no Section 74 proceedings had in fact been initiated. The Court observed that if such a reason were allowed to stand, **in all proceedings wherein show cause notice is issued under Section 74, provisional attachment would become valid**, and held the order perverse and arbitrary. The attachment notices were quashed with a

M/s Soraza Recycling Pvt. Ltd. v. Union of India & Ors.

CONTINUED

direction to release the accounts within 48 hours, with liberty to the Revenue to issue a fresh notice under Section 83 in accordance with law. On the credit ledger, the authority was directed to consider the petitioner's reply, grant a personal hearing and pass a reasoned order within two weeks.

Conclusion

Section 83 of the CGST Act, 2017, confers an extraordinary and far-reaching power upon the Commissioner. Judicial pronouncements, both of the Supreme Court and of the High Courts, have consistently underscored that this power must be exercised sparingly and strictly in accordance with the statutory conditions. Provisional attachment is permissible only where there exists a reasonable apprehension, founded on tangible material, that the assessee may defeat the ultimate collection of the demand that is likely to be raised upon completion of the assessment or adjudication proceedings.

The essential safeguards distilled from the case law may be summarised as follows:

First, proceedings under the relevant Chapters of the Act must have been validly initiated against the person whose property is sought to be attached;

Second, the Commissioner must form an opinion, based on tangible material, that attachment is necessary to protect the interest of revenue, and such opinion must disclose a proximate and live nexus with that object;

Third, the attachment cannot be renewed or reissued after the statutory period of one year has expired; and

Fourth, the power cannot be employed as a routine recovery measure or imposed arbitrarily.

These restrictions serve as essential constitutional and statutory checks upon a power that, if left unchecked, is capable of causing irreversible hardship to legitimate business activity. The consistent judicial approach reflects a careful balance between the legitimate interest of the State in protecting its revenue and the fundamental rights of the taxpayer.

TOPIC V · JURISPRUDENCE

V Secondment of Employees and its Implications under GST

Judgments of the Supreme Court and the High Courts, with CBIC clarifications

SUPREME COURT

M/s Northern Operating Systems Pvt. Ltd.

CBIC

Instruction No. 05/2023-GST

Circular No. 210/4/2024-GST

HIGH COURTS

Metal One Corporation India Pvt. Ltd. — Delhi

M/s Alstom Transport India Ltd. — Karnataka

The Statutory Framework

A secondment of employees is the temporary transfer of an employee (the *secondee*) from their original employer (the *seconder*) to another department or a different external organization (the *host*) for a fixed period.

Entry 1 of Schedule III to the CGST Act, 2017 provides that services by an employee to the employer in the course of or in relation to employment shall be treated as neither a supply of goods nor a supply of services.

Accordingly, the GST treatment of secondment depends on whether the arrangement establishes an employer–employee relationship between the secondee and the host entity or constitutes a supply of manpower services by the seconder to the host.

The Contours of Controversy

Tax authorities have often treated secondment arrangements as an import of manpower supply services, taxable under the reverse charge mechanism, particularly where the secondee remains on the overseas entity’s payroll and the Indian host reimburses the corresponding salary costs to the foreign entity.

Supreme Court Jurisprudence

1. Commissioner of Central Excise & Service Tax, Bangalore (Adjudication) v. M/s Northern Operating Systems Pvt. Ltd.

Supreme Court of India · Date of Order: 19.05.2022

AGAINST ASSESSEE

CITATION GIB-SC-2022-06



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether secondment of employees by overseas group companies to the Indian entity is a taxable “manpower recruitment or supply agency service” received by the Indian entity under reverse charge (Finance Act, 1994), and whether the extended period of limitation could be invoked.

2. BACKGROUND

The assessee provided back-office and operational support to its overseas group companies (USA, UK, Ireland, Singapore and others). Employees of those companies were seconded to it and worked under its control, but remained on the overseas payroll for social security; the overseas entity paid their salaries and recovered them from the assessee through debit notes without mark-up, while the assessee issued them employment letters and deducted TDS. Four show cause notices covering October 2006 to September 2014 demanded service tax under reverse charge. The Commissioner confirmed two and dropped the later two, and CESTAT ruled in the assessee’s favour. The Revenue appealed.

3. FINAL VERDICT

Applying substance over form, and holding that the nomenclature of a contract is not decisive and no single test governs, the Supreme Court read the agreements together. Though the assessee had operational control, the secondees stayed on the overseas payroll, were paid in foreign currency with a hardship allowance under the overseas employer’s policy, served for a fixed tenure and were repatriated under its global mobility policy; the overseas group’s business was to deploy its skilled personnel. Consideration was implicit in the reimbursement and the economic benefit derived, and revenue neutrality was held irrelevant to the incidence of tax. The Court held that **the assessee was, for the relevant period, service recipient of the overseas group company concerned, which can be said to have provided manpower supply service**. However, since the assessee’s view was bona fide, being supported by CESTAT rulings and by the Revenue itself dropping the later notices, the invocation of the extended period of limitation was unjustified. The appeals were partly allowed and the demand was confined to the normal period.

CBIC Circular / Instructions

1. Instruction No. 05/2023-GST dated 13th December 2023

Central Board of Indirect Taxes and Customs



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Judgment of the Hon'ble Supreme Court in Northern Operating Systems Pvt. Ltd. case – applicability under GST and invocation of Section 74

2. DESCRIPTION

This instruction examines the implications of the Hon'ble Supreme Court's judgment in *Northern Operating Systems Pvt. Ltd.* on taxability of secondment of employees under GST. It clarifies that the Supreme Court's decision was based on the specific factual matrix of that case and should not be applied mechanically to all secondment arrangements. Each case of employee secondment must be examined independently, considering contractual terms and actual conduct, to determine GST liability. The instruction cautions field formations against routine invocation of extended limitation under Section 74(1) and reiterates that it can be applied only where fraud, wilful misstatement, or suppression of facts with intent to evade tax is clearly established. Mere non-payment of tax does not justify invocation of Section 74(1). Officers are directed to keep these principles in mind while conducting investigations and issuing show cause notices.

2. Circular No. 210/4/2024-GST dated 26th June, 2024

Central Board of Indirect Taxes and Customs



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Clarification on Valuation of Import of Services between Related Persons where Recipient is Eligible for Full ITC

2. DESCRIPTION

This circular provides clarification regarding valuation of import of services by a related person located outside India, where the Indian recipient is eligible for full Input Tax Credit (ITC).

It explains that as per Rule 28(1) of the CGST Rules, when goods or services are supplied between related or distinct persons and the recipient is eligible for full ITC, the value declared in the invoice shall be deemed as the open market value. Extending the principle clarified earlier in Circular No. 199/11/2023-GST (dated 17.07.2023), the same treatment applies to cases of import of services between related persons.

Accordingly, where a foreign affiliate provides services to its related domestic entity and full ITC is available, the value declared in the self-invoice issued by the Indian recipient under Section 31(3)(f) of the CGST Act shall be treated as

Circular No. 210/4/2024-GST dated 26th June, 2024

CONTINUED

open market value. If no invoice is issued in such cases, the value of services may be deemed as ‘Nil’, also considered as open market value under Rule 28(1).

This clarification ensures consistency and avoids unwarranted tax demands where full ITC is admissible to the recipient.

High Court Decisions

1. Metal One Corporation India Pvt. Ltd. v. Union of India & Ors. (and connected matters)

High Court of Delhi · Date of Order: 22.10.2024

IN FAVOUR OF ASSESSEE

CITATION GIB-DHC-2024-21


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether IGST under reverse charge is payable on secondment of expatriate employees by a foreign group company where no invoice is raised, in view of Rule 28 and Circular No. 210/4/2024-GST.

2. BACKGROUND

Metal One Corporation India Pvt. Ltd. employed staff of its Japanese parent under individual employment agreements. After the Supreme Court decision in Northern Operating Systems, the department issued SCNs under Section 73 (29.09.2023) demanding IGST under reverse charge on “import of manpower supply services” for July 2017 to March 2023: about ₹1.94 crore for its Delhi registration and ₹58.95 lakh for its Maharashtra registration. The department valued the supply at the full salary cost as open market value under Rule 28. Similar SCNs and orders against Sony India, Petronas Energy India, Mitsui & Co. India and another petitioner were heard together. The petitioners did not press their challenge to whether secondment is a supply, so the question was confined to valuation under the second proviso to Rule 28 read with paragraph 3.7 of Circular No. 210/4/2024-GST dated 26.06.2024.

3. FINAL VERDICT

The High Court allowed the writ petitions. It noted that it was undisputed that no invoices had been raised for the services of the foreign affiliates. Under paragraph 3.7 of the Circular, where full ITC is available to the recipient and no invoice is raised, the value is deemed to be “Nil” and treated as the open market value under the second proviso to Rule 28. The Court observed that the correctness of the Circular might be questioned as being founded on whether parties choose to raise an invoice. However, it is not for the Court to question the wisdom of CBIC, as the Circular binds the department. Applying the Circular, the value of the service rendered would have to be treated as ‘Nil’. This would lead one to the inescapable conclusion of no perceivable or plausible tax liability possibly being created. The SCNs were quashed as futile, together with the consequential Orders-in-Original. For Sony India, which had already paid the tax and taken credit, interest and penalty were held unsustainable once CBIC had clarified the position. The relief was confined to the secondment issue, and all other issues in the SCNs were left open.

2. M/s Alstom Transport India Ltd. v. Commissioner of Commercial Taxes & Ors.

High Court of Karnataka at Bengaluru · Date of Order: 15.07.2025

IN FAVOUR OF ASSESSEE

CITATION GIB-KHC-2025-71



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether IGST under reverse charge is leviable on the secondment of expatriate employees by overseas group entities as an import of “manpower supply service”, where no invoice was raised, in light of para 3.7 of CBIC Circular No. 210/4/2024-GST dated 26.06.2024.

2. BACKGROUND

The petitioner, engaged in railway and metro infrastructure, engaged employees of its overseas group companies on secondment for July 2017 to March 2023 under employment agreements with it. The expatriates were on its payroll and paid by it after TDS, while the overseas entities continued home-country social security benefits. From November 2020 the petitioner paid IGST under reverse charge on the debit-note amounts and availed ITC. A show cause notice dated 26.09.2023 proposed IGST of Rs. 59,57,19,228 on import of manpower supply services, and orders dated 16.10.2024 confirmed IGST of Rs. 57,94,94,146 with interest and penalty, despite the petitioner’s reliance on the circular.

3. FINAL VERDICT

The Court noted that Northern Operating Systems had applied substance over form on its own facts, and that secondment must be assessed case by case. It found that the expatriates were under the petitioner’s exclusive control, integrated into its organisation, paid by it subject to Indian TDS and given statutory employment benefits, establishing a genuine employer-employee relationship within Entry 1 of Schedule III. Quoting para 3.7 of Circular 210/4/2024-GST, which deems the value of services from a foreign affiliate to be Nil where no invoice is issued and full ITC is available, and agreeing with the Delhi High Court in Metal One Corporation that the circular binds the authorities, the Court held that **even if arguing such secondment arrangement is assumed to be a supply, the deeming fiction under the Circular neutralises any scope for further tax liability**. It ruled that the secondment of employees does not amount to a taxable supply of manpower services under GST and is not amenable to IGST under reverse charge. The writ petition was allowed and the six orders dated 16.10.2024 were quashed.

Conclusion

The GST treatment of employee secondment depends on the substance of the arrangement, particularly the existence of a genuine employer–employee relationship. Secondment does not automatically constitute a taxable supply of manpower services. Further, where the recipient is eligible for full input tax credit, it may take leverage of the value under the valuation provisions of Rule 28, subject to the prescribed conditions. Accordingly, each arrangement must be assessed on its facts, contractual terms and applicable GST provisions.

— End of Article —

GST APPELLATE TRIBUNAL

2I

2I GSTAT Decisions

The latest important GSTAT decisions are summarised herein. A QR code is attached with each judgment, which can be scanned to read the complete judgment.

NO.	CASE	BENCH · DATE OF ORDER	CITATION	PAGE
01	Sterling & Wilson Pvt. Ltd.	Principal Bench · 11.02.2026	GIB-GSTAT-2026-10	30
02	Dow Chemical International Pvt. Ltd.	Principal Bench · 04.06.2026	GIB-GSTAT-2026-55	30
03	Godrej Tyson Foods Ltd.	Thane · 22.07.2026	GIB-GSTAT-2026-86	31
04	Tata Unistore Ltd.	Thane · 31.07.2026	GIB-GSTAT-2026-91	32
05	Power Tech Global Pvt. Ltd.	Kolkata · 05.08.2026	GIB-GSTAT-2026-89	33
06	Siddhi Vinayak Automobiles	Thiruvananthapuram · 14.08.2026	GIB-GSTAT-2026-84	34
07	M S Steels	Thiruvananthapuram · 14.08.2026	GIB-GSTAT-2026-88	34
08	Lucknow Automotives	Lucknow · 19.08.2026	GIB-GSTAT-2026-87	35
09	Islam Trading Co. (Om Prakash)	Lucknow · 20.08.2026	GIB-GSTAT-2026-82	36
10	Sri Parameshwara Bricks	Hyderabad · 20.08.2026	GIB-GSTAT-2026-115	37
11	Agarwala's Bitumex Pvt. Ltd.	Kolkata · 20.08.2026	GIB-GSTAT-2026-85	37
12	Santhome Latex Enterprises	Thiruvananthapuram · 21.08.2026	GIB-GSTAT-2026-83	38
13	Islam Trading Company (Santosh Mani Mishra)	Lucknow · 25.08.2026	GIB-GSTAT-2026-116	39
14	Lucknow Test House	Lucknow · 27.08.2026	GIB-GSTAT-2026-117	40
15	CISCE	Delhi State Bench · 31.08.2026	GIB-GSTAT-2026-118	40
16	HP Cotton Casuals Pvt. Ltd.	Kolkata · 10.09.2026	GIB-GSTAT-2026-119	41
17	Santosh Fragrance	Kolkata · 16.09.2026	GIB-GSTAT-2026-120	42
18	YRK Constructions	Hyderabad · 17.09.2026	GIB-GSTAT-2026-121	43
19	Metalloids India	Thiruvananthapuram · 17.09.2026	GIB-GSTAT-2026-122	43
20	Flora Kingdom Farm Resort	Bengaluru · 30.09.2026	GIB-GSTAT-2026-123	44
21	Pragna Chemical Industries & Ors.	Surat · 06.10.2026	GIB-GSTAT-2026-124	45

1. M/s Sterling & Wilson Pvt. Ltd. v. Commissioner, Commissionerate of CT & GST, Odisha & Ors.

GST Appellate Tribunal, Principal Bench, New Delhi (Single Member – President) · Date of Order: 11.02.2026

NEUTRAL

CITATION GIB-GSTAT-2026-10



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

GSTR-1 v. GSTR-3B mismatch due to credit notes and advance adjustments – whether the First Appellate Authority can itself convert a Section 74 demand into Section 73, and the Tribunal’s power to examine facts.

2. BACKGROUND

For FY 2018-19 the appellant, an EPC contractor, reported tax in GSTR-3B Rs. 27,06,634 lower than in GSTR-1. It attributed the difference to credit notes and advance adjustments recorded in its books and GSTR-3B but not amended in GSTR-1. A Section 74 demand of Rs. 65,17,849 was raised. The First Appellate Authority found no intent to evade, but itself recomputed the case under Section 73, confirming tax and interest with a 10% penalty, holding that the credit notes were beyond the Section 34(2) time limit and recipients’ ITC reversal was unproven.

3. FINAL VERDICT

Rejecting Revenue’s reliance on Hamida v. Md. Khalil, the Tribunal held that **unlike Section 100 CPC, Section 112 read with Rule 112 does not confine the Tribunal to questions of law; it is the last fact-finding forum**, and that Dilip Kumar & Co. (on exemption notifications) had no bearing on whether tax was actually short-paid. It noted that the only lapse found was the non-reflection in periodical returns of debit and credit notes duly accounted in the books, at a time when online filing was not fully operational, and adopted a pragmatic rather than pedantic approach. Relying on the text of Section 75(2) and CBIC Circular 254/11/2025-GST, it held that **once Section 74 fails, it is the proper officer, not the appellate authority or the Tribunal, who must re-determine tax as if the notice had been issued under Section 73**. The finding that Section 74 did not apply was upheld, but the Section 73 determinations of both lower authorities were set aside and the matter remanded, with liberty to file amendments within one month and a direction to examine the genuineness of the credit and debit notes and decide afresh after a hearing.

2. M/s Dow Chemical International Pvt. Ltd. v. Commissioner of State Tax, Mazgaon, Mumbai & Ors.

GST Appellate Tribunal, Principal Bench, New Delhi · Date of Order: 04.06.2026

AGAINST ASSESSEE

CITATION GIB-GSTAT-2026-55



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether procurement services by a Swiss group hub (Dow Europe GmbH) to its Indian affiliate are “intermediary services” with place of supply outside India, entitling refund of IGST paid under RCM as import of services.

M/s Dow Chemical International Pvt. Ltd. v. Commissioner of State Tax, Mazgaon, Mumbai & Ors.

CONTINUED

2. BACKGROUND

Under a Procurement Agreement of 01.07.2021, Dow Europe, the group's centralised procurement hub, identified and approved foreign suppliers, negotiated terms and facilitated purchases for the appellant for a fee of 3.5% of purchases. The appellant paid IGST under RCM as import of services for January–June 2022, then claimed refunds of about Rs. 13.42 crore, contending that the services were intermediary services taxable outside India under Section 13(8)(b). The refunds were rejected and the rejection upheld in first appeal.

3. FINAL VERDICT

The Tribunal noted that the CBIC tests in Circular 159/15/2021-GST are persuasive only, since **CBIC circulars bind departmental officers but not the Tribunal**, and that advance rulings (Airbus, Global Reach, Toshniwal) are not binding under Section 103. It accepted that three parties were involved, but held that the second test of two distinct supplies failed: Dow Europe, as the centralised procurement hub of the Dow Group, renders a core service on its own account as an independent contractor, without authority to bind the Indian entity, in line with Columbia Sportswear (Kar HC) and Blackberry India (Del HC). Holding that **the services are not ancillary but a core service, and therefore an import of services with place of supply in India, outside Section 2(13) and Section 13(8)(b)**, the Tribunal answered all questions against the appellant and dismissed the appeals. It did, however, disagree with the appellate authority's view that the refund claim was barred as an "afterthought", since Section 54 permits refund of tax paid under a misconception within the time limit.

3. Commissioner, CGST & Central Excise, Raigad v. M/s Godrej Tyson Foods Ltd.

GST Appellate Tribunal, Thane Bench, Maharashtra · Date of Order: 22.07.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-86


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether printing the manufacturer's corporate name under FSSAI/Legal Metrology law amounts to a "brand name", and whether institutional bulk supplies of frozen chicken are "pre-packaged and labelled", for exemption under Sl. No. 9 of Notification 02/2017-CT(R).

2. BACKGROUND

The assessee supplied frozen chicken cuts to Sapphire Foods (a Yum! franchisee). From 05.01.2021 it removed the brand logos, retaining only the corporate name and address required by FSSAI and Legal Metrology law, and claimed Nil rate; after 18.07.2022 it claimed that institutional supplies are not "pre-packaged and labelled". A Section 74 demand of Rs. 2,26,77,883 with interest and equal penalty was set aside by the Appellate Authority, and Revenue appealed for FY 2020-21 to 2022-23.

Commissioner, CGST & Central Excise, Raigad v. M/s Godrej Tyson Foods Ltd.

CONTINUED

3. FINAL VERDICT

The Tribunal held that **printing the manufacturer's name and address to comply with a statutory mandate for traceability and safety does not amount to use of a brand name**, applying RDB Textiles and Tarai Foods (SC) and the Madras High Court in Narasus Sarathy Enterprises, and distinguishing Grasim Industries (voluntary use of a name to show trade connection). The exemption conditions apply to the goods and their packaging, so a brand name on invoices does not make the goods branded (Australian Foods). For the period after 18.07.2022, under Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011, **packages intended for institutional consumers are not pre-packaged commodities meant for retail sale**. Advance rulings relied on by the adjudicating authority were held not binding on the Tribunal and contrary to Supreme Court law, and Sarvasidhi Agrotech (Tripura HC) was distinguished. The goods were held exempt, the demand, interest and penalty fell, and Revenue's appeals were dismissed.

4. M/s Tata Unistore Ltd. v. Commissioner, CGST & C. Ex., Navi Mumbai Commissionerate & Ors.

GST Appellate Tribunal, Thane Bench (Division Bench) · Date of Order: 31.07.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-91


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether GST officers can deny, transitional credit (TRAN-1) of CENVAT/VAT closing balances that were never disputed under the pre-GST law, including Krishi Kalyan Cess.

2. BACKGROUND

The appellant, which operates the TataCliQ e-commerce platform, transitioned credit of about Rs. 32.81 crore through TRAN-1: CENVAT credit of Rs. 31,83,93,390 under Sections 140(1)/(5), KKC of Rs. 74,67,109 (later reversed under protest) and VAT credit of Rs. 22,14,479 under Section 140(6). By SCN dated 18.01.2022 under Section 74, the department alleged that eligibility had not been proved through invoices and registers; the demand with interest and 100% penalty was confirmed by both lower authorities.

3. FINAL VERDICT

The Tribunal noted the admitted position that no proceedings were ever initiated under the erstwhile law questioning the credit when it was availed. Reading Sections 142(6)(a) and 174(2)(e) and following Usha Martin and SAIL (Jhar HC) and Kunjal Synergies (Cal HC), it held that **the admissibility of credit availed under the erstwhile law can be questioned only under that law; officers under the CGST Act have no jurisdiction to reassess it through Section 74**. Clause (i) of the proviso to Section 140(1) bars transition only of credit not admissible as ITC under the GST law and does not permit reassessment of pre-GST credits; moreover, a closing balance cannot be correlated to specific invoices. On KKC, following Godrej & Boyce (Bom HC) and Circular 87/06/2019-GST, Explanation 3 cannot operate without notification of Explanations 1 and 2, and the pending SLP, with no stay, did not affect this. The VAT credit was denied without any finding, and Section 74 was unjustified since the basis was the appellant's own

M/s Tata Unistore Ltd. v. Commissioner, CGST & C. Ex., Navi Mumbai Commissionerate & Ors.

CONTINUED

TRAN-1 disclosures. **The transitional credit was held eligible in full**, and the appeal was allowed with consequential relief.

5. Commissioner, CGST & CX, Kolkata North v. M/s Power Tech Global Pvt. Ltd.

GST Appellate Tribunal, Kolkata Bench · Date of Order: 05.08.2026

NEUTRAL

CITATION GIB-GSTAT-2026-89



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Reversal of ITC attributable to exempt supply of MEIS duty credit scrips (FY 2017-20) – whether Explanation 1(d) to Rule 43 (inserted 05.07.2022) applies retrospectively, and whether Section 74 was rightly invoked.

2. BACKGROUND

The respondent, a manufacturer of electrical apparatus, also sold MEIS duty credit scrips (exempt from 13.10.2017). A Section 74 SCN required reversal of proportionate ITC of Rs. 74,75,604 under Section 17(2) and Rules 42/43 for FY 2017-18 to 2019-20, with interest and equal penalty, and this was confirmed. The First Appellate Authority set the demand aside, treating Notification 14/2022 (which excludes the value of scrips from exempt supplies) as clarificatory and beneficial, and so retrospective. Revenue appealed, and the respondent objected that the appeal was below the Rs. 20 lakh limit in Circular 207/1/2024-GST.

3. FINAL VERDICT

The Tribunal held that CBIC circulars do not bind the Tribunal, but on the circular's own terms the appeal was maintainable, because the composite amount exceeded the limit and the issue was interpretational. On merits, Notification 14/2022 commences on its publication and the rule-maker, though empowered under Section 164(3), chose not to give it retrospective effect; **the insertion of clause (d) is not clarificatory or curative but confers a fresh benefit prospectively from 05.07.2022, and ITC being a concession cannot be claimed retrospectively as a vested right** (Sedco Forex, Sree Sankaracharya University). The appellate authority's contrary view was therefore wrong. However, since the respondent filed all returns, disclosed the scrip sales and acted on a bona fide view known to both sides, **no fraud, wilful misstatement or suppression was established and Section 74(1) could not be invoked** (Anand Nishikawa; CBIC Instruction 05/2023-GST). Applying Section 75(2), the proper officer was directed to re-determine the liability as if under Section 73 after a hearing, and the appeals were disposed of accordingly.

6. M/s Siddhi Vinayak Automobiles v. Commissioner of Kerala State GST, Thiruvananthapuram

GST Appellate Tribunal, Thiruvananthapuram Bench (Division Bench) · Date of Order: 14.08.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-84



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether a Section 129(3) penalty order (MOV-09) passed 47 days after the MOV-07 notice, beyond the seven-day statutory limit, is time-barred and void.

2. BACKGROUND

Auto parts supplied under two e-invoices were intercepted on 18.04.2022 without an e-way bill. MOV-07 was issued the same day and the goods were released on bank guarantee, but the MOV-09 order confirming penalty of Rs. 1,38,706 was passed only on 04.06.2022. The First Appellate Authority upheld the penalty. Before the Tribunal the appellant raised limitation under Section 129(3); the department objected that the ground was new and caused no prejudice.

3. FINAL VERDICT

The Tribunal rejected the department's objection, holding that the dates of MOV-07 and MOV-09 were undeniable facts on record, noted by the First Appellate Authority itself, so the limitation plea was not a new ground. On merits, it held that the use of "shall" in Section 129(3), both for issuing notice within seven days and for passing the order within seven days of service, shows that **the timelines are mandatory; a fiscal statute is strictly construed, and the absence of a stated consequence does not make them directory**, following Mohd Hazzak Lohar (J&K & Ladakh HC), Allcargo Logistics and Khatu Enterprises (Guj HC), Deepam Roadways (Mad HC), Pawan Carrying Corporation (Pat HC) and K.P. Sugandh (Ori HC). It also found no mens rea, since the e-invoices auto-populated GSTR-1 and tax was paid in the April 2022 return. Holding that **MOV-09 issued 47 days after MOV-07 is illegal and without jurisdiction**, the Tribunal set aside the Order-in-Appeal, allowed the appeal with consequential relief and directed immediate release of the bank guarantee.

7. M/s M S Steels v. Commissioner of Kerala State GST, Thiruvananthapuram

GST Appellate Tribunal, Thiruvananthapuram Bench (Division Bench) · Date of Order: 14.08.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-88



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether penalty under Section 129 is leviable for moving goods without an e-way bill when the movement is a stock transfer between premises under the same GSTIN.

M/s M S Steels v. Commissioner of Kerala State GST, Thiruvananthapuram

CONTINUED

2. BACKGROUND

On 13.06.2022 the appellant, a steel dealer, moved TMT bars under a delivery challan from its own premises to its own godown under the same GSTIN. The vehicle was detained for want of an e-way bill and penalty of Rs. 1,34,640 was imposed under Section 129(3), with no tax demand, and paid to obtain release. The First Appellate Authority dismissed the appeal, calling the transaction “not genuine”. Revenue contended that “tax payable” in Section 129(1)(a) is only a measure for computing penalty and that mens rea is not required.

3. FINAL VERDICT

The Tribunal held that penalty under Section 129(1) is linked to the “tax payable on such goods”. A movement between premises of the same person involves neither a second party nor consideration, so it is not a “supply” under Section 7(1)(a), and therefore not an intra-State supply attracting the charging provision in Section 9. Following Fabricship Pvt. Ltd. (Bom HC), Vacmet India and Goverdhan Oil Mill (All HC), it held that **where no tax is payable on the goods, penalty under Section 129, which is measured by that tax, cannot be levied**. Revenue’s attempt to distinguish Fabricship because the goods there were exempt was rejected as a misreading of its ratio, and the “not genuine” finding was held to be unsupported by any allegation or evidence. Rule 138(1)(ii) still requires an e-way bill for non-supply movements, but **the remedy for such a lapse lies only under Section 122(1)(xiv), not Section 129(3)**. The question of law was answered in the negative, and the Order-in-Appeal was set aside with consequential relief.

8. M/s Lucknow Automotives v. Assistant Commissioner (Mobile Squad), Gonda & Ors.

GST Appellate Tribunal, Lucknow Bench (Division Bench) · Date of Order: 19.08.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-87


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Section 129(3) penalty on motorcycles intercepted without e-way bill, which was generated nine minutes after interception – whether sustainable absent intent to evade tax.

2. BACKGROUND

The appellant, a dealer in motorcycles and spares, had its vehicle carrying motorcycles under four invoices intercepted by the Mobile Squad, Gonda at 7:25 A.M. on 20.01.2025; the e-way bill was generated at 7:34 A.M. and produced immediately. Penalty of Rs. 2,63,330 (CGST + SGST) was imposed under Section 129(3) and confirmed by the First Appellate Authority. The question referred to the Division Bench was whether movement without an e-way bill (mandatory under Rule 138(1)) justified penalty on these facts.

3. FINAL VERDICT

The Tribunal accepted that generation of the e-way bill after interception was a procedural lapse, but found that it occurred in a genuine and fully identifiable transaction: the motorcycles carried engine and chassis numbers and were subject to RTO registration, the movement was backed by purchase/sale invoices, challans, ledgers and bank records,

M/s Lucknow Automotives v. Assistant Commissioner (Mobile Squad), Gonda & Ors.

CONTINUED

and no discrepancy in quantity, value or classification, nor any suppression, undervaluation, fake documentation or clandestine movement, was found. Relying on the Allahabad High Court in M/s OSR Creation (and Uttam Electric Store, Vishnu Singh), the Tribunal held that **the lapse was a bona fide procedural one and not part of an attempt to evade tax, so penalty under Section 129(3) could not be sustained**; the department's reliance on M.B. Computers was distinguished as involving unfilled Part-B and a different destination. The order under Section 129(3) and the appellate order were set aside and the deposited Rs. 2,63,330 was directed to be refunded subject to verification.

9. Om Prakash (Revenue) v. M/s Islam Trading Co., Baheri, Bareilly

GST Appellate Tribunal, Lucknow Bench (Division Bench) · Date of Order: 20.08.2026

AGAINST ASSESSEE

CITATION GIB-GSTAT-2026-82


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether producing the e-way bill after interception cures the transport of iron scrap without one, and whether intent to evade tax is established for Section 129(3).

2. BACKGROUND

On 08.03.2018 a vehicle carrying iron scrap worth Rs. 83,323 under a tax invoice, but without an e-way bill, was intercepted by the Mobile Squad, Bareilly, and tax and penalty of Rs. 30,000 were imposed under Section 129(3). The First Appellate Authority set this aside because the e-way bill was produced later with the reply. Revenue appealed, and the question of movement without an e-way bill under Rule 138(1) was referred to the Division Bench. The respondent did not appear.

3. FINAL VERDICT

The Tribunal held that carrying an e-way bill is mandatory under Rule 138(1) and that the e-way bill is an integral part of the statutory mechanism for monitoring movement of taxable goods. It distinguished the precedents relied upon by the First Appellate Authority (Singh Tyre, Harle Foods, Modern Traders, Raj Iron, Rai Prexim) on the reasoning that the e-way bill is an online, time-stamped record whereas the invoice is issued manually, so **non-generation of an e-way bill leaves scope to manipulate the books, and such a transaction establishes an intention to evade tax**. The movement of sensitive goods (iron scrap) from Baheri (UP) to Kichha (Uttarakhand), about 25 km apart, was held to reinforce that intent, which the Tribunal found “crystal clear”. The First Appellate Authority was held to have erred, its order was quashed, and **the Section 129(3) order of tax and penalty was restored**, allowing Revenue's appeal.

10. M/s Sri Parameshwara Bricks v. State Tax Officer, Peddapalli Circle, Karimnagar Division & Ors.

GST Appellate Tribunal, Hyderabad Bench (Division Bench) · Date of Order: 20.08.2026

NEUTRAL

CITATION GIB-GSTAT-2026-115



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Lapse of composition option on crossing the Rs. 1.5 crore turnover threshold, and whether differential tax must be computed on cum-tax value under Rule 35.

2. BACKGROUND

The appellant, a red clay brick manufacturer under composition (Section 10(1), TGS/CGST), was found in audit to have e-way bill turnover of Rs. 1,95,53,800 for FY 2020-21 against Rs. 1,44,86,100 declared in CMP-08. Demands under Section 73 at the regular 5% rate, with interest and 10% penalty, were confirmed for FY 2020-21 and 2021-22 and upheld by the First Appellate Authority. The issues were whether the threshold was crossed and composition benefit lost, and whether the appellate order was justified.

3. FINAL VERDICT

The Tribunal held that, the crossing of the threshold being admitted, **under Section 10(3) the composition option lapses automatically, by force of statute, from the day aggregate turnover exceeds Rs. 1.5 crore.** From that day Rule 6(2) makes tax payable under Section 9(1), subject to credit for composition tax already paid. It saw no ground to disturb the figures, which had already excluded e-way bill typographical errors. On its own motion, however, it held that since a composition dealer cannot collect tax from recipients (Section 10(4)), **the invoice value must be treated as cum-tax and the differential tax worked out under the Rule 35 formula, even though the benefit was never claimed,** because, following Unichem Laboratories (SC), the department must collect neither more nor less than the tax legally due. The proper officer was directed to recompute tax only on post-lapse supplies within two weeks, and to recompute interest and penalty accordingly. The question of ITC after cessation was left open, and the order was modified to that limited extent.

11. Pr. Commissioner, CGST & CX, Siliguri v. M/s Agarwala's Bitumex Pvt. Ltd.

GST Appellate Tribunal, Kolkata Bench · Date of Order: 20.08.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-85



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Refund of accumulated ITC on exports – whether denial is justified on toll-plaza data, “bill-to ship-to” movement, cancelled second-tier suppliers, and new grounds raised for the first time before the Tribunal.

Pr. Commissioner, CGST & CX, Siliguri v. M/s Agarwala's Bitumex Pvt. Ltd.

CONTINUED

2. BACKGROUND

The respondent exported bitumen and steel bars and claimed refunds of accumulated ITC of Rs. 11,41,828 (January 2025) and Rs. 27,65,697 (February 2025). The refunds were rejected because toll data showed the supplier's vehicles never crossed West Bengal, and because its supplier, KS Metals, had bought from two dealers whose registrations were cancelled ab initio. The Appellate Authority allowed the refunds, and Revenue appealed, adding new grounds (Customs letters, a DGGI probe of a group unit, and bitumen licensing).

3. FINAL VERDICT

The Tribunal noted that tax payment, verification of RFD-01, the exports and bank realisation were all undisputed. The goods moved under a "bill-to ship-to" model to LCS Jogbani, and **no provision of GST law requires goods to start from the supplier's registered place, nor are toll-plaza receipts a mandatory condition for ITC** (Raghuvansh Agro Farms, All HC). The respondent had satisfied Section 16(2)(a)–(d) through invoices, e-way bills, bilty, shipping bills, EGM, a transporter's certificate and banking records, none of which Revenue disputed. Its direct supplier was validly registered, and **a recipient cannot be denied refund for irregularities of second-line suppliers with whom it has no nexus**. The new grounds were outside the SCNs and unsupported by any document, and could not be entertained in view of Rule 45(1) of the GSTAT (Procedure) Rules, 2025 and Rule 112(1) of the CGST Rules. Revenue's appeals were dismissed and the Orders-in-Appeal upheld.

12. M/s Santhome Latex Enterprises v. Commissioner of CGST, Thiruvananthapuram

GST Appellate Tribunal, Thiruvananthapuram Bench (Division Bench) · Date of Order: 21.08.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-83


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether merely availing ineligible self-assessed ITC, or not replying to an audit enquiry or final audit report, amounts to "suppression" justifying invocation of Section 74.

2. BACKGROUND

After an audit for July 2017–March 2022, an SCN under Section 74 sought recovery of excess ITC of Rs. 8,56,877 with interest and penalty. The adjudicating authority dropped the demand, finding that the ITC reconciliation had been disclosed through GSTR-9C on the portal and that no non-declaration under Explanation 2 to Section 74 was shown. The Joint Commissioner (Appeals) reversed this on the department's new plea that the taxpayer had not replied to the audit enquiry or report.

3. FINAL VERDICT

The Tribunal held that the SCN rested on bald assertions with no evidence; **every transgression of Sections 16(2)/42(1) cannot attract Section 74 unless fraud, wilful misstatement or suppression with intent to evade is alleged and proved by evidence**, and the onus is on the department to show that the taxpayer knowingly took ineligible credit. The failure to reply to the audit enquiry was never a ground in the SCN, so the appellate authority's

M/s Santhome Latex Enterprises v. Commissioner of CGST, Thiruvananthapuram

CONTINUED

reliance on it violated natural justice; it also did not identify what information was sought, when, or under which provision, and never dislodged the finding of disclosure through GSTR-9C. Relying on CBIC Instruction No. 05/2023-GST and Cosmic Dye Chemical and Ballarpur Industries (SC), it answered both questions in the negative: **merely taking ineligible self-assessed ITC, or merely failing to reply to an audit enquiry or final audit report, does not by itself amount to suppression under Section 74.** The Order-in-Appeal was set aside and the appeals allowed with consequential relief.

13. Santosh Mani Mishra (Revenue) v. M/s Islam Trading Company, Baheri, Bareilly

GST Appellate Tribunal, Lucknow Bench (Division Bench) · Date of Order: 25.08.2026

AGAINST ASSESSEE

CITATION GIB-GSTAT-2026-116


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Section 129(3) tax and penalty for transporting iron goods without an e-way bill – whether later production of documents cures the lapse and whether a repeated lapse shows intent to evade.

2. BACKGROUND

On 27.03.2018 the Mobile Squad, Bareilly intercepted iron goods moving under Tax Invoice No. 29 without an e-way bill, and tax of Rs. 47,844 with equal penalty was imposed under Section 129(3). The First Appellate Authority set it aside (24.09.2021), relying on later production of the e-way bill and documents. Revenue appealed, contending that the violation of Rule 138 was not cured afterwards. The respondent did not appear.

3. FINAL VERDICT

Holding that the e-way bill under Rule 138(1) is an integral part of the statutory mechanism, the Tribunal distinguished the High Court precedents relied upon below (Singh Tyre, KL Industries, Harley Foods, Modern Traders, Rai Prexim). Because the e-way bill is generated online while the invoice is manual, **transporting goods without an e-way bill was held to be substantive non-compliance establishing an intention to evade tax**, reinforced by the short Baheri (UP)–Kichha (Uttarakhand) route. Referring to its own order of 20.08.2026 in Om Prakash v. Islam Trading Co., which involved the same dealer, goods, destination and modus operandi, the Tribunal held that **the repeated lapse, with the e-way bill surfacing only after interception, was a deliberate course of conduct and not a mere technical lapse.** Revenue's appeal was allowed, the appellate order set aside and the original order of 09.03.2018 under Section 129(3) restored.

14. M/s Lucknow Test House v. Additional Commissioner Grade-II, State Tax, Lucknow & Ors.

GST Appellate Tribunal, Lucknow Bench (Division Bench) · Date of Order: 27.08.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-117



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether ITC reported under CGST/SGST heads instead of IGST, without exceeding aggregate eligible credit, can be demanded as excess ITC under Section 73.

2. BACKGROUND

For April 2020–March 2021, a mismatch between GSTR-3B and the returns led the department to treat Rs. 1,00,408 each of CGST and SGST (Rs. 2,00,816 in total) as excess ITC under Section 73, with no allegation of fraud or suppression. The First Appellate Authority upheld it, reasoning under Section 16(2)(c) that ITC is available only under the head in which tax was deposited. The question of law referred was the treatment of ITC misreported across heads without exceeding aggregate eligibility.

3. FINAL VERDICT

Applying the Kerala High Court Division Bench in Rejimon Padickapparambil Alex v. UOI (W.A. 54/2024) and CBIC Circular No. 192/04/2023-GST, which treat the electronic credit ledger as a single pool or “waller” of IGST, CGST and SGST, the Tribunal held that **the demand cannot be sustained merely because credit was reflected under an incorrect tax head**, since the department had not established actual loss of revenue or avilment beyond aggregate entitlement and the eligibility of the credit was not disputed. With the principal demand unsustainable, interest and penalty could not survive independently. However, as neither lower authority had verified from the ledger and returns that matching IGST credit was available and unclaimed, the appeal was allowed with a direction that **the proper officer verify sufficient eligible IGST credit and drop the demand if the IGST credit stands unclaimed**, with consequential relief including restoration or adjustment of ITC.

15. Council for the Indian School Certificate Examinations v. Commissioner, CGST Delhi East & Ors.

GST Appellate Tribunal, Delhi State Bench, New Delhi (Division Bench) · Date of Order: 31.08.2026

NEUTRAL

CITATION GIB-GSTAT-2026-118



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

GST on affiliation fees and annual or late registration charges collected by CISCE from schools – exemption under Entry 66(b)(iv) of Notification 12/2017-CT(R), validity of a consolidated SCN, Section 74 and cum-tax value.

2. BACKGROUND

Following an anti-evasion inspection, a consolidated SCN for July 2017–November 2023 demanded GST of about Rs. 20.90 crore on affiliation, registration, documentation, licence and late fees, invoking Section 74 for July 2017–August

Council for the Indian School Certificate Examinations v. Commissioner, CGST Delhi East & Ors.

CONTINUED

2018. The first appellate authority dropped documentation charges, late entry fees and licence fees, and regularised affiliation fees up to 17.06.2021 under Circular 234/28/2024-GST. It upheld tax on affiliation fees after 18.06.2021 and on annual and late registration charges for the whole period, with Section 74 and penalties. Eight issues were framed in CISCE’s appeal.

3. FINAL VERDICT

The Tribunal held that a consolidated SCN covering several years is not invalid without demonstrable prejudice. Applying Dilip Kumar & Co. (strict construction of exemptions) and distinguishing High Court rulings on statutory universities, since CISCE is a registered society, it held that **affiliation, including processing and form charges, is an independent taxable supply and not a service “relating to admission to, or conduct of examination” under Entry 66(b)(iv)**. Annual and late registration charges were likewise held taxable and outside the regularisation in Circular 234/28/2024-GST, whose challenge was rejected.

In CISCE’s favour, it held that since no tax was separately collected, **the amounts received must be treated as cum-tax under Rule 35**, and that, the respondent having called for and received details in 2023, **fraud, wilful misstatement or suppression was not established**. The demand for July 2017–August 2018 (Rs. 1,29,60,720) was therefore set aside as time-barred, together with its interest and penalty. Demands for September 2018–November 2023 were upheld with Section 73 penalty and the Section 125 penalty of Rs. 25,000, no penalty or interest was to apply to the regularised affiliation period, and the liability was ordered to be recomputed. The outcome is neutral: the levy was upheld, but with substantial relief.

16. Commissioner of CGST & Central Excise, Kolkata North v. M/s HP Cotton Casuals Pvt. Ltd.

GST Appellate Tribunal, Kolkata Bench · Date of Order: 10.09.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-119


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Inverted duty refund to a garment processor – whether denied because input and output share the same HSN, or on “manufacture”, verification and period-wise computation objections.

2. BACKGROUND

The respondent buys fabric and pre-stitched garments (5%) and chemicals and packing materials (12–18%), and supplies finished apparel at 5% after bleaching, dyeing, printing, stitching, branding and packing. Its inverted duty refunds of Rs. 34,47,623 (March 2024) and Rs. 7,86,037 (February 2024) were rejected on the ground that input and output fall under the same HSN. The First Appellate Authority allowed them, and Revenue appealed, also alleging non-verification of capital-goods invoices, GSTR-2B mismatches, export ITC and annual (rather than period-wise) computation.

Commissioner of CGST & Central Excise, Kolkata North v. M/s HP Cotton Casuals Pvt. Ltd. CONTINUED

3. FINAL VERDICT

The Tribunal held that **the concept of “manufacture” is no longer relevant under GST, since the levy under Section 9(1) is on supply, so refund eligibility does not depend on whether the claimant is a trader or a manufacturer.** Para 3 of Circular 135/05/2020-GST, by its very heading, deals with accumulation due to a reduction in the GST rate, and para 3.2 applies only where the same goods attract different rates at different points of time; it has no application where there is no rate reduction. Following the Madras High Court in Vindhya Spinning Mills (14.07.2026), it held that **Section 54(3)(ii) draws no distinction between principal and other inputs, so where higher-taxed chemicals and packing materials cause the accumulation, refund cannot be denied because one input shares the output’s rate or HSN.** Computation had been period-specific under Rule 89(5), and the verification objections had already been examined by both lower authorities and were not rebutted by any evidence. Revenue’s appeals were dismissed.

17. Commissioner, CGST & CX, Siliguri Commissionerate v. M/s Santosh Fragrance

GST Appellate Tribunal, Kolkata Bench · Date of Order: 16.09.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-120


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Inverted duty refund under Section 54(3)(ii) to an agarbatti manufacturer – whether para 3.2 of CBIC Circular 135/05/2020-GST bars the refund.

2. BACKGROUND

The respondent manufactures agarbatti (HSN 3307) taxed at 5%, using perfumes, fragrances, chemicals and packaging materials taxed at 12–18%. A refund of Rs. 4,00,000 of ITC accumulated due to inverted tax structure (April 2022–March 2023) was sanctioned on 18.01.2024 and upheld by the First Appellate Authority. Revenue appealed, contending that para 3.2 of Circular 135/05/2020-GST (as substituted by Circular 173/05/2022-GST) took the case outside Section 54(3)(ii).

3. FINAL VERDICT

The Tribunal framed two questions: whether the credit had accumulated because the tax rate on inputs was higher than on output, and whether para 3.2 of the Circular stood in the way. Applying the definition of “inputs” in Section 2(59) and VKC Footsteps (SC), it held that the perfumes, chemicals and packaging materials were commercially distinct inputs taxed at higher rates than agarbatti, so **the ITC had accumulated on account of an inverted rate structure squarely within Section 54(3)(ii).** Para 3.2 applies only where input and output are the same goods taxed at different rates at different points of time, and has no application here. Reiterating its own view in Power Tech Global and that of the Principal Bench in Dow Chemical, the Tribunal held that **CBIC circulars bind departmental officers but not the Tribunal, and are at most persuasive.** The concurrent findings of the lower authorities were affirmed and Revenue’s appeal dismissed.

18. Md Qamaruddin Khan v. M/s YRK Constructions, Hyderabad

GST Appellate Tribunal, Hyderabad Bench (Division Bench) · Date of Order: 17.09.2026

NEUTRAL

CITATION GIB-GSTAT-2026-121



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether the appellate authority could revoke cancellation of registration on verification of returns and tax alone, without ensuring payment of interest, late fee and penalty under the proviso to Rule 23(1).

2. BACKGROUND

The respondent's registration was cancelled from 12.11.2020 for not filing GSTR-3B for six months. Finding that all returns had been filed after the show cause notice, the First Appellate Authority revoked the cancellation and directed the proper officer to verify the filing of returns and payment of tax. The department appealed, contending that interest, late fee and penalty also had to be paid under Rule 23(1). The respondent did not appear despite three opportunities.

3. FINAL VERDICT

The Tribunal held that the liability under returns extends to interest, late fee and penalty, and that **by not applying the proviso to Rule 23(1), the First Appellate Authority committed a jurisdictional and substantive error**. It also observed that admitted dues are recoverable through Section 79, which the department ought to invoke before seeking the Tribunal's aid for collection. Reading the appellate order as intending recovery of the Rule 23 amounts, it held that the department was free to collect interest under Section 50 and late fee under Section 47, and **imposed a penalty of Rs. 10,000 under Rule 23**, modifying the order to that extent. Since the revocation of cancellation was left intact and only ancillary dues and penalty were added, the outcome is neutral (partly in favour of each side).

19. M/s Metalloids India, Pathanamthitta v. Commissioner of State Tax, Kerala

GST Appellate Tribunal, Thiruvananthapuram Bench (Division Bench) · Date of Order: 17.09.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-122



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether the value of the principal's goods returned by a job worker must be included in the consignment value declared in the e-way bill, and whether Section 129 penalty is sustainable.

2. BACKGROUND

Aluminium colour-coated coils belonging to the appellant (principal), returned by its job worker Roofstyle Industries, were intercepted on 04.05.2023 under a job-work invoice of Rs. 1,841, a return e-way bill showing nil quantity, and the original delivery challan. Penalty of Rs. 2,50,884 was imposed under Section 129(3) for want of a valid delivery

M/s Metalloids India, Pathanamthitta v. Commissioner of State Tax, Kerala

CONTINUED

challan and e-way bill, and was upheld in first appeal. Before the Tribunal, Revenue argued that the e-way bill had to reflect the Rs. 6,96,900 value of the material.

3. FINAL VERDICT

The Tribunal found that the SCN rested on facts falsified by the department's own records: the job-work tax invoice, the principal's delivery challan (as required by Circular 38/12/2018) and e-way bill No. 521496456415 were all tendered at interception. The adjudication order impermissibly introduced a new ground of an "invalid" e-way bill and was non-speaking, while the appellate order relied on a ground outside the SCN (an e-way bill from A.S. Metals); Revenue's attempt to improve the SCN at the Tribunal stage was rejected. On the question of law, reading Explanation 2 to Rule 138 with Section 15, it held that **on return after job work the supply is only of job-work services, so the consignment value is the job-work charges plus tax, and the value of the principal's goods is not includable in the e-way bill**. As the consignment value of Rs. 1,841 was below the Rs. 50,000 threshold, **no e-way bill was mandatory and proceedings for a defective or missing e-way bill were void ab initio**. The appeal was allowed with consequential relief.

20. M/s Flora Kingdom Farm Resort v. Commissioner of Commercial Taxes, Karnataka

GST Appellate Tribunal, Bengaluru Bench (Division Bench) · Date of Order: 30.09.2026

AGAINST ASSESSEE

CITATION GIB-GSTAT-2026-123



SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

ITC on goods and services used to construct a resort building – blocked under Section 17(5)(d) after the retrospective 2025 amendment ("plant and machinery") and Safari Retreats.

2. BACKGROUND

The appellant, which runs a resort at Udupi supplying accommodation, restaurant services and wedding and event venues, availed ITC in FY 2019-20 on inputs used to build the resort. After allowing Rs. 1,47,922.92 on electrical items, air-conditioners and expensed purchases, a Section 73 demand of Rs. 9,32,177 (tax Rs. 8,45,972, interest Rs. 1,607, penalty Rs. 84,598) was confirmed and upheld in first appeal. Relying on Safari Retreats, the appellant claimed that the resort is a "plant" and was not built "on its own account".

3. FINAL VERDICT

The Tribunal held that, by Section 124 of the Finance Act, 2025 and the corresponding KGST amendment, **clause (d) must be read from 01.07.2017 with the defined expression "plant and machinery", which expressly excludes buildings and civil structures, so a resort building cannot qualify**. Even under the unamended clause, Safari Retreats framed the functionality test only for "a mall, warehouse or any building other than a hotel or a cinema theatre" (citing Anand Theatres), so a resort supplying accommodation and food was outside it. Applying Safari Retreats on "own account", which the amendment did not touch, it held that **a building used as the setting of the taxpayer's own hotel, restaurant and events business is constructed on its own account**; no lease or licence to

M/s Flora Kingdom Farm Resort v. Commissioner of Commercial Taxes, Karnataka

CONTINUED

third parties was shown, and the words “including when ... used in the course or furtherance of business” defeat the contrary plea. Under Section 155 the burden of identifying items outside clause (d) lay on the appellant, which identified nothing beyond what was already allowed. Interest (computed under Rule 88B) and penalty under Section 73(9) were sustained, and the appeal was dismissed.

21. Assistant Commissioner, CGST & Central Excise, Division-IX, Ankleshwar v. Pragna Chemical Industries (with Shivabhishek Industrial Park Pvt. Ltd. and Kumar Packaging)

GST Appellate Tribunal, Surat Bench (Division Bench) · Date of Order: 06.10.2026

IN FAVOUR OF ASSESSEE

CITATION GIB-GSTAT-2026-124


SCAN TO READ THE
COMPLETE JUDGMENT

1. SUBJECT

Whether GST is leviable under reverse charge on assignment of GIDC leasehold rights in industrial plots to a third-party assignee.

2. BACKGROUND

The Respondents became assignees of leasehold rights in GIDC plots (in Pragna’s case, a plot sold in a departmental e-auction and transferred by GIDC in 2019). The department demanded GST from the assignees under RCM, invoking Section 74 and a further penalty under Section 122(2)(b). The Appellate Authorities set aside the demands following the Gujarat High Court in Gujarat Chamber of Commerce and Industry v. UOI (03.01.2025), and the department appealed to the Tribunal.

3. FINAL VERDICT

The Tribunal noted that it was undisputed that the case was squarely covered by Gujarat Chamber of Commerce and Industry, where the High Court held that assignment of GIDC leasehold rights for consideration is a transfer of benefits arising out of immovable property, outside Section 7(1)(a) read with Schedule II/III, and not liable to GST; the Bombay High Court took the same view in Aerocom Cushions (09.01.2026). The department’s SLPs against both judgments were dismissed by the Supreme Court on 22.05.2026 and 21.07.2026. Holding that **the jurisdictional High Court’s judgment holds the field and binds the Tribunal, and the department’s intention to seek review does not dilute it in the absence of any stay or recall**, the Tribunal held that **GST is not leviable on the assignment transactions**. The questions of invoking Sections 74 and 122(2)(b) and applicability of RCM did not survive; the department’s appeals were dismissed and the Orders-in-Appeal upheld.

CONCEPT EXPLAINED



GST Documentation

Types, Significance and Compliance Requirements under the CGST Act, 2017

Introduction

Documentation forms the foundation of compliance under the Goods and Services Tax (GST) regime. The **Central Goods and Services Tax Act, 2017 (“CGST Act”)**, read with the **Central Goods and Services Tax Rules, 2017 (“CGST Rules”)**, establishes a framework of prescribed documents through which transactions are recorded, supplies are evidenced, and tax liabilities are determined. The nature of the document required varies according to the transaction and the circumstances in which it takes place. Failure to comply with the prescribed documentation requirements may attract penalties under Section 122 and, where the statutory conditions are satisfied, prosecution under Section 132 of the CGST Act.

The scope of documentation under GST encompasses written, printed and electronic records, as reflected in the definition of **“document”** under **Section 2(47) of the CGST Act**. These documents serve different purposes throughout a transaction, from recording its particulars and evidencing the supply to facilitating the verification of tax positions and compliance with statutory obligations.

The tax invoice occupies a central position within this framework. It serves as evidence of a taxable supply and, where applicable, supports the movement of goods, the recipient’s claim to input tax credit (“ITC”) and refund claims. The CGST Act and the CGST Rules prescribe the circumstances in which invoices must be issued and the particulars they must contain. However, GST documentation extends beyond tax invoices: bills of supply, debit notes, credit notes, receipt vouchers, payment vouchers and delivery challans are also prescribed for specific situations, reflecting the different requirements that arise over the course of a transaction.

01 Tax Invoice

A tax invoice is the principal document evidencing a taxable supply of goods or services, or both. It records essential particulars, including the supplier’s and recipient’s details, GSTIN, invoice number and date, description and value of the supply, applicable tax rates and tax amounts.

The invoice establishes the nature and value of the transaction, facilitates the reporting of outward supplies and provides the recipient with the documentary basis for claiming ITC, subject to fulfilment of the prescribed conditions. Proper issuance and maintenance of tax invoices are therefore essential for accurate tax reporting and reconciliation.

A tax invoice is issued by a registered supplier in respect of taxable supplies of goods or services, or both, subject to the applicable invoicing requirements.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Section 31	Prescribes the requirements and circumstances for issuing tax invoices.
Rule 46	Specifies the particulars to be contained in a tax invoice.
Rule 47	Prescribes the time limit for issuing tax invoices for services.
Rule 48	Prescribes the manner of issuing invoices, including e-invoicing for persons covered by the applicable provisions.
Rule 54	Prescribes special invoicing procedures for specified categories of registered persons, including insurers, banking companies, financial institutions and other specified suppliers.
Rule 55A	Requires a copy of the tax invoice or bill of supply to accompany the transportation of goods where an e-way bill is not required, as prescribed.

02 Bill of Supply

A bill of supply is issued in respect of supplies for which a tax invoice is not required, particularly supplies of exempt goods or services and supplies made by a registered person paying tax under the composition scheme. Unlike a tax invoice, a bill of supply does not charge GST separately. It documents the transaction and enables the supplier to maintain appropriate records of exempt or composition supplies. It also helps the recipient identify the nature of the transaction, although it does not, by itself, provide a basis for claiming ITC.

A bill of supply is issued by a registered person for supplies of exempt goods or services and by a person paying tax under the composition scheme, as applicable.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Section 31(3)(c)	Requires the issuance of a bill of supply in the prescribed circumstances.
Rule 49	Prescribes the particulars to be contained in a bill of supply.
Rule 46A	Permits a registered person supplying taxable as well as exempt goods or services to an unregistered person to issue a single invoice-cum-bill of supply, subject to the prescribed conditions.
Rule 55A	Requires a copy of the tax invoice or bill of supply to accompany the transportation of goods where an e-way bill is not required, as prescribed.

03 Receipt Voucher

A receipt voucher is issued upon receipt of an advance payment in respect of a proposed supply of goods or services, or both, where the applicable statutory requirements so provide. It records the advance received and relevant particulars of the proposed supply, including the amount and other prescribed details. The voucher provides an audit trail for advances and

assists in reconciling the amount received with the eventual supply, adjustment or refund. The applicable GST liability on the advance must be determined separately in accordance with the relevant provisions.

A receipt voucher is issued by a registered supplier upon receipt of an advance payment towards a proposed supply of goods or services, wherever required under the applicable GST provisions.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Section 31(3)(d)	Requires the issuance of a receipt voucher or other prescribed document upon receipt of an advance payment.
Rule 50	Prescribes the particulars to be contained in a receipt voucher.

04 Refund Voucher

A refund voucher is issued where an advance has been received against a proposed supply but the supply is subsequently not made and no tax invoice is issued in respect of that advance.

It documents the refund of the advance and provides a link to the original receipt voucher. This helps businesses maintain accurate records of cancelled transactions, reconcile advances received and refunded, and establish the appropriate GST treatment of the transaction.

A refund voucher is issued where an advance has been received against a proposed supply, but the supply is not made and no tax invoice is issued against the advance.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Section 31(3)(e)	Provides for the issuance of a refund voucher where an advance has been received but the relevant supply does not take place and no tax invoice is issued.
Rule 51	Prescribes the particulars to be contained in a refund voucher.

05 Self-Invoice

A self-invoice is issued by a registered recipient in specified circumstances where the recipient is liable to pay GST under the reverse charge mechanism (“RCM”) on supplies received from an unregistered supplier. The self-invoice documents the inward supply for which the recipient is responsible for discharging GST. It helps identify reverse-charge liabilities, maintain records of inward supplies and support the recipient’s tax reporting and compliance. Any ITC arising from the transaction remains subject to the applicable eligibility conditions.

A self-invoice is issued by a registered recipient for specified taxable supplies received from an unregistered supplier where the recipient is liable to pay GST under reverse charge.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Section 31(3)(f)	Requires a registered recipient liable to pay tax under reverse charge on specified supplies received from an unregistered supplier to issue an invoice.
Section 9(3)	Provides for reverse-charge liability on notified categories of goods or services.
Section 9(4)	Provides for reverse-charge liability on specified categories of supplies received from unregistered suppliers, as notified.
Rule 46	Prescribes the particulars to be contained in an invoice, subject to applicable requirements.
Rule 47A	Prescribes the time limit for issuing an invoice where the recipient is required to issue it under the reverse-charge provisions.

06 Payment Voucher

A payment voucher is issued by a registered person when making payment to a supplier in respect of supplies for which GST is payable under RCM.

It records the payment made and the relevant particulars of the transaction, providing documentary evidence of the payment and assisting in maintaining an audit trail for reverse-charge supplies. It is distinct from a self-invoice: while the self-invoice documents the inward supply, the payment voucher records the payment made to the supplier.

A payment voucher is issued by a registered recipient at the time of making payment to a supplier in respect of supplies liable to GST under reverse charge.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Section 31(3)(g)	Requires the issuance of a payment voucher at the time of making payment in respect of supplies liable to reverse charge.
Rule 52	Prescribes the particulars to be contained in a payment voucher.

07 Debit Notes and Credit Notes

Debit notes and credit notes are used to adjust the value of supplies or the tax charged under an earlier tax invoice.

A debit note may be issued where the taxable value or tax charged in the original invoice is lower than what is properly chargeable. A credit note may be issued in circumstances such as excess taxable value or tax charged, return of goods or deficiencies in the supply, subject to the applicable statutory requirements.

These documents facilitate the correction of invoicing errors, account for subsequent changes in transactions and maintain consistency between books of account, invoices and GST returns. Any reduction in output tax liability through a credit note must comply with the prescribed conditions and time limits.

A debit note is issued where the taxable value or tax charged in the original invoice is lower than the amount properly chargeable, while a credit note is issued in cases such as excess value or tax charged, return of goods or qualifying post-supply discounts.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Section 34(1)	Provides for the issuance of debit notes where the taxable value or tax charged in the original invoice is lower than what is properly chargeable.
Section 34(2)	Provides for the issuance of credit notes and governs reductions in output tax liability, subject to statutory conditions and time limits.
Rule 53	Prescribes the particulars to be contained in revised tax invoices and credit or debit notes.

08 Delivery Challan

A delivery challan is used for the movement of goods in circumstances where a tax invoice is not required to be issued at that stage. It records particulars of the goods being transported and explains the purpose of their movement.

The delivery challan helps establish the connection between the goods in transit and the underlying business transaction, thereby facilitating verification during transportation and departmental scrutiny. It cannot replace a tax invoice where an invoice is legally required.

A delivery challan is used for the movement of goods without a tax invoice at that stage, such as goods sent for job work or transported for reasons other than supply, where permitted under the applicable provisions.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Rule 55	Specifies the circumstances in which goods may be transported under a delivery challan instead of an invoice and prescribes the relevant particulars and requirements.
Rule 138	Requires information regarding the relevant movement of goods to be furnished for e-way bill purposes where applicable.

09 E-Way Bill

An e-way bill is an electronic document generated on the GST common portal for the movement of goods wherever the prescribed requirements are met. It contains relevant details concerning the goods, the consignor and consignee, the underlying invoice or delivery challan and the transportation particulars.

The e-way bill enables tax authorities to verify the movement of goods and assists businesses in maintaining a traceable record of consignments. It is an important compliance document for the transportation of goods and helps establish the connection between physical movement and the underlying transaction.

An e-way bill is generated before the commencement of the relevant movement of goods where the prescribed value thresholds and other applicable conditions are satisfied, subject to exemptions.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
Rule 138	Prescribes the conditions and procedure for furnishing information and generating an e-way bill for the movement of goods.
Rule 138A	Specifies the documents and devices to be carried by the person in charge of a conveyance, as applicable.
Rule 138B	Provides for verification of documents and conveyances.
Rule 138C	Prescribes the inspection report and related documentation requirements.
Rule 138D	Provides for reporting details of detention of vehicles and related matters.

10 E-Invoicing

E-invoicing is a system under which prescribed particulars of specified invoices and other eligible documents are reported to an Invoice Registration Portal (“IRP”) for authentication and generation of an Invoice Reference Number (“IRN”). It does not involve creating an invoice exclusively on the GST portal; rather, the invoice is prepared using the supplier’s accounting or billing system and its prescribed particulars are reported to the IRP.

Upon successful registration, the IRP generates an IRN and a digitally signed QR code, which must be incorporated into the invoice in the prescribed manner. The system facilitates standardisation of invoice data, improves the accuracy of GST reporting, supports reconciliation and enables tax authorities to verify transaction details.

E-invoicing is generally mandatory for registered persons whose **aggregate turnover exceeds ₹5 crore in any preceding financial year from 2017–18 onwards**, subject to the prescribed exclusions.

Aggregate annual turnover (“AATO”) refers to the aggregate turnover of all registrations having the same Permanent Account Number (“PAN”) across India, computed on an all-India basis. It broadly includes taxable supplies, exempt supplies, exports and inter-State supplies, while excluding GST and cess levied under the GST laws. Consequently, the threshold is not assessed separately for each GST registration or State.

The relevant test is whether the threshold was exceeded in **any preceding financial year**, beginning with FY 2017–18. Once a person falls within the notified category, e-invoicing applies to the documents and transactions covered by the law, subject to the applicable exclusions. The turnover threshold is therefore a test for determining the class of persons covered; it does not mean that e-invoicing is required only for transactions exceeding ₹5 crore.

For persons covered by the mandate, e-invoicing generally applies to the following documents issued in respect of covered transactions:

- ◆ **Tax invoices** issued for business-to-business (“B2B”) supplies, including eligible supplies to registered government entities.

- ◆ **Export invoices**, including eligible supplies made to recipients outside India.
- ◆ **Invoices for supplies to or by Special Economic Zone (“SEZ”) entities**, where the supplier and transaction fall within the mandate and are not otherwise excluded.
- ◆ **Debit notes and credit notes** issued in respect of transactions covered by the e-invoicing provisions.

The mandate is not restricted to transactions involving physical movement of goods; it also covers eligible supplies of services. Conversely, ordinary business-to-consumer (“B2C”) invoices are not covered by the general e-invoicing mandate, although separate requirements concerning dynamic QR codes may apply to specified registered persons.

As per Notification 13/2020 and subsequent updates, specific entities are exempt from e-invoicing irrespective of turnover:

- ◆ Insurers, banking companies, financial institutions, and NBFCs.
- ◆ Goods Transport Agencies (GTAs).
- ◆ Passenger transport service providers.
- ◆ Multiplex cinema exhibition services.
- ◆ Special Economic Zone (SEZ) units (supplies TO SEZ units still require e-invoicing).
- ◆ Government departments and local authorities (Notification No. 23/2021-Central Tax dated 01.06.2021).

Non-compliance with e-invoicing requirements attracts following consequences—

- a) Invoices reported beyond the prescribed 30-day deadline may be rejected by the IRP, preventing their registration through the prescribed system and potentially affecting the recipient’s ITC claim.
- b) Failure to generate an e-invoice or issuing an incorrect invoice may attract penalties under the applicable provisions of the CGST Act, depending on the nature and circumstances of the contravention.
- c) Non-compliance may also result in denial of the recipient’s ITC claim.

In an advisory issued on 16 October 2026, the Goods and Services Tax Network (GSTN) announced the introduction of new document categories in the e-invoicing system for self-invoices raised under the Reverse Charge Mechanism (RCM). The development follows the GST Council’s recommendation at its **57th meeting** to bring specified domestic purchases from unregistered suppliers and imports of services within the e-invoicing framework for taxpayers whose aggregate annual turnover is ₹5 crore or more. The facility allows eligible taxpayers to report these invoices and obtain Invoice Reference Numbers (IRNs). The system now provides for the following two document categories:

- ◆ **RCMDOM**: Used for self-invoices relating to specified domestic supplies procured from unregistered suppliers, where the recipient is responsible for discharging GST under RCM.
- ◆ **RCMIMP**: Used for self-invoices covering services received from suppliers situated outside India.

RELEVANT PROVISIONS	
SECTION/RULES	DETAILS
<i>Section 122(1)(i)</i>	Provides for a penalty in specified cases involving supply without an invoice or issuance of an incorrect or false invoice.
<i>Rule 48(4)</i>	Requires persons covered by the notified e-invoicing provisions to prepare invoices by uploading prescribed particulars to the Invoice Registration Portal.
<i>Rule 48(5)</i>	Provides that an invoice issued by a person covered by Rule 48(4) otherwise than in the prescribed manner is not treated as an invoice under the Rules.
<i>Rule 48(6)</i>	Provides that the ordinary requirements regarding invoice copies do not apply to invoices prepared in the prescribed e-invoicing manner.
<i>Relevant notifications under Rule 48(4)</i>	Specify the classes of registered persons covered by e-invoicing, together with applicable exemptions and conditions.

Conclusion

Understanding the circumstances in which each document is required is as important as knowing its statutory particulars. Maintaining complete and accurate documentation enables businesses to determine their tax liabilities correctly, substantiate eligible ITC claims, reconcile statutory returns and respond effectively to audits and departmental scrutiny. Accordingly, businesses should establish appropriate documentation and reconciliation procedures, ensure that the correct document is issued for each transaction and periodically review their compliance with the CGST Act, the Rules and applicable notifications.

ARTICLES FROM FELLOW PRACTITIONERS



Guest Corner

This corner publishes articles that our fellow practitioners share with us. In this issue, we are publishing an article by **CA Raghav Goel** on the classification of goods, drawing on the ruling of the Hon'ble Supreme Court in *Commissioner of Central Excise v. Connaught Plaza Restaurant (P) Ltd.* Practitioners who wish to contribute may write to us at info@ada.org.in.

Classification of Goods under GST: Can Technical Parameters overrule Common Parlance?

ARTICLE AUTHORED BY



CA Raghav Goel

Commissioner of Central Excise, New Delhi v. M/s Connaught Plaza Restaurant (P) Ltd.

The author may be contacted at raghavgoel@gmail.com



SCAN TO READ THE
COMPLETE JUDGMENT

Introduction: -

Classification disputes under the Goods and Services Tax (GST) and Customs regimes continue to be one of the most litigious flashpoints in Indian indirect taxation. Assessing officers frequently oscillate between laboratory parameters, regulatory definitions and broad commercial usage to classify goods into higher tax brackets. Tax tariffs are meant to be interpreted in the marketplace, not in a laboratory. The 'Common Parlance Test' tells that a product must be understood as the trade and the consumer perceives it.

A landmark ruling by the Hon'ble Supreme Court—*Commissioner of Central Excise v. Connaught Plaza Restaurants—establishes definitive boundaries. Connaught Plaza anchors classification in everyday commercial reality and rejects cross-statutory borrowing.*

Let's delve into how the Hon'ble Supreme Court in **Commnr. Of Central Excise, New Delhi vs M/S Connaught Plaza Rest. (P) Ltd., New Delhi**, upheld the supremacy of the common parlance test when the statute fails to technically define the good. It observed that "*A trade understanding or commercial nomenclature can be given only in cases where the word in the tariff entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the tariff entry and any other entry in the Tariff Schedule.*"

Facts: -

- ◆ M/s Connaught Plaza Restaurant (P) Ltd. ("hereinafter also referred to as the "assessee"), operating the fast-food chain McDonald's in India, served a widely popular dessert (ice-cream) marketed as "soft serve". The production process was distinct: - a pre-mixed liquid containing approximately **4.9% milk fat** was poured into customized, automated vending machine. The machine chilled the liquid, injected air and dispensed the semi-frozen product directly into cones or plastic cups upon customer order.

The tax conflict erupted when The Central Excise Department issued Show Cause Notices proposing to classify "soft serve" under **Tariff Heading 2105.00 ("Ice-cream and other edible ice")**, demanding an ad-valorem duty of **16%**. The Revenue contended that in common trade parlance, an average consumer ordering a soft serve at a fast-food counter was buying, perceiving and consuming "ice cream".

- ◆ However, the assessee found itself trapped in a severe statutory paradox across two conflicting federal laws: -
- ◆ **The Tax Stand:** The assessee claimed classification under **CETH 04.04 ("Other dairy produce")** or **CETH 2108.91 ("Edible preparations, not elsewhere specified")**, both attracting a **Nil rate** of excise duty for the period under dispute- **Apr, 1997 to March, 2000**.
- ◆ **The Criminal Regulatory Threat:** Under **The Prevention of Food Adulteration Act, 1955**, "ice cream" was legally defined as containing a **minimum of 10% milk fat** and any person selling an ice-cream with less than minimum 10% milk fat was liable to prosecution.

Issues: -

- ◆ **Issue 1: Popular Sense vs. Laboratory Precision**

Whether, in the absence of an explicit statutory definition within the tax tariff, the entry "Ice-cream" must be construed according to its **popular, commercial and trade understanding (Common Parlance Test)** or through technical parameters like milk-fat percentages and scientific treatises.

- ◆ **Issue 2: The Legality of Cross-Statutory Borrowing**

Whether definitions, parameters and minimum quality thresholds prescribed under **non-fiscal regulatory statutes**—such as the Prevention of Food Adulteration Act, 1955 (PFA) and ISI/BIS specifications—can be imported into a fiscal statute (Central Excise Tariff) to dictate product classification.

Held: -

- ◆ **Absolute Primacy of the Common Parlance Test**

The Court Observed: The Supreme Court reiterated that in fiscal statutes, words must be understood in their popular, commercial, and trade sense unless explicitly defined. Tax tariffs are drawn for the trade, by the trade. An average consumer walking into a fast-food outlet orders a "softy" intending to buy ice cream, remaining completely unconcerned with fat percentages (4.9% vs. 10%) or chemical compositions.

The Court observed that **fiscal tariffs are framed for the commercial world, not for academic laboratories**. To the trade and the consumer, soft serve is an ice cream. To anchor this holding, the Apex Court drew upon a long, unbroken chain of

landmark classification cases such as- **Ramavatar Budhaiprasad v. Assistant Sales Tax Officer (AIR 1961 SC 1325), Planter Nut & Chocolate Co. Ltd. v. The King (1951 CLR 122) & Dunlop India Ltd. v. Union of India (1976) 2 SCC 241.**

♦ **Rejection of Cross-Statutory Borrowing (The Prevention of Food Adulteration Act, 1955 vs. Central Excise Tariff)**

Addressing the assessee's plea that selling 4.9% fat soft serve as "ice cream" would invite criminal liability under The PFA Act for containing the Supreme Court drew a sharp line between **regulatory enforcement laws** and **fiscal tax statutes**, as-

"We are unable to persuade ourselves to agree with the submission. It is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute...."

♦ **Practical Guidance for CAs Defending GST Assessments**

For Chartered Accountants and tax practitioners handling GST classification disputes, the principles from *Connaught Plaza Restaurant* provides a clear framework for responding to SCNs and audits: -

- ♦ **Audit Tariff Headings for Technical Terms:** Verify whether HSN headings or chapter notes explicitly mandate technical parameters. If general terms are used, resist departmental attempts to introduce laboratory standards.
- ♦ **Challenge Cross-Statutory Imports:** Oppose assessing officers seeking to import FSSAI licenses, BIS specifications, or municipal norms into tax proceedings as technical definitions apply only when the statute explicitly requires technical interpretation.

Conclusion: -

The Bench set aside the CESTAT order and restored the Department's classification under **Heading 2105.00 ("Ice-cream and other edible ice")**. Beyond resolving the classification of soft-serve, the decision is a masterclass in statutory interpretation, reaffirming foundational canons of indirect tax law and establishing strict boundaries on when technical precedents can be invoked.

References-

- ♦ *Commnr. Of Central Excise, New Delhi vs M/S Connaught Plaza Rest. (P) Ltd., New Delhi, (2012) 13 SCC 639 (Decided on 27th November, 2012).*
- ♦ *Akbar Badrudin Giwani Vs. Collector of Customs, Bombay, 1990 (47) E.L.T. 161 (S.C.).*
- ♦ *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, AIR 1961 SC 1325.*
- ♦ *Planter Nut & Chocolate Co. Ltd. v. The King, (1951) C.L.R. 122.*
- ♦ *Dunlop India Ltd. v. Union of India, (1976) 2 SCC 241.*
- ♦ The Central Excise Tariff Act, 1985 & The Central Goods and Services Tax Act, 2017 (HSN Classification Rules).
- ♦ The Prevention of Food Adulteration Act, 1955.

GST COUNCIL

57th GST Council Meeting

Summary of Points Finalized

DATE 8 October 2026

PLACE New Delhi

01 Streamlining GST Registration Applications

The Council recommended a comprehensive circular and FAQs specifying documents and information required for registration, amendments to FORM GST REG-01 with prescribed-document drop-downs, and a more user-friendly GST portal interface. The measures are intended to reduce queries and rejections and expedite processing.

02 Rationalization of Amendments to GST Registration

The Council recommended amendment to Rule 19 of the CGST Rules, 2017, for automatic acceptance of amendments to registration particulars, except Principal Place of Business (PPoB). For taxpayers registered under Rule 14A, amendments including PPoB particulars would be accepted automatically.

03 Simplification of GST Registration Cancellation

The Council recommended phased automatic acceptance of FORM GST REG-16 applications after pending returns are filed and dues paid. It also recommended changes to Rules 21, 21A and 22 and insertion of Rule 23A for system-based cancellation and revocation linked to non-filing of returns or non-furnishing of bank account details and subsequent compliance.

04 Simplified Registration for Small Sellers through ECOs

The Council recommended insertion of Rule 14B to enable eligible small suppliers of goods selling through electronic commerce operators to obtain automatic registration in States/UTs where they have no physical presence, by declaring an ECO warehouse as their PPoB, subject to conditions. The proposed facility applies where monthly ITC passed on does not exceed ₹2.5 lakh, excluding stock transfers between distinct persons.

05 Alternate Mechanism for Correcting Liability and ITC in Returns

The Council recommended enhancements to GSTR-1, GSTR-1A and IFF; electronic statements for reverse-charge tax and ITC and for ITC reversal/reclaim; mechanisms to correct liability and ITC in GSTR-3B to align with GSTR-1/1A/IFF and GSTR-2B; changes to DRC-03 to capture underlying invoice details; and IMS functionality to accept, reject or keep inward-supply documents pending. The proposed mechanism may apply from the April 2027 return, following time-bound stakeholder consultation.

06 Faster, System-Based Processing of Refunds

The Council recommended phased automation of refunds. Phase 1 includes automatic sanction of the full eligible excess electronic cash ledger balance, reduction of the acknowledgement/deficiency memo period from 15 to 10 days with deemed acknowledgement if not issued, and automatic provisional sanction of 90% of eligible zero-rated and inverted-duty-structure refunds based on system risk evaluation. Phase 2 provides for system-based acknowledgement and automated sanction of eligible zero-rated refunds after adjustment of pending dues. Changes to RFD-01, Rule 89(4)(C), Section 54(14) and Section 115 were also recommended.

07 Reforms Relating to Demand Notices, Adjudication and Appeals

The Council recommended a circular with comprehensive guidelines on quality and timely issuance of demand notices and orders, invocation of fraud-related grounds on merits, and observance of natural justice, including personal hearings. Proposed amendments to Sections 73, 74 and 74A include a ₹10,000 minimum threshold for notices, deemed treatment of penalty as a charge in specified voluntary-payment cases, reduced 5% penalty in specified non-fraud cases where dues are paid within 30 days under Section 73 or 60 days under Section 74A, and removal of the minimum ₹10,000 penalty in non-fraud cases.

08 Reduction of General Penalty and Cap on Appeal Pre-Deposit

The Council recommended reducing the maximum general penalty under Section 125 of the CGST Act from ₹25,000 to ₹10,000. It also recommended a maximum pre-deposit cap of ₹40 crore (₹20 crore CGST and ₹20 crore SGST/UTGST) under Sections 107(6) and 112(8), respectively, for appeals involving only penalty and no tax demand.

09 Refund of Accumulated ITC on Capital Goods and Input Services

The Council recommended amendments to Section 54(3) and the CGST Rules to allow refund of accumulated ITC on capital goods for zero-rated supplies and on input services and capital goods for inverted-duty-structure refunds. Input-service ITC refunds for inverted duty structure would apply to credit availed on or after 1 November 2026. Capital-goods ITC refunds would be spread over 60 months and apply to credit availed on or after 1 April 2027.

10 Rationalization of Blocked ITC under Section 17(5)

The Council recommended removing restrictions on ITC, among other items, for outdoor catering, health and life insurance, telecommunication towers, pipelines laid outside factory premises, free samples, and goods destroyed or written off on expiry of shelf life as required by law.

11 Reforms Relating to Export of Services and Zero-Rated Supplies

The Council recommended removing the distinct-person condition from the definition of export of services, issuing a circular on receipt of export consideration in foreign exchange or permitted Indian rupees, omitting Section 13(3)(a) of the IGST Act so the default place-of-supply rule applies to specified services involving goods made physically available, and clarifying zero-rating for goods delivered to overseas buyers in SEZs/FTWZs where payment is received in permitted foreign exchange or Indian rupees.

12 Rationalization of Arrest and Prosecution Provisions

The Council recommended omission of Section 69 of the CGST Act to withdraw GST arrest powers. It also recommended raising the prosecution threshold from ₹1 crore to ₹5 crore, omitting specified offence language in Section 132(1), limiting clause (c) to fraudulent ITC availment without receipt of goods/services or without an invoice/bill, and rationalizing punishments for offences under Section 132.

13 Rationalization of E-Way Bill Interception and Detention

The Council recommended amendments to Sections 68, 129 and 130. Interception would require specific intelligence and authorization by an officer not below Joint Commissioner rank. Inspection and detention/seizure would generally be permitted where the supplier or recipient is located/registered in the intercepting State, with exceptions where no e-way bill or origin/destination documents exist. Confiscation under Section 130 would not apply to goods/conveyances in transit.

14 GST Treatment of Transfer of Intellectual Property Rights

The Council recommended amendment to Schedule II of the CGST Act to treat temporary or permanent transfer of title in intellectual property rights uniformly as a supply of services.

15 Opportunity of Hearing before Blocking ITC under Rule 86A

The Council recommended amendment to Rule 86A of the CGST Rules to allow taxpayers to object to blocking of an amount in the electronic credit ledger and receive a personal hearing before the proper officer decides the objection.

16 Late-Fee Relief for Small Taxpayers

The Council recommended waiver of late fee for delayed returns under Section 39(1) for taxpayers with preceding-year annual turnover up to ₹5 crore, provided the return is filed by the end of the month in which it was due.

17 Clarifications through Circulars

The Council recommended circulars on the ISD mechanism; ITC availment by banking companies, financial institutions and NBFCs opting for Section 17(4); issues relating to appeal pre-deposits; ITC on demonstration vehicles in specified situations; and the effect of omission of Rule 96(10) from 23 October 2017 in line with the Supreme Court decision.

18 Optional Annual Return Quarterly Payment Scheme and Other Compliance Changes

The Council approved in principle a concept note for an optional Annual Return Quarterly Payment (ARQP) scheme for taxpayers with turnover up to ₹5 crore engaged exclusively in B2C supplies. It also recommended amendments to Sections 16, 37 and 39 to align return and ITC time limits; clarification of ECO tax liability under Section 9(5); a validation clause for notices held invalid because they cover multiple financial years; and e-invoicing for specified domestic RCM supplies from unregistered persons and import of services for taxpayers with turnover of ₹5 crore or more.

19 GST Appellate Tribunal – Alignment with Tribunal Reforms

The Council approved amendments to the CGST Act and GSTAT (Appointment and Conditions of Service of President and Members) Rules, 2023, to align GSTAT provisions with the Tribunals Reforms Act, 2026 and the National Tribunals Commission and Qualification, Selection and Conditions of Service of Chairpersons and Members of Tribunals Rules, 2026.

20 Changes and Clarifications Relating to GST Rates on Goods

1. Classification of sublimation paper under heading 4809, with past cases to be regularised on an “as is where is” basis.
2. Clarification that GST rate-schedule entries for toys cover all categories of toys under heading 9503, including dolls and puzzles, and are not restricted to tricycles, scooters and pedal cars.
3. Seaweed-extract-based bio-stimulants registered under Schedule VI to the Fertiliser Control Order, 1985, to be classified under heading 3101 as fertilisers; past cases to be regularised on an “as is where is” basis.
4. Under the GST margin scheme for second-hand vehicles, ITC on other inputs and input services (such as spares, repairs, technology services, rent and advertising) is permitted; the restriction applies to tax paid on procured second-hand vehicles.
5. Specified plastic, electrical/electronic and tyre waste/scrap and used cooking oil supplied by an unregistered person to a registered person to be brought under RCM. TDS at 2% is introduced for specified waste/scrap supplied in registered-to-registered B2B transactions.
6. Nil GST rate for psyllium (Isabgol) seeds, whether fresh, chilled, frozen or dried.
7. GST treatment of retreaded tractor tyres to be aligned with the rate applicable to new tractor tyres.
8. Compensation Cess exemption for CSDs on two- and four-wheelers for 1 July 2017 to 30 September 2022, and for CSDs and Unit Run Canteens on aerated drinks for 1 July 2017 to 31 March 2022.

21 Changes and Clarifications Relating to GST Rates on Services

1. An option to pay GST at 5%, with restricted ITC, for passenger transport and rental of motor vehicles with operators using electric vehicles where battery-charging cost is included in the consideration.
2. Delivery services other than courier and postal supplied through an ECO to be covered under Section 9(5), where the supplier is not liable for registration under Section 22(1), at 5% without ITC. A 5% rate without ITC is also proposed for delivery services relating to goods supplied/ordered through an ECO. The specified GTA exemption for transportation to unregistered persons would not apply where goods are supplied/ordered through an ECO.
3. Clarification of GST treatment of statutory and ancillary recoveries, including registration charges, road tax, insurance and FASTag charges, incurred by a lessor and recovered from a lessee in motor-vehicle leasing transactions.
4. Limited ITC in the same line of business for restaurant/outdoor catering services, hotel accommodation up to ₹7,500 per unit per day, and gym/fitness services, in a manner similar to specified passenger transport, tour operator and motor-vehicle renting services.

5. GST exemption for passenger transportation by helicopter on a seat-sharing basis from/to airports or helipads in north-eastern States, Sikkim and Bagdogra, West Bengal.
6. GST exemption for storage or warehousing of seeds meant for sowing.
7. GST exemption for agricultural support services of curing coffee provided by coffee curers to cultivators.
8. GST exemption for services provided by the Seamen's Provident Fund Organisation to persons governed by the Seamen's Provident Fund Act, 1966.
9. A self-certification mechanism by the head of an institution/organisation undertaking R&D services to certify that the activity is research and development and not consultancy, for determining exemption eligibility under Entry 44A of Notification No. 12/2017-Central Tax (Rate).
10. GST exemption for import of services by an Indian establishment of a foreign shipping company from a related person or its establishment outside India, when made without consideration; past cases to be regularised on an "as is where is" basis.
11. GST exemption for the Government's grant of exclusive right, licence and authority to a concessionaire to demand, collect and appropriate toll fees for highway projects under the Toll Operate Transfer model.
12. A special procedure for valuation and time of payment of GST on operation and maintenance services provided by concessionaires to the concessioning authority for highway projects under the TOT model.
13. Clarification that the notional amount treated as interest in bank books for notional inter-branch fund transfers under the Funds Transfer Pricing mechanism falls within the definition of "interest" in Notification No. 12/2017-Central Tax (Rate).

Source: Press Release of the 57th GST Council Meeting. The recommendations are to be given effect through relevant circulars, notifications and amendments to law.

THE CHAMBERS

Our Team

Our team is led by Adv. Ashu Dalmia, who has extensive experience and deep specialisation in GST law. Under his guidance, the Chambers consists of dedicated associates who focus on delivering precise and effective solutions in tax laws and corporate matters.



Adv. Ashu Dalmia

FOUNDER · CHARTERED ACCOUNTANT & ADVOCATE

Ashu Dalmia is the Founder of ADA Law Chambers, an Advocate, and a former Chartered Accountant with extensive experience in indirect taxation and commercial laws. He specialises in GST litigation and advisory, arbitration, contract drafting, dispute resolution and commercial legal matters, and has been actively involved in the implementation of VAT projects in Saudi Arabia and the UAE.

He has served as a Special Invitee to the Indirect Taxes Committee of ICAI. As a faculty member of ICAI and other leading professional bodies, he has delivered more than 1,000 seminars, workshops and training programmes, and is a respected author and speaker in the field of indirect taxation.

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Smita Raj

TAX PROFESSIONAL

A law graduate and tax professional with over 16 years in taxation, finance and indirect tax advisory. She handles GST assessments, notices and litigation, and advises on direct and indirect taxation, company incorporation, payroll and PF compliance.



Adv. Ankita Jha

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Her practice centres on GST matters, civil litigation, insurance disputes and corporate compliance: GST replies, appeals and GSTAT filings, insurance claims and MACT cases, with an ADR-first approach where appropriate.



Neelam

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A legal professional with three years of practice as an advocate in litigation, legal drafting, legal research and regulatory compliance, with working knowledge of GST notices, replies and appeals.



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Ishan Gupta

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WITH THANKS TO OUR OFFICE STAFF

Subhankar Das



*We also place on record our sincere appreciation for the dedicated support of our office staff, including **Subhankar Das**, in handling correspondence, filings, courier work and day-to-day administrative matters. Their quiet diligence contributes greatly to the smooth functioning of the Chambers.*



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Thank You

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