ADA LAW CHAMBERS
ATTORNEYS & ADVOCATES

VOL. II · ISSUE 02
21 NOVEMBER 2026
THE MONTHLY GST JOURNAL

VOLUME

II



GST: 21 *Insights*

Every recent circular, notification, instruction and advisory, summarised and linked to the original.

25	05	10	01	02
CIRCULARS & NOTIFICATIONS	INSTRUCTIONS & ADVISORIES	CASE-LAW SUMMARIES	CONCEPT CLEAR	GUEST ARTICLES

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FROM THE EDITORIAL DESK

PREFACE

नमस्कार!



Adv. Ashu Dalmia
Founder
ADA Law Chambers

Welcome to the second issue of *GST: 21 Insights*. Our inaugural volume followed the courts; this one follows the Government.

October 2026 was an unusually busy month for GST. Between 26 and 30 October, the Government issued Central Tax and Central Tax (Rate) notifications, Circulars No. 257 to 266/2026-GST and two instructions, and in November the GSTN followed with advisories. They touch registration, e-invoicing, refunds, rates, input tax credit and pre-deposit. This volume is built around them.

Each is summarised in plain terms, with a QR code and a tappable title to read the original, uploaded on **www.gstindia.biz**. Judgments discussed in the articles appear beside them, with a QR code, and are not repeated in the case-law summaries.

This e-magazine is fully interlinked: tap any entry in the Contents or a section index to reach that topic, and use "Back to Index" at the top of every inner page to return.

This second volume presents:

01 Articles on Circulars 258 and 259 and on TDS under Section 51;

02 Ten circulars, then fifteen notifications;

03 Two instructions and three GSTN advisories;

04 10 case-law summaries, with a special case study on *Sri Sujit Das & Ors. v. Union of India*;

05 Concept Clear: Blocked Credit under Section 17(5); and

06 **Guest articles** by CA Raghav Goel (*Union of India v. Sunil Biyani*) and CA (Dr.) Naveen Kumar Dhandaria (audits, summons and writs).

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The compilation and presentation of this edition have been made possible through the dedicated efforts of **Adv. Ankita Jha**, **Adv. Ishan Gupta**, **Smita Raj**, **Ishu Jha**, and **Adv. Neelam Bhatia**. — *The Editorial Team*

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ARTICLE · CIRCULAR NO. 258/04/2026-GST

"Speaking Orders, Not Ritual: CBIC Circular No. 258 and the Discipline of GST Adjudication"

A show cause notice that merely reproduces statutory provisions, or an order that simply states that the taxpayer's reply has been considered, can lead to avoidable litigation. CBIC's Circular No. 258/04/2026-GST sets out a framework for fair, reasoned and legally sustainable proceedings, covering everything from the issuance of a notice to the disposal of a first appeal.

Circular No. 258/04/2026-GST, dated 26 October 2026, issued by the Central Board of Indirect Taxes and Customs (CBIC) under Section 168(1) of the CGST Act, 2017, addresses concerns arising from vague and non-speaking orders passed by adjudicating and appellate authorities. Such orders often fail to deal with the submissions made by taxpayers, resulting in avoidable litigation and being remanded or reversed by higher forums.

To address these concerns, the Circular provides a uniform set of guidelines for departmental officers covering the entire course of GST proceedings, from pre-show cause notice intimation to adjudication, rectification and first appeal. Its key directions are discussed below.

1. Pre-SCN Intimation and the Show Cause Notice

Under Rule 142(1A) of the CGST Rules, 2017, the taxpayer may be informed of the tax assessed as payable under Section 73, Section 74 or Section 74A through Part A of FORM GST DRC-01A before the issuance of a show cause notice (SCN).

The Circular encourages the use of this mechanism wherever feasible. It provides taxpayers an opportunity to clarify their position at an early stage, promotes voluntary compliance and may reduce the need for formal proceedings.

Once issued, the SCN becomes the foundation of the entire proceeding. It must provide the taxpayer with a clear understanding of the allegations and the grounds on which the proposed action is based. Its summary is required to be uploaded in FORM GST DRC-01, or FORM GST DRC-02 in the case of a statement, under Rules 100 and 142 of the CGST Rules.

The Circular identifies the following essential elements of a properly drafted SCN:

- **Noticee and case details:** The notice should clearly mention the name of the noticee, GSTIN, registration status, jurisdiction, relevant tax periods and the background of

the proceedings, whether arising from assessment, audit, scrutiny or enforcement. Where multiple noticees are involved, their particulars should be stated separately.

- **Facts and supporting evidence:** The facts and evidence should be presented objectively. Expressions such as "it appears that" should be preferred over language suggesting that the authority has already reached a conclusion.
- **Relevant legal provisions:** Only the applicable statutory provisions should be referred to. Each alleged omission or commission should be linked to the relevant legal provision, and the role of each noticee should be clearly identified.
- **Charges and quantification:** The allegations and proposed demand should be clearly stated and quantified. Where multiple financial years are involved, the demand should preferably be quantified separately for each year. Where interest depends on the date of payment, the notice may use an expression such as "why interest as applicable should not be demanded".
- **Concluding paragraph:** The notice should identify the Adjudicating Authority, specify the time allowed for filing a reply and explain the consequences of non-compliance.

The importance of providing clear grounds in an SCN has also been recognised judicially. In *Nice Enterprises v. Deputy Commissioner ST* [(2024) 21 Centax 554 (Telangana)], the High Court held that a notice merely reproducing statutory provisions without providing grounds or factual particulars violates the principles of natural justice.

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Similarly, in *G.R. Infra Project Ltd. v. State of Madhya Pradesh* [(2026) 45 Centax 331 (S.C.)], decided on 19.08.2026, the Supreme Court held that the material necessary to sustain a notice must be contained in the notice itself. A deficiency in the SCN cannot subsequently be cured.

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2. Fraud, Wilful Misstatement and Suppression of Facts

One of the significant aspects of the Circular concerns the invocation of the extended period under Section 74(1) and Section 74A(5)(ii) of the CGST Act, which deal with cases involving fraud, wilful misstatement or suppression of facts.

The Circular clarifies that these provisions cannot be invoked merely because tax has not been paid or because a discrepancy has been noticed during scrutiny.

It also draws attention to Explanation 2 to Section 74A, which defines suppression to include the non-declaration of facts or information required to be furnished in a return, statement, report or other document, or failure to furnish information specifically called for in writing by the proper officer.

The SCN must clearly disclose the material forming the basis of the allegation. Merely using expressions such as "fraud", "wilful misstatement" or "suppression of facts", without identifying the supporting material, is not sufficient.

The Circular further explains that suppression involves deliberate conduct and carries an element of intent to evade tax. Where the relevant facts are already known to both parties, an omission by one party does not, by itself, amount to suppression. Similarly, an incorrect statement cannot be treated as a wilful misstatement unless it is knowingly false.

These principles are drawn from *Sriba Nirman Company v. Commissioner (Appeals)* [(2025) 29 Centax 206 (A.P.)].

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The Circular consequently provides the following important directions:

- Section 74(1) and Section 74A(5)(ii) cannot be invoked merely because tax has not been paid.
- These provisions should not be invoked in scrutiny cases solely because a discrepancy has been noticed. Their invocation requires material evidence emerging from an investigation, which must be set out in the SCN.
- A second SCN for a subsequent period, based on the same facts and grounds and invoking the same allegation, is generally not valid unless new and independent grounds exist.
- At the adjudication stage, where the SCN does not contain evidence establishing intent to evade tax, the Adjudicating Authority must record clear findings on this aspect and confine the demand to Section 73 or Section 74A(5)(i), giving reasons for rejecting the taxpayer's submissions on this ground.

Where a single SCN proposes demands under both Section 73 and Section 74, it must clearly explain the factual and legal reasons for the distinction and quantify the demands separately.

The Circular also notes that Section 74A, applicable from FY 2024-25, provides a single time limit of 42 months from the due date of the annual return. Where the same set of

facts involves allegations both with and without intent to evade tax, the grounds and quantification must be separately identified.

3. Jurisdiction, Issuance and Service of Notices

The Circular also addresses the jurisdiction of officers and the proper issuance and service of notices.

Under Section 6 of the CGST Act, a CGST officer cannot initiate proceedings on a subject matter where an SGST or UTGST officer has already initiated proceedings. In this regard, the Circular refers to the guidelines laid down in paragraph 97 of the Supreme Court's judgment in *Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East* [(2025) 33 Centax 222 (S.C.)].

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It further advises officers to issue notices sufficiently before the expiry of the statutory limitation period, rather than waiting until the last moment.

Service of notices must follow the prescribed modes under Section 169 of the CGST Act, including direct delivery, speed post or courier, the registered email address, or the common portal.

4. Personal Hearing and Principles of Natural Justice

The Circular places considerable emphasis on providing a meaningful opportunity of hearing before an adverse decision is taken.

It recognises that the principles of natural justice are implicit in the CGST Act and supported by judicial pronouncements. In this context, it refers to *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248], wherein fairness in administrative action was recognised as implicit in Article 21 of the Constitution.

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Under Section 75(4) of the CGST Act, an opportunity of hearing must be granted where the taxpayer requests it in writing or where an adverse decision is contemplated.

The Circular provides the following directions for conducting personal hearings:

- **Number of hearing opportunities:** Section 75(5) permits a maximum of three adjournments. Accordingly, a maximum of four hearing opportunities may be granted.

Requests for adjournment should be considered judiciously, and reasons for declining them must be recorded in writing.

- **Authorised representation:** The appearance of authorised representatives under Section 116 must be duly considered. Officers may also offer virtual hearings.
- **Recording hearing details:** The date, time and persons attending each hearing must be recorded and incorporated into the adjudication order. The order should preferably be communicated within one month.
- **Transfer of the Adjudicating Authority:** Where the Adjudicating Authority is transferred, a fresh hearing is required. However, an outgoing authority who has already heard the matter should, as far as practicable, pass the order before relinquishing charge.
- **Authority letter:** The authority letter or vakalatnama must be submitted at the time of hearing and retained in the departmental records.

5. The Adjudication Order: Requirements of a Speaking Order

The central requirement of the Circular is that every adjudication order should be a reasoned and speaking order capable of withstanding scrutiny before higher forums.

The order, along with its summary in FORM GST DRC-07, must demonstrate that the Adjudicating Authority has independently examined the evidence, the taxpayer's reply and the submissions made during the personal hearing.

The Circular refers to the illustrative guidelines laid down by the Supreme Court in *Joint Commissioner of Income Tax, Surat v. Saheli Leasing & Industries Ltd.* [2010 (253) E.L.T. 705 (S.C.)] and sets out the following requirements:

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A. Introduction and background

The order should begin by identifying the issuing authority, the relevant statutory provisions, the appellate rights available to the taxpayer, the designated appellate forum and the applicable pre-deposit conditions.

It should then briefly summarise the facts of the case, the particulars of the SCN and the proposed demand. Where multiple noticees are involved, their particulars should be stated separately.

B. Examination of evidence and submissions

The Adjudicating Authority must critically analyse the evidence instead of merely reproducing it.

The reply filed in FORM GST DRC-06 and the submissions made during the personal hearing must be examined independently. The order should clearly state whether each submission has been accepted, partly accepted or rejected, along with the reasons.

Generic statements such as "reply has been considered" should be avoided. The order must demonstrate how the authority has arrived at its findings.

C. Consideration of judicial precedents

The judgments relied upon by both the taxpayer and the department should be discussed. Their citations must be verified, and their current legal status should be examined.

Preference should be given to judgments of the Supreme Court and the jurisdictional High Courts. Where a judgment relied upon by either party is considered inapplicable, the authority must record reasons for the same.

D. Findings confined to the SCN

Section 75(7) restricts the Adjudicating Authority from confirming tax, interest or penalty beyond the amount specified in the SCN. It also prohibits confirmation of demand on grounds that were not mentioned in the notice.

If a new issue arises, it may be taken up through a fresh SCN rather than being introduced for the first time in the adjudication order.

E. Clear quantification of demand

The tax, interest and penalty must be quantified clearly, preferably issue-wise and financial year-wise.

The amounts should be separately identified under CGST, SGST, IGST and UTGST, preferably in tabular form. Where part of the proposed demand is dropped, both the original and the confirmed amounts should be stated, and any deposits made by the taxpayer must be duly adjusted.

The Circular also clarifies that interest continues to accrue until actual payment under Section 75(9), whether or not it is specifically mentioned in the adjudication order.

F. Imposition of penalty

Penalty must follow reasoned findings regarding the nature of the default and the applicable statutory provision. The Circular emphasises adherence to Section 126 and cautions against imposing penalties mechanically.

G. Closing paragraph

The order should conclude with a clear summary of the tax, interest and penalty confirmed or dropped, along with references to the specific provisions under which the amounts have been determined.

Use of Artificial Intelligence in Adjudication

The Circular also addresses the use of artificial intelligence tools in adjudication proceedings.

Where AI tools are used, human oversight is essential. The information generated through such tools must be independently verified before being relied upon. The responsibility for the correctness of the adjudication order continues to rest with the issuing authority.

The Circular further cautions against issuing orders close to the limitation deadline, as this may result in hurried adjudication. It suggests monthly disposal targets, monitored by senior officers, to ensure timely disposal of proceedings.

6. Rectification of Orders under Section 161

Section 161 of the CGST Act provides for rectification of errors apparent on the face of the record.

An application for rectification may be filed within three months, and the rectification order must ordinarily be passed within six months. This six-month limitation does not apply to purely clerical or arithmetical errors.

The Circular clarifies the scope and limitations of this power:

- **Authority competent to rectify:** The power of rectification must be exercised by the authority that issued the order itself. A senior officer cannot exercise the rectification powers of a subordinate officer under Section 5(2).
- **Meaning of an apparent error:** Relying on *Arun Dev Upadhyaya v. Integrated Sales Service Ltd.* [(2023) 8 SCC 11], the Circular explains that an error requiring a long-

drawn process of reasoning, detailed verification or one that is capable of argument or debate cannot be treated as an error apparent on the face of the record.

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- **Limitations of rectification:** Section 161 does not permit correction of errors of law or re-appreciation of facts. Once an order has been passed, the authority cannot reopen its merits except within the scope permitted by Section 161. Rectification cannot be used as a substitute for an appeal.
- **Disposal of applications:** Rectification applications should be disposed of expeditiously through FORM GST DRC-08, and the rectification order must be communicated to the jurisdictional reviewing authority.

7. First Appeal under Section 107

The Circular also provides guidelines for appellate authorities dealing with appeals under Section 107 of the CGST Act. The summary of the appellate order is issued in FORM GST APL-04, indicating the final demand confirmed.

The important directions are as follows:

A. Preliminary scrutiny and limitation

Preliminary scrutiny under Rule 108 should be limited to examining the maintainability and completeness of the appeal. It should not be used to reject an appeal on merits at the registration stage.

Limitation must be examined as a separate preliminary issue. Under Section 107(1), an appeal must ordinarily be filed within three months, with a further one-month period available for condonation under Section 107(4).

Where the delay exceeds the condonable period, the appeal cannot be decided on merits, even if a prima facie case appears to exist.

B. Personal hearing and appellate order

The date of every hearing, including hearings scheduled after adjournments, must be communicated through the GST Portal.

The appellate order should record the hearing dates, appearances, submissions, documents considered and directions issued by the appellate authority.

C. Additional grounds and evidence

Section 107(10) permits the consideration of additional grounds of appeal. The Circular distinguishes an additional legal ground arising from the existing demand from a new factual issue requiring fresh investigation, which should not ordinarily be entertained.

The admission of additional evidence under Rule 112 requires recorded reasons. If such evidence is rejected, the appellant must be given an opportunity of hearing. If it is admitted, the Adjudicating Authority must also be given an opportunity to rebut the evidence.

The Circular makes it clear that appellate proceedings should not become a fresh investigation to remedy deficiencies in the original adjudication order.

D. Disposal timeline and withdrawal of appeals

Section 107(13) contemplates disposal of appeals within one year from the date of filing, excluding periods during which the proceedings remain stayed.

Withdrawal of appeals is governed by Rule 109C through FORM GST APL-01/03W. Where FORM GST APL-02 has already been issued, withdrawal requires the approval of the Appellate Authority, which must be decided within seven days.

E. Cross-appeals

Where cross-appeals are filed against the same adjudication order, they should be decided together through a common, composite order.

The Circular further clarifies that its guidelines concerning natural justice, the requirements of a speaking order and the extended period of limitation apply, mutatis mutandis, to appellate authorities as well.

8. Status and Applicability of the Guidelines

An important clarification appears in paragraph 17 of the Circular.

The guidelines are illustrative and non-exhaustive. They are intended to guide departmental field formations in conducting adjudication and appellate proceedings. The Circular specifically directs that these guidelines must not be cited by proper officers in show cause notices, final adjudication orders or appellate orders.

Any difficulties encountered in implementing the guidelines are to be brought to the notice of the Board.

Conclusion

Circular No. 258/04/2026-GST provides a comprehensive framework for improving the quality of GST adjudication and appellate proceedings. Its focus is on clear show cause notices, meaningful opportunities of hearing, independent consideration of submissions and reasoned orders.

The Circular reinforces that an SCN must contain the factual and legal grounds supporting the proposed demand, and deficiencies in the notice cannot subsequently be cured. It also makes clear that the extended period under Section 74 or Section 74A cannot be invoked merely because tax remains unpaid or a discrepancy is noticed during scrutiny. The material supporting the allegation of intent to evade tax must be disclosed in the notice itself.

At the adjudication stage, the authority is expected to examine the taxpayer's submissions, discuss the relevant judicial precedents, remain within the scope of the SCN and clearly quantify the tax, interest and penalty. The guidelines on rectification and first appeals further emphasise adherence to statutory limits and procedural fairness.

Ultimately, the Circular seeks to promote a more transparent, reasoned and consistent approach to GST proceedings, reducing avoidable litigation and ensuring that adjudication and appellate orders are supported by proper reasoning and legal justification.

ARTICLE · CIRCULAR NO. 259/05/2026-GST

When the First Pre-Deposit Is Enough: CBIC Circular No. 259/05/2026-GST and the Tribunal's Contrary Reasoning

Introduction

An assessee pays 10% of the disputed tax to reach the first appellate authority. The appeal succeeds in large part, and the demand falls sharply. When the Revenue's remaining demand is carried to the Tribunal, must the assessee deposit another 10%, although what the department already holds exceeds the amount now required?

Circular No. 259/05/2026-GST (F. No. CBIC-20001/2/2026-GST), issued on 26.10.2026, gives the Revenue's answer: the deposit is payable afresh on the reduced demand. GSTAT and the Jharkhand High Court have reasoned the other way. **In our view, the Circular's position is difficult to justify, runs against the reasoning of the judicial orders, and will create uncertainty at the admission stage of GSTAT appeals.**

The Text: Two Pre-Deposits and One Troublesome Phrase

Section 107(6) bars an appeal to the Appellate Authority unless the appellant has paid the admitted amount in full and a sum equal to 10% of the remaining tax in dispute. Section 112(8) sets the same two conditions for an appeal to the Tribunal, but words the second so that the 10% is paid:

> *"in addition to the amount paid under sub-section (6) of section 107".*

The whole controversy turns on that phrase, and on whether a deposit already made at the first stage can be counted when the demand has since shrunk.

What the Circular Says

Issued under section 168(1) of the CGST Act, the Circular deals with pre-deposit in six clarifications. Clarification 1 explains the vocabulary. The "admitted amount" is what the taxpayer accepts and does not challenge, and it must be paid in full. The balance is the "tax in dispute", on which the 10% is computed. The taxpayer makes the choice at filing, through Table 14 of APL-01 and Table 20 of APL-05.

Clarification 2 is the one that matters here. Where the Appellate Authority modifies the liability, the 10% payable for the Tribunal appeal is computed on the liability it has confirmed and the appellant disputes, and it is paid in addition to what was paid for the first

appeal. That fixes the base for the second deposit at the reduced demand, not the original one, and that much helps assessees.

The Circular does not say in terms what happens to a surplus. But Clarification 5 treats the deposits at the two levels as separate payments, each with its own date for interest under section 115. Read together, the two clarifications leave little doubt about the intended working: **the section 112(8)(b) deposit is computed on the reduced demand and payable independently, with no credit for what was paid earlier.**

The remaining clarifications deal with refunds. An order in the assessee's favour need not state that the deposit is refundable. The claim is filed in RFD-01 under S. No. 7, and refund is not to be withheld merely because the department proposes a further appeal, unless the order is stayed. On a partial remand, any confirmed portion is recovered from the deposit first.

What the Courts Have Said

Ashirwad Food Industries (Jharkhand High Court, 09.02.2026)

In *M/s Ashirwad Food Industries v. Union of India* (W.P.(T) No. 469 of 2026, 2026:JHHC:3326-DB), the petitioner had deposited ₹23,85,182 at the first appellate stage against a demand of about ₹2.38 crore. The Appellate Authority cut the demand to about ₹40 lakh, so a 20% deposit on what survived came to about ₹8 lakh. The Division Bench found substance in the submission that the Tribunal should not insist on more, and agreed that, given the deposit already made, no further pre-deposit arose. It also directed that, if the portal would not accept the appeal, a physical filing be taken on record without a fresh pre-deposit.

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Manoranjan Dash (GSTAT, Cuttack Bench, 21.09.2026)

The Tribunal's own reasoning is fuller. In *Manoranjan Dash v. Commissionerate of CT & GST* (INTL.APPL/2/CTT/2026 in APL/10/2026), the Bench of Suchismita Misra (Member (Judicial)) and Ranjan Kumar Sahoo (Member (Technical)) dealt with an interim application by the Revenue. By order dated 08.07.2026, the Tribunal had admitted the appeal without requiring any further deposit under section 112(8)(b). The Revenue had not been heard at that stage, and asked

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for the finding to be recalled, or at least clarified as laying down no general proposition. The Bench declined to interfere.

The facts were stark. The assessee had paid ₹1,13,448 under section 107(6) against disputed tax of ₹11,34,474, and the Appellate Authority reduced the disputed tax to ₹1,02,012. Ten per cent of the surviving demand is roughly ₹10,200, so the deposit already held is more than eleven times the amount required. (That computation is ours, not the order's.)

The Bench reasoned that the pre-deposit is not a payment towards a separate or independent liability. It is a specified portion of the disputed tax itself, and the demand that survives the first appeal becomes the tax in dispute for the second. If the amount already deposited equals or exceeds the prescribed percentage of that surviving tax, a further deposit cannot justifiably be required, and a provision framed in general terms should not be applied mechanically. The Bench also tested the literal reading against an anomaly: an assessee who pays the entire disputed tax under protest would, on that reading, still have to make a fresh pre-deposit. Treating *Ashirwad* as identical on the facts and as persuasive, it held that no further pre-deposit was needed.

Two features limit the reach of the order. First, the Bench framed its conclusion by reference to the facts before it, and its logic depends on the first-stage deposit being equal to or more than the amount required on the surviving demand; on that reasoning, a shortfall would still have to be made good. Second, the order is dated more than a month before the Circular, so the Bench did not have the Circular before it.

Where the Circular and the Orders Part Ways

Issue	CBIC Circular (26.10.2026)	Ashirwad and Manoranjan Dash
Nature of the section 107(6) deposit	A separate payment, with its own date for interest under section 115 (Clarification 5)	A specified portion of the disputed tax itself, not a separate liability
Base for the section 112(8)(b) deposit	The liability confirmed by the Appellate Authority and still disputed (Clarification 2)	The demand surviving the first appeal
First-stage deposit equals or exceeds the requirement on the surviving demand	No credit; a fresh 10% is payable	No further deposit; the earlier amount counts
First-stage deposit falls short	Fresh 10% on the reduced demand, on the independent-payment reading	Not decided; the logic points to the shortfall alone

Why Clarification 2 Is Hard to Defend

The observations that follow are our analysis, not a holding of any court.

1. **The deposit is part of the disputed tax, not a fee.** Once it is accepted that the section 107(6) amount is a portion of the tax in dispute, it stays with the department as security for the demand. A fresh deposit demanded when that security already exceeds the statutory percentage achieves nothing the provision is concerned with.
2. **The Circular's own refund scheme produces a circuit.** Clarifications 3 and 4 entitle the assessee to a refund where the order is favourable, even if the department means to appeal, unless the order is stayed. Where the first appeal largely succeeds, the excess deposit is therefore refundable, yet Clarification 2 would require a fresh deposit to get to the Tribunal. The department would be refunding with interest under section 115 on one hand and collecting afresh on the other.
3. **The phrase "in addition to" does no useful work here.** It does its job where the demand survives intact, by preventing an appellant from treating the first deposit as sufficient for both stages. It does nothing where the first deposit already covers the whole requirement on the surviving demand. Insisting on a second payment then converts a

condition of maintainability into a penalty for success at the first appellate stage, the anomaly the Bench identified.

4. **The result is uncertainty.** A Division Bench order of the High Court and an order of GSTAT excuse the further deposit, while the department's published position requires it.

Does the Circular Bind the Tribunal?

Section 168(1) lets the Board issue orders, instructions or directions to central tax officers for uniformity in the implementation of the Act, and the officers must follow them. The Circular states that it is issued in exercise of that power. It therefore binds proper officers and departmental representatives, and the department cannot ordinarily argue against its own circular.

It does not bind GSTAT, the High Courts or the Supreme Court. The Tribunal is a quasi-judicial body that construes the statute for itself, and a circular records only the executive's understanding of the law. It cannot override the Act, create liabilities or rights beyond it, or prevail over judicial interpretation. Taxpayers are not bound either, though they may rely on a circular that benefits them, and Clarification 2 does not benefit them on the surplus point. The Supreme Court has held that circulars bind the department but not the courts, and that a circular contrary to the statute has no legal force [citation to be inserted].

So the real question is how the Tribunal treats the Circular once the issue is argued with the Circular on record. Whether other benches follow *Manoranjan Dash* or confine it to its facts, and whether the Revenue carries the matter to the High Court, are the points to watch.

Where This Leaves Appellants

Until the Tribunal speaks on the Circular, appellants should expect friction at the admission stage and prepare for it.

1. **Attach a short computation to the appeal:** the first-stage deposit, the reduced demand, 10% (and the aggregate 20%) of the surviving tax, and the surplus.
2. **Rely on** *Manoranjan Dash* **and** *Ashirwad*, and address the Circular and its date directly.
3. **Pay any shortfall.** Where the earlier deposit falls short, the differential should be paid, because the reasoning in *Manoranjan Dash* does not clearly cover a shortfall.

4. **If a defect notice is raised on the strength of the Circular,** seek a hearing rather than paying reflexively. Whether to pay under protest instead depends on the limitation position in each case.

Conclusion

Clarification 2 does fix the base for the second deposit at the reduced demand, and that much is welcome. But it treats the section 112(8)(b) payment as wholly independent of the section 107(6) payment, which the only judicial orders we have reviewed do not accept. That body of authority is small, and one of the two orders is a consent disposal, so it would be too much to call the judicial view settled. **It is, however, consistent, and it sits uneasily with the Circular.**

*Authored by **Ashu Dalmia**, who places on record his appreciation for the research and drafting assistance provided by **Adv. Ankita Jha**.*

Disclaimer: This article reflects our own reading, interpretation and professional determination of CBIC Circular No. 259/05/2026-GST, the order of the Jharkhand High Court in Ashirwad Food Industries and the orders of the GST Appellate Tribunal, Cuttack Bench, in Manoranjan Dash, based on the text of these documents as available to us. It does not constitute legal advice and should not be relied upon or acted upon as such without independent professional consultation.

ARTICLE · NOTIFICATION NO. 07/2026-CENTRAL TAX

GST TDS under Section 51 – Applicability, Effective Dates and Compliance

The Central Goods and Services Tax (CGST) Act, 2017 provides for deduction of tax at source (TDS) under Section 51 in respect of the following supplies:

Goods	*HSN / Classification*	*Effective Date*
Metal scrap	Chapters 72 to 81	10 October 2024
Used cooking oil	Heading 1518	1 November 2026
Waste and scrap of plastics	Heading 3915	
Waste and scrap of tyres	Heading 4004	
Electrical and electronic waste and scrap	Heading 8549	

TDS is required where:

- The recipient is a registered person receiving the specified goods from another registered person.
- The total value of taxable supplies under a contract exceeds ₹2,50,000.
- Location of supplier and place of supply is not in a State/UT different from State/UT of registration of recipient.

The TDS deducted during a particular month must be deposited with the Government **within 10 days after the end of that month**, i.e., by the 10th of the succeeding month.

The deductor is also required to furnish FORM GSTR-7 **on or before the tenth day of the month succeeding the calendar month**.

The referred notifications may be accessed by clicking the hyperlink provided below.

References

- Notification No. 50/2018-Central Tax dated 13.09.2018.
- Notification No. 25/2024-Central Tax dated 09.10.2024 – Effective from 10.10.2024.
- Notification No. 07/2026-Central Tax dated 27.10.2026 – Effective from 01.11.2026.
- Section 51 of the CGST Act, 2017.

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Circulars & Notifications

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Circular No. 257/03/2026-GST

Dated: 26.10.2026

Subject: Guidelines for handling applications for GST registration

Circular No. 257/03/2026-GST

The circular issues guidelines for applicants filing FORM GST REG-01, covering details to be furnished in Parts A and B, photographs, authorised signatory, bank account and documents for proof of principal place of business for owned, rented, consent-based, inherited, co-working and SEZ premises. Unmanned installations such as ATMs and telecom towers need not be declared as places of business.

It sets out the processing timelines: 7 working days where Aadhaar is authenticated, 30 days where physical verification is required, and 3 working days under rules 14A and 9A, with deemed approval if the officer does not act in time. The officer may seek clarification only through FORM GST REG-03 and only for incomplete or illegible documents or incorrect or vague address, and shall not ask for unwarranted documents such as Udyam certificate or residence in the same State, or question the type of premises or electricity connection.

Exit from rule 14A is through FORM GST REG-32 with documents as per REG-01. Applicants may file grievances with the jurisdictional Chief Commissioner of Central Tax or Commissioner of State Tax on the designated e-mail.

Annexure: Annexure-I – Frequently Asked Questions (51); Annexure-II – Checklist of documents; Annexure-III – List of documents for proof of principal place of business; Annexure-IV – Format of affidavit (inherited property); Annexure-V – Format of undertaking (no rent agreement); Annexure-VI – Format of consent letter.

Circular No. 258/04/2026-GST

Dated: 26.10.2026

Subject: Clarification on issues related to demand, adjudication and appeal proceedings under the CGST Act, 2017

Circular No. 258/04/2026-GST

The circular issues guidelines for drafting and issuing show cause notices, including pre-SCN intimation in FORM GST DRC-01A wherever feasible, structure of the notice and year-wise quantification. Demand under section 74 or section 74A(5)(ii) is to be invoked only where there is specific evidence of fraud, wilful misstatement or suppression of facts with intent to evade tax, and not merely for non-payment or a discrepancy in scrutiny. Parallel proceedings by Central and State authorities on the same subject matter are not to be initiated.

For adjudication, a maximum of four personal hearing opportunities may be granted, virtual hearing may be provided, and the order should be a reasoned speaking order dealing with all submissions, not exceeding the amount and grounds in the notice. Information obtained through AI tools must be verified by the officer. Rectification under section 161 is limited to errors apparent on the face of the record and is to be done only by the authority that issued the order.

For first appeals, appeals should not be rejected on merits at the admission stage, limitation is to be decided as a preliminary issue, withdrawal applications are to be decided within seven days, and appeals are to be decided within one year as far as possible, with cross-appeals disposed of by a common order.

Circular No. 259/05/2026-GST

Dated: 26.10.2026

Subject: Clarification on various issues pertaining to the amount paid as pre-deposit as per sub-section (6) of section 107 or sub-section (8) of section 112 of the CGST Act

Circular No. 259/05/2026-GST

'Admitted amount' is the part of tax, interest, fine, fee and penalty that the appellant does not challenge, and must be paid in full; the pre-deposit is 10% of the remaining tax in dispute. For appeal before the Appellate Tribunal, the 10% is computed on the liability confirmed by the Appellate Authority and disputed by the appellant, in addition to the amount paid for the first appeal.

The appellate order need not specifically direct refund of pre-deposit; the refund is to be claimed under 'on account of order' in FORM GST RFD-01. Refund cannot be denied merely because the department intends to file or has filed an appeal, unless the order is stayed. Interest under section 115 is computed separately from the actual date of each deposit. Where the Tribunal remands the matter, the pre-deposit is refundable; on partial remand, the confirmed demand with interest is adjusted before the balance is refunded.

Circular No. 260/06/2026-GST

Dated: 26.10.2026

Subject: Clarification on issues pertaining to Input Service Distributor

Circular No. 260/06/2026-GST

Each business vertical or place of business holding a separate registration in a State may obtain a separate ISD registration. The conditions of sections 16 and 17, and reversals under sections 17(1), 17(2) and 17(4), are to be complied with by the recipients of credit and

not by the ISD. Wrong distribution attracts penalty on the ISD under section 122(1)(ix), and excess credit is recovered from the recipients under section 21.

Input tax credit is 'available for distribution' in the month in which the ISD ascertains it to be prima facie eligible after it appears in FORM GSTR-6A, and eligible and ineligible credit is to be distributed separately. Invoices issued under rule 54(1A) by a registration with the same PAN to transfer credit to the ISD do not form part of 'turnover in State', the credit so transferred is not 'Net ITC' for refund, and the transferring registration is not required to reverse it.

Circular No. 261/07/2026-GST

Dated: 26.10.2026

Subject: Clarification on issues related to provisions of section 17(4) of the Central Goods and Services Tax Act, 2017

Circular No. 261/07/2026-GST

A registration of a banking company, financial institution or NBFC that is not engaged in accepting deposits or extending loans and advances (for example, exclusively bullion trading) cannot opt for section 17(4). If one registration engaged in such services opts for section 17(4), all such registrations of the entity must comply with it. Full credit under the second proviso to section 17(4) is available only on supplies from another registration with the same PAN that has also opted for section 17(4).

The circular prescribes the manner of reporting availment and reversal of input tax credit in FORM GSTR-3B, both where IMS was not used and after IMS-related rule amendments. Field formations are not to take an adverse view of a different reporting method followed for past periods, as long as the amount of credit availed is in line with these principles.

Circular No. 262/08/2026-GST

Dated: 26.10.2026

Subject: Clarification on Input Tax Credit admissibility to authorised agents appointed by manufacturers for sale of motor vehicles, pursuant to the circular No. 231/25/2024-GST dated 10.09.2024

Circular No. 262/08/2026-GST

Para 4.6 of Circular No. 231/25/2024-GST, which stated that input tax credit on demo vehicles was blocked for a dealer acting only as agent of the vehicle manufacturer, is withdrawn.

It is clarified that input tax credit on demo vehicles is not blocked under section 17(5)(a) of the CGST Act for a dealer in the dealer-agency model, where the manufacturer sells vehicles directly to customers.

Circular No. 263/09/2026-GST

Dated: 26.10.2026

Subject: Clarification in respect of receipt of payment for export of goods or services

Circular No. 263/09/2026-GST

For export of services, payment received in convertible foreign exchange or in Indian rupees through repatriable accounts such as SNRR account, INR Nostro account or similar accounts satisfies section 2(6)(iv) of the IGST Act. Payment to stock brokers by FPIs, NRIs and OCIs through SNRR or NRE accounts is valid, while NRO payments must be routed through such accounts. Set-off of export receivables against import payables as per RBI directions, and retention of commission by reinsurance brokers under the net retention mechanism, are also treated as satisfying the condition.

For export of goods, the time limit for realisation of export proceeds under rule 96B is the period, including extended period, prescribed in RBI Master Direction No. 16/2015-16 (last amended 05.06.2026). No recovery of refund is to be made where realisation has been written off by the AD bank.

Circular No. 264/10/2026-GST

Dated: 26.10.2026

Subject: Clarification in respect of the omission of rule 96(10) of the Central Goods and Services Tax Rules, 2017

Circular No. 264/10/2026-GST

Rule 96(10), which restricted IGST refund on exports where specified exemption or concessional benefits were availed on inputs, was omitted with effect from 08.10.2024 by Notification No. 20/2024-Central Tax. The Supreme Court in M/s Goodluck India

Limited v. Union of India (judgment dated 06.08.2026) held that, in the absence of a saving clause, the omission applies to all pending proceedings.

Accordingly, it is clarified that the omission of rule 96(10) will be effective retrospectively from 23.10.2017, and pending proceedings are to be dealt with as per the judgment. The same treatment applies to the omission of rules 89(4A) and 89(4B).

Circular No. 265/11/2026-GST

Dated: 28.10.2026

Subject: Clarification regarding classification and applicability of GST on the supply of certain goods based on the recommendations of the GST Council in its 57th meeting held on 8th October 2026

Circular No. 265/11/2026-GST

Sublimation paper is classifiable under heading 4809 and attracts 18% GST, and the past period is regularised on 'as is where is' basis.

Entries for toys at S. No. 497 of Schedule I and S. No. 616 of Schedule II of Notification No. 9/2025-CT(R) cover all toys of heading 9503, including dolls, scale models and puzzles, and are not limited to tricycles, scooters and pedal cars.

Under the margin scheme for old and used motor vehicles, the restriction on input tax credit applies only to tax paid on the used vehicles purchased; credit is available on other inputs and input services such as spares, repairs, rent and marketing. Sea-weed extract based bio-stimulants registered under Schedule VI of the Fertiliser Control Order, 1985 are classifiable under heading 3101, and the past period is regularised on 'as is where is' basis.

Circular No. 266/12/2026-GST

Dated: 28.10.2026

Subject: Clarifications regarding applicability of GST on certain services

Circular No. 266/12/2026-GST

For exemption under Entry 44A of Notification No. 12/2017-CT(R) for research and development services against grants, a certificate from the head of the institution that the activity is research and development and not consultancy may suffice. Import of services by an Indian establishment of a foreign shipping company from a related person or its establishment outside India without consideration is exempt from 01.11.2026, and payment of GST for the period 01.07.2017 to 31.10.2026 is regularised on 'as is where is' basis.

Statutory and ancillary charges such as registration, road tax, insurance and FASTag recovered by a lessor in addition to lease rent form part of the value of the motor vehicle leasing service. TRAI is not 'Government' under section 2(53). Notional interest recorded by banks under the Fund Transfer Pricing mechanism is covered by the definition of 'interest' for exemption. Lending services provided by an NBFC to a bank under a co-lending arrangement are taxable, at the value specified in their agreement.

Notification No. 03/2026 – Central Tax

Dated: 26.10.2026

Subject: Seeks to appoint 01.11.2026 as the date on which sections 153 to 155 of the Finance Act, 2026 come into force

Notification No. 03/2026 – Central Tax

The Central Government has appointed 1 November 2026 as the date from which sections 153, 154 and 155 of the Finance Act, 2026 (4 of 2026) come into force. These sections amend sections 15, 34 and 54 of the CGST Act, 2017.

Section 15(3)(b) is substituted. A discount given after the supply is now excluded from the value of supply if the supplier issues a credit note for it and the recipient reverses the input tax credit attributable to the discount, in terms of section 34. The earlier conditions that the discount must be agreed at or before the time of supply and linked to specific invoices are removed. Section 34(1) is amended so that a credit note can also be issued where such a discount is given.

Section 54(6) is amended so that provisional refund (90%) is also available for refund of unutilised input tax credit on account of inverted duty structure. Section 54(14) is amended so that the minimum refund limit of ₹1,000 does not apply where refund is claimed on goods exported out of India with payment of tax.

Notification No. 04/2026 – Central Tax

Dated: 26.10.2026

Subject: Seeks to extend e-invoicing to inward supplies from unregistered persons under reverse charge and to import of services

Notification No. 04/2026 – Central Tax

Notification No. 13/2020-Central Tax, which specifies the persons required to issue e-invoices under rule 48(4) of the CGST Rules, is amended. Earlier, e-invoice was required for supplies to registered persons and for exports.

E-invoice will now also be required for (i) supplies received from an unregistered person where the recipient pays tax under reverse charge, and (ii) import of services. The amendment comes into force on 1 January 2027.

Notification No. 05/2026 – Central Tax

Dated: 26.10.2026

Subject: Central Goods and Services Tax (Amendment) Rules, 2026 – amendments relating to registration, cancellation, ISD, refunds, blocking of credit ledger, returns and forms

Notification No. 05/2026 – Central Tax

Registration: new rule 14B allows a seller supplying goods through e-commerce operators to obtain registration in another State without physical presence, by declaring the e-commerce operator's warehouse as principal place of business, subject to the operator's consent and a tax limit of ₹2.5 lakh per month on supplies to registered persons. Rule 19 (amendment of registration) is substituted with fixed timelines, deemed approval where the officer does not act and deemed rejection where the applicant does not reply; new rule 83C provides for amendment of GST Practitioner enrolment. Rule 20 (cancellation on request) is substituted with automatic cancellation by the portal in specified cases, and rule 21 is substituted. Rules 21A, 22 and new rule 23A provide for system-based suspension, cancellation and revocation for non-filing of returns or non-furnishing of bank details from 1 April 2027.

Refunds and ISD: in rule 89, the cap of 1.5 times the value of like domestic goods for export refund is removed; a new formula for inverted duty refund is prescribed, with Net ITC including input services and, from 1 April 2027, capital goods; the order of debiting the credit ledger is prescribed. Refund applications are to be acknowledged within 10 days (earlier 15), failing which they are deemed acknowledged, and provisional refund orders may be generated by the portal within 3 working days. Rules 36, 39, 54 and 60 are

amended for the Input Service Distributor. Rule 86A (blocking of credit ledger) is amended from 1 April 2027 with new forms DRC-26, DRC-27 and DRC-28. Introduces a provision for system-based processing of provisional refund orders, enabling the GST portal to generate such orders within three working days, subject to prescribed conditions.

Other changes: due date of GSTR-5 changed from the 20th to the 13th; 'April' replaced by 'June' in rule 62(5); metro railway added in rule 138(2A) for e-way bill; Part B of DRC-22 for rejection of objection against provisional attachment. Forms REG-01, REG-14, REG-16, REG-32, REG-33, RFD-01, CMP-08, GSTR-4, GSTR-6, GSTR-7A, DRC-01, DRC-01A, DRC-07 and INV-01 are amended or substituted and new forms REG-05A and REG-34 to REG-38 are inserted. The rules come into force on 1 November 2026, except specified provisions effective from 1 December 2026, 1 January 2027 and 1 April 2027.

Notification No. 06/2026 – Central Tax

Dated: 27.10.2026

Subject: Seeks to make registration compulsory for suppliers of specified waste and scrap and used cooking oil, even where all supplies are under reverse charge

Notification No. 06/2026 – Central Tax

Notification No. 5/2017-Central Tax exempts persons making only supplies taxable under reverse charge from obtaining registration.

Its proviso is substituted to provide that this exemption will not apply to persons supplying used cooking oil (heading 1518), waste and scrap of plastics (heading 3915), waste and scrap of tyres (heading 4004), metal scrap (Chapters 72 to 81) and electrical and electronic waste and scrap (heading 8549).

Earlier, the proviso covered only suppliers of metal scrap. The notification comes into force on 1 November 2026.

Notification No. 07/2026 – Central Tax

Dated: 27.10.2026

Subject: Seeks to notify registered persons receiving specified waste and scrap and used cooking oil as persons required to deduct tax at source under section 51

Notification No. 07/2026 – Central Tax

Clause (d) of Notification No. 50/2018-Central Tax is substituted. Any registered person receiving supply of used cooking oil (heading 1518), waste and scrap of plastics (heading 3915), waste and scrap of tyres (heading 4004), metal scrap (Chapters 72 to 81) or electrical and electronic waste and scrap (heading 8549) from another registered person is required to deduct tax at source under section 51 of the CGST Act.

Earlier, clause (d) covered only receipt of metal scrap. The notification comes into force on 1 November 2026.

Notification No. 02/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Amendment in GST rate notification relating to fertilisers (sea-weed extract based bio-stimulants), retreaded tractor tyres and retreaded or used tyres under the 2.5% and 9% GST rate schedules.

Notification No. 02/2026 – Central Tax (Rate)

This notification further amends Notification No. 09/2025-Central Tax (Rate), dated 17 September 2025. In Schedule I (2.5%), the column (3) entry against S. No. 237 is substituted to read "All goods i.e. animal or vegetable fertilisers or organic fertilisers pre-packaged and labelled". An Explanation is added saying that this includes sea-weed extract based bio-stimulants registered under Schedule VI to the Fertiliser (Inorganic, Organic or Mixed) (Control) Order, 1985. A new S. No. 272A is inserted after S. No. 272, covering Retreaded tractor tyres under heading 4012. In Schedule II (9%), the entry against S. No.

138 is substituted to cover "Retreaded or used pneumatic tyres of rubber (other than re-treaded tractor tyres); solid or cushion tyres, tyre treads and tyre flaps, of rubber". Retreaded tractor tyres therefore move out of the 9% entry and into the 2.5% schedule. The amendment is made under Sections 9(1) and 15(5) of the CGST Act, 2017, on the recommendations of the GST Council. It comes into force on 1 November 2026.

Previous Notification: Notification No. 09/2025-Central Tax (Rate), dated 17 September 2025 (G.S.R. 641(E)), last amended by Notification No. 01/2026-Central Tax (Rate), dated 30 April 2026 (G.S.R. 328(E)).

Notification No. 03/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Amendment in GST exemption notification inserting Psyllium seeds (Isobgul/Isobgol).

Notification No. 03/2026 – Central Tax (Rate)

This notification amends Notification No. 10/2025-Central Tax (Rate), dated 17 September 2025. A new S. No. 87A is inserted after S. No. 87 in the Schedule, covering Psyllium seeds (Isobgul/Isobgol) under heading 1211 90 13.

The amendment is made under section 11(1) of the CGST Act, 2017, on the recommendations of the GST Council, and comes into force on 1 November 2026.

Previous Notification: Notification No. 10/2025-Central Tax (Rate), dated 17 September 2025 (G.S.R. 660(E)).

Notification No. 04/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Amendment in reverse charge notification adding used cooking oil, waste and scrap of plastics, waste and scrap of tyres, and electrical and electronic waste and scrap.

Notification No. 04/2026 – Central Tax (Rate)

This notification further amends Notification No. 4/2017-Central Tax (Rate), dated 28 June 2017, by inserting four new entries in the Table: S. No. 2A for used cooking oil under heading 1518; S. No. 3B for waste and scrap of plastics under heading 3915; S. No. 3C for waste and scrap of tyres under heading 4004; and S. No. 9 for electrical and electronic waste and scrap under heading 8549.

For each of these entries, the supplier is specified as any unregistered person and the recipient as any registered person. The amendment is made under section 9(3) of the CGST Act, 2017, on the recommendations of the GST Council, and comes into force on 1 November 2026.

Previous Notification: Notification No. 4/2017-Central Tax (Rate), dated 28 June 2017 (G.S.R. 676(E)), last amended by Notification No. 06/2024-Central Tax (Rate), dated 8 October 2024 (G.S.R. 614(E)).

Notification No. 05/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Amendment in Notification No. 26/2018-Central Tax (Rate) substituting the definition of "Nominated Agency".

Notification No. 05/2026 – Central Tax (Rate)

This notification further amends Notification No. 26/2018-Central Tax (Rate), dated 31 December 2018. Clause (c) of the Explanation is substituted. "Nominated Agency" now means the entities mentioned in Appendix 4B of the Handbook of Procedures, as amended by the Directorate General of Foreign Trade from time to time.

The definition therefore refers to the DGFT list as amended from time to time, instead of a fixed list. The amendment is made under section 11(1) of the CGST Act, 2017, on the recommendations of the GST Council, and comes into force on 1 November 2026.

Previous Notification: Notification No. 26/2018-Central Tax (Rate), dated 31 December 2018 (G.S.R. 1263(E)), last amended by Notification No. 18/2025-Central Tax (Rate), dated 24 October 2025 (G.S.R. 783(E)).

Notification No. 05/2026 – Central Tax (Corrigendum) Dated: 18.11.2026

Notification No. 05/2026 – Central Tax (Corrigendum)

Subject: Corrigenda to the Central Goods and Services Tax (Amendment) Rules, 2026 (G.S.R. 919(E), dated 26.10.2026)

CBIC has corrected both the Hindi and English versions of the Central Goods and Services Tax (Amendment) Rules, 2026 (G.S.R. 919(E), dated 26.10.2026, Issue No. 846). Most of the corrections are clerical. They fix serial numbers, clause lettering and sub-rule cross-references (for example, sub-rule (5) becomes (7), and (20) becomes (25)), correct spellings ("Aadhar" becomes "Aadhaar"), and replace "permission" with "consent" and"representative" with "person".

A few corrections are substantive. A new proviso provides that an order in FORM GST RFD-06 need not be revalidated by the proper officer. A second proviso provides that a payment order in FORM GST RFD-05 must be revalidated if the refund was not disbursed in the financial year in which the order was issued. In one place, "seven days" is replaced by"seven working days".

The refund declaration is reworded. It now states that the input tax credit claimed does not include ITC blocked under section 17(5) or ITC on goods or services used for nil-rated or fully exempt supplies, and the earlier reference to "ITC availed on capital goods" is removed. The list of documents accepted as proof of address for registration is revised to

the latest property tax receipt, municipal khata copy, property identification copy, and the latest electricity and water bills.

Previous Notification: the last-amendment reference in the Rules is corrected to Notification No. 20/2025-Central Tax, dated 31 December 2025 (G.S.R. 950(E)).

Notification No. 06/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Seeks to amend Notification No. 11/2017-Central Tax (Rate) – ITC on same-line services for hotels, restaurants and catering; rates for electric vehicle transport and renting; delivery services

Notification No. 06/2026 – Central Tax (Rate)

For hotel accommodation, restaurant service, supply of food in trains and platforms and outdoor catering taxed at 2.5% CGST without input tax credit, input tax credit is now allowed on input services in the same line of business (for example, hotel accommodation procured from another hotel). For hotel accommodation and outdoor catering, such credit is limited to tax at 2.5% CGST where the supplier charges a higher rate.

New entries are inserted for transport of passengers by electrically operated vehicle, renting of electrically operated vehicle for passengers and renting of electrically operated vehicle for transport of goods, where the cost of battery charging is included in the consideration. The supplier may pay CGST at 2.5% without input tax credit (other than same-line input services, capped at 2.5%) or CGST at 9% with input tax credit. 'Electrically operated vehicle' is defined and includes e-bicycles.

Delivery services supplied through an e-commerce operator by a person not liable for registration under section 22(1), and delivery of goods supplied through an e-commerce operator, are taxed at 2.5% CGST without input tax credit. The definition of 'goods transport agency' is substituted and paragraph 3 of the notification is omitted. The notification comes into force on 1 November 2026.

Notification No. 07/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Seeks to amend Notification No. 12/2017-Central Tax (Rate) – exemption to certain services

Notification No. 07/2026 – Central Tax (Rate)

The following services are exempted: transport of passengers by helicopter on seat-share basis from or to airports and helipads in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Bagdogra (West Bengal); storage or warehousing of cereals, pulses, fruits, vegetables and seeds meant for sowing; services by the Seamen's Provident Fund Organisation; grant of exclusive right to collect toll by the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity; and curing of coffee supplied to coffee cultivators.

The exemption at serial number 21A will not apply to services of a goods transport agency for goods supplied through an e-commerce operator. The explanation to serial number 18 is omitted, the definition of 'goods transport agency' is substituted and a definition of 'seed' is inserted. The notification comes into force on 1 November 2026.

Notification No. 08/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Seeks to amend Notification No. 13/2017-Central Tax (Rate) – reverse charge entry at serial number 15

Notification No. 08/2026 – Central Tax (Rate)

In the reverse charge notification, against serial number 15, in column (3), the figure '6' is replaced by '9'. Serial number 15 relates to renting of motor vehicles designed to carry pas-

sengers, where the cost of fuel is included, supplied by a person other than a body corporate to a body corporate.

Reverse charge will apply unless the supplier issues an invoice charging central tax at 9%. The notification comes into force on 1 November 2026.

Notification No. 09/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Seeks to amend Notification No. 17/2017-Central Tax (Rate) – e-commerce operator to pay tax on delivery services under section 9(5)

Notification No. 09/2026 – Central Tax (Rate)

Clause (v) of the notification is substituted. The electronic commerce operator is liable to pay tax on delivery services, other than postal and courier services, supplied through it, except where the person supplying such services through the operator is liable for registration under section 22(1) of the CGST Act.

The notification comes into force on 1 November 2026.

Notification No. 10/2026 – Central Tax (Rate)

Dated: 27.10.2026

Subject: Seeks to notify special procedure under section 148 for concessionaires supplying operation and maintenance services under Toll-Operate-Transfer concession agreements

Notification No. 10/2026 – Central Tax (Rate)

A concessionaire under a Toll-Operate-Transfer concession agreement, who supplies operation and maintenance services to the concessioning authority during the concession period, shall pay central tax on such services on the amount charged or debited from the escrow account towards operation and maintenance expenses, in the tax period in which it is so charged or debited.

'Concession Agreement' and 'concessioning authority' are defined. The concessioning authority may be the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity, and the concessionaire pays the concession fee upfront. The notification comes into force on 1 November 2026.

OFFICIAL RELEASES

Instructions & Advisories

Summary of orders, instructions and advisories

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Instruction No. 02/2026

Dated: 30.10.2026

Subject: Implementing certain recommendations of the GST Council made in its 57th meeting held on 08.10.2026, prior to legislative amendments.

Instruction No. 02/2026

This instruction directs CBIC field formations to implement, as an interim trade-facilitation measure, certain reforms recommended by the GST Council at its 57th meeting. The Council had recommended that the corresponding amendments to the CGST Act, 2017 and the State GST Acts come into force from 1 April 2027. Pending that, the directions remain in force until the amendments commence. First, on arrests, the Council recommended omitting section 69, and field formations are directed to make no further arrests under GST. Second, on e-way bill verification, a conveyance may be intercepted only on specific intelligence authorised by an officer not below Joint Commissioner, who must record in writing the reasons to believe that the goods are moving in contravention of the law. The intercepting officer may inspect the conveyance and goods only if the supplier or recipient is registered or located within his State or Union territory, and may then detain or seize under section 129 if a contravention is found. If neither is within that jurisdiction, he must let the conveyance pass and only transmit the information to the jurisdictional officer. Where there is no e-way bill and no document showing origin or destination, inspection, detention or seizure is permitted irrespective of jurisdiction. Detention or seizure on any other ground is barred, and goods or conveyances in transit are not to be confiscated under section 130. Third, no show cause notice is to be issued under sections 73, 74 or 74A where the amount involved is below Rs. 10,000, computed as the sum of CGST, SGST, IGST, UTGST and Compensation Cess. Chief Commissioners are to monitor implementation, and difficulties are to be reported to the Board.

Instruction No. 03/2026

Dated: 30.10.2026

Order / Reference No.: CST/ACST/HQR-05/GST-Audit/2023-24/Guidelines/B. 85

Issued by: Office of the Commissioner of State Tax, Maharashtra

Subject: Selection of GST Audit Cases for FY 2023-24 – reg.

Instruction No. 03/2026

The Maharashtra Commissioner of State Tax has issued these Instructions on selecting GST audit cases for FY 2023-24 under section 65. A review of FY 2022-23 audits found weak desk reviews and audit plans. It also found unfocused requisition of records, poorly formulated Local Importance proposals, and cases selected for risk under Rs. 5 lakh, mostly GSTR-1/3B mismatches. Audits started late, Audit Monitoring Committee (AMC) proceedings became last-minute formalities, and Deputy Commissioners were not involved enough. The department is therefore moving from "risk based" to "risk assessment based" selection. Centrally selected cases go into a pool for each Audit Division, which does a detailed desk review. The desk review uses sectoral trends, past audits, Economic Intelligence Unit inputs, BIFA, the E-Way Bill MIS portal and SCNs. Cases cannot be recommended only on routine return-scrutiny parameters (Annexure-A). Cases need a revenue risk above Rs. 2 crore in MMR/PMR, or above Rs. 1 crore elsewhere in Maharashtra. Proposals go through PRAISE with a draft ADT-01 listing only the records relevant to the identified issues. The Joint Commissioner (Audit) submits them to the Central Selection Committee, which meets every Tuesday and Friday. A Deputy Commissioner must present each proposal. Recommendations are due within 15 days. The first lot of 3,258 cases is distributed, and each Division should recommend about 10% of its lot. In MMR/PMR the pool is allocated across zones (Annexure-C). Audit visits are limited to 30% of a zone's selected cases, and anything above that needs Central Committee approval.

GSTN Advisory – 01.11.2026

Issued by: GSTN (Goods and Services Tax Network)

Published: 01.11.2026

Subject: Changes in GST Registration Amendment Process

Advisory · 01.11.2026

GSTN has implemented changes in the GST registration amendment process pursuant to the substitution of provisions under Rule 19 of the CGST Rules, 2017.

Vide Notification No. 05/2026-Central Tax dated 26.10.2026, Rule 21 of the Central Goods and Services Tax Rules, 2017, the provisions relating to amendment of registration under Rule 19 of the CGST Rules, 2017 have been substituted. The corresponding changes have been implemented on the GST portal.

Amendments relating to the Principal Place of Business (PPOB) will continue to be examined by the Proper Officer, whereas other amendments, including changes in legal name, addition or deletion of partners/directors, additional places of business and other registration particulars, will be processed online through system-based validation. Mandatory OTP verification of the mobile number and email ID of the Primary Authorised Signatory and one selected promoter/partner/director/karta/member/trustee is required. Applicants will be given three days to complete OTP verification, failing which the Application Reference Number (ARN) will not be generated. PAN, DIN and CIN, wherever applicable, will also be validated online, and the amended Registration Certificate will be made available on the common portal after successful verification. Taxpayers are advised to furnish accurate particulars and relevant supporting documents while filing FORM GST REG-14.

GSTN Advisory – 04.11.2026

Issued by: GSTN (Goods and Services Tax Network)

Published: 04.11.2026

Subject: Revision in E-Way Bill and Consolidated E-Way Bill Numbering Formats w.e.f. 1 January 2027

Advisory · 04.11.2026

GSTN has announced revisions in the numbering formats of E-Way Bills and Consolidated E-Way Bills due to the expected exhaustion of the existing numbering capacity arising from the substantial volume of E-Way Bills generated. With effect from 1 January 2027, the E-Way Bill Number will be increased from the existing 12 digits to 14 digits, while the Consolidated E-Way Bill Number will be increased from 10 digits to 11 digits. All stakeholders, including taxpayers, GST Suvidha Providers (GSPs), ERP/software providers and API integrators, are advised to make necessary modifications to their applications, APIs, database schemas and validation rules to accommodate the revised numbering formats. The changes will be released in the Sandbox environment shortly for testing, with relevant details to be published on the E-Way Bill Portal. Stakeholders are required to ensure system readiness well before 1 January 2027 to facilitate a seamless transition and avoid disruption to E-Way Bill-related operations.

GSTN Advisory – 17.11.2026

Issued by: GSTN (Goods and Services Tax Network)

Published: 17.11.2026

Subject: Advisory on Implementation of e-Invoicing for RCM Domestic Supplies (RCMDOM) and Import of Services (RCMIMP) with effect from 1st January 2027

Advisory · 17.11.2026

This advisory continues GSTN's 16 October 2026 advisory. It covers e-invoicing for recipient-generated self-invoices under reverse charge, for two supply types. These are domestic supplies received from unregistered persons (RCMDOM) and import of services (RCMIMP). Notification 04/2026-CT extends e-invoicing to these supplies from 1 January 2027. Notification 05/2026-CT makes the related CGST Rules and e-invoice

schema amendments. The functionality is already live in the sandbox of all six Invoice Registration Portals (IRPs). It is proposed to open in the IRP production environments from 15 December 2026. Between 15 and 31 December 2026, taxpayers may voluntarily generate an IRN for these supplies. Mandatory e-invoicing starts on 1 January 2027 only. Production should be used for genuine transactions only, and sample-data testing belongs in the sandbox. For these two supply types, the system will accept documents dated 15 December 2026 or later. Technical specifications and release notes are on the NIC e-Invoice API portal, and the advisory asks taxpayers, GSPs, ASPs and ERP providers to complete testing well before 1 January 2027.

JURISPRUDENCE

Latest Case-law Summaries

Supreme Court, High Courts, GSTAT and CESTAT

Verdict key: ● in favour of assessee ● against assessee ● neutral

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A To Z Chemicals v. Krishna Gopal Saha, Assistant Commissioner of State Tax, Lalbazar & Radhabazar Charge, WBGST & Ors.

Dated: 06.11.2026

Court: Goods and Services Tax Appellate Tribunal (GSTAT), Kolkata Bench

Verdict: In favour of assessee

Subject: ITC mistakenly availed under CGST/SGST instead of IGST (FY 2017-18) – Section 73 demand set aside; remanded on Kerala High Court ratio.

Case Law No. GIB-GSTAT-2026-133

BACKGROUND

A To Z Chemicals, a Kolkata-based trader of chemicals, was served a show cause notice dated 28.02.2023 under Section 73(1) of the CGST Act, 2017 by the West Bengal GST authorities. The issue was that, in FY 2017-18, the first year of GST, the assessee had availed and utilised ITC of about Rs. 1,43,404 each under CGST and SGST instead of IGST. The assessee explained that this was an inadvertent mistake, that GSTR-2A became available only at the end of 2018, and that the total ITC claimed did not exceed the tax paid by its suppliers, so there was no loss of revenue. The Adjudicating Authority (order dated 29.05.2023) confirmed the demand with interest and penalty, holding that ITC cannot be adjusted from one tax head to another. The First Appellate Authority (order dated 25.08.2023) upheld the reversal of this ITC with interest under Section 50 and penalty, and further directed reversal of Rs. 4,176 each under CGST and SGST for breach of Section 16(4). Aggrieved, the assessee appealed under Section 112(1) before the Tribunal, and the Revenue opposed it, arguing that the CGST Act has no provision to grant such relief.

FINAL VERDICT

The Tribunal first held that the dispute over Rs. 4,176 (each under CGST and SGST) stood settled by the non-obstante clause in Section 16(5) of the CGST Act, so the assessee is absolved of reversing it. On the main issue, it relied on the Kerala High Court rulings in Kalleppuram Metals and Rejimon Padickapparambil Alex v. Union of India, which treat the electronic credit ledger as a unified pool, like a wallet with IGST, CGST and SGST compartments. On that view, availing CGST/SGST in place of IGST is an inadvertent, technical error and not a wrongful availment or utilisation, causes no loss of revenue, and

does not attract Section 73. **The Tribunal held that these Kerala High Court judgments squarely apply, set aside the First Appellate Authority's order and remanded the appeal for fresh decision in their light within three months, after giving the assessee a reasonable hearing.**

Choice Cashew Industries v. Commissioner of CGST, Thiruvananthapuram

Dated: 17.09.2026

Court: Goods and Services Tax Appellate Tribunal, Thiruvananthapuram Bench

Verdict: In favour of assessee

Subject: Refund of IGST paid twice on exports due to a GSTR-3B reporting error; a clerical mistake cannot defeat refund.

Case Law No. GIB-GSTAT-2026-131

BACKGROUND

The appellant, an exporter of cashew kernels, exported goods on payment of IGST at 5% in November 2018, December 2018 and February 2019 and reported the shipping bills correctly in GSTR-1. In GSTR-3B, however, it showed the export turnover and IGST in Table 3.1(a) (other than zero-rated supplies) instead of Table 3.1(b) (zero-rated supplies). Because of this mismatch, the Customs EDI system did not process the automatic refund. To get the refund processed, the appellant paid the same IGST (about ₹18.27 lakh) a second time through the GSTR-3B for August 2019, this time correctly reported, and received the Customs refund for that second payment. It then claimed refund of the original, excess payments. The refund claims were rejected on the ground of discrepancies between GSTR-1 and GSTR-3B, and the Joint Commissioner (Appeals) dismissed the appeals on the footing that the appellant had already received a refund. The issue before the Tribunal was whether the original IGST payments, made in the wrong column by clerical error, were refundable.

FINAL VERDICT

The Tribunal found that neither the refund-sanctioning authority nor the first appellate authority had tried to understand which amount was being claimed and which had already been refunded through Customs; the claim related only to the original payments, not the August 2019 payment. The returns showed that GSTR-1 was correct and the error

was one of right entries at wrong places, explained through a reconciliation statement, and the Revenue produced no evidence that the amount was not an excess payment. The Tribunal held that tax cannot be collected or retained without authority of law and relied on the Orissa High Court and the Karnataka High Court (Article 265 of the Constitution; refund of tax paid by mistake). **It held that wrong entries in the returns, later corrected and resulting in an excess payment of IGST not otherwise due, are not a substantive infraction so as to deny the refund.** The order of the Joint Commissioner (Appeals) was quashed and the appeals were allowed with consequential relief.

REFERRED CASES

Rajendra Narayan Mohanty v. Joint Commissioner of State Tax, CT & GST Circle, Cuttack & Anr. (Orissa High Court, 12.02.2026); M/s. Merck Life Science Private Limited v. Union of India & Ors. (Karnataka High Court, 07.11.2025).

Gujarat Co-operative Milk Marketing Federation Limited v. Union of India & Others

Dated: 14.10.2026

Court: High Court of Gujarat at Ahmedabad

Verdict: In favour of assessee

Subject: No GST on Head Office services to branches where no invoice is issued (value 'Nil'); Section 74 invoked mechanically.

Case Law No. GIB-GUJHC-2026-134

BACKGROUND

The petitioner, the apex dairy federation popularly known as 'Amul', has its Head Office at Anand and holds separate registrations for branches outside Gujarat. For July 2017 to March 2019 it incurred corporate expenses at the Head Office (advertising, IT and maintenance charges, legal fees and salaries of Head Office employees) but did not allocate them to its branches and depots by cross-charging. Treating the separately registered branches as 'distinct persons' under Section 25 of the CGST Act, the Department issued a show cause notice dated 31.08.2022 under Section 74, and the Additional Commissioner, by Order-in-Original dated 01.01.2025, confirmed an IGST demand of ₹43,43,12,441 with interest and penalty, brushing aside CBIC Circulars dated 17.07.2023 and 26.06.2024. The petitioner challenged the order in writ jurisdiction. The questions were whether any tax

was leviable on Head Office services to branches when no invoices were issued, and whether Section 74 and its extended period were validly invoked.

FINAL VERDICT

The High Court accepted that separately registered branches are distinct persons and that services between them fall within Schedule I (Entry 2) and Rule 28. It held, however, that since the Head Office admittedly issued no tax invoices, the value of the services must be treated as 'Nil' in terms of the CBIC Circulars (Circular No. 199/11/2023-GST 17.07.2023, Circular No. 210/4/2024-GST 26.06.2024) and the Delhi High Court decision in **Metal One Corporation India Pvt. Ltd. v. Union of India & Ors.,** Court: High Court of Delhi at New Delhi, Date of Order: 22.10.2024, **Tata Steel Limited v. Union of India through the Secretary, Ministry of Finance & Ors.,** Court: Supreme Court of India Date of Judgment: 25.08.2026) so that no tax liability arises; the adjudicating authority had referred to the Circulars only cursorily and could not value the services proportionately merely because cross-charging was not adopted. On Section 74, following the Supreme Court in Tata Steel (2026), the Court found no foundational facts in the notice or order showing fraud, wilful misstatement or suppression, the expenses were fully recorded in the books, and the matter was revenue-neutral as credit would have been available to the branches. **Mere failure to adopt cross-charging cannot, by itself, lead to the conclusion that the petitioner wilfully or fraudulently evaded tax or suppressed facts.** The Order-in-Original was quashed and the writ petition allowed.

Laldeo Rajak v. Kanthwal Services

Dated: 15.10.2026

Court: Goods and Services Tax Appellate Tribunal, New Delhi (State Bench)

Verdict: Neutral (partly in favour, partly against)

Subject: Interest under Section 50(1) stops when PMT-06 cash is credited to the Government; penalty under Section 73 upheld.

Case Law No. GIB-GSTAT-2026-135

BACKGROUND

For FY 2017-18, interest under Section 50(1) was charged on the taxpayer up to the date of filing of GSTR-3B, although cash had been deposited earlier through Form PMT-06. The

short-paid tax and interest were paid after the 30-day window under Section 73(8) but before the order-in-original, which nevertheless confirmed the full demand. The first appellate authority set aside the tax, restricted interest to the date of cash credit and upheld the penalty. The Department contended that tax is paid only when the Electronic Cash Ledger is debited on filing the return and that Section 73(8) immunity is lost beyond 30 days; the taxpayer contended that interest stops when the cash is credited and that no penalty is leviable without contumacious conduct. The Tribunal had to decide the tax demand, the period for which interest runs, and the penalty.

FINAL VERDICT

The Tribunal held that a demand under Section 73(1) is not a tool for recovering again an amount already received, so payment before the order-in-original leaves nothing to confirm. On interest, it held that PMT-06 cash is credited to the Government on realisation and the later ledger debit is only an accounting entry; following several High Courts and consistently with amended Rule 88B, **interest ceases to run once tax stands credited to the Government's account**, though relief extends only to cash credited before the return, since one payment cannot discharge two distinct interest liabilities. With regards to the same the court distinguished Hindustan Steel. The Tribunal distinguished Hindustan Steel Ltd. v. State of Orissa, AIR 1970 SC 253, holding that its principle applies to discretionary penalties, whereas penalty under Sections 73(8), 73(9) and 73(11) is statutory and non-discretionary. Since tax and interest were not paid within 30 days of the SCN, the penalty became mandatory, irrespective of bona fide conduct or absence of fraud or dishonest intention. The penalty was upheld because immunity under Section 73(8) is lost if payment is not made within 30 days of the notice, even if made before adjudication, and the penalty is not discretionary. The appeal and the cross-objection were dismissed, and the balance interest and penalty are payable within thirty days.

JUDGMENTS RELIED UPON

In Para 16.3(B), the Tribunal relied upon the following High Court judgments: M/s Vishnu Aroma Pouching Pvt. Ltd. v. Union of India – Gujarat High Court, 2020 (38) GSTL 289; Eicher Motors Ltd. v. Superintendent of GST and Central Excise – Madras High Court, (2024) 14 Centax 323; Arya Cotton Industries & Anr. v. Union of India – Gujarat High Court, (2024) 20 Centax 8; Bangalore International Airport Ltd. v. Union of India – Karnataka High Court, (2025) 37 Centax 227; Symphony Ltd. v. Union of India – Gujarat High Court, (2025) 36 Centax 250.

G P Motors Private Limited v. Commissioner, State Tax & Others

Dated: 16.10.2026

Court: Goods and Services Tax Appellate Tribunal, State Bench Prayagraj

Verdict: In favour of assessee

Subject: Section 129 penalty for stock transfer without e-way bill: no tax payable, no intent to evade; penalty quashed.

Case Law No. GIB-GSTAT-2026-136

BACKGROUND

The appellant, an authorised dealer of Honda two-wheelers, was moving five two-wheelers (valued at ₹3,50,000) in its own loader from its godown at Naini to its showroom at Civil Lines, Prayagraj, about 14 km away. On 30.04.2025 the vehicle was intercepted by the State Tax Mobile Squad. The goods were accompanied by a delivery challan (whose production the Revenue disputed) but no e-way bill. A penalty of ₹1,96,000 (₹98,000 each of CGST and SGST) was imposed under Section 129(3) on 05.05.2025 and was upheld in first appeal on 24.07.2025. The questions before the Tribunal were whether a Section 129 penalty could be sustained for moving a stock transfer without an e-way bill, and whether a charge of deliberate evasion by clandestine removal was warranted.

FINAL VERDICT

The Tribunal held that an e-way bill was required even for a stock transfer, as a delivery challan under Rule 55 does not dispense with it, so there was a technical breach of Rules 138 and 138A. The charge of clandestine removal failed because two-wheelers are uniquely traceable through engine and chassis numbers and cannot be sold without invoice and RTO registration. Since penalty under Section 129 is computed on 'tax payable' and a transfer between one's own premises under the same GSTIN is not a 'supply' under Section 7 (no second person, no consideration), no tax was payable and no penalty was leviable, following the Bombay High Court in ***Fabricship Pvt. Ltd. v. The Union of India and Ors*** and the Allahabad High Court in ***Vacmet India Ltd. vs Additional Commissioner Grade-2 India*** and ***M/S Goverdhan Oil Mill vs Additional Commissioner And Another*** [1]. The Revenue's authorities, arising under the Rajasthan Sales Tax Act, were distinguished. **Although the law required an e-way bill, the virtual impossibility of tax evasion in such stock transfers and the absence of fraudulent intent rule out the severe penalty meant for tax evasion un-**

der Section 129. The appeal was allowed, both orders were set aside, the penalty was quashed and refund of any amount deposited was directed with interest as per law.

The Tribunal held that mens rea (intention to evade tax) is necessary for imposing penalty under Section 129. Mere non-generation of an e-way bill does not automatically establish tax evasion. In a genuine stock transfer without tax liability or fraudulent intent, penalty under Section 129 cannot be sustained.

Oxygen The Digital Shop Vs. The Commissioner of Keralam State GST, Thiruvananthapuram

Dated: 16.10.2026

Court: Goods and Services Tax Appellate Tribunal, Thiruvananthapuram

Verdict: In favour of assessee

Subject: ITC on interior joinery, carpentry and painting of rented showrooms – whether barred by Section 17(5)(d) of the CGST Act when the GST is not capitalised.

Case Law No. GIB-GSTAT-2026-137

BACKGROUND

The appellant, a partnership firm engaged in retail trading of digital gadgets and their repair, availed input tax credit of ₹5,61,470 each under CGST and SGST (aggregate ₹11,22,940) on four invoices of July and September 2017 raised by Brightech Interiors and Exteriors Pvt. Ltd. for joinery, carpentry and painting work (SAC 995476/995473) carried out in two rented showrooms at Vellayambalam and Nedumangad. The department denied the credit under Section 17(5) of the CGST/KGST Act, 2017, treating the work as alteration of an immovable property falling under "building completion and finishing services", and the Joint Commissioner (Appeals) upheld the denial. Before the Tribunal, the appellant contended that the fixtures were detachable and movable, the premises were leased, the GST was never capitalised, and relied on a Chartered Accountant's certificate and the Wework India ruling; the Revenue argued that the supplier's own classification, damage on removal of the fixtures, the capitalisation "trap" and the burden under Section 155 defeat the claim. The issue was whether the credit is eligible or restricted by Section 17(5).

FINAL VERDICT

The Tribunal held that the department's show cause notice never disputed the classification of the supplier's services, so it could not be raised against the buyer beyond the notice. It found that the interior work, i.e. wooden and glass shelves for display and sale of goods in rented showrooms, was in direct furtherance of business, making credit available under Section 16(1). Noting that Explanation 1 to Section 17(5) brings renovation, additions or alterations within "construction" only "to the extent of capitalisation", it accepted the Chartered Accountant's certificate that the CGST and SGST were not added to the asset cost, were accounted for separately as ITC and attracted no depreciation. **"Since the amount of GST is not capitalised, such amount of tax does not get covered under the restricted category of the Section 17(5)(d)."** The impugned order was set aside and the appeal was allowed with consequential relief.

Kanakia Spaces Reality Pvt. Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai

Dated: 14.03.2024

Court: Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Mumbai

Verdict: In favour of assessee

Subject: Refund of service tax paid on flat booking advances where bookings were cancelled and the amount and tax were returned – Section 142(5) of the CGST Act, 2017.

Case Law No. GIB-CESTAT-2024-24

BACKGROUND

The appellant, a developer providing construction of residential complex service, collected booking amounts from prospective apartment buyers and paid service tax on them. Several allottees later cancelled their bookings, and the appellant returned the booking amounts along with the service tax collected. Contending that the Rule 6(3) route for adjusting excess service tax was not available in GST returns, it filed three refund claims (6 March, 27 April and 29 June 2018) under Section 11B of the Central Excise Act, 1944 read with Section 142(5) of the CGST Act, 2017, aggregating ₹24,58,250 (revised from ₹35,14,597). The adjudicating authority rejected the claims and the Commissioner (Appeals), by common order dated 11.03.2020, upheld the rejection, holding that the GST law has no provision for such a refund and that mere cancellation does not mean no ser-

vice was provided. In appeal, the Tribunal examined whether it had jurisdiction over such refund claims and whether the refund was admissible.

FINAL VERDICT

Following the Larger Bench decision in Bosch Electrical Drive India Private Limited v. Commissioner of Central Tax, Chennai (21.12.2023), the Tribunal held that appeals against refund orders under Section 142 of the CGST Act lie before CESTAT and, relying on Wave One Private Limited v. Commissioner of CGST & Central Excise, Delhi CESTAT, New Delhi and Jai Jai Mateshwaari Steels Pvt. Ltd. v. Commissioner, CGST, Dehradun, Customs, Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi that the limitation under Section 11B cannot be invoked against claims under Section 142(5). On merits, it held that service tax presupposes a taxable service; where the buyer cancels and receives back the consideration with tax, the service contract stands terminated, the tax deposited is merely a deposit and its retention would violate Article 265 of the Constitution. **"If there is no service then question of paying any tax on it does not arise and the Department can't keep it with them."** The right to refund of excess service tax had accrued to the appellant and was protected by Section 174, with Section 142(5) providing the refund route; the appeals were allowed with consequential relief as per law.

Sterling and Wilson Pvt. Ltd. v. Union of India & Others

Dated: 16.11.2026

Court: Supreme Court of India

Verdict: In favour of assessee

Subject: Solar EPC contracts – whether 70:30 goods–services split was mandatory for 01.07.2017 to 31.12.2018; works contract v. composite supply; Section 74.

Case Law No. GIB-SC-2026-139

BACKGROUND

The assessee, a turnkey EPC contractor supplying and installing Solar Power Generating (SPG) systems, paid CGST/SGST at 5% under Sl. No. 234 of Notification No. 1/2017-CT(Rate) for 01.07.2017 to 31.12.2018. The Joint Commissioner, Thane (order dated 17.01.2025, followed by Summary Order dated 24.01.2025) treated the supply as a works contract of immovable property and, relying on Circular No. 163/19/2021-GST dated

06.10.2021, demanded tax at 5% on 70% and 18% on 30% of the value by invoking extended limitation under Section 74, with penalty under Section 122(2)(b), aggregating to ₹53,35,80,964 including SGST. The Bombay High Court dismissed the writ petition on 28.07.2025 citing the alternate appellate remedy. The Supreme Court examined whether the writ should have been entertained, whether the 70:30 ratio could be forced on the pre-01.01.2019 period, whether SPG systems are immovable property so that the contract is a works contract, and whether Section 74 was validly invoked.

FINAL VERDICT

The Court held the High Court's cursory dismissal unjustified, since the alternate-remedy rule is not a straitjacket formula (Para 5), and decided the matter on merits. It found that Notification No. 24/2018 operated only from 01.01.2019 and that the Circular merely stated that tax "can" be paid at 70:30 for the earlier period, which was an option and not a mandate (Paras 11, 17, 33). As the 70:30 regime came into existence only from 01.01.2019, no fraud, wilful misstatement or suppression could be imputed, making Section 74 untenable (Para 34). Following the Andhra Pradesh High Court's view (not challenged by Revenue), it held that a composite supply is a works contract only if the end product is immovable property; SPG systems are detachable from the foundation, which only gives stability, so they are movable and the supply is not a works contract (Paras 35–36). The later substitution of "solar power generating system" by "solar power generator" in Entry 201A cannot operate retrospectively (Para 38). **The 70:30 ratio was only an option for the period prior to 01.01.2019, not a mandate; the demand is unsustainable on facts and in law, and the appeal is allowed, setting aside the orders dated 17.01.2025 and 24.01.2025, with parties bearing their own costs (Paras 39–40).**

Sterlite Power Transmission Limited & Others v. Union of India & Others

Dated: 17.11.2026

Court: High Court of Delhi

Verdict: Neutral (partly in favour, partly against)

Subject: GST on corporate guarantee given by holding company for a related person's bank borrowings – validity of Rule 28(2) deemed value of 1% per annum.

Case Law No. GIB-DHC-2026-140

BACKGROUND

A batch of writ petitions (including Sterlite Power Transmission, ReNew, Jindal Stainless and Azure Power) challenged show cause notices and demands raised on corporate guarantees issued without consideration to banks for group companies, along with Rule 28(2) of the CGST Rules inserted by Notification No. 52/2023-CT dated 26.10.2023 (deemed value of 1%), its amendment by Notification No. 12/2024 dated 10.07.2024 ("located in India" and "per annum"), and Circular Nos. 204/16/2023-GST and 225/19/2024-GST. The Court framed five issues: (a) whether such a guarantee is a supply of services under Section 7(1)(c) read with Entry 2 of Schedule I, and who is the recipient; (b) whether it is excluded as an actionable claim or security; (c) whether Rule 28(2) is intra vires and constitutional; (d) the time of supply and the position for guarantees before 01.07.2017, up to 25.10.2023 and the retrospective effect of the 2024 amendment; and (e) validity of the Circulars.

FINAL VERDICT

The Court held that a corporate guarantee for a related person is a supply of services even without consideration, the service being assumption of the risk of default, with the related person as recipient; Edelweiss was distinguished as it arose under the service tax definition requiring consideration (Paras 71–72, 121). It is neither an actionable claim nor a security (Para 122). Rule 28(2) is intra vires, but making 1% p.a. a fixed minimum is arbitrary under Article 14, so it is read down as a rebuttable presumption displaced by a lower open market value proved by the supplier on cogent material; the proviso is valid (Paras 87–91, 123–124). A guarantee is a single supply on execution and on each renewal, extension or enhancement, taxed under Section 13(2)(a)/(b) and not as a continuous supply; guarantees before 01.07.2017 are not taxable unless renewed, those from 01.07.2017 to 25.10.2023 are taxable but valued under the then Rules without Rule 28(2), and the 2024 amendment is validly retrospective (Paras 125–126). The Circulars are valid but must be read in conformity with the judgment (Para 127). **The notices and demands are set aside to the extent contrary to these findings and the proper officers must determine liability afresh after hearing; questions such as Section 74 limitation are left open, and the petitions are partly allowed (Paras 128–131).**

Vishal Chaudhary v. Bangla Foods Pvt. Ltd.

Argued by ADA Law Chambers

Dated: 20.11.2026

Court: Goods and Services Tax Appellate Tribunal (GSTAT), Principal Bench at Delhi

Verdict: In favour of assessee

Subject: Department's appeal below the ₹20 lakh limit of Circular No. 207/1/2024-GST not maintainable; Para 4(iv)(e) exception not attracted.

Case Law No. GIB-GSTAT-2026-143

BACKGROUND

The Department, acting on a review order dated 29.01.2026 under Section 112(3) of the CGST Act, 2017, appealed to the GSTAT against the Order-in-Appeal dated 03.10.2025, which had set aside a Section 74 demand of ₹1,36,634 (with interest and equal penalty) raised against the assessee on a DGGI alert for non-payment of tax under reverse charge (RCM) on OIDAR services allegedly received from Facebook Ireland Limited in FY 2017-18. The issues before the Tribunal were: (i) whether the appeal was maintainable in view of the ₹20,00,000 monetary limit for GSTAT appeals under Circular No. 207/1/2024-GST dated 26.06.2024, issued under Section 120 of the CGST Act; and (ii) on merits, whether the assessee was liable to IGST under RCM on such services. The Department invoked the exclusion in Para 4(iv)(e) of the Circular, contending that the matter involved interpretation of the RCM notification and place of supply, and was recurring as notices had been issued for other years; the assessee contended that the clause, read with clauses (a) to (d) on the principle of ejusdem generis, covers legal questions and not a routine factual dispute.

FINAL VERDICT

The Tribunal (Justice Mayank Kumar Jain and Shri A. Venu Prasad) held that Section 120 and the Circular bind departmental officers, who cannot apply them selectively. The case turned on interpretation of the exception itself; the Tribunal agreed that clause 4(iv)(e) cannot be read in isolation and must be read as a whole, and on that reading, held that the Department's plea of interpretation of a notification and place of supply does not merit acceptance. The Department also produced no record to show the issue was recurring; the mere mention of notices for other years does not suffice. **The Tribunal observed that no interpretation of the relevant notification is involved and the issue is limited to whether**

the assessee actually received OIDAR services from FIL; hence the Department does not fall within the exception, and the appeal, with disputed tax of ₹1,36,634 against the ₹20,00,000 limit, is not maintainable. The Tribunal also noted that the review order ignored the Circular and wasted judicial resources. The merits were not examined and the Department's appeal was dismissed, leaving the Order-in-Appeal in the assessee's favour undisturbed.

SPECIAL CASE STUDY

Sri Sujit Das & Ors. v. Union of India

Supreme Court of India · 05.11.2026 · Article 22(2)

Sri Sujit Das & Ors. v. Union of India

Dated: 05.11.2026

Court: Supreme Court of India

Verdict: In favour of appellants (accused)

Subject: Whether the 24-hour period under Article 22(2) commences from actual curtailment of liberty or formal arrest, and whether investigative formalities can be excluded from its computation.

Case Law No. GIB-SC-2026-141

BACKGROUND

The appellants were intercepted by the search team at about 2:00 p.m. on 29.09.2025 in connection with the recovery of methamphetamine (Yaba) tablets under the NDPS Act; the FIR of the same date records that all four accused were intercepted at around 2:30 p.m. and that the seizure was made in the presence of witnesses. The search and seizure were completed at about 5:00 p.m., but formal arrest was recorded only at 11:00 a.m. and 11:15 a.m. on 30.09.2025, and the appellants were produced before the Magistrate at 4:45 p.m. that day. They contended that their liberty had been curtailed from the time of interception, so that production after 24 hours violated Article 22(2). The issue was whether the 24-hour period under Article 22(2) commences from actual curtailment of liberty or from formal arrest, and whether investigative formalities can be excluded from its computation.

FINAL VERDICT

In paragraph 69, the Court summarised its conclusions: the 24-hour period under Article 22(2) commences from the date and time of detention, when the person's liberty stands curtailed, and not from formal arrest; if detention continues beyond 24 hours without production before the Magistrate, the person must be released forthwith; and no period can be excluded except the time necessary for the journey from the place of arrest to the Magistrate's court. It held that the decisions of the Orissa High Court in Aryaman

Pattnayak, the Madras High Court in Kannan and the Kerala High Court in Arun K. Thomas do not lay down the correct law on Article 22(2). The Court added that the detaining authority must also ensure that detention does not extend beyond a reasonable period within the 24 hours (Section 58 BNSS / Section 57 CrPC); the Magistrate must record the actual date and time when liberty stood curtailed, examine compliance with the 24-hour deadline and, on breach, order release, and may decline remand where detention, though within 24 hours, exceeded what was reasonable. The Court also recorded its reservation on certain observations made by the Bench, stressing that Article 21 rights are fundamental and that the rigour of Section 37 of the NDPS Act or similar provisions must give way where Article 21 is violated. **Applying these principles, the Court held that the appellants' detention breached Article 22(2) and exceeded a reasonable period under Section 58 BNSS (Section 57 CrPC), set aside the High Court's order dated 29.04.2026, and directed that the appellants be produced before the jurisdictional Special Court within a maximum of 7 days, whereafter they shall be released on bail on such terms and conditions as may be deemed appropriate.** Key observation: "Article 22(2) does not sanction creation of any buffer zone where the liberty of an individual is curtailed for investigating purposes but not formally shown as arrested."

CASES REFERRED

State of Punjab v. Sukhwinder Singh @ Gora – Supreme Court of India – 24 April 2026

CONCEPT CLEAR

Blocked Credit under Section 17(5) of the CGST Act, 2017

1. Introduction

Input tax credit (ITC) is the backbone of GST, yet Section 17(5) of the CGST Act, 2017 carves out a list of supplies on which credit is simply not available, however business-related the expenditure may be. The sub-section opens with a non-obstante clause: it operates notwithstanding section 16(1), which grants the basic entitlement to credit, and section 18(1), which governs credit in special circumstances. A taxpayer who holds a valid invoice, has received the supply, has seen the tax paid to the Government and has filed returns still cannot claim credit in a blocked category.

In practice, the real work lies in the exceptions. Most disputes turn on whether a particular supply falls inside a clause at all, and, if it does, whether the taxpayer's line of business or the use of the asset takes it out again. This note walks through each clause, the relevant circulars, and the developments of the last two years, including the retrospective amendment that followed Safari Retreats and the recommendations of the 57th GST Council meeting.

2. Clause-wise snapshot

Clause	Subject	Credit blocked on	Key exceptions / carve-outs
(a)	Motor vehicles	Vehicles for transport of persons with approved seating capacity of 13 or less (including driver)	Used for further supply of such vehicles, passenger transportation, or driving training
(aa)	Vessels and aircraft	Vessels and aircraft	Further supply, passenger transport, navigation or flying training, and transport of goods

Clause	Subject	Credit blocked on	Key exceptions / carve-outs
(ab)	Insurance, servicing, repair, maintenance	Services relating to vehicles, vessels, aircraft under (a) and (aa)	Where the conveyance itself qualifies; manufacturers of such conveyances; general insurers
(b)(i)	Food, catering, beauty, health, cosmetic surgery; leasing/renting/hiring of (a)/(aa) conveyances; life and health insurance	Such goods and services	Used for outward taxable supply of the same category or as part of a composite/mixed supply
(b)(ii)–(iii)	Club and fitness memberships; employee leave/home travel benefits	Such services	Where obligatory for the employer under any law in force
(c)	Works contract services	For construction of immovable property (other than plant and machinery)	Input service for further supply of works contract service
(d)	Goods/services for construction	For construction of immovable property (other than plant and machinery) on own account	Plant and machinery; construction not on own account; expenditure not capitalised
(e)	Composition levy	Goods/services on which tax is paid under section 10	None
(f)	Non-resident taxable person	Inward supplies received by an NRTP	Goods imported by him

Clause	Subject	Credit blocked on	Key exceptions / carve-outs
(fa)	CSR	Goods/services used for CSR activities under section 135, Companies Act, 2013	None (in force from 1 October 2023)
(g)	Personal consumption	Goods/services used for personal consumption	None
(h)	Goods lost, stolen, etc.	Goods lost, stolen, destroyed, written off, or disposed of as gifts or free samples	None
(i)	Tax paid on demand	Tax paid under section 74 for periods up to FY 2023-24	Not extended to section 73 or section 74A

3. Vehicles, vessels and aircraft: clauses (a), (aa) and (ab)

3.1 Motor vehicles

Clause (a) blocks credit on motor vehicles designed for the transport of persons with an approved seating capacity of not more than thirteen persons, including the driver. Three consequences follow from the wording:

- Vehicles seating more than thirteen persons, including the driver, are outside the block, so credit is allowed.
- Vehicles meant for the transport of goods (trucks, loading autos, dumpers and similar) are outside the clause, and so are work trucks, fork-lifts and other special-purpose vehicles that are not designed for carrying persons. Credit is allowed.
- 'Motor vehicle' takes its meaning from the Motor Vehicles Act, 1988, which excludes, among others, a vehicle of a special type adapted for use only in a factory or other enclosed premises, and a vehicle with fewer than four wheels and an engine capacity not exceeding 25 cc.

Even a blocked vehicle yields credit when it is used for making the following taxable supplies: (A) further supply of such vehicles (dealers), (B) transportation of passengers (cab and bus operators), or (C) imparting training on driving such vehicles (driving schools).

3.2 Demonstration vehicles

CBIC Circular No. 231/25/2024-GST dated 10 September 2024 clarified the position for demo vehicles used by dealers before sale:

- Where the demo vehicle is used by the dealer to make a further supply of such vehicles, the credit is not blocked.
- Where it is used to transport the dealer's staff or management, the credit is blocked.
- Where an authorised dealer acts only as an agent providing marketing or facilitation services and does not make a further supply on his own account, the credit is blocked.
- Capitalisation of the demo vehicle in the dealer's books does not by itself affect eligibility, which remains subject to section 16(3). If the vehicle is later sold, section 18(6) applies as on a permanent transfer of a business asset.

The 57th GST Council has recommended a further circular on the admissibility of ITC on demo vehicles in certain other situations, which may address vehicles used for testing and similar purposes.

3.3 Vessels and aircraft

Clause (aa) applies the same logic to vessels and aircraft. Credit is blocked unless the vessel or aircraft is used for further supply, passenger transportation, training on navigating the vessel or flying the aircraft, or for transportation of goods.

3.4 Insurance, servicing, repair and maintenance

Clause (ab) makes the credit on general insurance, servicing, repair and maintenance of such conveyances follow the conveyance. If credit on the vehicle, vessel or aircraft is allowed, credit on these services is also allowed. If credit on the conveyance is blocked, credit on these services is also blocked, with two standing exceptions: the service is received by a manufacturer of such motor vehicles, vessels or aircraft, or by a general insurer supplying insurance in respect of conveyances insured by him. Circular No. 217/11/2024-GST dated 26 June 2024 deals with general insurers' credit on repair expenses under cashless and reimbursement claim settlement, and should be read by every insurer and garage network.

4. Personal and employee-related spends: clause (b)

Clause (b) covers three groups. First, food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of the conveyances referred to in clauses (a) and (aa) (except when used for the purposes listed there), and life and health insurance. Second, membership of a club, health and fitness centre. Third, travel benefits extended to employees on vacation, such as leave or home travel concession.

Two exceptions apply. For the first group, credit is available where the inward supply is used to make an outward taxable supply of the same category of goods or services, or as an element of a taxable composite or mixed supply. A restaurant buying catering services for resale, or a hotelier supplying food as part of an accommodation package, is the typical example. And across clause (b), credit is available where the law makes it obligatory for the employer to provide the benefit to its employees, for example a canteen where a statute requires one.

5. Construction of immovable property: clauses (c) and (d)

5.1 The two clauses

Clause (c) blocks works contract services supplied for construction of immovable property, other than plant and machinery, except where they are an input service for further supply of works contract service. Clause (d) blocks goods or services received for construction of immovable property, other than plant and machinery, on the taxable person's own account, even when they are used in the course or furtherance of business.

The Explanation to the sub-section widens 'construction' to include re-construction, renovation, additions or alterations or repairs, but only to the extent of capitalisation. The converse is equally important: where construction or works contract services are not capitalised and are charged to the profit and loss account as expenditure, the block does not apply.

A taxpayer who uses construction or works contract services as input services to supply construction or works contract services to others is eligible for credit on the tax paid on those inputs. Credit under clause (d) is also tied to construction on 'own account'. Construction undertaken for sale of units to buyers, or for a customer under a contract, is not on the taxpayer's own account, although this is a question of fact in each case.

5.2 Plant and machinery

The Explanation to section 17 defines 'plant and machinery' as apparatus, equipment and machinery fixed to earth by foundation or structural support and used for making outward supply of goods or services, and includes such foundation and structural supports. It excludes land, buildings and other civil structures, telecommunication towers, and pipelines laid outside the factory premises. Pipelines inside the factory premises are therefore not excluded.

Circular No. 219/13/2024-GST dated 26 June 2024 clarified that ducts and manholes used in an optical fibre cable network for telecommunication services fall within 'plant and machinery', as they are neither land, building nor civil structures, and credit on them is therefore not blocked.

5.3 Safari Retreats and the retrospective amendment

Until 2025, clause (d) said 'plant or machinery' while clause (c) said 'plant and machinery'. In Chief Commissioner of CGST v. Safari Retreats Pvt. Ltd. (2024 INSC 756, decided on 3 October 2024), the Supreme Court upheld the constitutional validity of clauses (c) and (d), declined to read them down, but held that 'plant' in clause (d) is not limited by the Explanation and that a building can be a 'plant' if it passes a functionality test, a question of fact to be examined case by case.

Parliament responded quickly. Following the 55th GST Council recommendation, the Finance Act, 2025 (section 124) substituted 'plant and machinery' for 'plant or machinery' in clause (d), with effect from 1 July 2017, together with a deeming provision overriding contrary judicial decisions. The amendment was brought into force from 1 October 2025 (Notification No. 16/2025-Central Tax). The practical result is that the Explanation's exclusion of buildings and civil structures now governs clause (d) as well, and the functionality route in Safari Retreats is no longer available on the amended text.

What remains open to taxpayers is narrower but real. They can show that the asset is plant and machinery in the statutory sense (fixed to earth by foundation or structural support and used for outward supply), that particular items such as removable fittings and equipment do not form part of an immovable structure, that the construction is not on own account, or that the expenditure was not capitalised. Taxpayers who claimed credit in reliance on Safari Retreats for earlier periods face exposure to interest and possible demand, and should take a considered decision on reversal.

6. Other categories: clauses (e) to (i)

- **Composition levy, clause (e).** Credit is not available on goods or services on which tax is paid under section 10.
- **Non-resident taxable person, clause (f).** Inward supplies received by an NRTP are blocked, except goods imported by him.
- **CSR, clause (fa).** Goods or services used or intended to be used for corporate social responsibility activities under section 135 of the Companies Act, 2013 are blocked. The clause was inserted by the Finance Act, 2023 and has applied since 1 October 2023.
- **Personal consumption, clause (g).** Goods and services used for personal consumption are blocked. Where a supply is used partly for business and partly for other purposes, section 17(1) allows credit to the extent attributable to business.
- **Lost, stolen, destroyed or written-off goods, gifts and free samples, clause (h).** The clause refers to goods only, not services. Credit already taken must be reversed when the goods are lost, stolen, destroyed, written off or disposed of by way of gift or free sample.
- **Tax paid on demand, clause (i).** The Finance (No. 2) Act, 2024 (section 119, in force from 1 November 2024) restricted the clause to tax paid under section 74 for periods up to FY 2023-24 and removed the references to sections 129 and 130. The clause does not name section 73 or the new section 74A, which applies from FY 2024-25. Whether and how credit can be claimed on tax paid under those sections will still depend on the other conditions of the Act.

Sales promotion schemes and free samples

Circular No. 92/11/2019-GST addressed sales promotion. Free samples and gifts are supplied without consideration, and credit on them is blocked under clause (h). A supply without consideration is covered by Schedule I only where credit has been availed, so free samples and gifts on which credit has not been taken fall outside it. A 'buy one, get one free' offer is not a free supply at all. It is the supply of two or more goods for the price of one, to be treated as a composite or mixed supply, and credit remains available.

7. Ex-works supplies and the timing of credit

A related question arises in the automobile and other sectors that sell on an ex-works basis: can the dealer or buyer take credit only after physically receiving the goods, or from the date the goods are handed to the transporter at the manufacturer's gate? Circular No.

241/35/2024-GST dated 31 December 2024 clarified that, where property in the goods passes at the factory gate, the recipient is treated as having received the goods when they are handed over to the transporter, even though they reach him after the transit period. Two limits follow from clause (h) and clause (g): if the goods are diverted to a non-business purpose before physical receipt, credit is not available, and if they are lost, stolen, or disposed of as gifts or free samples at any time after receipt, credit is not available either. The same principle applies to other goods supplied on an ex-works basis.

8. What may change: the 57th GST Council

The 57th GST Council meeting, held on 8 October 2026, recommended a significant rationalisation of Section 17(5). According to reports of the meeting, the Council recommended removing the restrictions on credit for:

- outdoor catering, and health and life insurance;
- telecommunication towers and pipelines laid outside the factory premises, by revisiting the exclusions in the definition of plant and machinery;
- free samples, and goods destroyed or written off on expiry of shelf life as required by law.

The Council also recommended allowing limited credit, in the same line of business, for restaurant and outdoor catering services, hotel accommodation up to INR 7,500 per unit per day, and gym or fitness services, in the same manner as credit is now available on passenger transport, tour operator and motor vehicle renting services. These are recommendations. They need amendments to the CGST Act and, in all likelihood, a Finance Bill, and the reports raise the question whether the changes will apply to past periods. Until the enabling amendments are enacted and notified, the law as set out above continues to govern, and pending disputes will be decided on the existing text.

9. Practical checklist

- Map every capital and revenue purchase against clauses (a) to (i) at the time of booking, rather than at the time of filing GSTR-3B.
- For construction, separate in the books the plant and machinery, with its foundation and structural supports, from civil structures, and keep contracts, bills of quantities and engineering drawings that support the split.

- Record the use of every vehicle, vessel and aircraft. The exceptions in clauses (a) and (aa) depend on actual use for the listed taxable supplies.
- Check whether a statute obliges you to provide the benefit before reversing credit on canteen, insurance or similar employee costs.
- For demands raised for periods before and after 1 October 2025, examine which version of clause (d) applies and whether the asset can be shown to be plant and machinery.
- Where credit has been wrongly availed, weigh voluntary reversal with interest against contesting the demand, and track the legislative follow-up to the 57th Council recommendations.

GUEST ARTICLE SECTION 69

The End of Stealth Arrests under GST: Deciphering the Constitutional Shield in *Union of India v. Sunil Biyani*



ARTICLE AUTHORED BY

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In Indirect tax litigation, few statutory provisions evoke as much anxiety as Section 69 of The Central Goods and Services Tax Act, 2017 (CGST Act). While investigative authorities like the Directorate General of GST Intelligence (DGGI) routinely deploy summons under Section 70 to gather evidence, the shadow of Section 69 hangs like a sword over corporate executives and tax practitioners. The core fear has never been the law itself, but the stealthy, opaque manner in which coercive powers are unleashed.

Scan / Tap: judgment

In a landmark decision, ***Union of India v. Sunil Biyani* [2026 INSC 849]** (decided 12th Aug., 2026), the Supreme Court of India delivered a masterclass in balancing state revenue powers against constitutional liberty under Article 21: **Protection of life and personal liberty**- "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*" While the Apex Court firmly shut the door on High Courts granting conditional "post-dismissal" protective umbrellas, it fundamentally restructured GST arrest jurisprudence by declaring that **an arrest order passed under Section 69 must be formally communicated to the target prior to arrest—without which no arrest can legally take place.**

The Factual Flashpoint: The Anomaly of Pre-Arrest Protection

1. The dispute arose from a multi-crore investigation initiated by the DGGI, Mumbai Zonal Unit, against M/s Alphaneon Techsolutions Pvt. Ltd. for alleged fraudulent availing and passing of Input Tax Credit (ITC) through circular invoicing and non-payment of GST on imported services. The respondent, Sunil Biyani, was intercepted during an inspection and subsequently issued multiple summonses under Section 70.

2. Apprehending arrest, Biyani sought anticipatory bail before the Bombay High Court. During proceedings, the Revenue filed an affidavit admitting that no formal order under Section 69 had been passed yet, as investigation was still nascent.

3. Confronted with this statement, the High Court correctly held that without a Section 69 order, there was no legal "apprehension of arrest," rendering the anticipatory bail application premature. However, recognizing the practical threat of a surprise arrest the moment proceedings concluded, the High Court inserted a protective rider: *the applicant shall not be arrested for a period of one week from the date of intimation if a Section 69 order is passed*. Aggrieved by this interim shield, the Union of India appealed to The Supreme Court.

Ratio 1: The Death of Post-Dismissal Protective Umbrellas

The first legal question before the Supreme Court was whether a court can grant interim protection against arrest while simultaneously dismissing or rejecting a bail application as non-maintainable.

Setting aside the High Court's protective direction, the Supreme Court invoked the 5-Judge Constitution Bench ruling in ***State of Orissa v. Madan Gopal Rungta*** **(1951 SCC 1024)**, which established that a petition under Article 226 of the Constitution of India cannot be used for the sole purpose of issuing interim relief when the high court is of the considered opinion that the petition itself is not maintainable.

Extending the criminal law jurisprudence laid down in ***Hema Mishra v. State of U.P.*** **(2014) 4 SCC 453**, the Apex Court held that-

"6. ... Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and ... that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding....."

The Court established: once an application for pre-arrest bail is dismissed—whatever the ground—the court loses jurisdiction to grant "post-dismissal" conditional immunity or temporary protection.

"71. However, we may clarify that a person summoned under Section 70 of the CGST Act is not per se an accused protected under Article 20(3) of the Constitution, as has been held in Deepak

Mahajan6. This is because the prohibitive sweep of Article 20(3) of the Constitution does not go back to the stage of interrogation."

Ratio 2: Dismantling the Revenue's Catch-22 — Mandatory Service of Section 69 Orders

Had the judgment stopped at stripping away the High Court's protective shield, it would have left taxpayers defenseless against administrative overreach. Under the framework anchored in ***Radhika Agarwal v. Union of India*** **(2025) 6 SCC 545**: -

Scan / Tap: judgment

"71. However, we may clarify that a person summoned under Section 70 of the CGST Act is not per se an accused protected under Article 20(3) of the Constitution, as has been held in Deepak Mahajan. This is because the prohibitive sweep of Article 20(3) of the Constitution does not go back to the stage of interrogation."

1. A person summoned under Section 70 is merely a witness/cooperator, not an "accused" protected under Article 20(3).
2. The apprehension of arrest is legally "activated" *only* when the Commissioner records "reasons to believe" and executes a formal order under Section 69(1).
3. Therefore, a Section 69 order is a *sine qua non* (absolute prerequisite) for maintaining an anticipatory bail application under Section 438 CrPC / Section 482 BNSS.

Synthesizing constitutional guarantees under Article 21 with landmark precedents—***Gurbaksh Singh Sibbia v. State of Punjab*** **(1980) 2 SCC 565**, ***Sushila Aggarwal v. State (NCT of Delhi)*** **(2020) 5 SCC 1**, and ***Maneka Gandhi v. Union of India*** **(1978) 1 SCC 248**—the Supreme Court held that procedural law must be fair, just and reasonable.

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Withholding the "reasons to believe" recorded under Section 69 deprives the citizen of their fundamental right to challenge administrative action before constitutional courts. Consequently, the Court read the requirement of prior communication into Section 69 as a mandatory constitutional necessity.

To ensure seamless operational enforcement, the Court referenced **Rule 8 of The CGST Rules, 2017**, holding that communication of the Section 69 order can be executed electronically via the registered email or portal address, in addition to standard modes under the BNSS. The decision in *Sunil Biyani* alters criminal tax litigation strategy across India.

It forces the tax administration to operate transparently while providing defense counsel with a clear constitutional boundary.

Conclusion

Union of India v. Sunil Biyani re-establishes procedural fairness in fiscal enforcement. By dismantling the practice of secret arrest authorizations, the Supreme Court ensured that while investigative agencies retain the statutory authority to combat tax fraud, they cannot bypass the constitutional rights guaranteed under Article 21. The message to the tax department is unequivocal: Transparency is not an administrative courtesy; it is a prerequisite for depriving a citizen of liberty.

GUEST ARTICLE AUDITS, SUMMONS AND WRITS

GST Audits (Section 65), Summons (Section 70) & Constitutional Writ Remedies



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Executive Summary

GST audits under Section 65 and special GST audits under Section 66 are tools that let tax authorities check if people follow the rules. These checks use steps and set time limits. Summons under Section 70 give officers the power to collect evidence and the statements they record matter when it comes to making a case. GST audits must be careful because the statements can be used in court.

Section 6(2)(b) stops Central and State authorities from running the case at the same time. Yet judges sometimes see a difference between an inquiry and a formal proceeding. GST law builds a chain of appeals that goes from the Appellate Authority to the Appellate Tribunal to the High Court and finally to the Supreme Court. Each step is guided by Section 107 (Appellate Authority), Section 112 (Appellate Tribunal), Section 117 (High Court) and Section 118 (Supreme Court), with mandatory pre-deposit conditions

While civil courts are barred under Section 162, High Courts retain extraordinary writ jurisdiction under Article 226 in exceptional circumstances, such as violation of natural justice or lack of jurisdiction, even when statutory remedies are available

1. GST Audits by Tax Authorities (Section 65)

There are two types of audits as per the GST mechanism in India, which include general departmental audits as per Section 65 of the Central Goods

and Services Tax Act, 2017 (CGST Act) and special audits as per Section 66 of the CGST Act. These audits are very important for checking compliance, correctness of tax paid, input tax credit (ITC) claimed, and refund claimed.

1.1 Departmental Audit under Section 65 of the CGST Act, 2017

The framework of departmental audit is provided in Section 65 of the CGST Act along with Rule 101 of the Central Goods and Services Tax Rules, 2017 (CGST Rules). The definition of "audit" is given in Section 2(13) of the CGST Act which means examination of records, returns, and other documents maintained or filed by the registered person to ensure the correctness of turnover declared, payment of taxes, refund claim, and availing of input tax credit.

- **Authority and Scope:** The Commissioner or any officer authorized by him, through a general or specific order, may undertake an audit of any registered person. The Deputy or Assistant Commissioner of Central Tax has been designated as the proper officer to conduct such audits. An audit can cover a financial year, part of a financial year, or multiple financial years, for such period, at such frequency, and in such manner as may be prescribed.
- **Selection Criteria:** Cases for audit are typically selected based on risk analysis derived from filed returns, annual returns, and other statutory compliances, or through random selection. Key criteria include turnover, tax, ITC, refund, industry type, compliance behavior (e.g., late filing, non-submission of GSTR-1, GSTR-3B, GSTR-9, GSTR-9C), various financial ratios, and exceptional reports (e.g., ITC claimed in GSTR-3B vs. GSTR-2A/GSTR-2B, turnover declared in GSTR-3B vs. GSTR-1, aggregate turnover in GST return vs. Income Tax return, purchases from non-existent registered persons). Local parameters such as intelligence inputs and past compliance behavior can also lead to selection.
- **Manner of Conducting Audit**
- **Notice (FORM GST ADT-01):** The proper officer must issue a notice in FORM GST ADT-01 to the registered person at least fifteen working days prior to the commencement of the audit. This ensures adequate time for the taxpayer to prepare the necessary documents.
- **Place of Audit:** Audits can be conducted either at the registered person's place of business or at the tax authorities' office. In exceptional cases, after an initial visit, verification may be done at the Audit Officer's (AO) office. If a physical inspection at the

business premises is deemed necessary, prior permission from an officer not below the rank of a Joint Commissioner of State Tax is required under Section 71 of the CGST Act.

- **Information and Documents:** The AO may seek information through questionnaires and lists of documents/statements. They may verify documents supporting books of account, returns, and statements, checking the correctness of turnover, exemptions, deductions, tax rates, ITC availed and utilized, refunds, and other relevant issues like stock verification. Officers are advised to avoid repeated requests, obtain information from system data where possible, and avoid asking for original invoices. The proper officer cannot remove any books of accounts, documents, cash, or stock from the premises, nor can they carry out a search.
- **Obligations of Registered Person:** During the audit, the registered person is required to afford the necessary facility to the authorized officer to verify books of account or other documents, furnish required information, and render assistance for timely completion. The person in charge of the business premises must provide records such as trial balance, annual financial statements, cost audit reports, income-tax audit reports, and other relevant records within 15 working days or an extended period. Failure to comply with the notice in FORM GST ADT-01 may lead to the presumption that the registered person is not in possession of such books, and the proper officer may initiate further proceedings.
- **Rights of Registered Person:** Taxpayers have rights including verifying the identity of the audit team, receiving the prescribed 15-day notice period, appointing an authorized representative, requesting adjournments, submitting contentions, receiving an opportunity of being heard, ensuring timely completion of the audit, receiving audit findings within 30 days of conclusion, and availing benefits of voluntary tax payment (e.g., via FORM GST DRC-03) if audit objections are acceptable, under Section 73(6)/74(6) (for periods up to Financial Year 2023-24) or Section 74A(8)(i)/74A(9)(i) (for periods from Financial Year 2024-25 onwards).
- **Discrepancies and Response:** The proper officer must inform the registered person of any discrepancies noticed, including the grounds for such discrepancies (e.g., based on circulars, clarifications, notifications, court decisions, Advance Ruling Authority decisions). The auditee is typically given at least seven days to submit a written explanation with supporting documentary evidence.

- **Conclusion of Audit (FORM GST ADT-02):** On conclusion, the proper officer must, within thirty days, inform the registered person about the findings, their rights and obligations, and the reasons for such findings in FORM GST ADT-02. The proper officer finalizes the audit findings after considering the reply furnished by the auditee.
- **Timeline for Completion** The audit must be completed within three months from the date of commencement of the audit. The Commissioner may extend this period by a further period not exceeding six months, for reasons to be recorded in writing, if satisfied that the audit cannot be completed within three months. The "commencement of audit" is defined as the later of: (a) the date on which records and other documents called for by tax authorities are made available by the registered person, or (b) the actual institution of audit at the place of business.
- **Consequences of Audit** If the audit detects tax not paid or short paid, erroneously refunded, or input tax credit wrongly availed or utilized, and the registered person does not make payment within 30 days after the issuance of the Final Audit Report, the proper officer may initiate demand and recovery proceedings. For periods up to Financial Year 2023-24, actions would be initiated under Section 73 (cases without fraud/wilful misstatement/suppression of facts) or Section 74 (cases with fraud/wilful misstatement/suppression of facts) of the CGST Act. For Financial Year 2024-25 onwards, Section 74A of the CGST Act, inserted by the Finance (No. 2) Act, 2024, would be applicable. Officers of Audit Commissionerates can exercise powers to issue show cause notices, but the adjudication process is typically handled by the proper officer in whose jurisdiction the noticee is registered.

1.2 Special Audit under Section 66 of the CGST Act, 2017

Section 66 of the CGST Act, read with Rule 102 of the CGST Rules, provides for special audits, which are extraordinary measures for complex cases or high revenue stakes.

- **Conditions for Direction** An officer not below the rank of Assistant Commissioner, during scrutiny, inquiry, investigation, or other proceedings, may direct a special audit if, considering the nature and complexity of the case and revenue interest, he believes that the value has not been correctly declared or the credit availed is not within normal limits. Prior approval of the Commissioner is mandatory for such a direction.
- **Mandatory Nature** Once directed, the registered person is required to get their accounts audited by a chartered accountant or cost accountant nominated by the

Commissioner, irrespective of whether their accounts have already been audited under any other law or provision of the CGST Act.

- **Manner of Conducting Special Audit**
- **Direction (FORM GST ADT-03):** The direction for a special audit is issued in writing in FORM GST ADT-03 to the registered person.
- **Audit Report:** The nominated auditor must submit a signed and certified report within ninety days, with specified particulars, to the Assistant Commissioner. This period can be extended by a further ninety days on application by the registered person or auditor, or for material and sufficient reason.
- **Opportunity of Being Heard:** The registered person must be given an opportunity of being heard regarding any material gathered from the special audit proposed to be used against them in any proceedings under the Act or rules.
- **Conclusion (FORM GST ADT-04):** On conclusion of the special audit, the registered person is informed of the findings in FORM GST ADT-04.
- **Expenses** The Commissioner determines and pays the expenses of the special audit, including the auditor's remuneration, and this determination is final.
- **Consequences of Special Audit** Similar to departmental audits, if a special audit detects tax not paid or short paid, erroneously refunded, or input tax credit wrongly availed or utilized, the proper officer may initiate action under Section 74A (for Financial Year 2024-25 onwards) or Section 73, Section 74 (for periods up to Financial Year 2023-24) of the CGST Act.

2. Powers of Proper Officers to Issue Summons and Relevancy of Statements

2.1 Power to Summon Persons (Section 70 of the CGST Act, 2017)

Section 70 of the CGST Act grants significant powers to proper officers to summon individuals for inquiry. The proper officer has the power to summon any person whose attendance is considered necessary either to give evidence or to produce documents or any other thing in any inquiry. This power is exercised in the same manner as provided for a civil court under the Code of Civil Procedure, 1908.

- **Who is a 'Proper Officer'?** The Gujarat High Court in Yasho Industries Limited v. Union of India held that officers of the Directorate General of GST Intelligence (DGGI) are 'Proper Officers' under GST to issue summons under Section 70. The

Allahabad High Court in *RC Infra Digital Solutions v. Union of India* further affirmed that the Central Government can also exercise powers invested with the CBIC, and the mere fact that the source of power is not indicated or wrongly indicated does not invalidate the instrument. Superintendents of Central Tax are also designated as 'proper officers' for issuing summons under Section 70.

- **Judicious Exercise of Power:** Circulars and instructions emphasize the judicious exercise of this power. Summons by Superintendents should generally be issued after obtaining prior written permission from an officer not below the rank of Deputy/Assistant Commissioner, with reasons recorded. Oral/telephonic permission may be obtained in operational exigencies but must be reduced to writing at the earliest. Summons should normally indicate the name of the offender(s) being investigated, unless detrimental to the investigation, to help the recipient understand their role (accused, co-accused, or witness).
- **Avoidance of Summons for Online Documents**Issuance of summons should be avoided for statutory documents (e.g., GSTR-3B, GSTR-1) that are digitally available on the GST portal.
- **Summoning Senior Management**Senior management officials (CMD/MD/CEO/CFO/similar officers) should not generally be issued summons in the first instance. They should be summoned only when there are clear indications of their involvement in the decision-making process that led to revenue loss.
- **Obligations of Summoned Persons**All persons summoned under Section 70 are legally bound to attend, either in person or through an authorized representative, as directed by the officer. They must state the truth during examination, make statements, or produce required documents/things. Exceptions exist for women who do not by tradition appear in public or privileged persons, as per Sections 132 and 133 of the Code of Civil Procedure, 1908.
- **Judicial Proceedings Classification**Every inquiry referred to in Section 70(1) is deemed a "judicial proceeding" within the meaning of Section 229 and Section 267 of the Bharatiya Nyaya Sanhita, 2023 (effective from 16-7-2024). This classification underscores the seriousness of summons proceedings, implying that false statements or non-compliance can attract penalties under criminal law, including Sections 172 (absconding to avoid service), 174 (non-attendance), 175 (failure to produce documents), 193 (giving false evidence), and 228 (intentional insult or interruption to a public servant) of the Indian Penal Code, 1860 (which was applicable before Bharatiya Nyaya Sanhita,

2023). Additionally, a penalty up to Rs. 25,000 can be levied under Section 122(3)(d) of the CGST Act for failure to appear.

2.2 Relevancy of Statements under Section 136 of the CGST Act, 2017

Section 136 of the CGST Act specifies the circumstances under which a statement made and signed by a person in response to a summons under Section 70 becomes relevant for proving the truth of its facts in any prosecution for an offence under the Act.

- **Conditions for Relevancy**Such a statement is relevant when:
- The person who made the statement is dead, cannot be found, is incapable of giving evidence, is kept out of the way by the adverse party, or whose presence cannot be obtained without unreasonable delay or expense; OR
- The person who made the statement is examined as a witness in the case before the court, and the court deems the statement admissible in evidence in the interest of justice.
- **Practical Implications**This section highlights the evidentiary value of statements recorded under Section 70, particularly in criminal proceedings. It implies that taxpayers must be cautious and accurate during such examinations. The commentary notes that this section specifies relevancy *only* in prosecution of an offence, implying it is not relevant evidence before the Appellate Authority and Appellate Tribunal. At the time of inquiry, the person giving the statement is generally not considered "accused of an offence" under Article 20(3) of the Constitution, so their statements are admissible. However, once an FIR is lodged, constitutional protection may apply, though this issue is not free from doubt due to conflicting judicial views. For a statement to be relied upon, it must be established that it was made voluntarily and is true. If a statement appears to be obtained by inducement, threat, or coercion, it should be rejected. Its truthfulness must be established by comparing it with other evidence on record.
- **Retraction of Statement**If a person alleges that their statement was obtained by coercion or force, they can retract it, but this should be done as early as possible. A retracted statement does not become a nullity; the authority must apply its mind to the retraction. If a confession is retracted, it must be corroborated by other independent and cogent evidence.

3. Prevention of Parallel Proceedings under Section 6(2)(b) of the CGST Act, 2017

Section 6 of the CGST Act addresses the authorization of officers and, crucially, aims to prevent dual control and parallel proceedings by Central and State tax authorities on the same subject matter. Section 6(2)(b) states that where a proper officer under the State Goods and Services Tax Act (SGST Act) or the Union Territory Goods and Services Tax Act (UTGST Act) has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under the CGST Act on the same subject matter. This provision is vital for safeguarding taxpayers against harassment due to multiple proceedings.

- **Policy Intent and Scope of the Bar**The policy intent is to ensure a single point of contact and resolution for taxpayers, preventing duplication of efforts and potential conflicting assessments. The Gauhati High Court in *Subhash Agarwalla v. State of Assam* held that Section 6(2) provides that once a proceeding is initiated either under the Central Act or a State Act, then another proceeding for the same period under the other Act is not to be initiated. The bar under Section 6(2)(b) applies where two departmental proceedings overlap in assessing or recovering the *same tax liability/deficiency/obligation from a particular contravention.*

UNDERSTANDING THE ABOVE ON THE BASIS OF JUDICIAL PRONOUNCEMENTS

1. GST Audits by Tax Authorities

Building on our understanding of the statutory framework for GST audits under Section 65 and special audits under Section 66, judicial pronouncements have further refined the procedural requirements and the rights of taxpayers during such audits.

1.1 Departmental Audit under Section 65 of the CGST Act, 2017

As discussed, Section 65 mandates specific procedures, including a 15-day prior notice in FORM GST ADT-01. Courts have emphasized strict adherence to these procedural safeguards.

- **Procedural Compliance and Natural Justice:** The Kerala High Court, in the case of Alleppey Company Ltd. *v. Assistant Commissioner, Central Tax and Central Excise* (2026) 47 Centax 191 (Ker.), highlighted the importance of natural justice during audits. The Court observed that while the audit was timely, the subsequent audit note and Show

Cause Notice (SCN) were vitiated because the taxpayer was not given a proper opportunity to reply to the draft audit observations or have their adjournment requests considered, as mandated by Rule 101(4) of the CGST Rules. This underscores that mere issuance of notices is insufficient; a meaningful opportunity to be heard and for the authorities to consider the taxpayer's response is paramount. Similarly, in *State of Andhra Pradesh v.* Vardhaman Gold (2023) 13 Centax 296 (A.P.), the High Court set aside an audit report and subsequent SCN because the audit findings were finalized without providing the statutory 'not less than fifteen working days' notice period for the taxpayer to respond, and the reply submitted by the assessee was not considered. This reinforces that the prescribed notice period is not a mere formality but a crucial element of natural justice.

- **Timelines for Completion:** The Alleppey Company Ltd. case also clarified the 'commencement of audit' for limitation purposes under Section 65(4). The Court held that the three-month period for completing the audit runs from the *later* of the date records are made available or the actual institution of the audit at the business premises. In that case, despite the notice being issued earlier, the audit commenced from the date of actual on-site inspection, making the finalization within time. This provides clarity on how the audit timeline is to be calculated, which is vital for taxpayers to monitor.
- **Distinction from Anti-Evasion Proceedings:** The Calcutta High Court, in R. P. Buildcon Pvt. Ltd. *v. Superintendent, CGST & Central Excise* (2022) 1 Centax 284 (Cal.), addressed a situation where three different wings of the department (Audit Commissionerate, Anti-Evasion wing, and Range Office) were proceeding against the same taxpayer for the same period. The Court held that once audit proceedings under Section 65 have commenced, they should be taken to their logical conclusion, and parallel proceedings by other wings for the *very same period* should not be pursued. This decision emphasizes the need for internal coordination within the department to avoid harassment of taxpayers through multiple, overlapping proceedings.

1.2 Special Audit under Section 66 of the CGST Act, 2017

While special audits are extraordinary measures, their initiation must also adhere to statutory conditions. The Delhi High Court, in *DHL Express India Pvt. Ltd. v. Goods and Services Tax Council* (2025) 30 Centax 413 (Del.), reiterated the importance of providing a proper hearing during special audit proceedings. The Court set aside an order passed after a special audit because the assessee was not given a proper opportunity to present its case, de-

spite repeated emails. This highlights that even in complex cases warranting a special audit, the fundamental principles of natural justice cannot be overlooked.

2. Powers of Proper Officers to Issue Summons and Relevancy of Statements

2.1 Power to Summon Persons (Section 70 of the CGST Act, 2017)

Section 70 grants significant powers to proper officers for inquiry, akin to a civil court. Judicial pronouncements have clarified the scope and limitations of this power.

- **Who is a 'Proper Officer'?** The Gujarat High Court, in *Union of India v. Yasho Industries Ltd.* 2021 (54) G.S.T.L. 19 (Guj.), affirmed that officers of the Directorate General of GST Intelligence (DGGI) holding the designation of Senior Intelligence Officer are 'Proper Officers' under Section 70, as their functions are assigned by the Board. This clarifies the authority of various officers to issue summons.
- **'Inquiry' vs. 'Proceedings' under** Section 6(2)(b)**:** A crucial distinction has been drawn by the courts between an 'inquiry' under Section 70 and 'proceedings' under Section 6(2)(b). The Allahabad High Court, in G.K. Trading Company *v. Union of India* 2021 (51) G.S.T.L. 288 (All.), explicitly held that the word "inquiry" in Section 70 is *not synonymous* with the word "proceedings" in Section 6(2)(b). The Court clarified that Section 70 is for collecting evidence, while "proceedings" under Section 6(2)(b) refer to formal adjudication processes like assessment, demand, and penalty under Sections 73 or 74. Therefore, the issuance of summons for an inquiry does not, by itself, trigger the bar on parallel proceedings. This view has been consistently followed by other High Courts, such as the Madras High Court in Directorate General of GST Intelligence v. Kuppan Gounder P.G. Natarajan [2022] 143 taxmann.com 289 (Madras)/[2022] 58 GSTL 292 (Madras)/[2023] 95 GST 341 (Madras)[01-09-2021] and the Kerala High Court in *K.T. Saidalavi v. State Tax Officer, SGST Department, Manjeri* (2024) 25 Centax 42 (Ker.).
- **Constitutional Validity of Section 70:** The Rajasthan High Court, in Assistant Commissioner v. S.K. Metal [2022] 135 taxmann.com 260 (Rajasthan)/[2022] 91 GST 313 (Rajasthan)/[2022] 63 GSTL 419 (Rajasthan)[25-01-2022], upheld the constitutional validity of Section 70. The Court noted that the powers to summon are not unguided or uncanalized, as they are to be exercised in the same manner as a Civil Court under the Code of Civil Procedure, 1908. The provision that an inquiry under Section 70(1) is deemed a "judicial proceeding" under the Indian Penal Code (now Bharatiya Nyaya Sanhita, 2023) ensures sanctity and accountability. The Court also clarified that

if a summons grants unreasonably short time, the aggrieved person can seek an extension or approach the court.

- **Summons during Investigation:** The Delhi High Court, in *Directorate General of Goods and Services Tax Intelligence v. Naveen* (2026) 39 Centax 281 (Del.), reiterated that summons under Section 70 pertain to an inquiry and not the initiation of proceedings. The Court dismissed a writ petition challenging summons as premature, stating that the inquiry stage, where the department collects information and evidence, cannot be equated with the initiation of adjudicatory proceedings.

2.2 Relevancy of Statements under Section 136 of the CGST Act, 2017

While the statutory text outlines the conditions for relevancy, the Supreme Court has provided crucial guidance on statements recorded under Section 70, particularly in the context of arrest.

- **Nature of Inquiry and Protection against Self-Incrimination:** In the landmark case of *P.V. Ramana Reddy v. Union of India* 2019 (25) G.S.T.L. 185 (Telangana), which was affirmed by the Supreme Court in *P.V. Ramana Reddy v. Union of India* 2019 (26) G.S.T.L. J175 (S.C.), the Court clarified several key principles:
- Officers under tax laws are *not police officers*, and therefore, Section 25 of the Indian Evidence Act, 1872 (now Section 24 of the Bharatiya Sakshya Adhiniyam, 2023) regarding confessions made to police officers does not apply. This means statements made to GST officers are generally admissible.
- A person against whom an inquiry is undertaken does *not automatically become an accused* until prosecution is launched. Consequently, the protection against self-incrimination under Article 20(3) of the Constitution of India does not apply at the inquiry stage.
- An inquiry under Section 70, though not a criminal proceeding, is a *judicial proceeding*, obliging the summoned person not to give false evidence.
- **Voluntariness and Retraction:** While not explicitly covered in the provided case laws, the general principle is that for a statement to be relied upon, it must be established that it was made voluntarily and is true. If a statement is alleged to be obtained by inducement, threat, or coercion, it should be rejected. A retracted statement does not become a nullity but requires corroboration by other independent evidence, as noted in general legal principles.

3. Prevention of Parallel Proceedings under Section 6(2)(b) of the CGST Act, 2017

Section 6(2)(b) is a critical provision designed to prevent dual control and harassment. The Supreme Court's landmark ruling in Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East Commissionerate [2025] 177 taxmann.com 478 (SC)/[2025] 111 GST 400 (SC)/[2025] 101 GSTL 289 (SC)[14-08-2025] has provided definitive clarity on this aspect.

Scan / Tap: judgment

- **Landmark Interpretation of 'Initiation of Proceedings' and 'Same Subject Matter':** The Supreme Court in *Armour Security (India) Ltd.* laid down the following binding principles:
- The expression "initiation of any proceedings" in Section 6(2)(b) refers to the **formal commencement of adjudicatory proceedings by way of issuance of a show cause notice**, and *does not encompass* preliminary steps like issuance of summons, or conduct of any search or seizure. This is a crucial distinction, meaning investigative actions by one authority do not bar the other from initiating an SCN if it is the first to do so.
- The "subject matter" refers to any tax liability, deficiency, or obligation arising from a particular contravention that the Department seeks to assess or recover. The Court provided a **two-fold test** for determining if a subject matter is "same": (1) whether an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts, and (2) whether the demand or relief sought is identical.
- The Court emphasized the "first-in-time" principle: once one tax administration (Central or State) has initiated intelligence-based enforcement action leading to formal adjudicatory proceedings, the other administration is barred from commencing parallel adjudicatory proceedings on the *same subject matter*.
- **Application by High Courts:** Subsequent High Court decisions have consistently applied the Armour Security principles:
- In Shub Conductors LLP *vs. Joint Commissioner Central Tax GST vs. Delhi East Delhi* (2026) 46 Centax 355 (Del.), the Delhi High Court held that since the CGST SCN was issued *before* the SGST notices for overlapping periods, the statutory bar under Section 6(2)(b) was not attracted. This reinforces the 'first-in-time' rule for formal adjudicatory proceedings.

- The Orissa High Court, in Commissioner vs. CGST and Central Excise vs. Rourkela vs. Tansam Engineering and Construction Company [2025] 179 taxmann.com 375 (Orissa)/[2025] 102 GSTL 280 (Orissa)[14-10-2025], quashed Central SCNs and orders because the State GST authorities had initiated Section 74 proceedings on the *same subject matter* (wrongful ITC on identical invoices and periods) *earlier* than the Central authorities. The Court explicitly relied on *Armour Security* to state that summons or inquiry steps do not amount to initiation of proceedings; only the SCN signifies formal commencement.
- Similarly, the Himachal Pradesh High Court, in Saraswati Spinning and Weaving Mills v. State of H.P. [2026] 182 taxmann.com 765 (Himachal Pradesh)/[2026] 106 GSTL 273 (Himachal Pradesh)[07-01-2026] and H.M. Steels Ltd. v. Joint Commissioner, State Taxes and Excise [2026] 185 taxmann.com 497 (Himachal Pradesh)/[2026] 115 GST 289 (Himachal Pradesh)/[2026] 109 GSTL 71 (Himachal Pradesh)[09-04-2026], consistently applied Armour Security, directing authorities to coordinate and ensure only one adjudicatory process proceeds for the same subject matter and period, while allowing bona fide investigative steps to continue as long as they do not mature into parallel adjudication.
- **Distinction between Search/Seizure and Adjudication:** The Delhi High Court, in *Armour Security India Ltd. v. Commissioner, CGST Delhi East* (2025) 27 Centax 329 (Del.) (which was affirmed by the Supreme Court in the landmark *Armour Security* case), clarified that an investigation or summons issued pursuant to a search is a precursor to proceedings and stands distinct from formal adjudication under Section 73 or 74. A search may unearth new material, and merely seeking information at that stage does not constitute parallel proceedings under Section 6(2)(b).
- **Different Subject Matter:** The Delhi High Court, in *SHRI Krishna Industries v. Commissioner of Central Goods and Services Tax* (2026) 46 Centax 282 (Del.), held that even if the assessee and period are common, if the underlying contravention and investigative material are distinct (e.g., different GSTINs for the supplier, different intelligence inputs), the "same subject matter" test is not met, and Section 6(2)(b) would not bar parallel proceedings.

4. Constitutional Writ Remedies under Article 226

While the GST Act provides a robust appellate mechanism, the extraordinary writ jurisdiction of High Courts under Article 226 of the Constitution of India remains a vital safe-

guard. However, courts have consistently emphasized that this remedy is to be used sparingly and only in exceptional circumstances.

- **Exhaustion of Statutory Remedies:** The Supreme Court, in Kapil Arora v. Union of India [2026] 191 taxmann.com 223 (SC)/[2026] 118 GST 201 (SC)[05-10-2026] and *Kapil Arora v. Union of India* (2026) 47 Centax 169 (S.C.), dismissed Special Leave Petitions (SLPs) against High Court orders that had rejected writ petitions challenging SCNs and orders-in-original. The High Court had held that statutory appellate remedies under Section 107 were efficacious and capable of examining both facts and law. The Supreme Court affirmed that while alternative remedy is not an absolute bar, the cases did not meet the recognized exceptions (like patent lack of jurisdiction or manifest procedural violation). Allegations of natural justice breaches or evidentiary disputes were deemed fit for the appellate forum. The Court also noted that parallel invocation of writ jurisdiction when a statutory appeal has already been filed is not maintainable.

- **Exceptional Circumstances for Writ Intervention:** The principle reiterated across various High Court judgments, such as *Assistant Commr. of CGST & C. Ex. v. Madurai v. Hi-Tech Arai Pvt. Ltd.* 2022 (58) G.S.T.L. 272 (Mad.) and *Sarvasiddhi Agrotech Pvt. Ltd. v. Union of India* 2020 (42) G.S.T.L. 192 (Tripura), is that writ petitions are generally not entertained without exhausting the appeal remedy, *except* in two well-recognized exceptions: (1) **want of jurisdiction** (where the authority acts without legal power or exceeds its jurisdiction), or (2) **violation of principles of natural justice** (e.g., denial of a fair hearing, unreasoned orders). Even in these cases, the High Court exercises its discretion cautiously.

- **Factual Disputes vs. Legal Questions:** Courts are reluctant to entertain writ petitions involving disputed questions of fact, as these are best resolved by the fact-finding appellate authorities. The Supreme Court in Vyome Therapeutics Ltd. v. Commissioner of CGST [2026] 191 taxmann.com 418 (SC)[12-10-2026] dismissed an SLP, affirming the High Court's decision to relegate the assessee to statutory appeal where the applicable limitation provision for a demand was debatable and required factual examination, which is unsuited for writ scrutiny.

- **Limitation and Writ Jurisdiction:** While statutory appellate authorities are bound by strict limitation periods (as seen in State of U.P. v. Umair Traders [2024] 166 taxmann.com 672 (Allahabad)/[2024] 90 GSTL 193 (Allahabad)/[2024] 106 GST 378 (Allahabad)[12-09-2024] and *Radhika Furniture @ Radha Devi v. Commissioner, State*

Goods and Services Tax (2026) 44 Centax 276 (Uttarakhand), which held that Section 5 of the Limitation Act, 1963, is impliedly excluded beyond the prescribed period under Section 107), High Courts, in their writ jurisdiction, may sometimes provide relief. For instance, in *Commissioner v. Central Goods and Services Tax v. Shree Shakti Minerals* (2024) 21 Centax 542 (Raj.), the Rajasthan High Court entertained a writ petition and quashed an order dismissing an appeal as time-barred, stating that the powers under Article 226 are founded on justice, equity, and good conscience and are exercised for public good, and Section 107 limitations are not applied in a writ proceeding. However, this is an exercise of discretion and not a right.

- **Interim Protection against Arrest:** In *P.V. Ramana Reddy v. Union of India* 2019 (25) G.S.T.L. 185 (Telangana), the High Court held that since no First Information Report (FIR) is registered before the power of arrest under Section 69(1) is invoked, taxpayers cannot seek anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973. Therefore, the only recourse for protection against pre-prosecution arrest is to invoke the writ jurisdiction of the High Court under Article 226. However, the Court cautioned that this power should be exercised sparingly and only in appropriate cases, considering the nature of allegations (e.g., large-scale fraudulent Input Tax Credit claims).

5. Handling Aggressive Departmental Actions

In light of the statutory provisions and judicial pronouncements, taxpayers facing aggressive departmental audits or summons should consider the following:

- **During Audits (Section 65):** Ensure strict adherence to procedural timelines and requirements. If the 15-day notice period is not provided or if a proper opportunity to respond to discrepancies is denied, these can be grounds for challenging the audit findings, as seen in Alleppey Company Ltd. and Vardhaman Gold. If multiple wings of the department initiate proceedings for the same period, refer to R. P. Buildcon Pvt. Ltd. to argue for a single, consolidated proceeding.
- **During Summons (**Section 70**):** Comply with summons, but be aware of your rights. Statements made are judicial proceedings but do not automatically grant Article 20(3) protection. If coercion is suspected, retract the statement at the earliest opportunity. Remember that summons for inquiry do not, by themselves, constitute 'initiation of proceedings' that would bar parallel action under Section 6(2)(b), as clarified in Armour Security (India) Ltd. and G.K. Trading Company.

- **Parallel Proceedings (Section 6(2)(b)):** The *Armour Security (India) Ltd.* judgment is your strongest defense. If an SCN has already been issued by one authority (Central or State) on the *same subject matter* (identical tax liability/contravention on same facts, with identical demand/relief), then the other authority is barred from initiating parallel adjudicatory proceedings. It is crucial to identify which authority initiated the formal adjudicatory process first. Promptly bring this to the attention of the authorities involved.
- **Constitutional Writ Remedies (Article 226):** While generally a last resort, writ petitions are appropriate in cases of:
- **Patent lack of jurisdiction:** Where the tax authority clearly acts beyond its legal powers.
- **Gross violation of natural justice:** Such as complete denial of hearing, unreasoned orders, or failure to follow mandatory procedures that cause prejudice.
- **Violation of fundamental rights:** Though rare in tax matters, this remains a ground.
- **Constitutional challenge to a provision:** If the validity of a statutory provision itself is in question.

However, for factual disputes or mere procedural irregularities that can be rectified in appeal, courts will likely direct taxpayers to exhaust the statutory appellate hierarchy. The Supreme Court's consistent stance in cases like Kapil Arora and *Bekem Infra Projects Ltd. v. Deputy Commissioner of State Tax* (2026) 41 Centax 378 (S.C.) is to discourage bypassing the efficacious statutory appeal remedy. If a writ petition is filed, and subsequently dismissed on the grounds of alternative remedy, the courts may allow for the exclusion of time spent in writ proceedings for limitation purposes in the statutory appeal, as noted in Shub Conductors LLP and Vyome Therapeutics Ltd..

It is important to note that the Income-Tax Act, 2025 (effective 1 April 2026) is a re-enactment of the Income-Tax Act, 1961. The judicial precedents discussed above, decided under the CGST Act, 2017, remain fully applicable as the corresponding provisions in the GST framework have not undergone material changes that would alter the principles laid down by these rulings. The principles regarding audits, summons, parallel proceedings, and writ remedies are general and continue to hold force in the current GST regime

6. Editorial Perspectives on GST Audits, Summons, and Dual Control

Building upon the statutory provisions and judicial interpretations regarding GST audits, summons, and the prevention of parallel proceedings, editorial commentaries offer valuable insights into the administrative intent, practical challenges, and proposed solutions that shaped the GST regime.

6.1 Administrative Approach to GST Audits (Section 65)

Early editorial content, particularly from July 2017, immediately after the GST rollout, highlighted the government's proactive approach in establishing a detailed roadmap for GST audits. Key administrative aspects emphasized included:

- **Risk-Based Selection:** The government swiftly developed a system for selecting audit cases based on **Big Data analytics**, utilizing statistics from previous financial years to identify risk areas and potential auditees. This approach aimed to focus on outliers and anomalies in tax payments compared to industry averages.
- **Focus on Transition Credits:** Initial audits were specifically designed to scrutinize **credit transfers or transitions from the erstwhile indirect tax regimes (Excise and Service Tax) to GST**. This was identified as a primary area where companies might have manipulated the system, leading to a significant focus on these aspects during early audits.
- **Taxpayer Facilitation:** Instructions were issued to tax officials to cause the **least inconvenience to auditees** and to **educate taxpayers**, especially small and medium enterprises (SMEs), on the new regime. However, industry experts noted that this dual focus on earlier legislation and GST simultaneously increased the compliance burden and effort for many companies.

6.2 Conceptual Framework for Compliance Verification

Commentaries on tax administration reforms underscored the importance of a clear conceptual distinction between different prongs of the compliance verification system:

- **Return Scrutiny vs. Audit vs. Anti-Evasion:** Experts advocated for a distinct approach, suggesting that **return scrutiny** should primarily focus on smaller units based on risk parameters and reconciliation with income tax data. **Audits**, on the other hand, were proposed for larger units, focusing on reconciling returns with financial records and evaluating internal control systems. **Anti-evasion** efforts were to be reserved for cases

of suppression of facts and clandestine transactions, leveraging information sharing among various tax departments.

- **Centre-State Collaboration:** The need for **standardized manuals for return scrutiny, audit, and anti-evasion**, common training programs, and administrative structures (like a GST secretariat in each state) was emphasized to foster collaboration and skill development among tax officers. This was seen as crucial for achieving efficiencies and ensuring a consistent approach across the Centre and states.

6.3 Addressing Dual Control and Parallel Proceedings (Section 6(2)(b))

Editorial discussions prior to GST implementation extensively highlighted the **turf war and administrative concerns between Central and State revenue officials** over control of taxes and assessments. These discussions provide crucial context for the legislative intent behind Section 6(2)(b) and the subsequent judicial clarity provided by the Supreme Court in Armour Security (India) Ltd.:

- **Administrative Tensions:** States often pressed for exclusive authority over tax assessment and dispute resolution for entities up to a certain turnover threshold, fearing that most service tax cases would move out of the Centre's domain. Concerns were raised about potential **dual authority** for larger cases, leading to increased litigation and harassment due to conflicting views from different authorities.
- **Proposed Solutions for Dual Control:** To mitigate these issues, experts suggested various solutions, including a **bifurcation of taxpayer control** based on the nature of business (e.g., single-state businesses under State control, multi-state/national businesses under Central control) and revenue share. A significant proposal was the implementation of **joint audit teams**, where if an audit was led by one authority (Central or State), an officer from the other authority would be part of the team. This was intended to ensure balanced views during audits, inspections, searches, and seizures, thereby protecting the interests of all stakeholders and preventing one-sided assessments. The establishment of **coordination committees** at various levels and a mechanism to refer disagreements to the GST Council were also proposed to foster inter-departmental harmony and consistency.

These editorial insights provide a deeper understanding of the administrative philosophy, initial challenges, and proposed structural solutions that underpinned the GST framework, complementing the statutory provisions and judicial interpretations.

Final Conclusion

While statutory provisions outline the framework for GST audits and summons, and judicial pronouncements, particularly the Armour Security (India) Ltd. Supreme Court ruling, have definitively clarified the 'first-in-time' principle for formal adjudicatory proceedings under Section 6(2)(b) to prevent parallel actions, editorial commentaries further illuminate the administrative intent behind these mechanisms. These commentaries highlight the early focus on risk-based audits using data analytics, the initial emphasis on scrutinizing transition credits, and the underlying administrative challenges of dual control that necessitated clear distinctions between compliance verification methods and collaborative Centre-State approaches, ultimately aiming to streamline processes and reduce taxpayer harassment, though writ remedies remain a last resort for exceptional circumstances.

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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.



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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.

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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.*

Thank You

For suggestions, feedback, or contributions to the magazine, we would be glad to hear from you.

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