

# Compilation of Important GST Cases (2025)

# Tattvam's Indirect Tax Practice

A flagship practice led by seasoned professionals with deep expertise in litigation, advisory, and investigations for **corporates and MNCs** across India.

## Team Strength

- **4 Partners** with extensive experience (Ex-LKS / Big 4 firms)
- Includes **2 Ex-Chief Commissioners** of GST, bringing invaluable government and enforcement insight
- **75+ total team members**, comprising over 30 CAs & Advocates
- Former senior bureaucrats with specialized litigation expertise, ensuring robust defense and strategy

## Scope of Services

- **GST Litigation:** Comprehensive support from adjudication at initial stages up to the Supreme Court
- **Investigations:** Expert handling of cases involving DGCI, search, seizure, and summons
- **Advisory:** Strategic counsel on transaction structuring, classification, valuation, and refunds
- **Compliance:** Detailed audits, assessments, and regular GST health checks to ensure adherence

## Client Base & Network

- Serving **250+ Corporates & MNCs** across diverse industries and sectors
- Recognized as a **Knowledge Partner** by prestigious organizations like PHD Chamber, Assocham, and Taxsutra
- Extensive reach across **25+ States**, supported by a strong local associate presence for seamless execution and localized expertise



# Supreme Court Decisions

CONSTITUTIONAL LAW

# Radhika Agarwal v. Union of India

Supreme Court upholds constitutional validity of arrest provisions under GST Act with mandatory procedural safeguards

**Citation:** 2025 (2) TMI 1162 – Supreme Court (LB)

**Key Issue:** Whether arrest provisions under Customs Act, 1962 and CGST Act, 2017 are constitutionally valid and whether procedural safeguards under CrPC apply to arrests made by customs/GST officers

**Constitutional Challenge:** Petitioners contended that arrest powers under Sections 69 and 70 of the CGST Act were arbitrary, lacked safeguards, and violated Articles 14 and 21 of the Constitution

## **Statutory Provisions**

Section 132(5) CGST Act requires satisfaction of specific conditions before arrest can be made for non-bailable offences



## Facts and Background

### Challenge Raised

Constitutional challenge relating to arrest powers under Customs Act, 1962 and CGST Act, 2017, particularly Sections 69 and 70 of the CGST Act

### Petitioners' Contentions

Arrest provisions were arbitrary, lacked adequate safeguards, and violated fundamental rights guaranteed under Articles 14 and 21 of the Constitution

### Scope of Challenge

Challenge extended to provisions classifying certain offences as cognizable and non-bailable under the GST framework

## Supreme Court Ruling

### GST Acts Not Complete Code

GST Acts are not a complete code for search, seizure and arrest. Provisions of the Criminal Procedure Code (CrPC) apply when not expressly or impliedly excluded

### Commissioner's Burden

Commissioner must satisfactorily show through recorded reasons to believe that person to be arrested has committed non-bailable offence and pre-conditions of Section 132(5) are satisfied

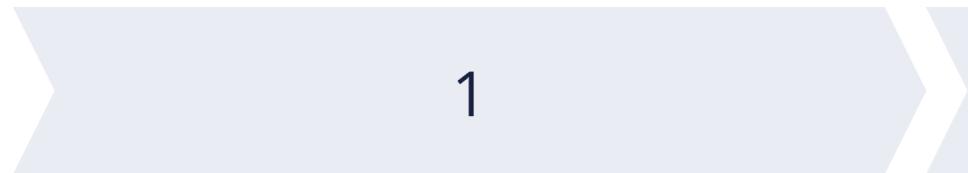
### Arrest Not Investigative Tool

Arrest cannot be made merely to investigate whether conditions of Section 132(5) are being met. Power of arrest should be used with great circumspection and not casually

### Timing of Arrest

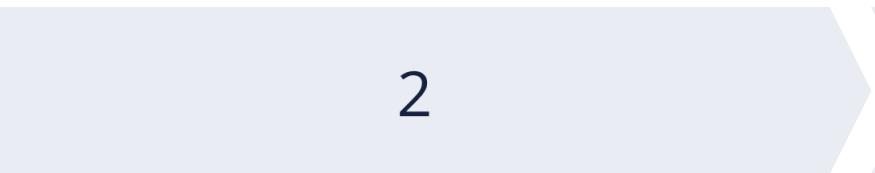
Power under Section 132(5) can be exercised even before assessment procedure under Section 73 is completed, but with strict adherence to statutory conditions

## Critical Safeguards Established

 1

### CBIC Instructions

Instruction No. 02/2022-23 dated 17 August 2022 and Instruction No. 01/2025-GST dated 13 January 2025 to be read with Supreme Court directions

 2

### Prohibition on Coercion

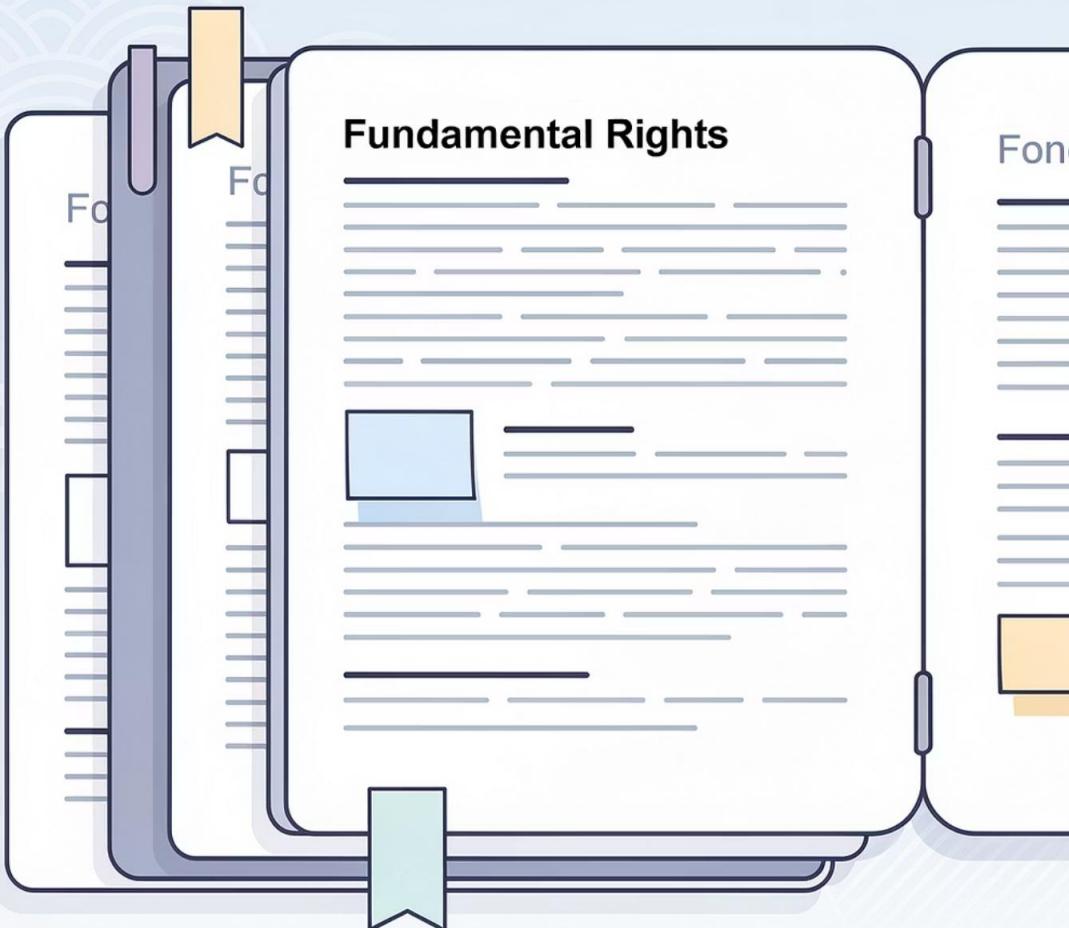
Coercion and threat to arrest amounts to violation of fundamental rights and law of the land. CBIC required to formulate clear guidelines

 3

### Anticipatory Bail

Application for anticipatory bail need not wait for FIR filing. Can be moved when reasonable apprehension of arrest exists

The Court emphasized that while there should not be any attempt to dictate the investigator, there should simultaneously not be any misuse of power and authority. Notes on the file must offer convincing justification for resorting to the extreme measure of arrest.



## Constitutional Validity Affirmed

### Legislative Competence Upheld

Sections 69 and 70 of the CGST Act declared constitutionally valid. The Court rejected the submission that powers to summon, arrest and prosecute are not ancillary and incidental to the power of levying GST.

These enforcement powers fall squarely within Parliament's legislative competence under Article 246-A of the Constitution, which grants concurrent power to levy and collect GST.



### Balancing Act

This landmark judgment balances interests of both Department and taxpayers, reaffirming that arrest provisions are not punitive or recovery tools but exceptional powers requiring strict safeguards.

PARALLEL PROCEEDINGS

## Armour Security India Ltd v. Commissioner

Issuance of summons is not "initiation of proceedings" under Section 6(2)(b)

**Citation:** 2025 (8) TMI 991 – Supreme Court

### Facts

Central GST Authorities issued summons against assessee while State GST Authorities had already commenced proceedings.

Reliance placed on Section 6(2)(b) to argue bar on parallel proceedings.

### Key Issue

Whether issuance of summons under Section 70 constitutes "initiation of proceedings" under Section 6(2)(b) of the CGST Act

## Supreme Court's Interpretation



### Summons vs. Proceedings

Issuance of summons, search or seizure does not amount to "initiation of proceedings" under Section 6(2)(b). Expression refers only to formal issuance of show-cause notice.



### Investigation Activities

Inquiry, investigation, summons or evidence-gathering actions are not proceedings for purposes of Section 6(2)(b). These are preliminary investigative steps.



### Subject Matter Definition

"Subject matter" refers to specific tax liability, deficiency or obligation arising from particular contravention sought to be assessed or recovered.

### 1 Identical Tax Liability Test

Whether an authority has proceeded on identical tax liability or alleged offence on the same facts

### 2 Identical Relief Test

Whether the demand or relief sought is identical in both proceedings



# Guidelines for Parallel Proceedings

## Taxpayer's Duty to Inform

Where assessee becomes aware that matter being investigated is already subject of inquiry by another authority, assessee must inform in writing to authority that initiated subsequent investigation

## Authority's Right to Verify

Tax authorities have right to verify claim and conduct inquiry or investigation until it is ascertained that both authorities are examining identical liability or contravention

## Communication of Decision

When subject matter found different, authorities must intimate taxpayer along with reasons. When same, authorities decide inter-se which shall continue

## Default Rule

In case of non-decision between authorities, first authority to take matter continues for conclusion of proceedings

## Significance

### Roadmap for Multiple Investigations

This significant decision provides clarity for taxpayers facing multiple investigations by Central and State GST authorities. It balances cross empowerment with protection against duplicative adjudication.

The decision provides detailed roadmap to be followed in case of multiple investigations by different tax authorities to ensure no duplication of proceedings on same subject matter.

### Clear Demarcation

Decision clearly demarcates between investigation and adjudication, which will likely reduce misuse of Section 6 of the CGST Act to stall inquiries.



#### Divergent Views

View taken by Supreme Court and Delhi High Court differs from view taken by Jharkhand High Court in *Vivek Narsaria v. State of Jharkhand*



## EXEMPTION - RESIDENTIAL DWELLING

## State of Karnataka v. Taghar Vasudeva

Leasing of premises used as hostels qualifies as renting of "residential dwelling for use as residence"

**Citation:** 2025 (12) TMI 505 – Supreme Court

The Supreme Court settled the long-standing dispute regarding GST on hostel accommodations, adopting a purposive and functional interpretation focusing on actual end-use rather than lessee's registration status.

## Facts and Context

### Lease Arrangement

Assessee leased residential building to company which operated premises as hostel providing long-term accommodation (3-12 months) to students and working professionals

### Property Classification

Property classified as residential under municipal records and not used as hotel, lodge, guest house or for transient accommodation

### Dispute Period

Period in dispute related to pre-amendment of exemption entry i.e. prior to 18.07.2022, when Entry 13 of Notification 09/2017-IT did not exclude renting to registered persons

## Supreme Court's Analysis

### Definition of Residential Dwelling

Expression "residential dwelling" not defined under GST law and must be understood in common parlance as place meant for habitation or living, not limited by number of rooms or occupants

### Hostels as Residential Use

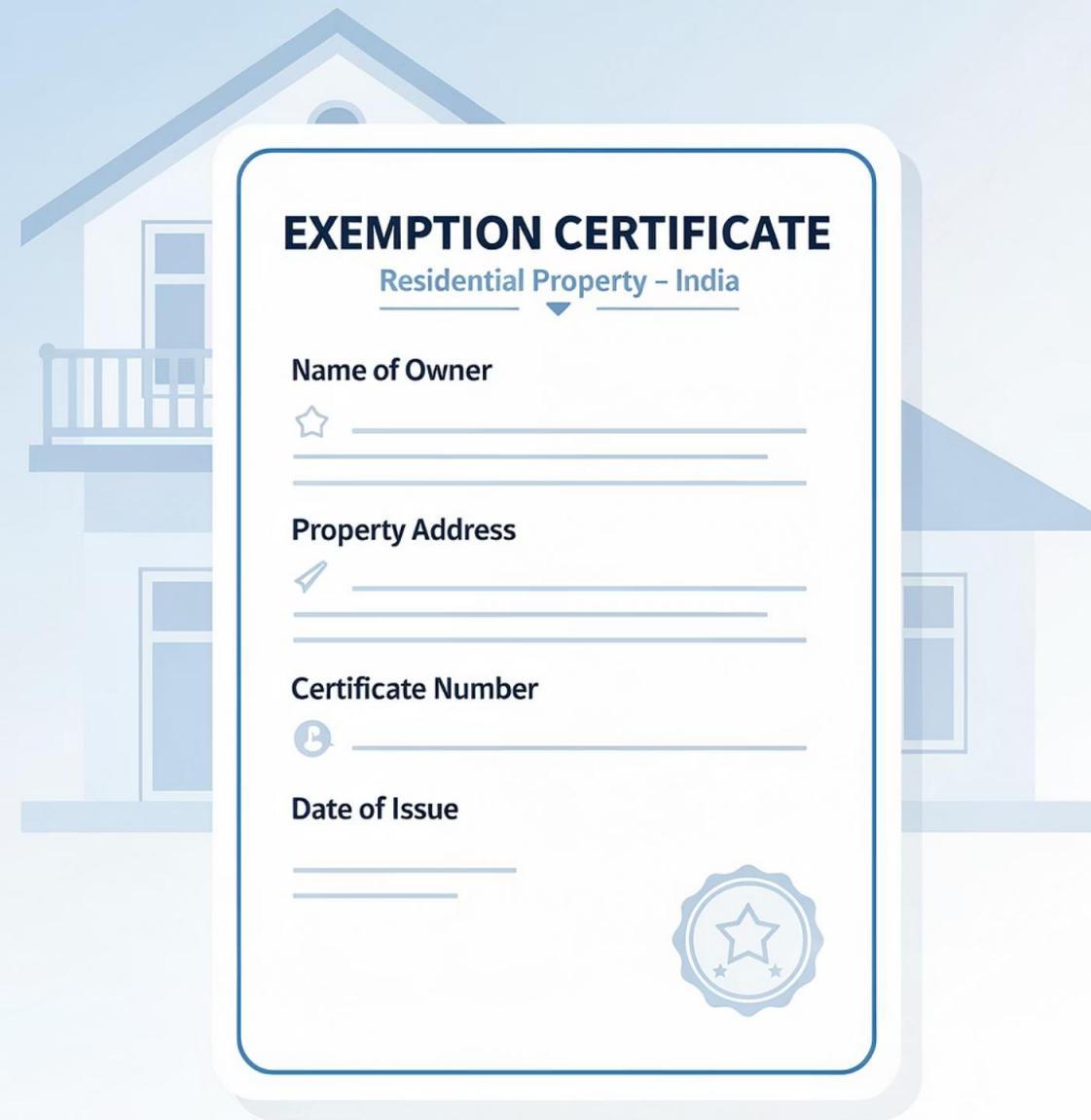
Hostels providing long-term accommodation to students and working professionals constitute residential use and cannot be equated with hotels, inns, guest houses meant for temporary stay

### End-Use Test

Entry 13 requires residential dwelling be "used as residence" and does not mandate that immediate lessee itself must reside in premises. Use by sub-lessees or occupants satisfies condition

### Registration Status Irrelevant

Leasing to registered company acting as aggregator or sub-lessor does not alter residential character of use. Focus is on actual purpose, not legal form



## Key Principles Established

### Beneficial Exemption

Entry 13 is activity-specific and beneficial exemption, intended to keep residential renting outside GST net. The Supreme Court adopted liberal construction favoring taxpayer.

### Prospective Amendment

Amendment to Entry 13 effective from 18.07.2022, excluding renting of residential dwelling to registered person, is prospective in nature and cannot be applied to deny exemption for prior periods.



#### Critical Distinction

Most important criteria is whether accommodation is provided for long-term or short-term period. Long-term accommodation qualifies as residential use.

## PENALTY PROVISIONS

# Godway Funicrafts v. State of Andhra Pradesh

Penalty under Section 74 is unsustainable in absence of malafide intention

**Citation:** 2025 (8) TMI 320 – SC Order

## Procedural Safeguard

Ground pleaded in writ petition cannot be rejected in review merely because it was not argued earlier. Courts have duty to examine all pleaded grounds.

## Mens Rea Requirement

Imposition of penalty under Section 74 necessarily requires proof of fraud or wilful concealment. Penalty cannot be sustained on mere assumptions.

## Substantive Rights Protected

All grounds mentioned in written reply ought to be considered by adjudicating authority, irrespective of whether elaborated during hearing proceedings.

## Facts and High Court Proceedings

Taxpayer was subjected to proceedings under Section 74 of the CGST Act, resulting in imposition of 100% penalty. In review petition, the High Court declined to examine validity of penalty on ground that issue was not argued during original writ hearing, though specifically pleaded in writ petition.

Taxpayer filed review application seeking adjudication on penalty issue. High Court rejected review on procedural grounds, holding that contention could not be raised at review stage.

### Supreme Court's Direction

Matter remanded to High Court for fresh consideration of penalty issue on merits. Procedural irregularities cannot defeat substantive rights.

## Principles Flowing from this Ruling



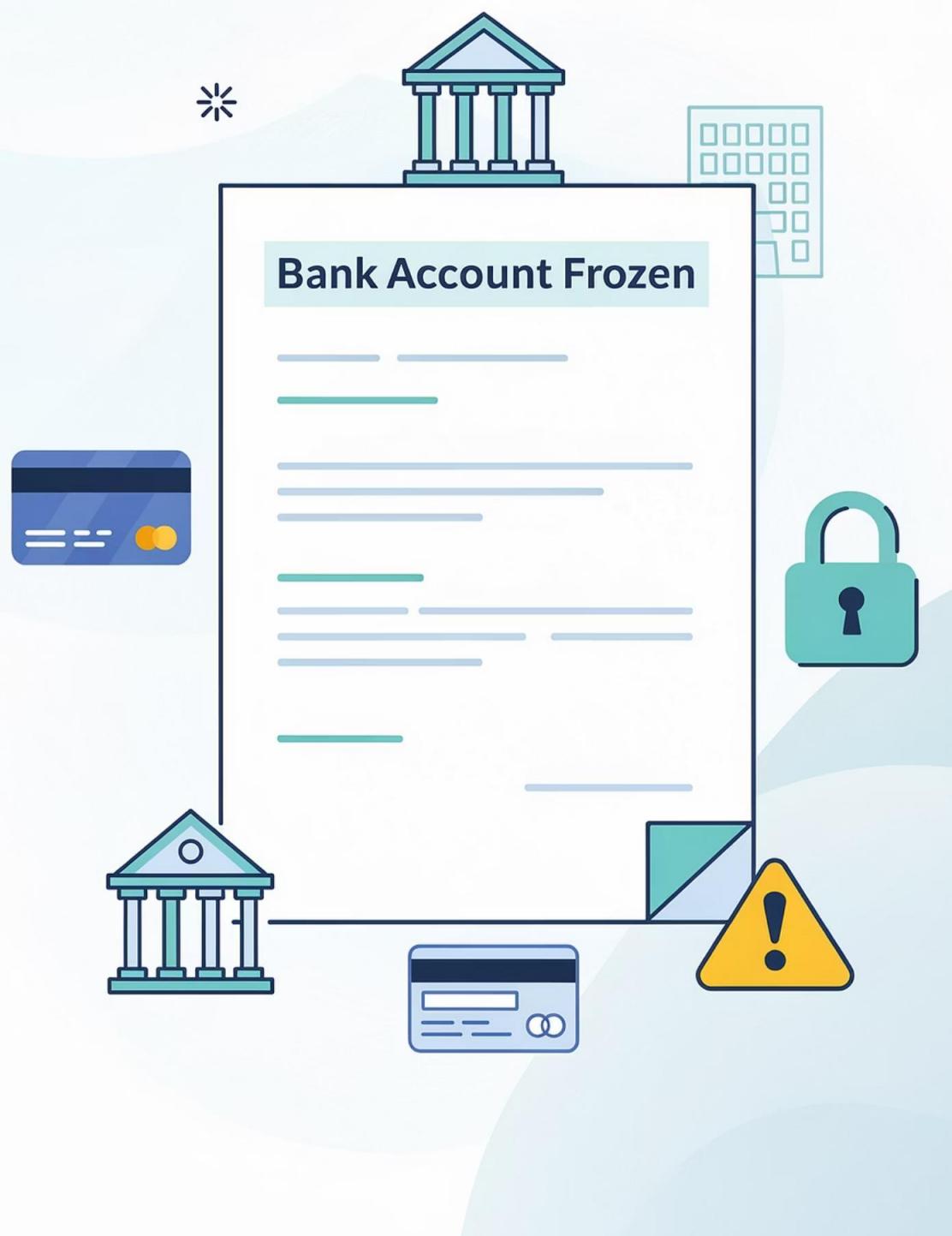
### Protection from Procedural Irregularities

Ruling seeks to protect substantive rights of taxpayer from procedural irregularities. All pleaded grounds must receive judicial consideration



### Affirmation of Mens Rea

Supreme Court accepted the contention that imposition of 100% penalty was not correct as fraud or wilful concealment was not proved by the department



PROVISIONAL ATTACHMENT

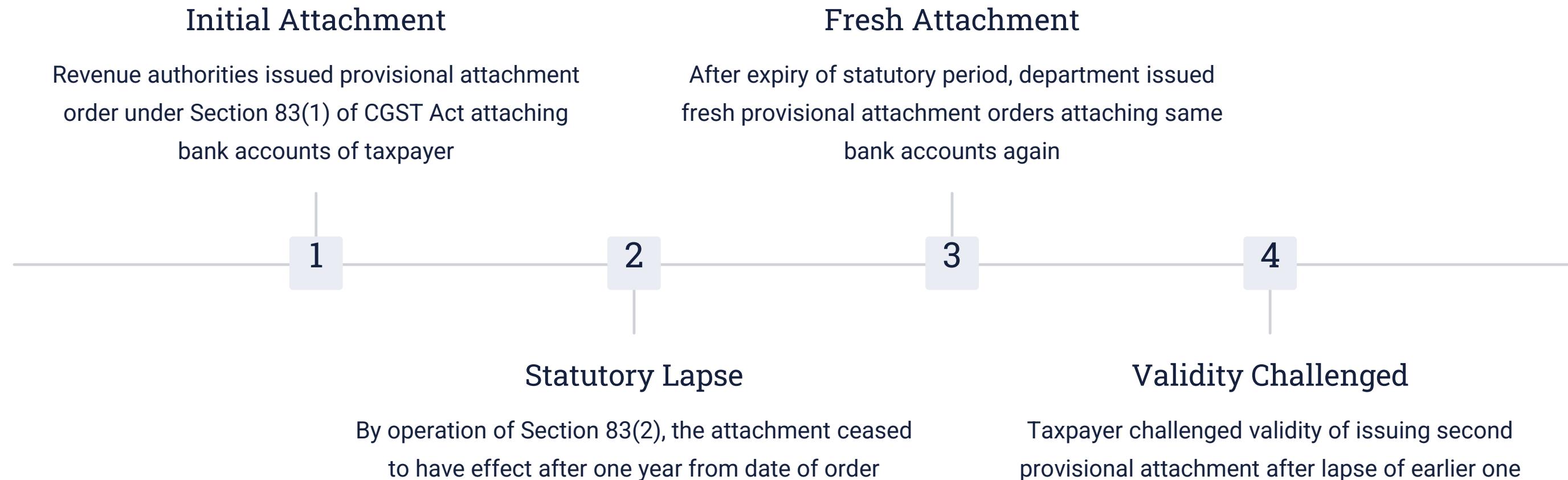
## Kesari Nandan Mobiles v. Assistant Commissioner

No power to issue fresh provisional attachment after one year lapse under Section 83

**Citation:** 2025 (8) TMI 992 – Supreme Court

This landmark decision reinforces that Section 83 is temporary and time-bound measure, not a tool for continuous coercion. The ruling will prevent misuse of provisional attachment as substitute for adjudication or recovery proceedings.

## Facts and Legal Challenge



## Supreme Court's Reasoning

### Draconian Power Requires Strict Construction

Section 83 confers draconian and extraordinary power, which must be strictly construed. Executive power cannot be exercised in manner inconsistent with statutory provisions; it can only supplement, not supplant the statute

### Section 83(2) Would Become Otiose

Section 83(2) clearly provides that provisional attachment automatically ceases after one year. Permitting issuance of second or renewed attachment would render Section 83(2) otiose and defeat legislative intent

### No Statutory Provision for Renewal

Statute does not contemplate repeated or successive provisional attachments once statutory period expires. Allowing such renewal would amount to conferring additional power on revenue, beyond what legislature intended

### Without Authority of Law

Consequently, issuance of second provisional attachment after lapse of first is without authority of law and violative of constitutional principles

## Rationale and Impact

### Legislative Intent

Rationale given by Supreme Court is consistent with objective sought to be achieved by legislature. Attachment of bank accounts causes significant financial hardships to taxpayers.

### Prevention of Misuse

If extension were allowed, this provision could be highly misused as coercion tool for tax recovery. Decision prevents use of provisional attachment as substitute for due adjudication process.



#### Time-Bound Measure

Section 83 is temporary and time-bound measure to protect revenue interest during investigation, not continuous coercive tool. After one year, department must proceed through regular adjudication channels.

## LIABILITY OF EMPLOYEES

# Union of India v. Shantanu Hundekari

Penalty under Section 122(1A) cannot be invoked against non-taxable persons

**Citation:** 2025 (1) TMI 1249 – SC Order

## Facts

Petitioner was employee of Maersk and power of attorney holder of Maersk, but not a taxable person under CGST Act. Show cause notice issued proposing penalty equivalent to tax under Section 122(1A)

## Quantum Involved

Notice alleged liability of approximately ₹3,731 crores, which on face of notice itself was attributable to Maersk and not petitioner

## Lack of Evidence

No material in show cause notice demonstrated that petitioner had retained benefit of ITC, or that transactions were conducted at his instance

## Earlier Bombay HC Judgment

1

### Taxable Person Requirement

Section 122 is penalty provision applicable only to "taxable person", and sub-section (1A) necessarily presupposes existence of taxable person

2

### Benefit Retention Test

Section 122(1A) cannot be invoked unless shown that person retained benefit of tax evasion or wrongful ITC, or that transaction was conducted at his instance

3

### No Vicarious Liability

GST law does not recognise principle of vicarious liability for civil penalties. Such liability cannot be read into Sections 122 or 137 by implication

# Statutory Interpretation

## Section 122 Read with Definitions

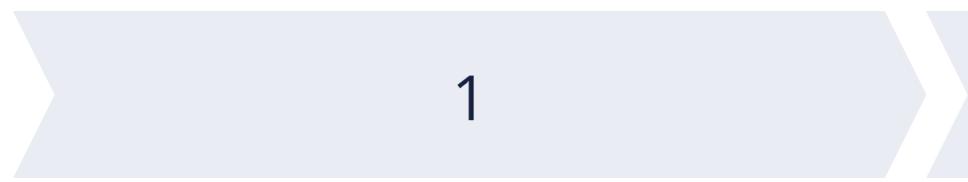
Statutory scheme of Section 122 read with Section 2(94) and Section 2(107) makes it clear that provision cannot be stretched to include employees or agents who are not taxable persons.

## Section 137 Does Not Create Automatic Liability

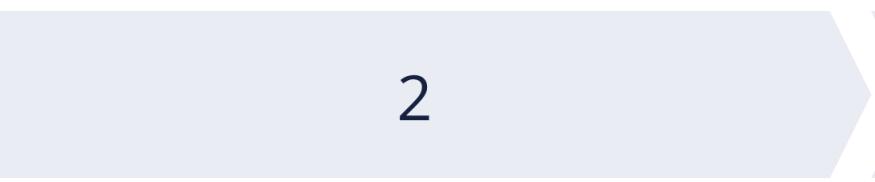
Section 137, which deals with offences by companies, also does not create any automatic or vicarious liability, and cannot be invoked in absence of foundational facts establishing statutory responsibility.



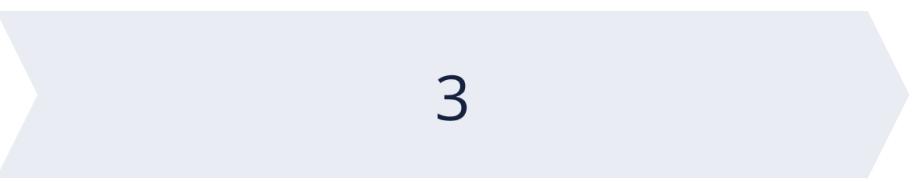
## Supreme Court Judgment

 1

The High Court after assigning cogent reasons took the view that the employee of the Company and he could not have been fastened with the liability of Rs. 3731 Crore

 2

No reason to interfere with the judgment of the High Court

 3

The question of law regarding interpretation of Section 122(1A) and Section 137 - kept open

## Commentary and Open Issues

### Jurisdictional Discipline

Judgment serves as strong affirmation of jurisdictional discipline in GST penalty proceedings. Non-taxable person cannot be made vicariously liable where such person has not retained benefit of specified transactions

### Penalties Prescribed Qua Employees

Though the SC did not give a ruling on the question of law, it agreed with the judgment of the Bombay High Court that the respondent, being only an employee, cannot be fastened with hefty penalty.

### Divergent View - Open Question

View different from Delhi High Court in Gurudas Malik Thakur v. Commissioner, 2025 (5) TMI 227. Supreme Court has left question of law open in this case

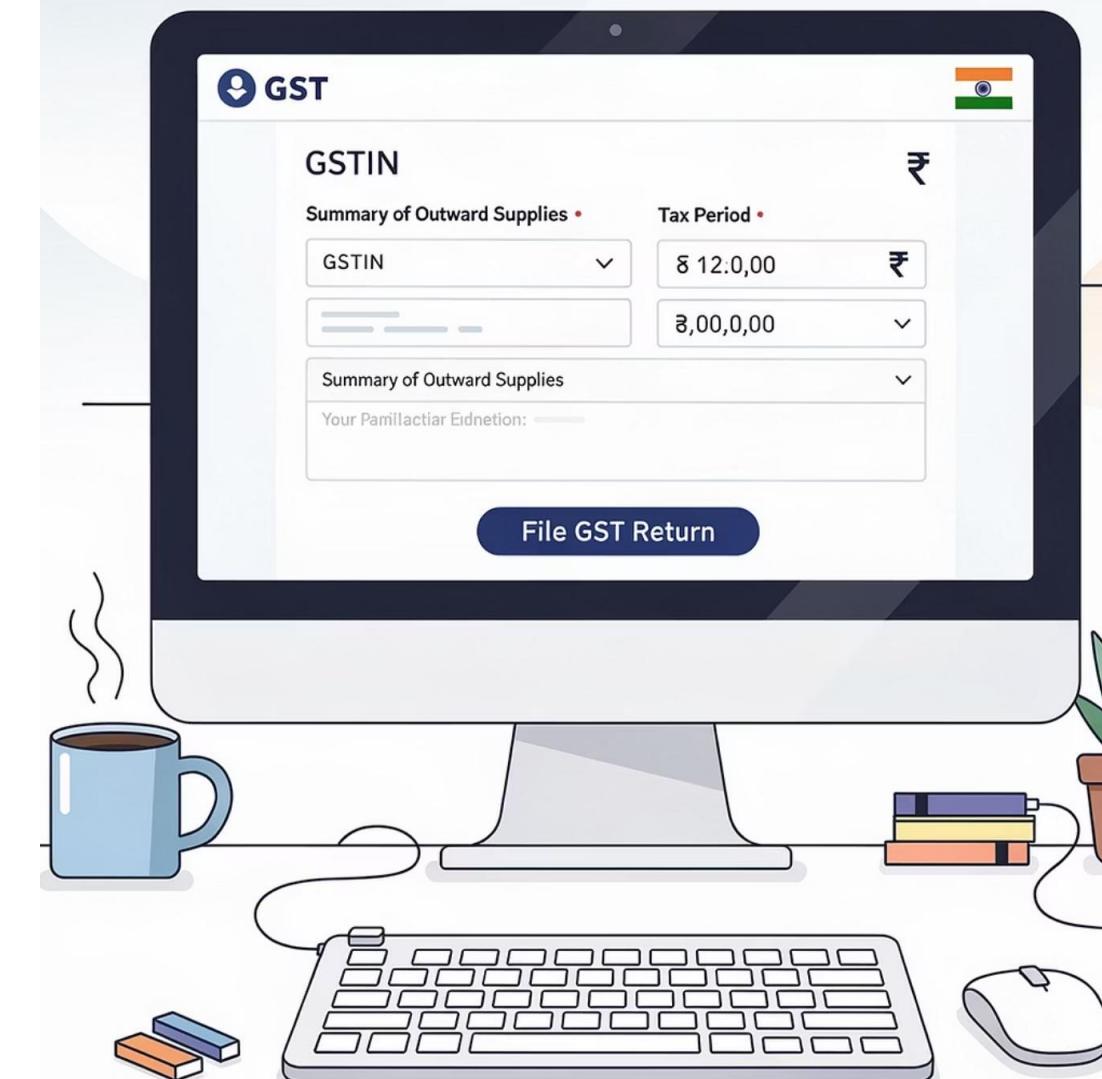
## RETURN RECTIFICATION

## CBIC v. Aberdare Technologies

Rectification of GST returns should be allowed beyond statutory timeline when there is no revenue loss

**Citation:** 2025 (4) TMI 101 – SC Order

Supreme Court has emphasized taxpayer-friendly and pragmatic approach aligning with principles of ease of doing business. Right to correct bona fide errors flows from right to do business itself.



## Facts and High Court Direction

Assessee sought amendment/rectification of Form GSTR-1 and Form GSTR-3B due to clerical/arithmetical errors. GST portal did not permit rectification beyond prescribed timelines.

Bombay High Court had directed revenue to enable Assessee to revise GST returns. Revenue challenged High Court order before Supreme Court.

### **Revenue Neutral**

Transaction was revenue neutral with no loss to exchequer. Denial of rectification would cause undue hardship to taxpayer without any benefit to revenue.

## Supreme Court's Observations

### Human Errors Are Normal

Human errors and mistakes are normal occurrence in course of business, including errors by Revenue. Such reality must be acknowledged in designing compliance systems

### Software Limitation Not Justification

Software limitation itself cannot be good justification for denying rectification, as software systems are meant to ease compliance and can be configured to allow genuine corrections

### Right to Correct Errors Flows from Right to Business

Right to correct clerical or arithmetical mistakes flows from constitutional right to do business. Such right cannot be denied unless there is good justification or valid reason

### CBIC Must Re-examine Timelines

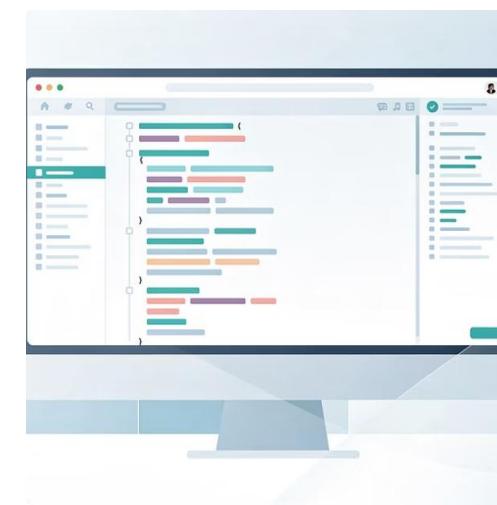
CBIC must re-examine provisions and timelines fixed for correcting bona fide errors to ensure they align with practical business realities and ease of doing business

## Significance of this Decision



### Ease of Doing Business

Decision follows taxpayer-friendly and pragmatic approach aligning with principles of ease of doing business, recognizing that rigid timelines should not defeat substantive rights



### Technology Should Enable, Not Restrict

Software systems and technological interfaces should facilitate compliance, not create artificial barriers. Systems must be designed with flexibility for genuine corrections

Supreme Court has emphasized that cases like Bar Code India Limited and Yokohama India Private Limited, which adopted restrictive approach (HC judgments wherein claim for rectification of return was denied), are bad in law and need to be revisited.

FINAL ADJUDICATION ORDER

# ASP Traders v. State of Uttar Pradesh

Payment of tax and penalty under Section 129 does not dispense with mandatory requirement to pass final adjudication order

**Citation:** 2025 (7) TMI 1525 – Supreme Court

01

## Detention of Goods

Goods and conveyance were detained under Section 129 of CGST Act and notice under Section 129(3) proposing tax and penalty was issued

02

## Objections Filed

Appellant filed objections to notice and paid tax and penalty under protest within stipulated time due to business exigencies

03

## Release Without Order

Goods were released through Form GST MOV-05, but no final adjudication order under Section 129(3) was passed by proper officer

04

## Denial of Appeal Right

Absence of final order effectively denied appellant statutory right of appeal under Section 107 of CGST Act

## Supreme Court's Reasoning

### Show Cause Must Culminate in Order

Show cause notice must necessarily culminate in final and reasoned adjudication order. This is settled principle of law and cannot be bypassed

### Section 129(3) Language is Mandatory

Language of Section 129(3) is mandatory: officer "shall issue notice and thereafter pass order", making adjudication obligatory even if payment is made

### Speaking Order Essential

Passing speaking order is essential to satisfy principles of natural justice and preserve statutory right of appeal under Section 107

### Section 129(5) Does Not Waive Right

Deeming fiction in Section 129(5) only signifies that no further proceedings will follow upon payment; it does not imply waiver of right to challenge levy

### Payment Cannot Be Presumed as Waiver

The payment, by itself, cannot be treated as a waiver or abandonment, especially when the appellant has clearly objected to the demand

### Absence Violates Article 265

In absence of final order, levy of tax or penalty lacks authority of law, offending Article 265 of Constitution - no tax without authority of law

# Commentary and Constitutional Implications

## Payment Under Protest

Decision laid down that payment of tax under protest cannot be construed as waiver of statutory remedies. Right to appeal remains available to taxpayer who has paid tax under protest, thereby requiring authorities to pass final adjudication order without exception.

## Absence of Order is Illegal

In absence of final order, tax/penalty demand shall be considered as illegal and violative of Article 265 of Constitution. This is fundamental constitutional protection against arbitrary taxation.

### Constitutional Safeguards

This reinforces that procedural safeguards, including fair opportunity to be heard and reasoned order, are not mere formalities but constitutional requirements rooted in Article 14 and Article 265

## Fundamental Rights

Articles 12–35



18



27

# Review Petitions / SLPs Dismissed by Supreme Court

The Supreme Court has dismissed several review petitions and Special Leave Petitions (SLPs) in 2025, thereby affirming important High Court decisions on input tax credit availability, refund entitlements, credit blocking restrictions, classification disputes, and seizure limitations. These dismissals have significant implications for taxpayers and the revenue authorities alike.



## INPUT TAX CREDIT

## Safari Retreats - ITC on Construction of Plants

Review petition dismissed affirming ITC availability on goods and services used in construction of plants

**Citation:** 2025 (5) TMI 1684 – SC Order

Review petition was filed against Supreme Court decision in Chief Commissioner v. Safari Retreats Pvt Ltd, 2024 (10) TMI 286. Supreme Court held there was no error apparent on record and dismissed review petition.

**Retrospective Amendment:** Legislature introduced retrospective amendment replacing term "plant or machinery" with "plant and machinery" to make Explanation applicable on Section 17(5)(d).

### **Exception Survives**

Retrospective amendment has not affected applicability of exception related to "on his own account". Where construction is for leasing, renting or other such services, Section 17(5)(d) restriction should not be applicable as per Supreme Court's observations in the judgment

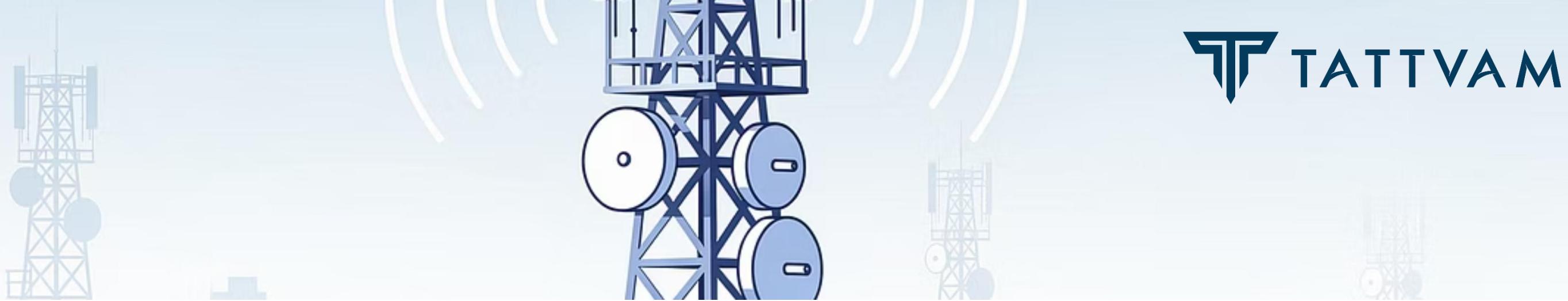
## Open Issues Requiring Clarity

### Validity of retrospective amendment

Whether the validity of the retrospective amendment made in the CGST Act to overcome the judgment in case of Safari Retreat be challenged?

### SC Findings regarding “on his own account”

Though the SC made a specific finding in the judgment that construction of building for rental purpose will not be ‘on his own account’, the SC did not provide relief to the assessee on this basis and remanded the matter to HC. It remains to be seen whether the lower courts will extend the benefit of ITC to the assessee based on the said findings of SC.



TELECOMMUNICATION TOWERS

## Bharti Airtel - ITC on Telecom Towers

SLP dismissed affirming ITC availability on goods and services used in construction of telecommunication towers

**Citation:** 2025 (5) TMI 1684 – SC Order

SLP filed against Delhi High Court decision in Bharti Airtel v. Commissioner Appeals, 2024 (12) TMI 998. Supreme Court found cases unfit for exercise of discretion under Article 136 of Constitution and dismissed SLP.

# Telecommunication Towers Are Not Immovable Property

## Supreme Court's Earlier Ruling

Supreme Court in Bharti Airtel v. Commissioner of Central Excise, 2024 (11) TMI 1042, held telecommunication towers are not immovable property

## Permanency Test Not Satisfied

Telecommunication towers do not satisfy tests of permanency, nor can they be regarded as being "attached to earth" in legal sense

## Designed for Relocation

Towers are designed to be dismantled, relocated, and reused. Their placement on concrete bases is only to ensure stability, not permanency

## Section 17(5)(d) Not Applicable

Delhi High Court allowed availment of ITC on goods and services used in construction of telecommunication towers. Section 17(5)(d) applies only to immovable property and towers fail this threshold requirement

This ruling (read with the Delhi HC ruling) is significant because it provides an in-depth discussion on the concept of immovability while interpreting the provisions of the GST law.



# Assistant Commissioner v. Gemini Edibles

## Citation

2025 (5) TMI 998 – Supreme Court  
Order

## Subject Matter

Validity of Circular No. 181/13/2022-  
GST on inverted duty structure  
refunds

## Outcome

SLP dismissed; Circular held invalid

# Gemini Edibles: Factual Background

The case originated from refund claims filed by M/s. Priyanka Refineries Private Limited and Gemini Edibles and Fats India Private Limited. These assessees sought refunds of Input Tax Credit (ITC) accumulated due to inverted duty structures, wherein the tax rate on inputs exceeded the tax rate on outputs.

The refunds pertained to tax periods prior to 18 July 2022. However, the refund applications were filed after this date. Notification No. 05/2017 and subsequently Notification No. 09/2022 specified certain goods (edible oils etc.) for which refunds would not be available due to inverted duty structure.

Circular No. 181/13/2022-GST introduced a critical restriction: it applied the limitation to all refund applications filed on or after 18 July 2022, irrespective of the underlying tax period. This meant that even if the accumulated ITC related to periods before date of the notification, taxpayers could not claim refunds if their applications were filed after the specified date.



# Gemini Edibles: High Court Analysis

## Ultra Vires Challenge

The Andhra Pradesh High Court examined whether Circular No. 181/13/2022-GST exceeded the scope of the parent statute and notifications. The Court determined that the Circular impermissibly expanded the restrictions beyond what was contemplated in Section 54 of the CGST Act.

## Date of Filing vs Tax Period

The crucial distinction identified by the Court was between the date of filing a refund application and the tax period to which the refund relates. The Circular applied restrictions based on filing date rather than the tax period, which was inconsistent with the statutory framework.

## Scope of Delegated Legislation

The Court applied the well-established principle that delegated legislation, including administrative circulars, cannot override or enlarge the scope of statutory provisions or notifications. The Circular was held invalid to the extent it imposed restrictions not contemplated by the statute and notification.

# Gemini Edibles: Implications

01

## Taxpayer Relief

This decision provides substantial relief to taxpayers who faced difficulties due to delays in filing refund applications after 18 July 2022, despite their ITC pertaining to earlier periods.

02

## Refund Eligibility

Taxpayers can file refund claims for inverted duty structures on specified goods for periods prior to 18 July 2022.

03

## Principle Established

The judgement reinforces that administrative circulars cannot expand statutory restrictions. Further, it reaffirms that important principle that the provisions applicable as on the date when refund becomes due have to be applied and not the provisions which are applicable on the date on which refund claim is filed.



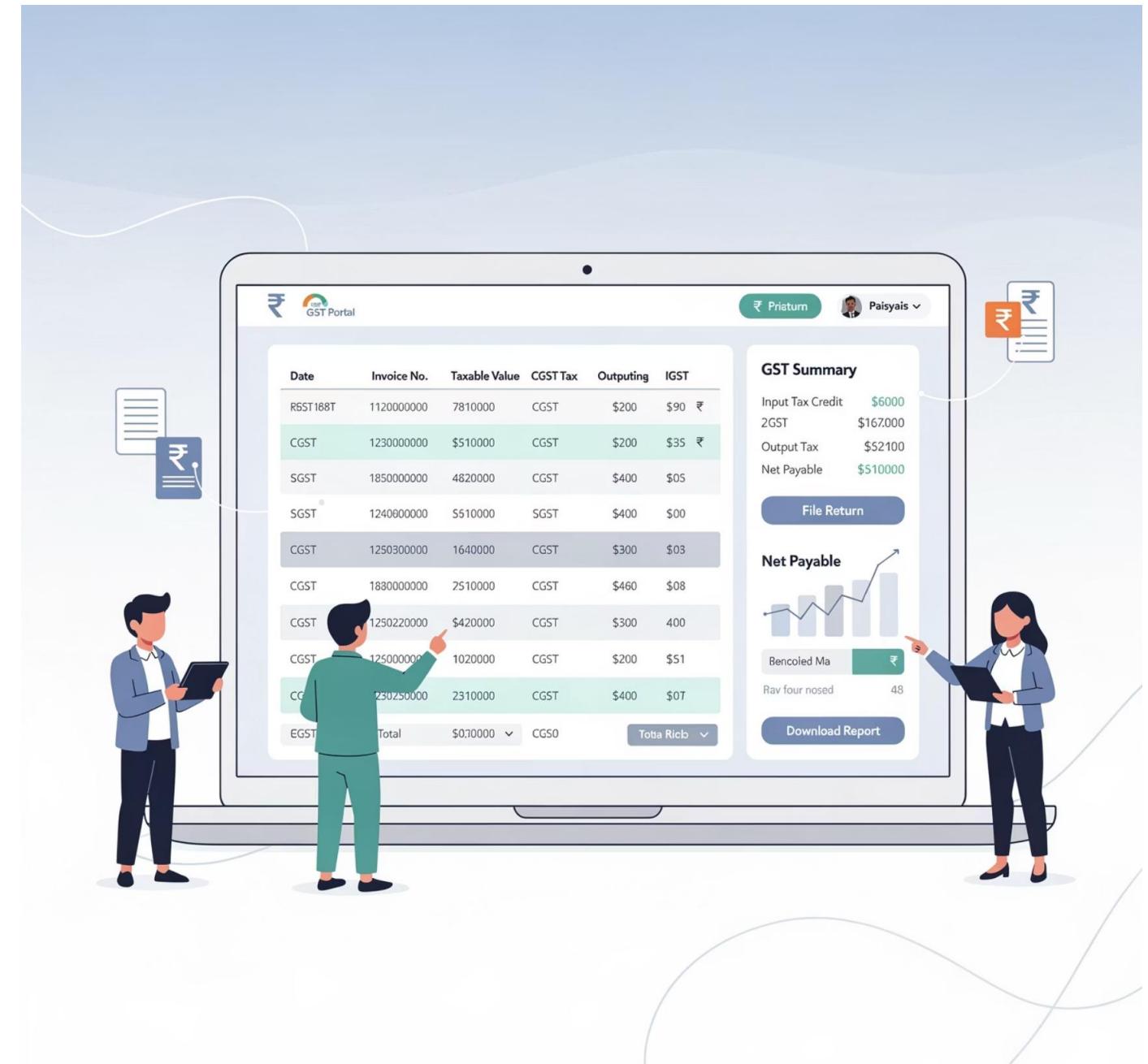
# Assistant Commissioner v. Raghav Agarwal

## Case Details

**Citation:** 2025 (5) TMI 844 – Supreme Court Order

**Issue:** Whether blocking of ITC under Rule 86A can exceed the credit available in the Electronic Credit Ledger at the time of passing the order

**Outcome:** Supreme Court dismissed the SLP, upholding the Delhi High Court's interpretation



# Raghav Agarwal: Rule 86A Framework



## Purpose of Rule 86A

Rule 86A of the CGST Rules empowers revenue authorities to block the debit of ITC from the Electronic Credit Ledger (ECL) when there are reasonable grounds to believe that the credit has been fraudulently availed or is ineligible. This is a protective mechanism to safeguard government revenue.



## Scope of Blocking

The critical question addressed was whether blocking could extend beyond the ITC actually available in the ECL at the time of passing the blocking order. Revenue authorities had been blocking amounts in excess of available credit, anticipating future accruals.

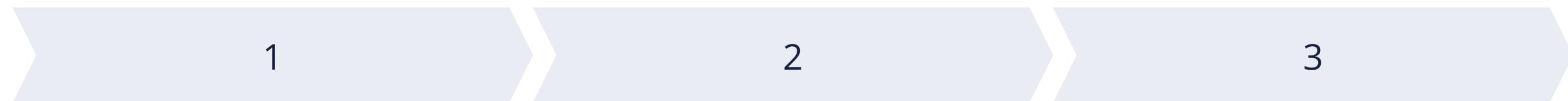


## Temporary Measure

The earlier High Court decision emphasised that Rule 86A is designed as a temporary protective measure and not as a machinery provision for recovery of tax dues. This distinction is crucial in determining the extent of blocking powers.

# Raghav Agarwal: Delhi High Court Ratio

The Delhi High Court, in Best Crop Science Private Limited, established several critical principles regarding the interpretation and application of Rule 86A. These principles have now received Supreme Court approval through dismissal of the Special Leave Petition.



## Available Credit

The expression "credit of input tax available in the electronic credit ledger" refers only to credit lying in the ECL at the relevant point in time, not credit already utilised, refunded or otherwise debited.

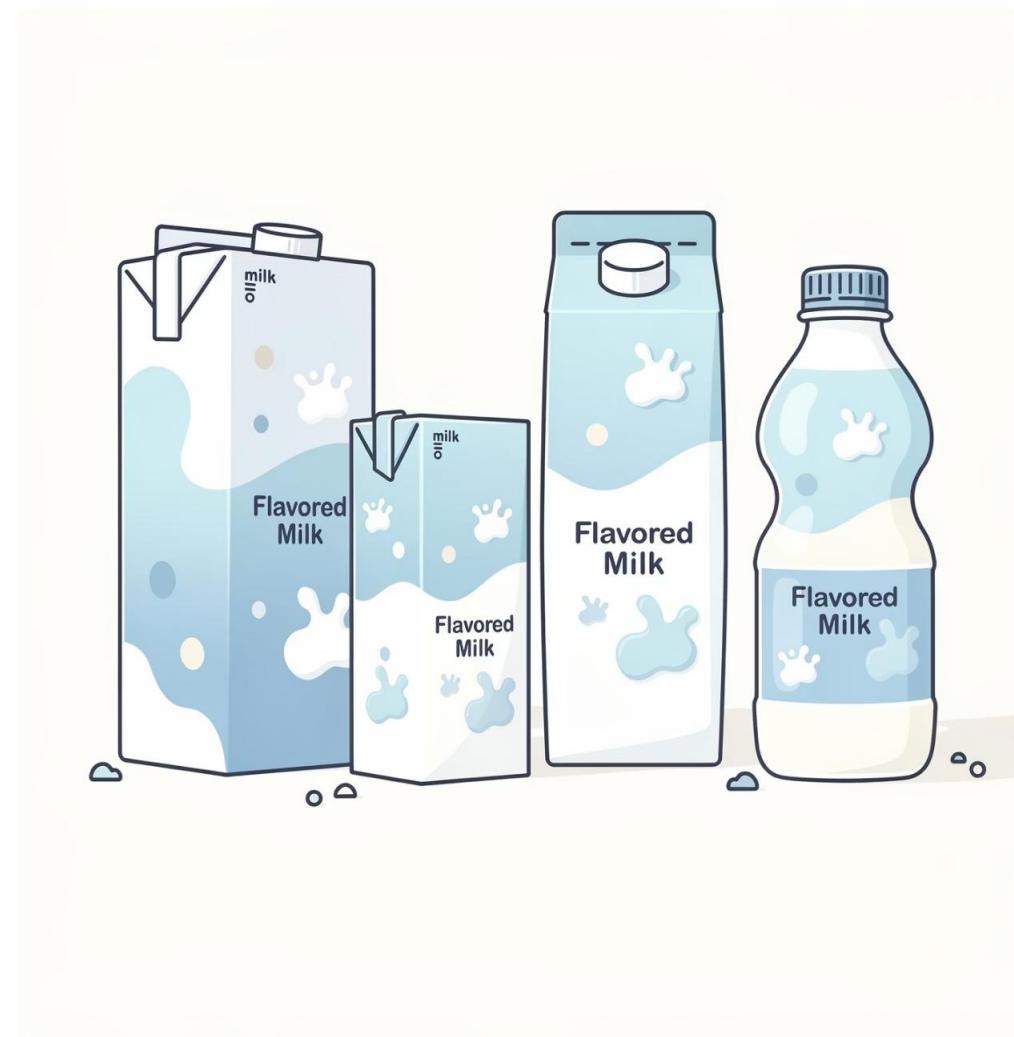
## Limitation on Blocking

Blocking under Rule 86A must be restricted to the lower of two amounts: ITC available in the ECL or ITC believed to be fraudulently availed or ineligible.

## Vested Rights

ITC becomes a vested right once conditions for availment are satisfied, and taxpayers cannot be deprived except by validly enacted statute or rules.

# Assistant Commissioner v. Sri Vijay Visakha Milk



## Classification Dispute

**Citation:** 2025 (6) TMI 713 – Supreme Court Order

**Product:** Flavoured milk with 0.5% badam (almond) flavour

**Assessee's Classification:** Tariff Item 0402 99 00 (milk and milk products)

**Revenue's Classification:** Tariff Item 2202 99 30 (beverages containing milk)

**Decision:** Supreme Court dismissed SLP, confirming classification under Heading 0402

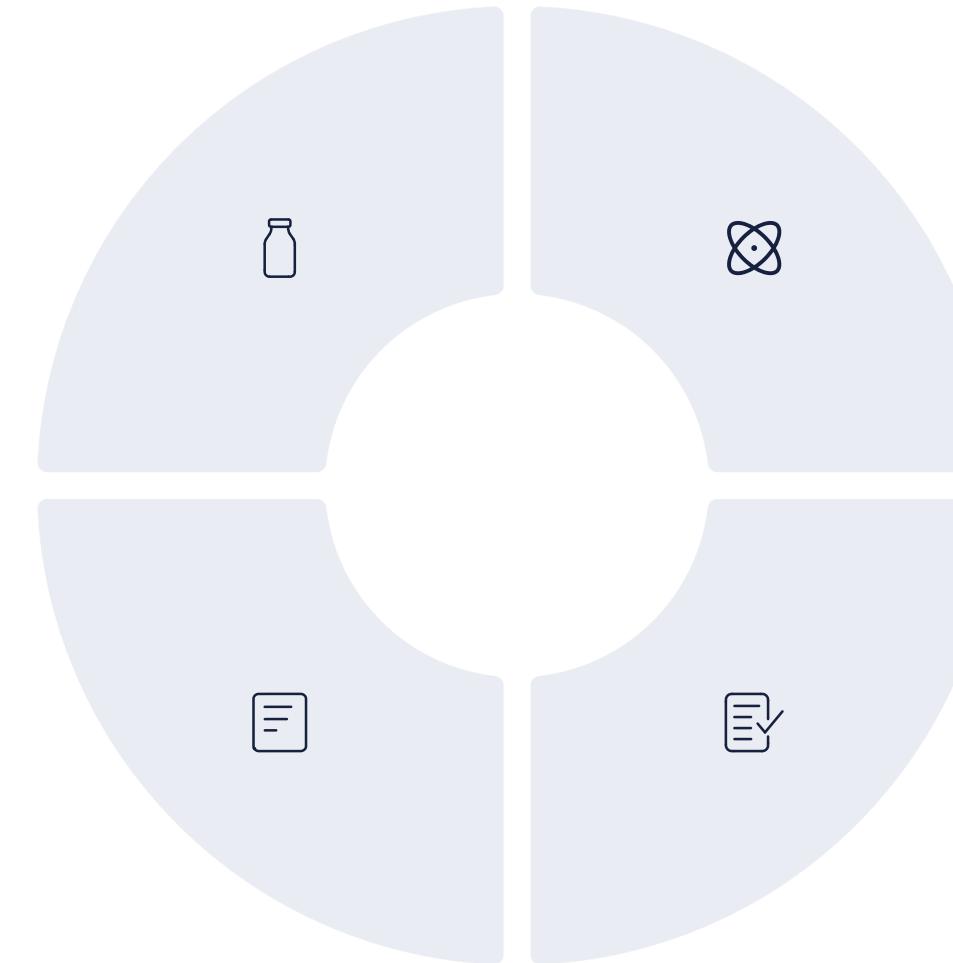
# Sri Vijay Visakha: Essential Character Test

## Primary Component

Milk constitutes the predominant ingredient, with only 0.5% flavouring agent added

## Classification Principle

Essential character test determines tariff classification when multiple headings are possible



## Minimal Addition

Small quantity of badam flavour does not alter the fundamental nature of the product

## Essential Character

Product retains essential characteristics of milk despite flavour enhancement

There are conflicting rulings on the issue regarding the classification of flavoured milk-based drinks. In this matter, the SC did not examine the merits of the case and did not admit the SLP filed by the revenue against the judgment of the HC. In case the product has been classified under Heading 0402 in the past, support can be taken from this judgment. After the recent GST rate changes in September 2025, this issue is resolved as same GST rate has been prescribed under Headings 2202 and 0402 for beverages based on milk.



# Commissioner v. Deepak Khandelwal

## Scope of Search and Seizure Powers

**Citation:** 2025 (8) TMI 1293 – Supreme Court Order (Review Petition dismissed)

**Core Issue:** Whether unaccounted valuable items unrelated to GST proceedings can be seized under Section 67 of the CGST Act

**Items Seized:** Currency, silver bars, and other valuable items having no connection with GST taxable supplies

**Legal Question:** Does the GST Act empower authorities to detect and seize undisclosed assets and unaccounted wealth?

**Supreme Court Position:** Review petition dismissed, reaffirming that Section 67 does not confer power to seize assets unrelated to GST proceedings

# Deepak Khandelwal: Judicial Reasoning

1

## Statutory Purpose

The GST Act is legislation for levy and collection of tax on supply of goods and services, not a statute for detection or seizure of undisclosed assets or unaccounted wealth.

2

## Strict Construction

The power of search and seizure, being a drastic power affecting fundamental rights, must be strictly construed and cannot be extended by implication or analogy.

3

## Meaning of "Goods"

The term "goods" in Section 67(2) refers only to goods which are the subject matter of taxable supply and which the proper officer believes are liable to confiscation under the Act.

4

## Limitation on Authority

Revenue authorities cannot use GST search and seizure provisions to uncover unaccounted wealth that has no nexus with GST taxable transactions or supplies.

# Notice issued by Supreme Court



# Union of India v. Anand Traders

SLP (C) Diary No. 28945/2025 – Supreme Court

The Supreme Court has issued notice on a critical question: Whether Rule 86A of the CGST Rules permits blocking of Input Tax Credit (ITC) beyond the amount actually available in the Electronic Credit Ledger, or can it extend to ITC already utilised in the past?

This matter arises from conflicting interpretations by different High Courts on the scope and application of Rule 86A, creating significant uncertainty for taxpayers across India.

# Background Facts of the Dispute

## The Core Issue

A dispute arose regarding blocking of ITC under Rule 86A of the CGST Rules in excess of the ITC actually available in the Electronic Credit Ledger at the time of passing the order.

This has created substantial working capital challenges for businesses, particularly during investigation proceedings.

## Judicial Divergence

Divergent views emerged from different High Courts on the scope and limits of Rule 86A, particularly whether ITC already utilised can be notionally blocked by the Department.

This conflict has led to forum shopping and inconsistent treatment of taxpayers across jurisdictions.

# Conflicting High Court Views

## Delhi High Court View

**Best Crop Science Pvt Ltd v. Principal Commissioner, 2024 (9) TMI 1543**

The Delhi High Court held that the blocking cannot exceed the ITC available in the Electronic Credit Ledger at the time of passing the order. This interpretation protects taxpayer liquidity and prevents arbitrary departmental action.

**(SLP Filed Dismissed by SC in this matter)**

## Madras High Court View

**TVL Skanthaguru Innovations Pvt. Ltd v. Commercial Tax Officer, 2024 (12) TMI 143**

The Madras High Court took a contrary view, permitting blocking beyond the ledger balance by adopting a broader interpretation of Rule 86A. This effectively allows blocking of ITC already utilised in past transactions.

# Supreme Court's Observations

The Supreme Court issued notice in the Special Leave Petition after prima facie noting a conflict between the Delhi High Court and Madras High Court decisions on interpretation of Rule 86A.

The Court recognised the pan-India significance of this issue, given the frequent invocation of Rule 86A during departmental investigations and its impact on business operations.

The final adjudication will determine whether Rule 86A remains a protective measure for preventing revenue leakage or effectively becomes a tool for indirect recovery of disputed tax demands.



# Implications and Commentary

## Pan-India Significance

The issue has pan-India significance, given the frequent invocation of Rule 86A during investigations. Final adjudication will determine whether Rule 86A remains a protective measure or effectively becomes a tool for indirect recovery.

## Impact on Taxpayers

A ruling in favour of the Delhi High Court view would curb excessive blocking of ITC and protect liquidity of taxpayers. A contrary view may expand departmental powers, increasing working capital stress for businesses.

## Pending Litigation

Pending clarity on the subject issue by the Supreme Court, litigation under Rule 86A is likely to continue, with taxpayers relying on jurisdiction-specific precedents.

## Favourable Precedents

The Bombay High Court in *Rawman Metal & Alloys*, Gujarat High Court in *Samay Alloys India Pvt Ltd* and Delhi High Court in *Best Crop Science Pvt Ltd* have given favourable decisions on the subject issue.

# Supreme Court Decisions on Pre-GST Matters

The Supreme Court has delivered several important rulings relating to erstwhile tax regimes, providing valuable guidance on principles applicable to indirect taxation in India.



# Commissioner Trade and Tax v. M/s. Shanti Kiran

2025 (10) TMI 607 – Supreme Court Order

## Protection of Bona Fide Purchasers

ITC cannot be denied where the purchasing dealer has transacted with a validly registered selling dealer, received proper tax invoices under Section 50 of the DVAT Act, and there is no mismatch or doubt regarding the genuineness of transactions.

## Department's Remedy

The appropriate remedy for the Department is to proceed against the defaulting selling dealer and not penalise the bona fide purchaser who has acted in good faith based on valid documentation.

## Constitutional Protection

In absence of material showing collusion or fraud, denial of ITC would be arbitrary and violative of Article 14 of the Constitution of India, which guarantees equality before law.

*Though the Ruling has been rendered in context of the provisions of Delhi VAT Act, the same has great significance under GST law as well. Reliance can be placed on this Ruling to contend that ITC should not be denied to the bona fide recipient in cases involving non-payment of tax by the supplier, mismatch in GSTR-2A and GSTR-3B, cases where registration of supplier is cancelled retrospectively etc.*

# M/s. Suraj Impex (India) Pvt Ltd v. Union of India

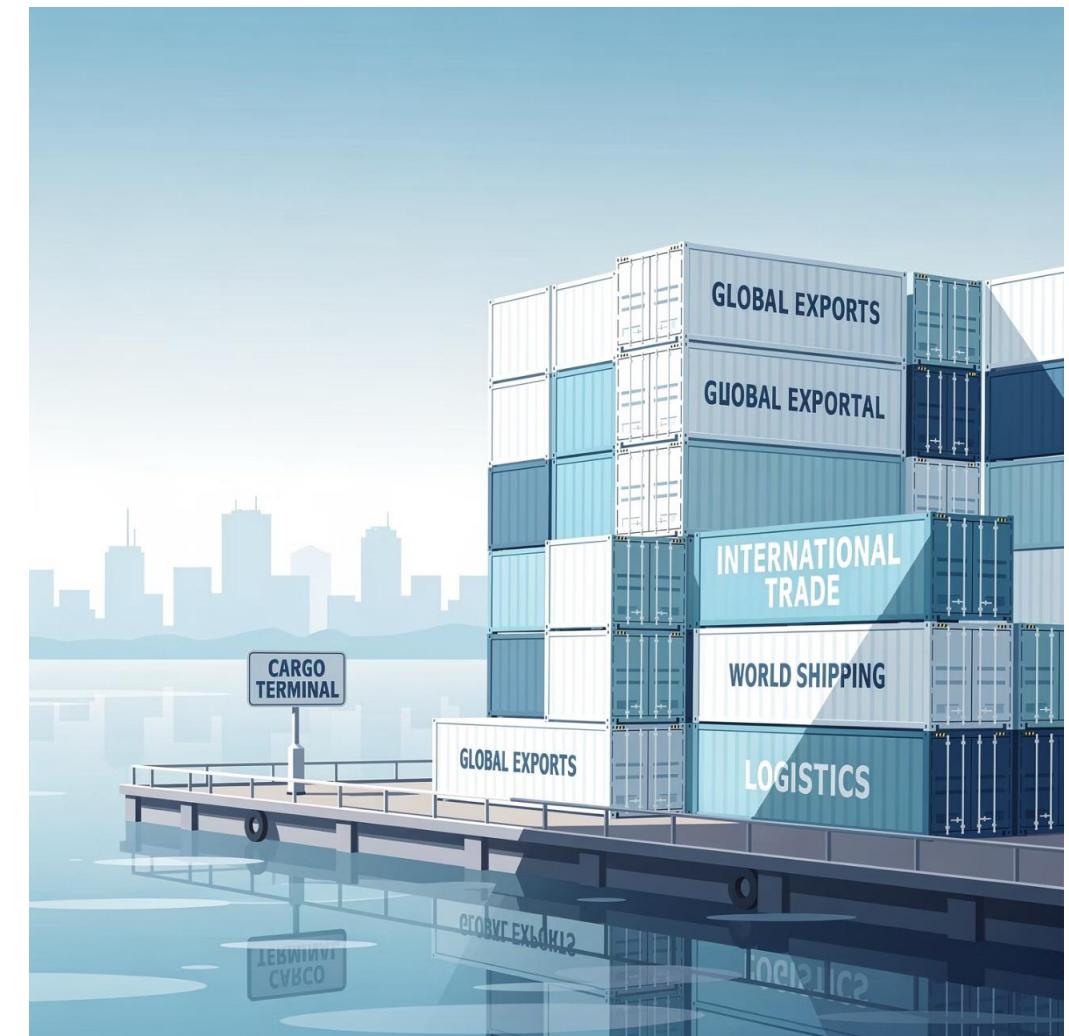
2025 (5) TMI 1695 – Supreme Court

## Retrospective Application of Circulars

The Supreme Court held that the Circular did not create a new exemption or benefit but merely clarified the scope of existing Notifications governing AIR duty drawback.

Being explanatory and declaratory in nature, the Circular must be given retrospective effect to give full effect to the parent Notifications from which it derives its authority.

A beneficial circular cannot be interpreted to deprive exporters of benefits for the period prior to its issuance, when the underlying Notifications were already in force and operative.



# Healthcare Services Exemption

M/s. Stemcyte India Therapeutics Pvt Ltd v. Commissioner of Central Excise and Service Tax  
2025 (7) TMI 1007 – Supreme Court

The Tribunal held that services relating to enrolment, collection, processing and storage of umbilical cord blood stem cells are preventive and curative in nature as well as involves diagnosis, treatment and care.

Therefore, the said services constitute "Healthcare Services" and exemption should be available on such services under the applicable exemption notifications.

This ruling provides clarity on the scope of healthcare services exemption and ensures that preventive healthcare services receive the same beneficial treatment as curative services.

Identical exemption entries have been incorporated under GST law as well. Therefore, the judgment will be of great relevance while interpreting the said exemption entry under GST law.

# M/s. Quippo Energy Ltd v. Commissioner of Central Excise

2025 (9) TMI 1157 – Supreme Court

01

## The Core Question

The issue revolved around whether the Genset placed within a steel container and fitting the steel container with some other components would amount to manufacture or not under the Central Excise regime.

02

## Parts vs. Accessories Test

It was held that the same would depend on whether such components fall under the purview of "parts" or "accessories". If the components fall under the purview of "parts", then it can be said that the same constitutes an integral component of the product without which such product would not be complete and functional.

03

## Definition of Accessories

An accessory on the other hand is a component which while not being essential to the primary functioning of the article, is used in conjunction with the article and adds supplemental or secondary value to enhance user experience.

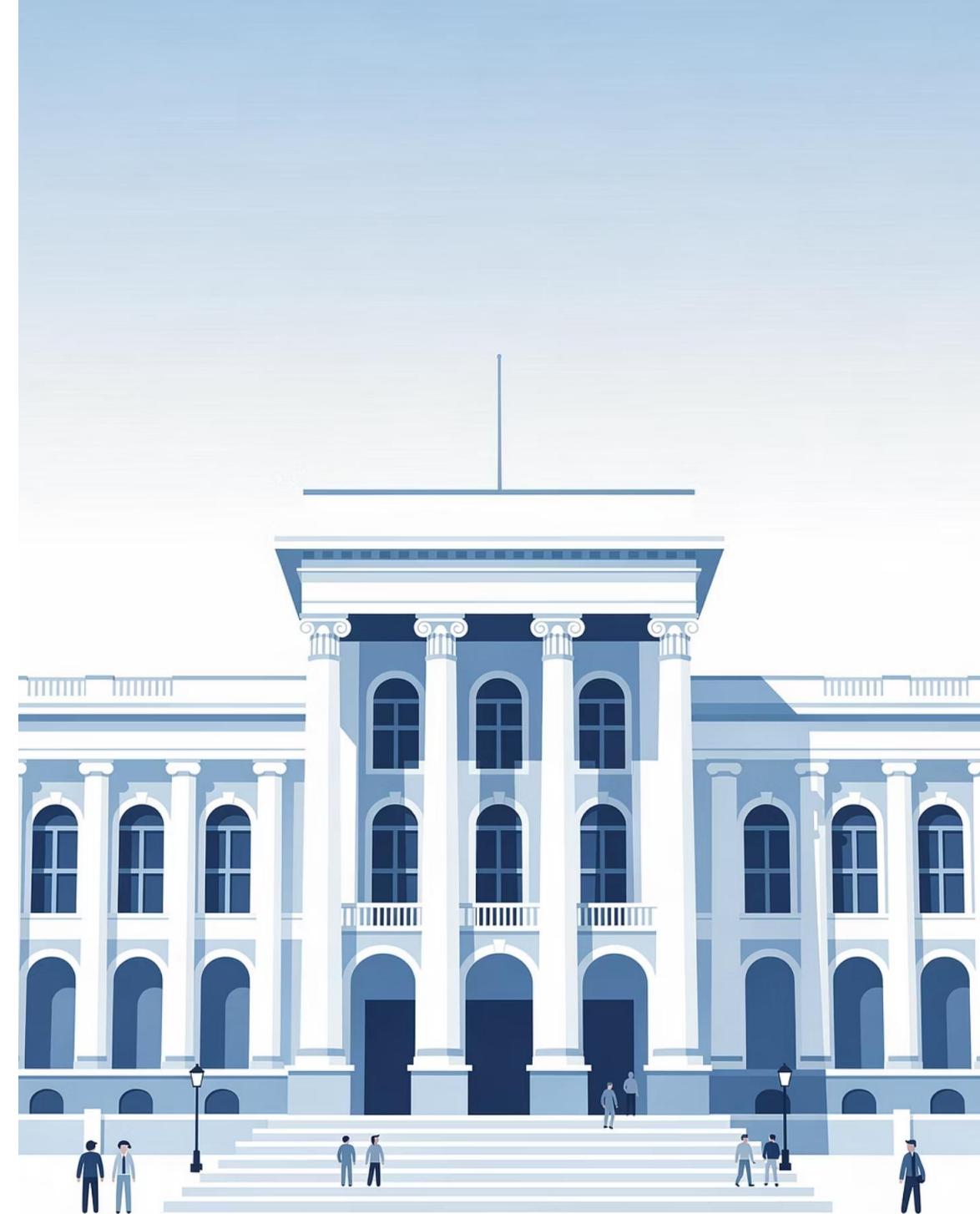
04

## Practical Illustration

To illustrate, an air conditioner installed in a car would not be considered a 'part' of that car. This is because the car can effectively perform its primary function of transportation even without an air conditioner.

**Held:** *The process of placing the Genset within the steel container and fitting that container with additional, integral components brings into existence a new, distinct, and marketable commodity and thus, the appellant was liable to pay excise duty.*

# Landmark High Court Judgements



SUBSTANTIVE ISSUES

# Assignment of Leasehold Rights

Gujarat Chamber of Commerce and Industry v. Union of India

2025 (1) TMI 516 – Gujarat High Court

A landmark ruling holding that assignment of leasehold rights on industrial land constitutes transfer of immovable property and falls outside the scope of GST.

# Factual Background

## GIDC Leases

Gujarat Industrial Development Corporation (GIDC) had leased out industrial plots to industrial units for 99 years under long-term lease agreements.

1

## Department's Action

Department issued Show Cause Notices proposing GST on such assignment, treating it as supply of services under Section 7 of the CGST Act.

2

## Assignment Transaction

Petitioners assigned their leasehold rights in land along with buildings constructed thereon to third parties for lump-sum consideration.

3

4

## Taxpayer's Contention

Petitioners contended that the transaction amounts to transfer of immovable property and is outside the scope of GST as per Schedule III.

# Court's Findings and Reasoning

## Nature of Leasehold Rights

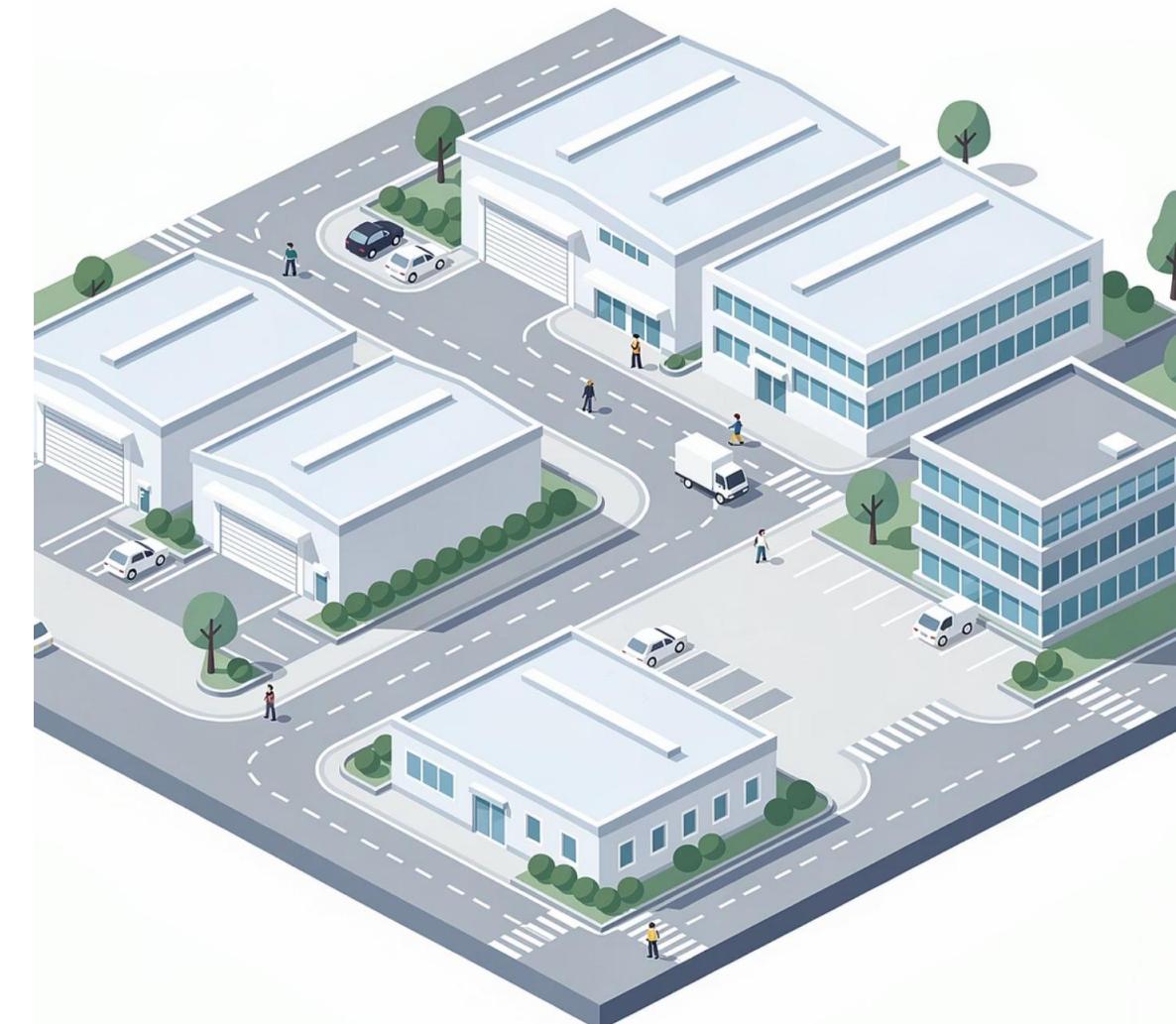
Leasehold rights are benefits arising out of land and hence qualify as immovable property under general principles of property law.

Therefore, transfer of absolute right by way of sale or assignment of leasehold rights shall be construed as transfer of "immovable property" itself.

## Schedule III Application

Sale, transfer or assignment of benefits arising out of immovable property is equivalent to transfer of immovable property itself.

Such transfer does not fall within the scope of "supply" under GST as per Entry 5 of Schedule III to the CGST Act.



## Service Tax Regime Comparison

The Court observed that under the service tax regime, even development rights (which are benefits arising from land) were not taxable as services.

Since leasehold rights represent a greater quantum of right than mere development rights, the same principle continues to apply under the GST regime.

GST being a subsuming tax that has replaced service tax, the position under service tax regime remains relevant for interpretational purposes and provides guidance on legislative intent.

# Implications and Open Questions

## Relief for Industrial Units

This judgement has provided significant relief to taxpayers, especially industrial units involved in transfer or assignment of leasehold rights on long-term basis.

## Substance Over Form

The judgement emphasizes on the principle that substance should prevail over the form of the transaction. Where the intention of parties is to absolutely transfer the property rights, such transfer cannot be treated as services merely on the basis of the form of the transaction.

## Persuasive Value

This decision will not hold precedential value in other states. However, the said decision will hold persuasive value in other jurisdictions and will influence policymaking on similar issues nationwide.

## Similar Precedents

The Gujarat High Court in *Time Technoplast Ltd v. Union of India* and *Life Sciences Chemicals v. Union of India* and in various other cases has taken a similar view on comparable transactions. Similar view has been taken by the Bombay High Court in the case of *Aerocom Cushions Private Limited*.

# Open Issues Requiring Clarification

## Applicability to Other Development Bodies

It needs to be seen whether this decision would be made applicable on other lease transactions such as transactions with SIPCOT, RIICO or other state development corporations.

## Other Property Rights

Whether this decision would be applicable on other rights relating to immovable property such as mining rights, development rights, air rights, or water rights remains to be tested before the Courts.

## Refund of Tax Paid

Another issue which remains open is refund of tax paid on such transactions under protest during the disputed period.

RENEWABLE ENERGY

# Solar Power Generating Systems

Sterling and Wilson Private Limited v. Joint Commissioner  
2025 (1) TMI 663 – Andhra Pradesh High Court

Supply of solar power generating system was held to be composite supply and not works contract services, providing crucial clarity for the renewable energy sector.



# Facts and Contentions

## Petitioner's Business

Petitioner was engaged in supply, installation and commissioning of Solar Power Generating Systems on turnkey basis for various clients.

The transaction involved supply of solar modules, inverters, mounting structures and related components along with installation services.

## Department's Position

Department sought to classify the transaction as a works contract under Section 2(119) of the CGST Act, treating the system as immovable property.

This classification would have resulted in higher tax liability for the petitioner.

## Petitioner's Arguments

Petitioner contended that the supply was a composite supply under Section 2(30) of the CGST Act, with solar modules being movable goods as the principal supply. Further, the installation of the components did not result in emergence of immovable property.

The solar power generating system can be dismantled and relocated to another location, indicating absence of permanence that is characteristic of immovable property.

The civil foundation merely supports the plant but the plant does not become part of the earth for permanent beneficial enjoyment of the foundation.

# Court's Detailed Analysis

- 1
- 2
- 3
- 4
- 5

## Composite Supply Finding

Supply of Solar Power Generating System is a composite supply and not a works contract under Section 2(119) of the CGST Act.

## Nature of Solar Modules

Solar modules and components are not immovable property, as they are not attached to the earth for permanent beneficial enjoyment of the civil foundation.

## Foundation Test

The foundation serves the plant and not vice versa.

## Relocatability Factor

The system can be dismantled and relocated, indicating absence of permanence required for classification as immovable property.

## Conclusion

Since the transaction does not result in immovable property, it falls outside the scope of works contract definition.

# Significance for Renewable Energy Sector



## EPC Contractors

This ruling holds a significance for the service providers involved in renewable energy projects, particularly EPC and turnkey solar projects across India.



## Legal Tests Applied

This ruling has referred to various tests propounded by the Supreme Court in various decisions, namely tests related to marketability, permanency, intention of annexation, etc.



## Installation Clarity

It clarifies that mere bolting and installation does not render goods immovable, protecting taxpayers from adverse classification.



## Correct Tax Rate

It prevents automatic classification of turnkey contracts as works contracts, ensuring correct GST rate application based on the nature of transaction.

REAL ESTATE

# Joint Development Agreements

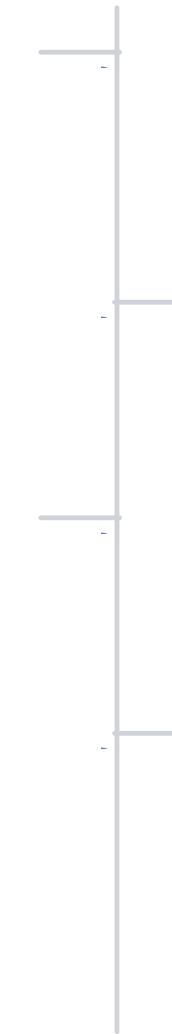
M/s. Provident Housing Ltd v. Union of India  
2025 (9) TMI 664 – Bombay High Court

GST liability on the developer does not arise at the time of execution of the Joint Development Agreement, providing crucial relief to real estate developers.



# Factual Matrix

JDA Execution
<p>The petitioner, a real estate developer, entered into a Joint Development Agreement with a landowner for construction and sharing of developed property.</p>
Sale Deed Execution
<p>Subsequently, the landowner executed a sale deed transferring the land to the petitioner, resulting in extinguishment of rights under the JDA.</p>



## Department's Allegation

During investigation, the department alleged that GST on construction services became payable on the date of execution of the JDA, invoking Section 13(2)(b) of the CGST Act.

## Changed Stand

The department later relied upon Notification No. 04/2018-CT (Rate), which prescribes a specific time of supply for JDAs, contradicting their earlier position.

# Key Findings of the Court

## Specific Notification Prevails

Notification No. 04/2018-Central Tax (Rate) specifically governs JDAs and overrides the general time-of-supply provisions under Section 13(2) of the CGST Act.

In terms of the Notification, GST liability on construction services provided by a developer to the landowner arises only at the time of transfer of possession or execution of conveyance deed or allotment, whichever is earlier.

## Deferred Liability

GST liability cannot be fastened at the time of execution of the JDA, as the taxable event is statutorily deferred to a later point in time.

The Revenue's initial stand invoking Section 13(2)(b) was unsustainable, especially in light of its subsequent affidavit accepting applicability of Notification No. 04/2018.

## Outcome in Present Case

Since the subsequent sale deed extinguished rights under the JDA and no transfer or allotment occurred under the JDA framework, no GST liability arose on the petitioner.

The Court held that the extinguishment of the JDA through the sale deed meant that no taxable supply of construction services ever crystallised under the JDA.

This ruling protects developers from GST liability where JDAs are superseded or terminated before completion of construction activities.



# Transfer of Development Rights

M/s. Srinivasa Realcon Pvt Ltd v. Deputy Commissioner  
2025 (4) TMI 931 – Bombay High Court

Agreement for the right to develop a land is not same as services by way of transfer of TDR, providing crucial distinction between different real estate transactions.

# Case Background



## Development Agreement

Petitioner entered into a development agreement with the landowner. Petitioner was permitted to develop the land using existing FSI or any increase thereof.



## Consideration Structure

Consideration comprised monetary payment and allotment of apartments to the landowner as agreed consideration.



## No Third-Party TDR

No Transferable Development Rights (TDR) or FSI were purchased or transferred from any third party in this transaction.



## Department's Demand

Department demanding GST under Entry 5B of the RCM Notification relating to transfer of development rights.

# Court's Analysis and Reasoning

## Regulatory Definition

Entry 5B applies only to TDR or Floor Space Index (FSI) as defined under the Unified Development Control and Promotion Regulations.

GST Act does not define TDR. Hence, regulatory meaning under town planning and development regulations must be adopted.

## Nature of TDR

TDR involves compensation in the form of FSI or development rights, which shall entitle the owner for construction of built-up area subject to the provisions in the regulations.

In the present case, no third-party TDR or FSI was purchased or transferred and developer merely exercised development rights inherent in the land under the agreement.

## Key Distinction Established

Rights derived from a landowner under a development agreement are not TDR or FSI under Entry 5B of the RCM Notification.

The Court distinguished between standalone transfer of TDR or FSI (which is taxable under Entry 5B) and transfer of development rights pursuant to a development agreement with the landowner.

This distinction is crucial for determining the applicability of reverse charge mechanism on different types of real estate transactions.

# Implications and Concerns

## Impact on JDAs

This decision would have significant impact on the joint development agreements which is generally entered between developer and landowner for development of a real-estate project.

## Scope Curtailment

This decision has significantly curtailed the scope of transactions which would be covered under Entry 5B by differentiating between standalone transfer of TDR or FSI and transfer of development rights pursuant to an agreement.

## Correctness Doubts

However, the correctness of this decision is doubtful as the relevant entry doesn't expressly distinguish between TDR and development rights inherent in land.

## Limited Examination

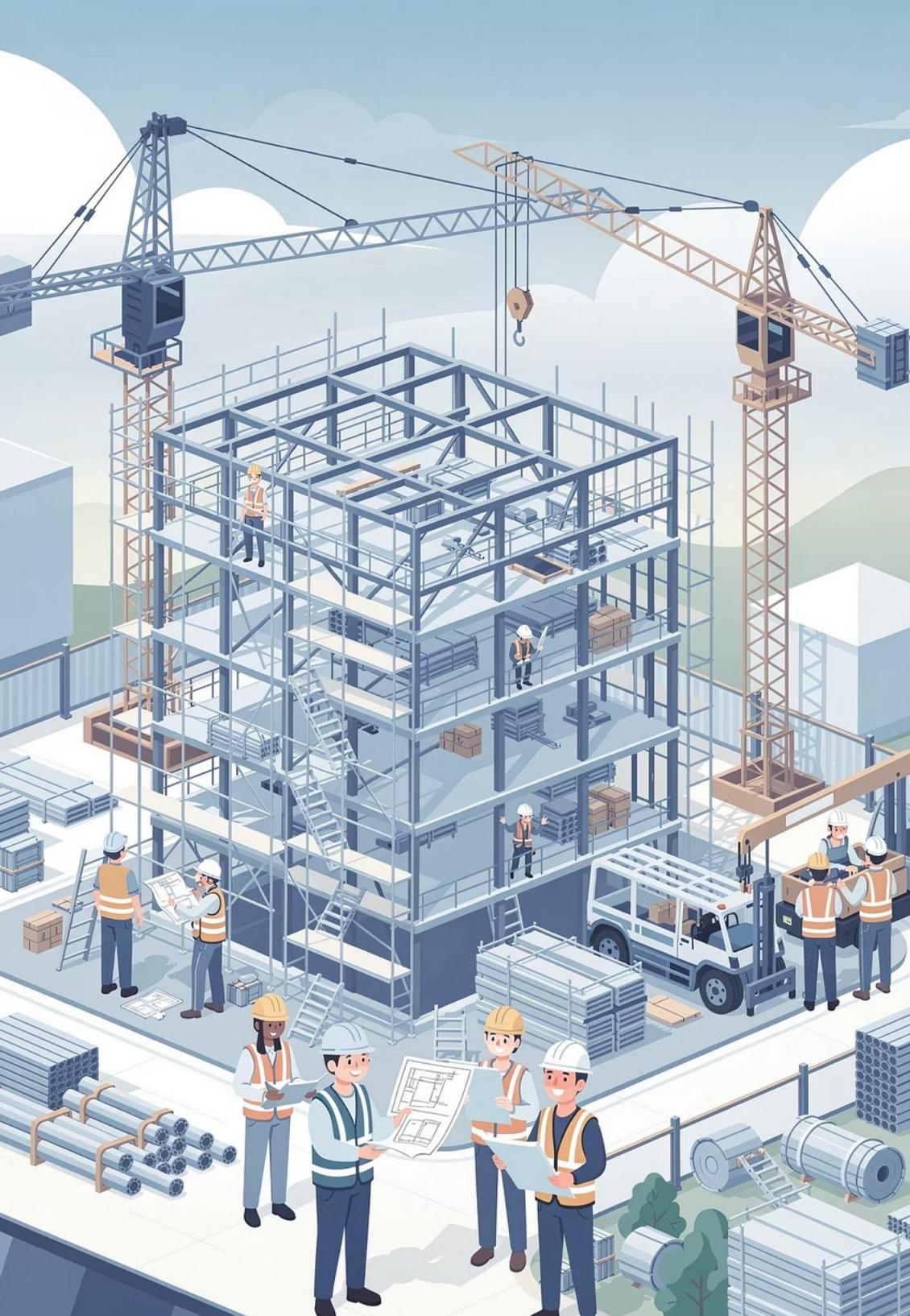
This decision haven't examined the taxability of the transfer of development rights, but have merely examined the applicability of RCM Notification.

## Related Decisions

The decision of the Hon'ble Telangana High Court in *Prahitha Construction v. Union of India and Ors* has examined the taxability of transfer of development rights from a broader perspective.

Hon'ble Bombay High Court has also granted a stay in *Nirmal Lifestyle Developers v. Union of India & Ors*, which involves a revenue sharing arrangement. The stay was granted on the basis of the Hon'ble Gujarat High Court decision in *Gujarat Chamber of Commerce and Industry v. Union of India*.

The applicability of this decision would depend on the evolution of jurisprudence in future. This decision cannot hold precedential value in other state jurisdictions. However, this decision will hold a significant persuasive value in other state jurisdictions.



# Pre-GST Development Agreements

Shashi Ranjan Constructions Pvt Ltd v. Union of India  
2025 (5) TMI 633 – Patna High Court

Construction services rendered in lieu of development rights is liable to GST even if agreement is registered pre-GST, clarifying the temporal application of GST law.

## Facts of the Case

01

### Development Agreement

Petitioner entered into a development agreement under which construction services were rendered in lieu of transfer of development rights from the landowner.

02

### Revenue's Position

Revenue proceeded on the basis that such construction activity was taxable under GST, as consideration was received prior to issuance of completion certificate or first occupancy.

03

### Petitioner's Defence

Core factual assertion of the petitioner was that the development agreement was registered prior to the coming into force of the GST laws, i.e., before 1st July 2017.

# Court's Findings

## Timing of Ownership

Execution of a development agreement does not confer ownership in land on the developer.

Until completion, the developer merely has contractual rights to develop the land and receive consideration in the agreed manner.

## Consideration Analysis

Consideration received in the form of transfer of development rights prior to completion constitutes valid consideration for construction services under GST law.

The fact that development rights were received before completion certificate is the very basis for attracting GST liability.

## Application of GST Provisions

Under Notification No. 11/2017, construction of a complex intended for sale is eligible to GST, except where entire consideration is received after issuance of completion certificate or first occupancy.

In the present case, consideration was received much prior to completion and therefore, GST liability is clearly attracted under the notification.

The timing of execution of the development agreement is not determinative; what matters is when the construction services are provided and when consideration is received.

# Commentary and Counter-Arguments

## Section 142(11)(b) Protection

Section 142(11)(b) of the CGST Act states that no tax shall be payable on services under the GST Act if such services was leviable to Service Tax under Finance Act, 1994.

## Timing of Services

Factually, it needs to be seen that when the construction services have been rendered. Where the construction services have been rendered in the pre-GST regime, then it may be argued that Service Tax was leviable on the said transaction and not GST.

## Contrary Precedent

In *M/s. Vimlesh Kumar Contractor v. State of UP, Writ Tax No. 1021 of 2025*, it was held works contract services rendered in pre-GST regime cannot be made leviable to GST merely on the basis that the payments for the said services were received in GST regime.



SECONDMENT SERVICES

# Employee Secondment Arrangements

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

2025 (7) TMI 1611 – Karnataka High Court

In absence of invoicing for secondment services, the taxable value is deemed to be 'Nil', providing relief based on CBIC Circular clarifications.

# Secondment Arrangement Details

## Secondment Structure

Employees of affiliated foreign entities were seconded to the Indian entity to work exclusively for it.

## Control & Supervision

During secondment, the expatriates functioned under the full control, supervision and discipline of the Indian entity.

## Salary Treatment

Salaries were paid by the Indian entity, subjected to TDS under Indian income-tax law and statutory employment benefits under Indian labour laws were extended.

## No Invoicing

No invoices were raised by the foreign entities for alleged manpower services.

## Revenue's Demand

Revenue sought to levy IGST under Reverse Charge Mechanism, treating secondment as manpower recruitment or supply services.

The Department relied on Supreme Court decision in *Northern Operating Systems* to support their contention that all secondment arrangements constitute taxable supply of manpower services.

This approach would have resulted in significant tax liability and compliance burden on Indian entities receiving seconded employees from foreign group companies.

# Court's Comprehensive Analysis



## 1 Northern Operating Systems Distinguished

The Court held that *Northern Operating Systems* is fact-specific and not a blanket rule applicable to all secondment arrangements.

## 2 Employer-Employee Relationship

Where seconded employees work exclusively for the Indian entity, are integrated into its organisational structure, are governed by its HR policies, service rules, and disciplinary control, and are paid salaries by the Indian entity with Indian tax compliance.

## 3 Schedule III Application

Such employer-employee services fall squarely under Schedule III and therefore do not constitute a "supply" under GST law.

## 4 Alternative Ground - Circular Benefit

Even assuming that a supply exists, then also in case where full ITC is available to recipient and invoice has not been raised to the foreign entity, the CBIC Circular mandates 'Nil' value as the open market value leaving no scope for levy of GST.

# Key Principles Established

## Control Test

This decision reaffirms that the secondment of employees cannot always be equated with manpower supply merely on account of employees originating from foreign group entity.

On case-to-case basis, it needs to be examined that whether there exists employer-employee relationship between the parties through application of various tests, including control and supervision.

## Circular Benefit

Further, the Circular benefit should be available to challenge any demands with respect to tax, interest and penalty on secondment of employees. However, such benefit can only be availed where full ITC is available to the recipient.

In terms of the Circular, an argument is also possible to contest the refund of tax, interest and penalty which has been already paid under protest.

## Related Decision

Similarly, in the case of *BSH Household Appliances Manufacturing Pvt Ltd v. Commissioner, 2025 (8) TMI 471 – Karnataka High Court*, the Hon'ble Karnataka High Court has set-aside the demand on the basis of clarifications issued vide the Circular.

The Court also held that the demand under Section 74 of the CGST Act is unsustainable as the subject issue involved interpretation of law and not suppression of facts or wilful misstatement.

This reinforces the principle that where the issue pertains to legal interpretation, recourse to Section 74 (which deals with fraud and suppression) is not appropriate.

CIRCULARS

# Retrospective Application of Circulars

M/s. Oriental Insurance Co Ltd v. Additional Commissioner  
2025 (10) TMI 372 – Delhi High Court

A clarificatory or regularising circular issued pursuant to a GST Council recommendation can be applied to grant relief for a prior period, even after adjudication orders.



# Factual Background

## Reinsurance Services

The petitioner is engaged in providing reinsurance services in respect of specified general and life insurance schemes.

1

## Adverse Orders

Original Order and Appellate Order was passed against the petitioner, confirming the demand of GST along with interest and penalty.

2

## GST Demand

GST demand was raised on reinsurance services for the period 01.07.2017 to 24.01.2018, on the ground that exemption for reinsurance was inserted only w.e.f. 25.01.2018.

3

4

## GST Council Action

Subsequently, the GST Council examined the issue and the Department issued Circular No. 228/22/2024-GST, regularising GST treatment of reinsurance for the disputed period.

# Court's Holdings

## GST Council Decision

The GST Council, upon recommendation of the Fitment Committee, decided to regularise GST liability on reinsurance for the past period to correct the anomaly in the initial GST rollout.

## Applicability to Concluded Cases

Following the reasoning in the *AXA France Vie – India (2024 (10) TMI 282 – Delhi High Court)*, the Court held that the Circular is applicable to pending disputes and concluded adjudications insofar as they relate to the regularised period.

## Circular Effect

Circular No. 228/22/2024-GST was issued to give effect to this decision, providing "as is where is" regularisation for the affected period.

## Setting Aside Orders

Consequently, Original Order and Appellate Order were set-aside, giving full effect to the remedial circular issued by the Government.

# Significance of the Decision



## GST Council Authority

The decision reinforces the principle that GST Council-driven regularisation measures cannot be rendered otiose by earlier adjudication orders.



## Remedial Circulars

Correctly recognises the binding and remedial nature of clarificatory or regularising circulars issued to cure anomalies in the initial GST rollout period.



## Uniform Treatment

Follows and strengthens the jurisprudence laid down in the *AXA France Vie – India* line of cases, ensuring uniformity and certainty in treatment of reinsurance.



STATUTORY PAYMENTS

# Road Restoration Charges

Torrent Power Ltd v. Union of India – 2025 VIL 1036 GUJ

Statutory reimbursement paid by an electricity distribution licensee to a municipal corporation for road restoration is not eligible to GST.

# Case Background

## Petitioner's Business

The petitioner was an electricity distribution licensee engaged in laying and maintaining electricity distribution lines as per statutory obligations.

For executing statutory functions, the petitioner is required to dig public roads maintained by the municipal corporation.

## Statutory Obligation

Under Section 67(3) of the Electricity Act, 2003, the licensee is statutorily obligated to pay full compensation for any damage caused while laying or maintaining distribution lines.

The municipal corporation undertakes restoration of damaged roads and recovers the cost from the petitioner.

## Court's Comprehensive Analysis

### Nature of Payment

The payment made by the petitioner is statutory compensation, not consideration for any service rendered by the municipal corporation.

### Statutory Mandate

Section 67(3) of the Electricity Act, 2003 mandates the distribution licensee to make full compensation for damage caused while laying or maintaining electric lines.

### No Service Received

The petitioner does not seek or receive any service from the municipal corporation; the obligation to restore roads flows from statutory duties of the municipality.

## "Tolerating an Act" Analysis

The concept of "tolerating an act" under Schedule II to the CGST Act presupposes a consensual arrangement and consideration for agreeing to tolerate a particular act.

In the present case, there is no agreement to tolerate the act of digging and the licensee exercises a statutory right coupled with a statutory obligation to compensate.

Road maintenance and restoration is a sovereign function of the municipality under Article 243W of the Constitution of India.

Consequently, the transaction does not qualify as "supply" under Section 7 of the CGST Act.

# Key Takeaways

## Statutory Compensation

This decision has reaffirmed that payment in the nature of statutory compensation cannot be treated as a consideration for tolerating an act and thereby a supply exigible to GST.

## Money Flow Not Determinative

Merely on account of the fact that there is a transfer of money between parties, a taxable supply of "tolerating an act" cannot be attributed. There must be a direct nexus between the consideration and service with respect to tolerating an act.

## Agreement Requirement

Furthermore, there must be an express or implied agreement for tolerating an act. Such arrangement must be an independent arrangement in its own rights.

## Liquidated Damages View

These charges can be said to liquidated damages for not tolerating the act of damaging the roads for laying electrical lines, rather than consideration for a supply.



# Goa University v. Joint Commissioner

Bombay High Court | 2025 (4) TMI 1056

A watershed decision clarifying that statutory affiliation and regulatory fees collected by universities in discharge of public educational functions do not constitute "consideration" for a "supply" under GST law.

# Factual Background: Goa University

Goa University collected various fees from affiliated colleges and students pursuant to its statutory obligations under the governing University statutes. These included affiliation fees, postgraduate registration fees, convocation fees, and other regulatory charges mandated by law.

The GST Department issued a show cause notice proposing to levy GST on these receipts, along with other income streams such as sale of prospectus, issuance of certificates, sports fees, and interest income earned by the University.

The University contended that these receipts were statutory and regulatory in nature, arising not from any commercial or business activity, but from the discharge of its public educational mandate. Therefore, they argued, these receipts fell outside the scope of GST altogether.



# Legal Issue Before the Court

## Core Question

Whether affiliation fees and other statutory fees collected by a University from its affiliated colleges and students constitute a taxable "supply" under the CGST Act, 2017?

## Jurisdictional Prerequisites

Does the transaction satisfy the three foundational requirements for GST levy: existence of a supply, presence of consideration, and conduct in the course or furtherance of business?

# Court's Holding: No Tax on Statutory Functions

01

## Jurisdictional Facts Required

A valid levy of GST presupposes existence of three jurisdictional facts: a supply, consideration, and business activity. Failing any one of these, the entire proceedings are without jurisdiction.

03

## Nature of Affiliation

Affiliation undertaken by a University is a statutory obligation performed in discharge of public educational functions and not a commercial or contractual activity driven by profit motive.

02

## Meaning of Consideration

"Consideration" under Section 2(31) of the CGST Act requires a payment in response to or for inducement of a supply. This element is absent in statutory affiliation and regulatory fees which are mandatory by law.

04

## Fees Not Commercial Receipts

Fees such as affiliation fees, PG registration fees, and convocation fees cannot be characterized as commercial receipts or consideration for supply under GST law.

# Dominant Purpose Test Applied



The Court emphasized that where the dominant and primary activity of an institution is education—it cannot be treated as "business" merely because incidental or ancillary receipts arise in the course of its operations.

Unless an independent intention to carry on business is affirmatively established by the Department through cogent evidence, the institution's activities must be viewed through the lens of its primary statutory and educational mandate.

This principle protects public educational institutions from aggressive tax demands based on expansive interpretations of commercial activity.

# Circulars Cannot Override Statutory Provisions

## Circular Dated 17.02.2021

The Court held that the Circular dated 17 February 2021 cannot override or expand the scope of Sections 7 and 9 of the CGST Act, nor can it create a tax liability where none exists in law.

## Circular Dated 11.10.2024

Similarly, Paragraph 2 of the Circular dated 11 October 2024 was found to be without statutory force insofar as it sought to deem statutory fees as taxable consideration.

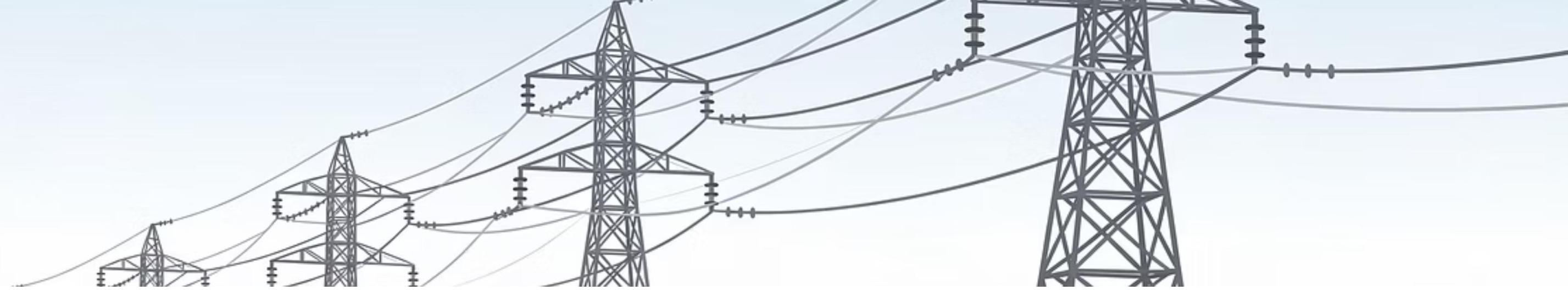
# Significance and Impact

This decision provides significant relief to universities and statutory educational bodies across India facing aggressive GST demands on regulatory and academic fees. It has categorically clarified that fees or charges collected in discharge of statutory obligations cannot fall within the purview of "consideration" for a supply.

The ruling reaffirms the settled principle that commercial intent and profit motive are key aspects in treating any activity as business. Discharge of statutory obligations, particularly in the field of public education, cannot be treated as a commercial or contractual activity subject to GST.

This decision was subsequently followed by the Karnataka High Court in *Rani Channamma University* (2025 (12) TMI 314), demonstrating its persuasive value across jurisdictions.





# Central Electricity Regulatory Commission v. Additional Director, DGGI

Delhi High Court | 2025 (1) TMI 887

A landmark ruling clarifying that fees charged by electricity regulatory commissions for performing statutory regulatory and quasi-judicial functions are not taxable under GST law.

# Background: Electricity Regulatory Commissions

The Central Electricity Regulatory Commission (CERC) and Delhi Electricity Regulatory Commission (DERC) collected statutory fees for discharging their regulatory and adjudicatory functions under the Electricity Act, 2003. These functions included regulation of tariff, licensing of entities, and oversight of inter-State transmission of electricity.

The GST Department issued show cause notices proposing levy of CGST and IGST on such fees, treating them as consideration for the supply of services. The Revenue authorities contended that the regulatory functions constituted "business" and that the fees were taxable as support services under the GST law.



# Key Holdings of the Delhi High Court



## Not Business Activity



Regulatory and adjudicatory functions of the commissions do not constitute "business" under Section 2(17) and are not supplies made for consideration in the course or furtherance of business.



## Statutory Functions



Commissions perform statutory functions without any commercial or profit motive. They are instruments of public policy, not commercial enterprises.



## Fees Deposited with Government



The fees collected by CERC and DERC are deposited with the government and not used for pecuniary benefit. Commissions are funded by government grants, further indicating their non-commercial nature.

## Schedule III Protection: Court or Tribunal Services

The Court held that the functions of electricity regulatory commissions fall squarely within Schedule III of the CGST Act, which lists activities that are neither supply of goods nor supply of services. Specifically, services by a court or tribunal are exempted, and the regulatory commissions perform quasi-judicial functions.

The Department's attempt to bifurcate regulatory and adjudicatory functions for GST purposes was firmly rejected. The Court emphasized that both functions are integral to the statutory mandate of the commissions and cannot be artificially separated to justify taxation.

# Implications: Limiting "Business" Under GST

## Curtails Over-Expansive Interpretation

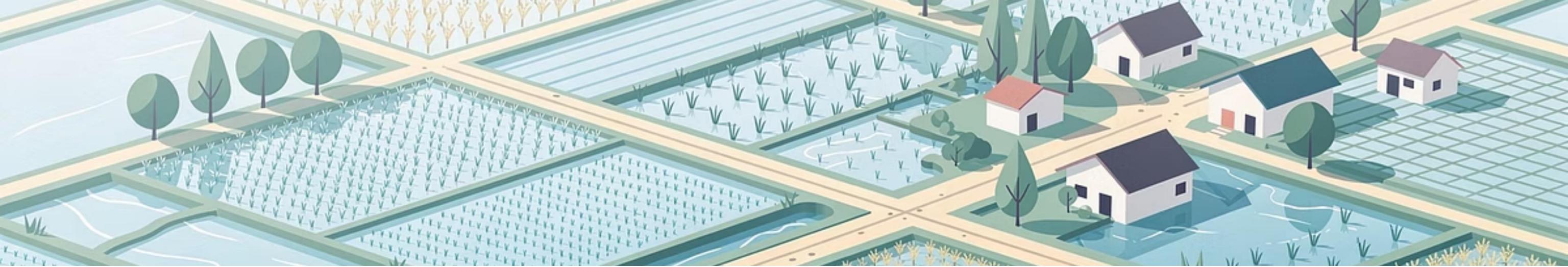
This landmark ruling has curtailed the Department's over-expansive interpretation of the term "business" under Section 2(17) of the CGST Act. Sovereign and statutory functions cannot be construed to fall within the meaning of "business" under GST law.

## Impact on Other Regulatory Bodies

This ruling has significant implications for regulatory fees, license fees, and adjudicatory charges collected by other statutory bodies such as SEBI, TRAI, Competition Commission, and similar regulators. It provides persuasive precedent for such bodies facing similar GST demands.

## Supreme Court Affirmation

This decision has been reaffirmed by the Hon'ble Supreme Court in *Additional Director DGGI v. Central Electricity Regulatory Commission, 2025 (7) TMI 1523 – SC Order*, as the SLP filed by the department was not admitted by SC.

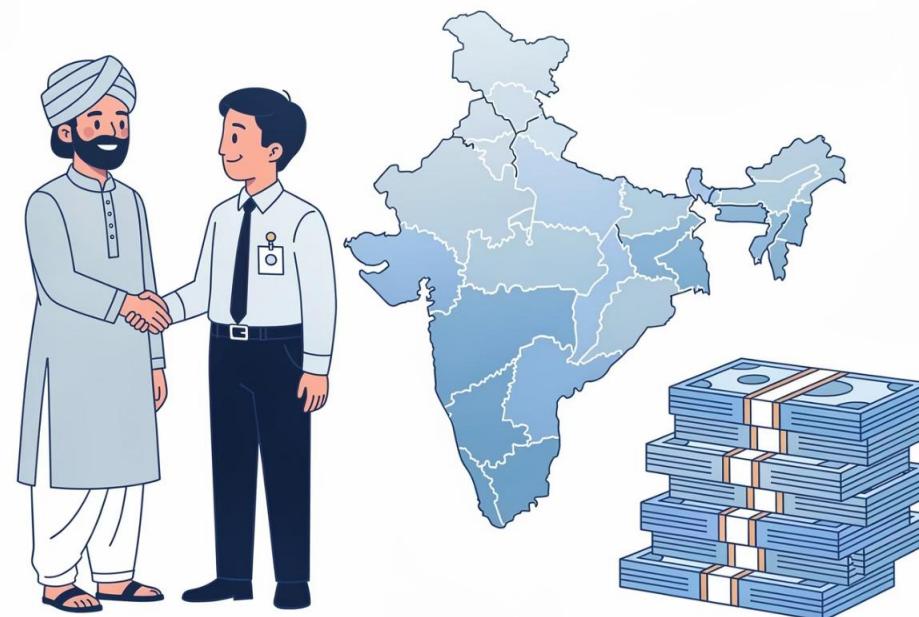


# Asha R v. Assistant Commissioner

Karnataka High Court | 2025 (4) TMI 548

A crucial decision holding that solatium received for compulsory acquisition of land by the State cannot be taxed under GST law as it is statutory compensation, not consideration for a supply.

# Facts: Compulsory Land Acquisition



The petitioners' lands were compulsorily acquired by the State of Karnataka and Karnataka Industrial Areas Development Board (KIADB) under statutory land acquisition framework. As part of the acquisition, the petitioners received compensation which included solatium—an additional amount paid to compensate for the compulsory nature of the acquisition.

The GST Department issued show cause notices proposing to levy GST on the solatium received, treating it as consideration for "tolerating an act" under Entry 5(e) of Schedule II to the CGST Act. The Department argued that by surrendering their land, the petitioners were tolerating the act of acquisition and thus providing a taxable service.

# Court's Reasoning: Solatium is Not Taxable



## Statutory Compensation

Solatium is statutory compensation mandated by law for the compulsory and involuntary nature of land acquisition. It is not negotiated consideration arising from a commercial transaction.



## Sale or Transfer of Land

The transaction is essentially a sale or transfer of all rights in land. Entry 5 of Schedule III explicitly treats sale of land as neither supply of goods nor supply of services, placing it outside GST.



## Immovable Property Under State List

Even otherwise, GST legislation does not intend to tax immovable property, which falls under State List II of the Seventh Schedule to the Constitution. Parliament's GST powers do not extend to taxing land transfers.



## No Agreement to Tolerate

Solatium is not consideration for tolerating an act or refraining from an act. No independent agreement exists for any service under Entry 5(e) of Schedule II—the acquisition is imposed by law, not contracted.

## Entry 5(e) of Schedule II: Conditions Not Met

According to Circular No. 178/10/2022-GST, the following conditions must be satisfied for taxing any transaction under Entry 5(e) of Schedule II as "agreeing to tolerate an act":

1. There must be an express or implied agreement between the parties to do an act or abstain from doing an act against a consideration;
2. Such arrangement cannot be presumed to exist merely on the basis of flow of money from one party to another;
3. There must be sufficient nexus between the supply (tolerating the act) and the consideration received.

In compulsory land acquisition, none of these conditions are met. There is no agreement—the acquisition is unilateral and statutory. The payment is compensation mandated by law, not contractual consideration for agreeing to tolerate an act.

# Significance: Protection from Aggressive Demands

## 1. Curtails Misuse of Entry 5(e)

This decision curtails aggressive departmental attempts to tax various compensations and statutory payments under the broad rubric of "agreeing to tolerate an act."

## 2. Distinguishes Compensation from Consideration

The judgment correctly distinguishes between contractual consideration arising from voluntary commercial transactions and statutory compensation for compulsory acquisition of property rights.

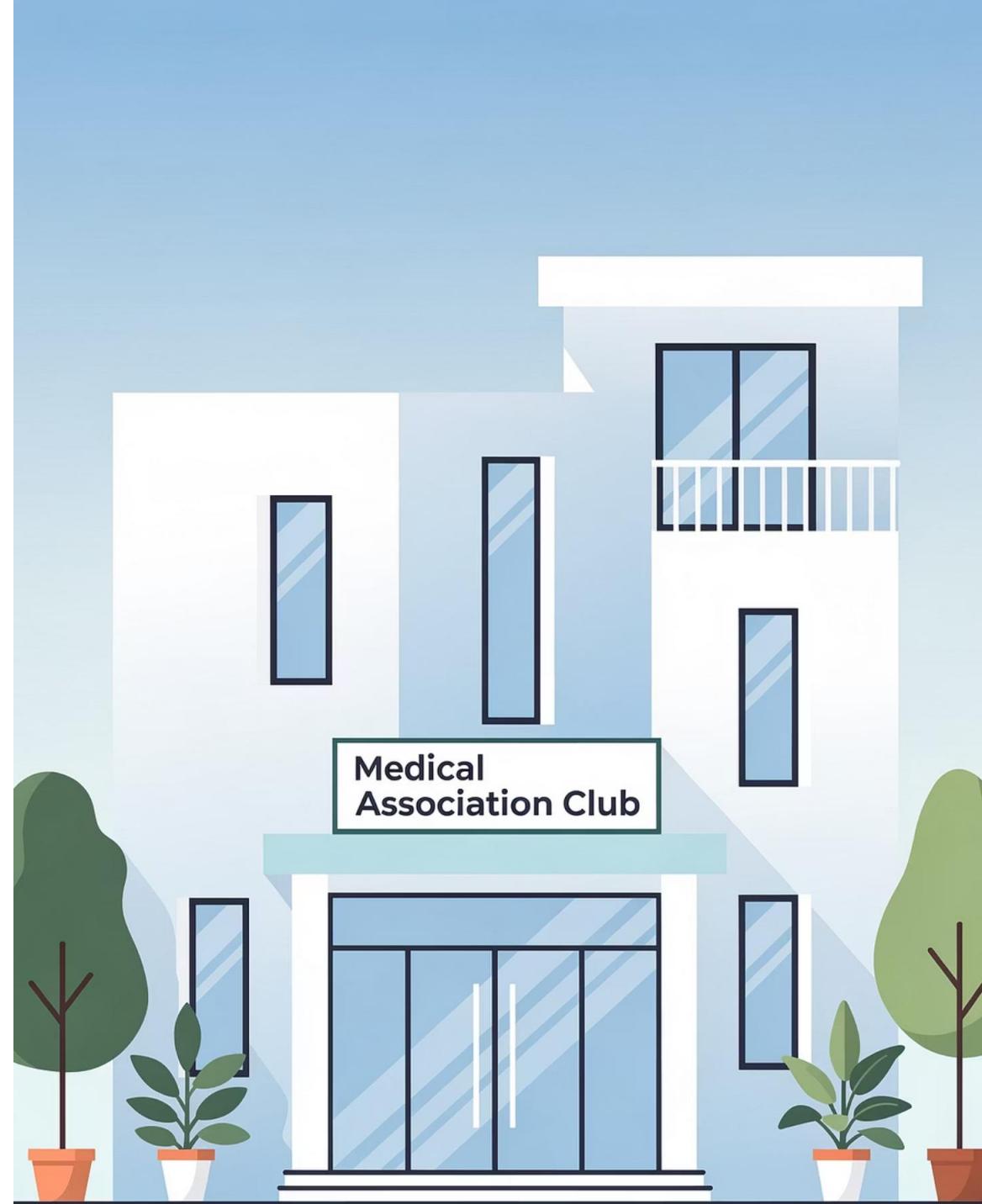
## 3. Protects Landowners

The ruling protects landowners from bearing an additional GST burden on what is already an involuntary dispossession of their property for public purposes.

# Indian Medical Association v. Union of India

Kerala High Court | 2025 (4) TMI 872

A constitutional challenge to amendments deeming services by clubs and associations to their members as taxable "supply". Held that such amendments are unconstitutional as the principle of mutuality was violated.



# Legislative Amendments Under Challenge

Amendments were introduced to Section 2(17)(e) and Section 7(1)(aa) of the CGST Act to deem services provided by clubs or associations to their members as taxable "supply," even though the club and members are not distinct legal persons.

These amendments were given retrospective effect from 01 July 2017, the date of commencement of GST. This meant that clubs and associations faced potential tax liability for past periods during which they had no obligation to collect tax from members.

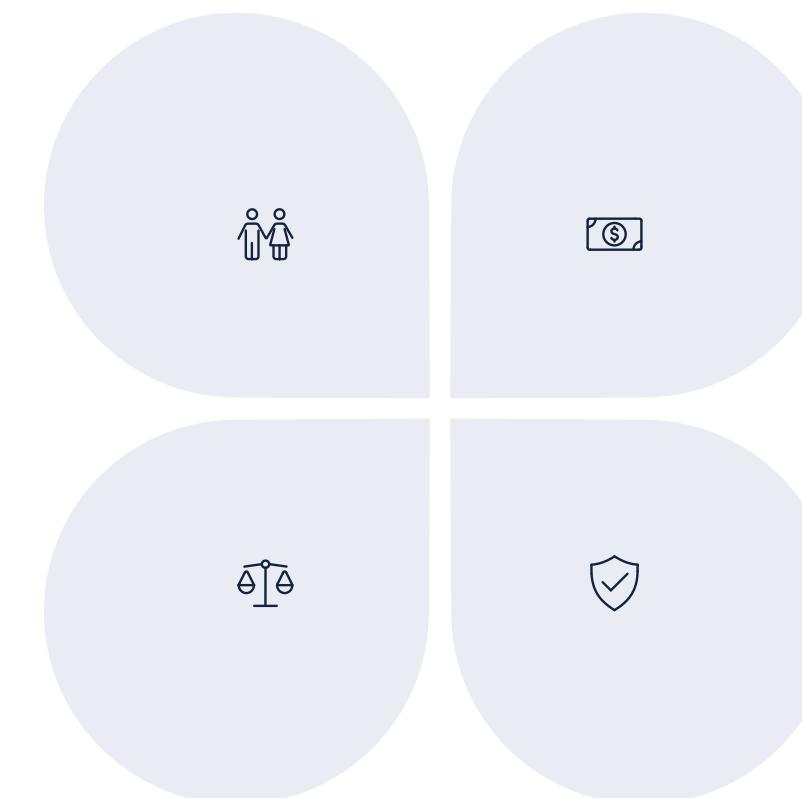
Clubs and associations across India challenged the constitutional validity of these amendments, arguing that they violated the well-established principle of mutuality and exceeded Parliament's legislative competence under Article 246A.



# Principle of Mutuality Under Tax Law

## Club and Members Not Distinct

Under the principle of mutuality, a club and its members are not separate legal persons for tax purposes—they are one and the same entity acting in different capacities.



## Constitutional Protection

Mutuality is not merely a tax avoidance principle but a fundamental concept rooted in the nature of legal personality and the constitutional limits of taxation.

## No Commercial Transaction

Contributions paid by members to the club are not consideration for services but pooling of resources among themselves for their mutual benefit.

## Established by Supreme Court

The principle was firmly established by the Supreme Court in *Calcutta Club Ltd v. State of West Bengal*, holding that principle of mutuality was applicable under sales tax and service tax laws.

# Court's Constitutional Analysis

## Article 246A Requires "Supply"

Article 246A of the Constitution uses the term "supply" in its natural constitutional sense, which inherently requires two distinct persons—a supplier and a recipient. Parliament's power to tax is limited to such supplies.

## Legislature Cannot Create Artificial Supply

The deeming provisions which were introduced retrospectively exceeded constitutional limits when they create fiction without substance. Statutes cannot ascribe meaning to a word/concept therein that differs from the accepted meaning of the same word/concept under the Constitution

## Amendments Held Unconstitutional

Amendments to Section 2(17)(e) and Section 7(1)(aa) of the CGST Act were held to be unconstitutional and void as they violated Article 246A and the principle of mutuality embedded in constitutional tax jurisprudence.

# Retrospective Levy: A Constitutional Violation

The Court held that retrospective levy of GST on clubs from 01 July 2017 violates the Rule of Law enshrined in the Constitution. During the period from July 2017 to the date of amendment, clubs had no legal obligation to collect tax from their members and no mechanism existed to do so.

Imposing a tax liability retrospectively when the taxpayer had no opportunity to collect the tax from the persons who would bear the economic burden is arbitrary, unreasonable, and illegal. This creates an unforeseen liability that the clubs cannot pass on, violating principles of fairness in taxation.

Retrospective taxation, while permissible in certain circumstances, cannot be used to create obligations that were impossible to fulfill at the time or to impose penalties for non-compliance with laws that did not exist.

# Future Legislative Options

1

## Acceptance of Ruling

Government may accept the judicial interpretation and withdraw demands on clubs and associations, recognizing the constitutional limits on taxing mutual associations.

2

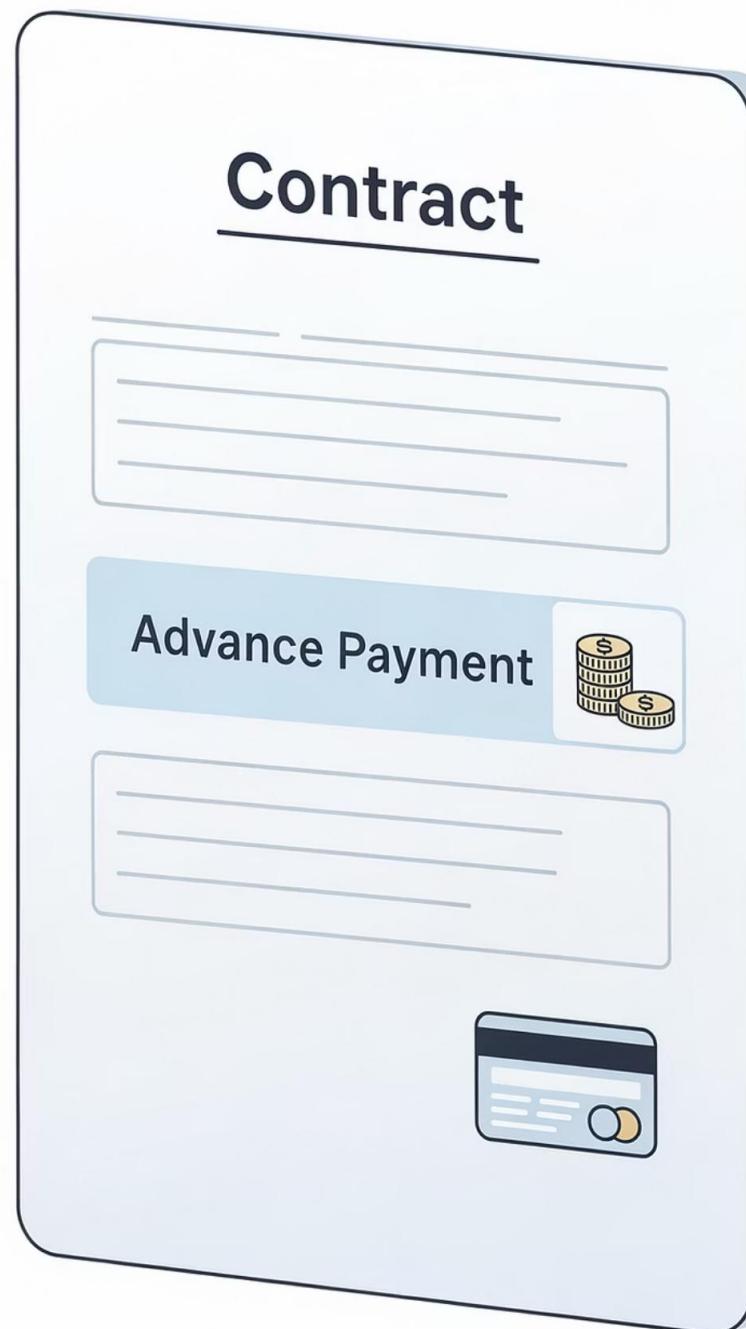
## Constitutional Amendment

If the Government intends to tax such transactions, a constitutional amendment to Article 246A may be required to explicitly include deemed supplies between non-distinct persons.

3

## Prospective Legislation

Alternatively, more carefully drafted prospective legislation with proper definitions and mechanisms for collection could be introduced, respecting constitutional boundaries.



# Joint Commissioner v. NAM Estates Private Limited

Karnataka High Court | 2025 (1) TMI 831

An important ruling establishing that GST paid on advance consideration is refundable when the underlying contract is rescinded due to supplier non-performance and no supply takes place.

# Contract Failure and Tax Refund

NAM Estates paid an advance along with applicable GST under a contract for supply of goods or services. The supplier failed to perform its obligations under the contract, leading to rescission of the agreement due to material breach.

The assessee recovered the advance amount paid by encashing a bank guarantee provided by the supplier. However, the GST paid on the advance remained with the State exchequer, as the supplier had deposited it with the government.

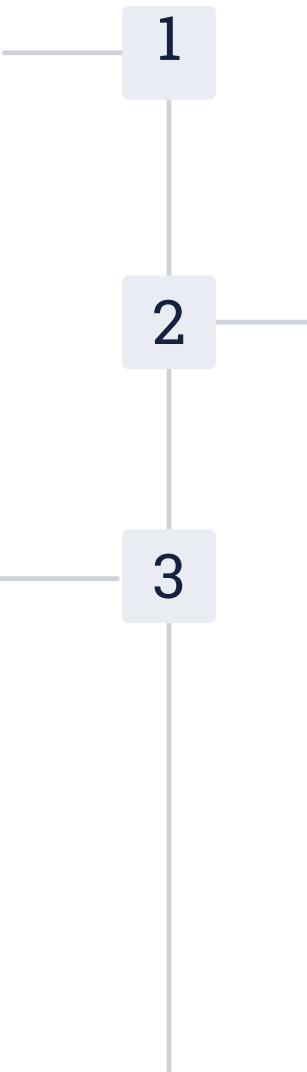
When NAM Estates filed a refund claim for the GST paid, it was rejected on procedural grounds, including the absence of a credit note from the defaulting supplier. The Department contended that without a credit note, the refund mechanism under Section 54 could not be invoked.



# Court's Analysis: Substance Over Form

## Tax Levied on Transaction

GST is levied on a taxable transaction—specifically, a supply of goods or services. If the transaction fails to materialize due to supplier default, the foundational basis for the tax ceases to exist.



## Tax cannot be retained

When no taxable event has occurred, tax paid in advance cannot lawfully be retained by the State. To do so would amount to unjust enrichment of the exchequer at the expense of the taxpayer.

## Credit Note Not Mandatory

The question of issuing a credit note does not arise when goods were never delivered and the contract was rescinded due to material breach. Procedural requirements cannot defeat substantive rights to refund.

## Implications and Takeaways

This ruling establishes a significant precedent that GST liability on advances is contingent upon actual supply. Failure of the transaction nullifies the levy, and the tax paid must be refunded regardless of whether a formal credit note has been issued by the supplier.

The decision reinforces the doctrine that the State cannot retain tax without authority of law, aligning with constitutional principles of unjust enrichment and restitution. It places substance over procedural form, ensuring that taxpayers are not penalized for supplier defaults.

The ruling is consistent with the Supreme Court's decision in *Oswal Chemicals and Fertilizers Limited*, which held that even purchasers can seek refunds under tax laws even though tax is paid by the supplier.

This decision will allow recipients to seek refunds in cases where suppliers have failed to issue credit notes due to insolvency, dispute, or disappearance, providing an important remedy for commercial parties facing contract failures.

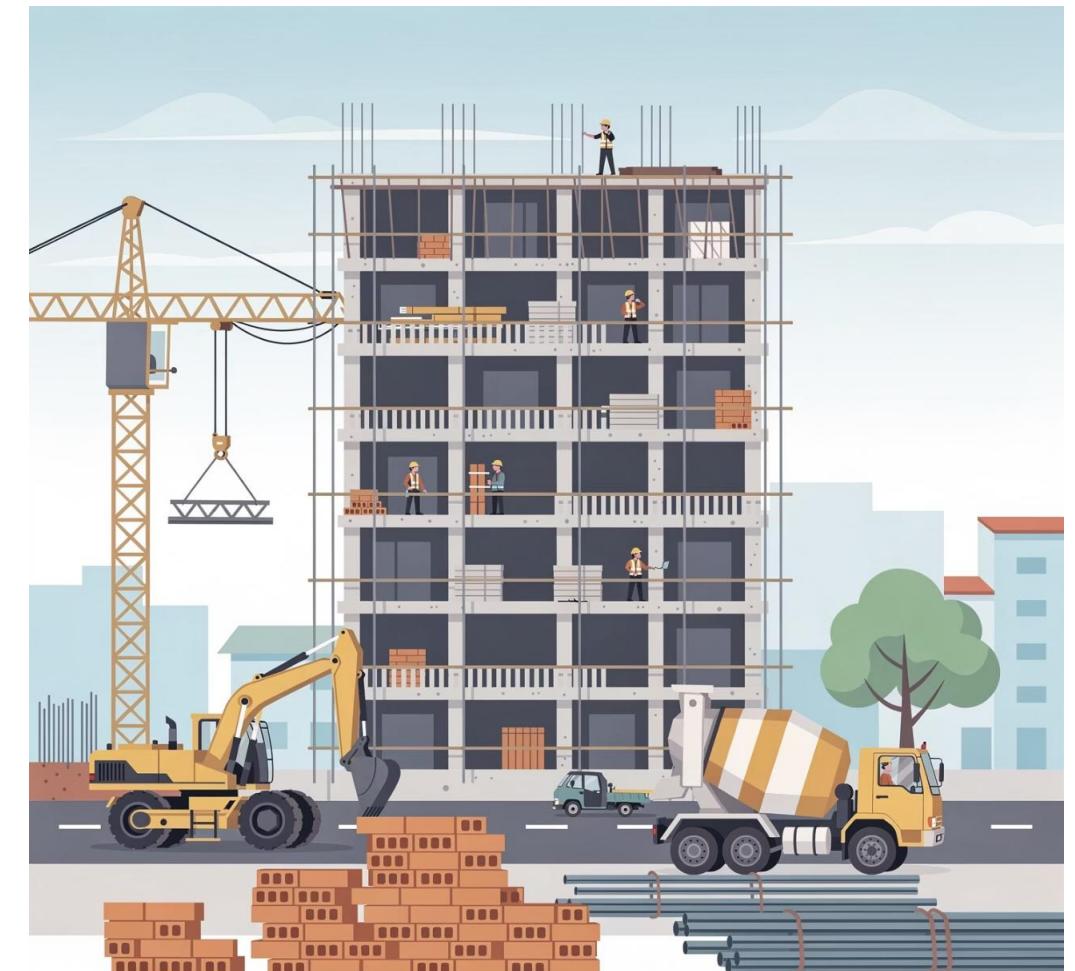
# M/s. Rohan Corporation Pvt Ltd v. Union of India

## Citation

2025 (4) TMI 549 – Karnataka High Court

## Core Principle

Sale of under-constructed building without construction services cannot be taxed under Entry 5(b) of Schedule II to the CGST Act



# Rohan Corporation: Factual Matrix



## Transaction Structure

Petitioner sold an under-constructed building on an "as is where is" basis to the purchaser



## Absence of Construction Contract

No construction contract or obligation to provide subsequent construction services existed between the parties



## GST Payment Under Protest

GST was paid under protest on the transaction by the petitioner



## Refund Rejection

Refund claim was rejected by the authorities treating the transaction as taxable under Entry 5(b) of Schedule II

# Rohan Corporation: Legal Issue and Holding

## Issue Before the Court

Whether sale of an under-construction building without providing construction services is taxable under the Goods and Services Tax regime in India?

The fundamental question addressed the scope and applicability of Entry 5(b) of Schedule II to the CGST Act, particularly in cases where no construction services are rendered post-sale.



### Court's Holding

Entry 5(b) of Schedule II applies only where there is a contract for construction services and consideration is received before issuance of completion certificate. In this case, there was no construction contract and no construction services were rendered post-sale.

# Rohan Corporation: Key Reasoning

01

## Entry 5(b) Scope Limited

Entry 5(b) of Schedule II applies only where there is a contract for construction services and consideration is received before issuance of completion certificate

03

## Absence of Completion Certificate Not Determinative

Mere absence of a completion certificate does not automatically attract Entry 5(b) of Schedule II to the CGST Act

# Rohan Corporation: Key Reasoning

02

## No Construction Services Rendered

In the present case, there was no construction contract and no construction services were rendered post-sale by the petitioner

04

## Pure Sale of Immovable Property

Transaction was classified as a pure sale of immovable property falling under Entry 5 of Schedule III, which is neither supply of goods nor supply of services

# Rohan Corporation: Practical Implications



This decision clarifies a critical distinction between construction service and sale of immovable property under GST. It reinforces that absence of completion certificate alone is not determinative of taxability.

## Clarity on Construction Services

The judgement establishes that GST applies to construction activity, not to the transfer of immovable property per se

## Completion Certificate Test

Absence of completion certificate is not the sole or determinative factor for attracting GST liability under Entry 5(b)

## Contractual Intent Matters

The presence or absence of a construction services contract is crucial in determining the nature of the transaction and its tax treatment

# X'SS Beverage Co v. State of Assam

## Citation

2025 (3) TMI 549 – Gauhati High Court

## Core Principle

Fruit-based drinks cannot be classified as water or carbonated water (based drinks) merely on account of the presence of carbon dioxide. Classification depends on the dominant nature and essential character of the product.



# X'SS Beverage: Facts and Classification Dispute



## Manufacturing Activity

Petitioner manufactured carbonated beverages containing fruit pulp, fruit juice, or fruit concentrate as key ingredients



## Petitioner's Classification

Products classified under Tariff Item 2202 99 20 as "fruit pulp or fruit juice-based drinks"



## Revenue's Classification

Revenue classified products under Tariff Item 2202 10 90 as "waters, including mineral waters and aerated waters" due to presence of carbonated water

# X'SS Beverage: Legal Framework and Essential Character Test

## Issue Before the Court

Whether the subject products were classifiable under Tariff Item 2202 99 20 as "fruit pulp or fruit juice-based drinks" or Tariff Item 2202 10 90 as "waters, including mineral waters and aerated waters"?

The classification dispute had significant tax implications, as the applicable GST rate varied substantially in these two tariff items.

### Essential Character Test

Classification depends on the dominant nature and essential character of the product based on fruit content

### Fruit Juice Threshold

Presence of fruit juice exceeding prescribed limits (generally >10%) gives the product its essential character. In this regard, the Court relied upon the FSSAI Regulations

# X'SS Beverage: Court's Reasoning and Holding

## Essential Character Principle

Classification depends on the dominant nature and essential character of the product. Presence of fruit juice exceeding prescribed limits gives the product its essential character, not merely acting as a flavouring agent.

## Carbonation Not Determinative

Mere presence of carbonated water does not render the product "water" or "aerated water" under the tariff classification scheme. The primary ingredient determines classification.

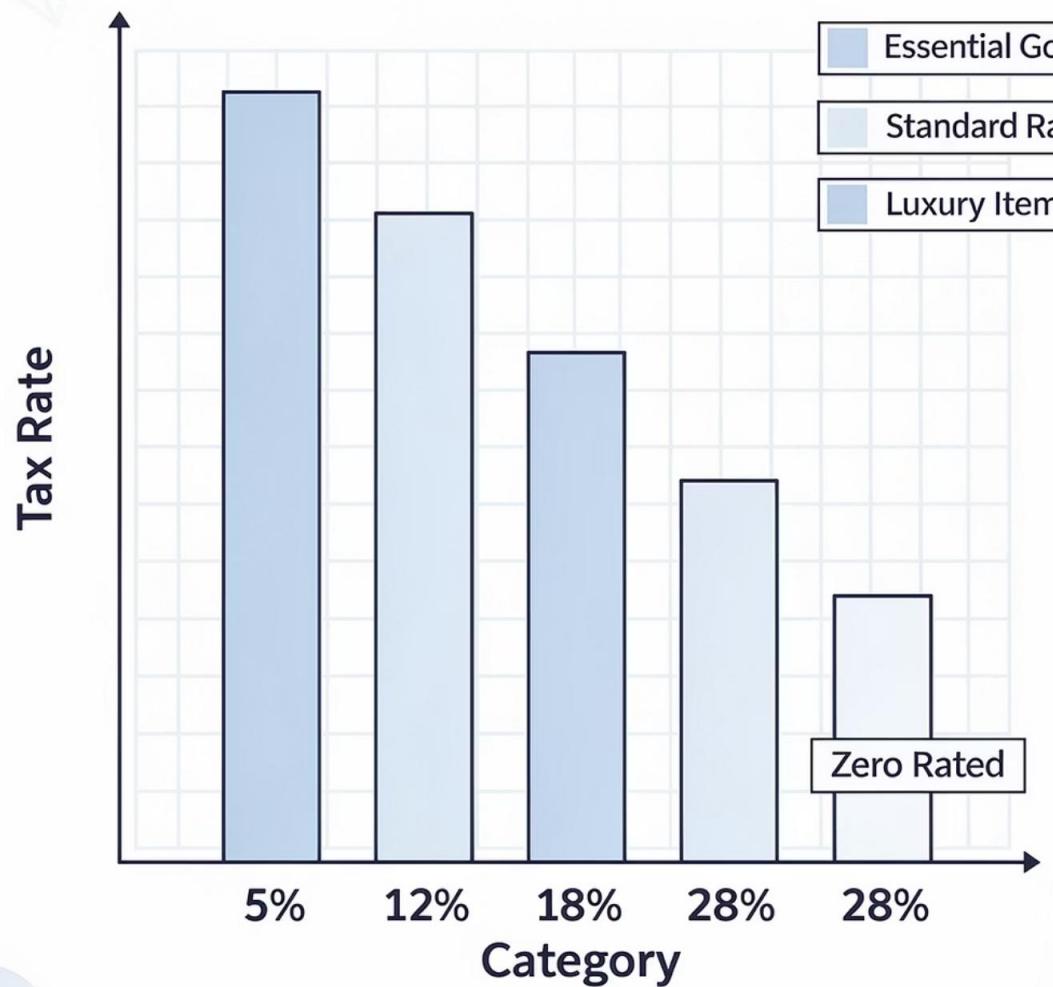
## Tariff Item Distinction

Tariff Item 2202 10 90 primarily covers water, whereas Tariff Item 2202 99 20 covers "others", including fruit juice-based drinks with substantial fruit content.

## Common Parlance Doctrine

The doctrine of common parlance was relied upon to hold that the subject goods were sold in the market as fruit-based drinks or drinks containing fruit pulp or fruit concentrate.

## GST Tax Rate Chart - India



## X'SS Beverage: Tax Rate Implications

### Correct Classification Upheld

The Court held that the subject products are correctly classifiable under Tariff Item 2202 99 20 as "fruit pulp or fruit juice-based drinks".

This classification was based on the essential character test, which considered the presence and quantity of fruit juice as the determining factor rather than the presence of carbonated water.

### Prospective Application of Higher Rate

Notification No. 8/2021-CT (Rate) and Notification No. 1/2021-Compensation Cess (Rate), which had put the said products under 28% GST slab, was prospectively applicable from 01.10.2021.

The period involved in the dispute was prior to 01.10.2021. Upholding coverage under 12% GST, the Court held that the notifications were not applicable retrospectively.

# X'SS Beverage: Practical Takeaways



## Essential Character Test Reaffirmed

This decision reaffirms the applicability of the "essential character" test to determine the classification of products under Chapter 22. Classification is determined by the nature of the beverage, particularly by the presence of fruit juice to an extent that attributes essential character, not merely as a flavouring agent.



## Supreme Court Precedent Applied

The Court heavily relied on the decision of the Hon'ble Supreme Court in Parle Agro (P) Ltd v. Commissioner of Commercial Taxes, Trivandrum, 2017 (5) TMI 592, wherein Appy Fizz containing more than 10% fruit juice was held to be a fruit juice-based drink.



## Reliance on Lab Reports

The Court emphasized that reliance can be placed on credible lab reports such as those from FSSAI to ascertain the composition and essential character of the products, providing an objective basis for classification disputes.

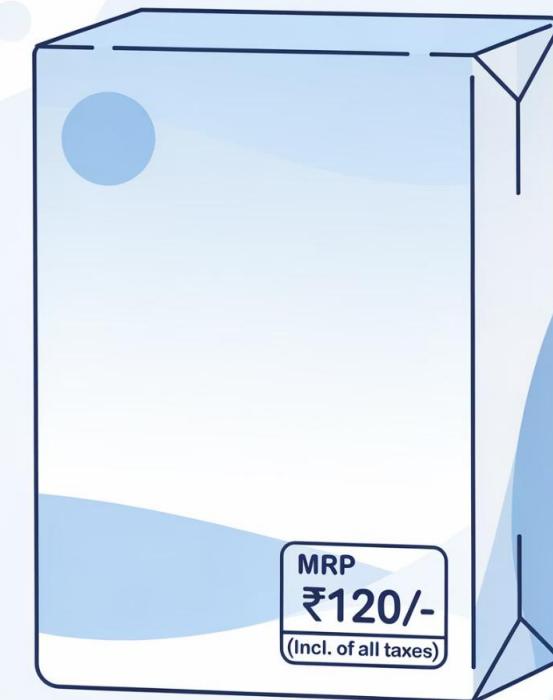
# M/s. VKG Packers v. Union of India

## Citation

2025 (11) TMI 425 – Karnataka High Court

## Core Principle

Compensation cess must be computed strictly on the transaction value. Delegated legislation cannot mandate levy on basis of Maximum Retail Price (MRP) in contravention of the parent statute.



# VKG Packers: Factual Background and Issue

01

## Manufacturers of Notified Goods

The petitioners were manufacturers and suppliers of goods notified under the GST (Compensation to States) Act, 2017, making them liable for compensation cess

02

## Notification Amendments

The Central Government issued notifications amending the earlier notifications prescribing rate of compensation cess wherein cess was prescribed on the basis of Maximum Retail Price (MRP) for certain products

03

## Constitutional Challenge

Petitioners challenged the validity of these notifications on the ground that they contravened the statutory mandate requiring valuation based on transaction value under Section 15 of the CGST Act

### Key Issue

Whether notifications issued under Section 8(2) of the Compensation Act prescribing MRP-based levy of compensation cess are valid and within the scope of delegated legislative power?

# VKG Packers: Statutory Framework Analysis

## Section 8(2) Mandate

Section 8(2) of the Compensation Act, read with its proviso, mandates that where compensation cess is chargeable with reference to value, the value must be determined in accordance with Section 15 of the CGST Act

## Section 15(1) Definition

Section 15(1) of the CGST Act clearly defines value as the transaction value, i.e., the price actually paid or payable for the supply of goods or services

## Notification's Substitution

The impugned notifications, by prescribing levy of cess on MRP, substitute a notional value in place of the statutorily mandated transaction value



# VKG Packers: Court's Holding and Reasoning

## Ultra Vires Declaration

The Court held that such substitution of MRP for transaction value directly conflicts with the proviso to Section 8(2) of the Compensation Act and the valuation mechanism under Section 15 of the CGST Act.

Consequently, the impugned notifications prescribing MRP-based compensation cess were declared ultra vires the Compensation Act and the CGST Act, being beyond the scope of delegated legislative power.

## Principle of Statutory Hierarchy

Delegated legislation cannot override or contradict the express provisions of the parent statute. The measure of tax must be prescribed by the statute itself, and subordinate legislation cannot alter this fundamental basis.

# VKG Packers: Implications for Tax Administration

1

## Statutory Hierarchy Reaffirmed

The judgement reaffirms the hierarchy between parent statute and delegated legislation, reinforcing that fiscal notifications cannot alter the measure of tax prescribed by the parent statute itself

2

## Valuation Uniformity

Correctly applies the valuation discipline under GST, ensuring uniformity between CGST valuation under Section 15 and compensation cess valuation under Section 8 of the Compensation Act

3

## Notional Value Rejected

Aligns with long-standing jurisprudence that tax cannot be levied on a notional or artificial value such as MRP unless the statute expressly authorises such levy



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Transectiogn: Cumber 2014  
Mole: Cacli 2012

### CLIENT:

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Daok 65 00



### ITEM:

Dsai 10.00  
Trasaction: S.,59,200.1

### TRANSACTION :

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3		5,00	5,00
4		3,00	4,00
5		1,00	3,00
		Tame	₹,13,00
		GST	₹,26,00
		Total	₹,25,00
		₹	₹,56,00



Signature  
CIKERIRI RVOUNETION



# Infodesk India Pvt Ltd v. Union of India & Ors.

## Citation

2025 (12) TMI 435 – Gujarat High Court

## Core Principle

Software consultancy services provided to overseas parent company on principal-to-principal basis constitute export of services, not intermediary services. The arrangement being bipartite and consideration on cost-plus basis are key determinative factors.



# Infodesk India: Facts and Refund Denial



## Service Provider Structure

Petitioner, an Indian entity, provided software consultancy and related services to its overseas parent company under a bipartite service agreement



## Nature of Services

Services included software development consultancy, information services, technical and business support services



## Pricing Mechanism

Petitioner raised monthly invoices on cost-plus (8%) basis and received consideration in foreign exchange



## Refund Denial

Refund of unutilised input tax credit was denied by classifying the services as "intermediary services" rather than export of services

# Infodesk India Pvt Ltd v. Union of India & Ors.

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## Refund Denial

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# Infodesk India: Legal Analysis and Holding

## Issue Before the Court

Whether services provided by the petitioner to its overseas parent are "export of services" under Section 2(6) read with Section 16 of the IGST Act or "intermediary services" under Section 2(13)?

The classification had significant implications for the petitioner's entitlement to refund of unutilised input tax credit on zero-rated supplies.

### Court's Finding

Services provided by the petitioner were supplied on its own account and not as an intermediary

### Bipartite Arrangement

The arrangement was bipartite, with no tri-partite facilitation between parent and third-party customers

### Independent Service Provider

Petitioner was an independent service provider, earning consideration on cost-plus basis, not commission-based

# Infodesk India: Practical Implications

## Related Entity Transactions Clarified

Reiterates the settled jurisprudence that transactions between related entities on principal-to-principal basis cannot be classified as intermediary services. The key test is whether services are provided "on its own account" or not.

## Relevance for IT/ITeS Sector

This ruling is highly relevant for service providers engaged in supplying IT/ITeS services, who face such demands on a routine basis from the Department challenging export classification.

## Determinative Factors

The Court particularly emphasized the nature of agreement being bipartite and the nature of consideration being on cost-plus basis to hold that the said services are not intermediary services.

## Recent GST Council Recommendation

Recently, on the 56th GST Council recommended, Finance Bill, 2026 proposes omission of clause (b) of Section 13(8) of IGST Act. Accordingly, the place of supply for "intermediary services" will be the location of the recipient as per Section 13(2).

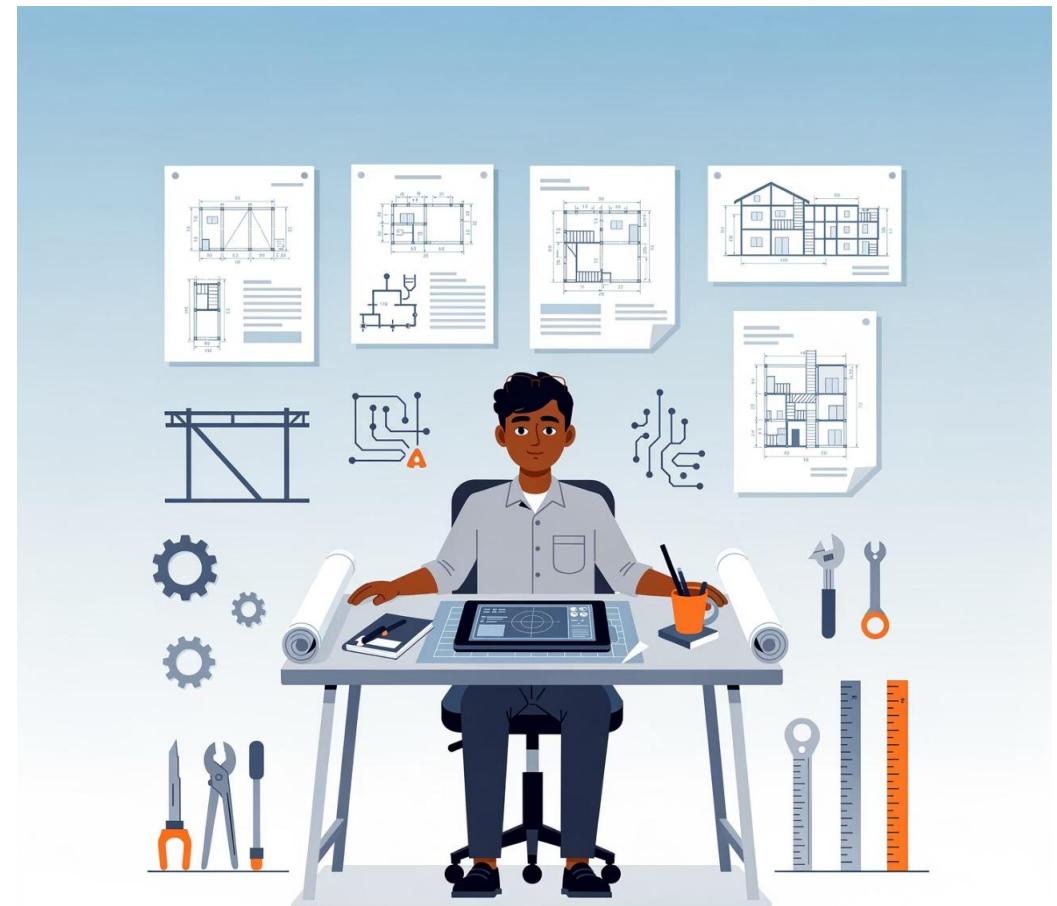
# Sundyne Pumps and Compressors India Pvt Ltd v. Union of India

## Citation

2025 (6) TMI 1259 – Bombay High Court

## Core Principle

Fixed mark-up pricing does not make an independent service provider an agent of the foreign recipient. Cost-plus arrangements and inspection clauses are commercial safeguards, not indicators of agency relationship.



# Sundyne Pumps: Agency Allegation and Refund Denial



## Service Provision

Petitioner provided design and engineering services to recipients located outside India on a principal-to-principal basis

## Own Resources Used

Services were rendered using the Petitioner's own manpower and resources, with consideration on a cost-plus mark-up model

## Refund Rejection

Refund of ITC relating to zero-rated supplies was rejected alleging Petitioner was acting as "agency" or mere establishment of foreign recipient

### Core Issue

Whether the Petitioner qualifies as an "agent" or mere establishment of a distinct person of the foreign recipient, thereby failing condition (v) of Section 2(6) of the IGST Act?

# Sundyne Pumps: Court's Definitive Ruling

## Principal-to-Principal Basis

The Petitioner does not supply services on behalf of the foreign recipient but supplies services on its own account on a principal-to-principal basis, which is fatal to the agency theory

## Commercial Safeguards Distinguished

Mere clauses permitting inspection of books or adopting a cost-plus pricing model do not establish control or agency; such clauses are commercial safeguards and are common in cross-border service arrangements

## Third Party Requirement

To qualify as an agent under Section 2(5) of the CGST Act, there must be a supply on behalf of another person involving a third party, which is completely absent in the present case

## Intention of Parties

Existence of only two parties is fatal to the Department's theory of agency. The agreement, read as a whole, expressly negates any agency relationship and intention of parties is determinative

# Key Implications of the Principal-Agent Determination

## Basis Cost-Plus Arrangements Are Insufficient

This landmark decision definitively establishes that a principal-agent relationship cannot be concluded solely based on the existence of a cost-plus arrangement between contracting parties. The presence of such financial structures, while potentially indicative, does not independently create the requisite legal relationship. When services are provided "on its own account," the nature of consideration and the contractual relationship between parties become immaterial to the principal-agent analysis.

## The "Own Account" Test Controls

The most critical criterion for establishing a principal-agent relationship is determining whether services were provided "on its own account." This requires examining the substantive nature of the transaction rather than its form. A true principal-agent relationship necessitates two distinct supplies: the main supply of goods or services, and a secondary supply that arranges or facilitates that main supply. Without this dual-supply structure, no principal-agent relationship exists regardless of other contractual terms.

## STS-KEC (JV) v. State Tax Officer

### Citation

2025 (3) TMI 165 – Madras High Court



### Core Principle

The Madras High Court ruled that the term "railways" under GST Rate Notifications should be construed liberally and not restricted to the definition under the Indian Railways Act. This landmark decision clarifies that works contract services for railway infrastructure qualify for concessional GST rates, even when executed for entities like Rail Vikas Nigam Limited.

# Case Background and Key Issue

## The Dispute

The assessee was awarded a works contract by Rail Vikas Nigam Limited (RVNL) for doubling of railway track, construction of roadbed, bridges, and platforms. They claimed a concessional GST rate of 12% under Sl. No. 3(v)(a) of Notification No. 11/2017-Central Tax (Rate), applicable to composite supply of works contract services pertaining to railways.

## Department's Position

The Department denied the benefit, attempting to import the definition of "railway" from the Indian Railways Act, 1989. They contended that works executed for RVNL did not qualify as works contract services pertaining to railways, arguing for a narrow interpretation limited to Indian Railways as an entity.

## Central Question

Whether works contract services executed for RVNL qualify as "original work pertaining to railways" eligible for 12% GST under the Rate Notification?

# Court's Ruling and Implications

The Madras High Court delivered a decisive ruling favoring the assessee, establishing important principles for interpreting GST notifications. The court held that definitions from other laws cannot be imported into GST law to limit concessional rates or expand taxability.

## Liberal Construction

The term "railway" refers to an industry/public utility, not just Indian Railways as an entity. The words "pertaining to" indicate expansive legislative intent.

## No Import of Definitions

Definitions from the Indian Railways Act, 1989 cannot be imported as the legislature did not expressly incorporate them into GST notifications.

## Qualifying Works

Track doubling, roadbed construction, bridges, platforms, and railway infrastructure clearly qualify as works pertaining to railways.

## Key Takeaway

Terms not defined under GST law must be interpreted according to legislative objectives. Reference can be made to the General Clauses Act, but definitions from sector-specific laws should not be imported to restrict concessional rates. This decision protects taxpayers from narrow interpretations that defeat the purpose of beneficial notifications.

# ITC-Related Issues



# K. V. Joshy and C. K. Paul v. Assistant Commissioner

MADRAS HIGH COURT

2025 (12) TMI 1438

This landmark ruling establishes that proceedings for ITC disallowance cannot be initiated against recipients when the fault lies with suppliers. The decision reinforces the principle that liability must follow causation, and statutory procedures under Section 42 must be strictly followed.

01

## Department's Action

Initiated proceedings under Section 73 directly against the recipient for wrong ITC availment, bypassing statutory procedures and without any proceedings against suppliers.

02

## Statutory Violation

Show cause notice issued without following Section 42(3) procedure, which mandates communication of discrepancies to both supplier and recipient.

03

## Court's Analysis

Section 42(5) allows tax liability addition to recipient only after supplier fails to rectify discrepancy post-communication, establishing a clear procedural hierarchy.

04

## Final Ruling

Notice quashed as violating Section 42; liberty reserved for Department to initiate proceedings against suppliers in accordance with law.

# Statutory Framework: Section 42 Requirements

## Mandatory Procedural Steps

Section 42(3) establishes a clear sequence that must be followed when discrepancies are detected in GST returns:

1. Proper officer identifies discrepancy in returns
2. Communication sent to both supplier and recipient
3. Supplier given opportunity to rectify in returns
4. Only upon supplier's failure, liability shifts to recipient

This procedural safeguard ensures that the party responsible for the error bears the consequences, protecting innocent recipients from supplier defaults.

## Key Judicial Principles

The Court relied on Suncraft Energy Pvt. Ltd. [2023 (8) TMI 174 – Calcutta HC], which established that recovery proceedings against recipients are impermissible without exhausting remedies against suppliers.

**Fundamental Principle:** One person cannot be penalized for faults attributable to another. This aligns with natural justice principles embedded in GST law.

**Important Note:** Section 42 was omitted effective October 1, 2022, creating uncertainty about current procedural requirements.

# Current Legal Landscape: Post-Section 42 Omission

## Conflicting Judicial Views

Various High Courts have adopted divergent positions on ITC eligibility. Some courts emphasize that ITC is purely a statutory right requiring strict compliance with all conditions. Others prioritize substantive entitlement over technical compliance when no revenue loss occurs.

## Legislative Gap

With Section 42 omitted from October 2022, the statutory framework for handling supplier-recipient discrepancies remains unclear. Matters must now be litigated based on pre-GST and GST case law principles rather than specific procedural provisions.

## Constitutional Challenge

Kerala High Court in *Muhammad Abdul Saini v. State Tax Officer* [2025] 170 taxmann.com 252 upheld the constitutionality of Section 16(2)(c) of the CGST Act, which conditions ITC on supplier's tax payment, adding another dimension to the debate.

# B Braun Medical India v. Union of India

DELHI HIGH COURT

2025 (3) TMI 774

This significant ruling holds that clerical errors in GSTN mentioning cannot justify ITC denial when substantive entitlement is established and no revenue loss occurs. The decision emphasizes pragmatic application of Section 16 conditions and protects taxpayers from supplier errors.

1

## Factual Matrix

Supplier issued invoices correctly naming petitioner as recipient but mistakenly mentioned supplier's Mumbai GSTN instead of Delhi GSTN.

2

## Department's Position

Revenue disputed ITC availment solely based on incorrect GSTN mention, ignoring that no other entity claimed the same credit.

3

## Court's Reasoning

Minor clerical errors not resulting in double benefit or revenue loss should not defeat substantive entitlement when recipient's identity is clear.

4

## Final Outcome

ITC allowed; Court noted substantial loss to assessee would result from small supplier error, advancing seamless credit objective.

# Key Principles from B Braun Medical India

## Pragmatic Application of Section 16

The Delhi High Court established several important principles for ITC eligibility assessment:

- **Substance Over Form:** Focus on actual transaction reality rather than technical documentation errors
- **No Revenue Loss Test:** When no double benefit claimed and revenue unaffected, minor errors shouldn't defeat legitimate claims
- **Supplier Error Shield:** Recipients cannot be penalized for inadvertent supplier mistakes
- **Proportionality:** Substantial taxpayer loss from minor clerical errors is unconscionable

This ruling aligns with GST's core objective of seamless credit flow and recognizes that hyper-technical interpretations undermine the regime's functionality.

### Current Status

This decision has been challenged before the Supreme Court in Union of India & Anr v. M/s. B Braun Medical India Pvt Ltd & Ors, Special Leave to Appeal (C) No. 17790/2025.

The Supreme Court's eventual ruling will provide definitive guidance on balancing procedural compliance with substantive entitlement in ITC disputes.

# Sane Retailers v. State of Bihar

PATNA HIGH COURT

2025 (4) TMI 1055

This progressive ruling clarifies that physical receipt of goods at the recipient's premises is not mandatory for ITC eligibility under Section 16(2)(b)(i). The decision validates drop-shipment and direct-delivery business models, recognizing modern commercial practices.

## Business Model

Petitioner purchased goods from suppliers but instructed direct delivery to end consumers. Goods never physically moved to petitioner's premises, following standard drop-shipment practices.

## Court's Interpretation

Section 16(2)(b) permits delivery to any person on registered person's instruction. Circular No. 241/35/2024-GST clarifies deemed receipt doctrine applies.



## Departmental Challenge

ITC and refund rejected solely on non-physical receipt ground under Section 16(2)(b)(i). Department insisted on actual movement to registered person's location.

## Evidentiary Requirements

Authorities must examine MOU/agreements, consumer intimation, and delivery proof before rejecting ITC on receipt grounds.

# Deemed Receipt Doctrine and Business Implications

## Legal Framework

Circular No. 241/35/2024-GST provides crucial clarification on the receipt requirement:

"Goods delivered directly to the registered person, or to any other person on the instruction of the registered person, shall be treated as deemed receipt for the purposes of Section 16(2)(b)(i)."

This interpretation aligns with the legislative intent to facilitate seamless credit flow while accommodating diverse business models. Physical receipt is not the sole test; deemed receipt based on instruction suffices.

## Protected Business Models

- **Drop-Shipment:** Direct supplier-to-consumer delivery without intermediate handling
- **Third-Party Logistics:** Goods sent to warehouses or fulfillment centers on buyer's instruction
- **Direct-to-Consumer:** B2C models where goods bypass intermediary's premises
- **Just-in-Time Supply:** Manufacturing inputs delivered directly to production facilities

These models represent modern commerce realities and should not face ITC denial based on outdated physical receipt concepts.

# Deendayal Port Authority v. Union of India

GUJARAT HIGH COURT

2025 (1) TMI 773

This decision establishes that transitional Cenvat credit carried forward under Section 140 qualifies as "input tax credit" under the CGST Act, attracting interest liability for wrong availment but not automatic penalty absent mens rea.

## Transitional Credit Status

Once Cenvat credit is carried forward via Form GST TRAN-1 and credited to Electronic Credit Ledger, it becomes "input tax credit" under CGST Act. Section 140 integration brings pre-GST credit within the new regime's framework.

## Interest Liability

Section 50(3) interest applies to wrongly availed transitional credit. The Court held that incorrect carry-forward attracts interest obligation, treating such credit identically to current-regime ITC for consequence purposes.

## Penalty Exemption

Section 122(2)(b) penalty set aside based on bona fide belief. Absent deliberate tax evasion intent, penalty cannot be imposed under Section 122(1)(b) read with Section 74(1).

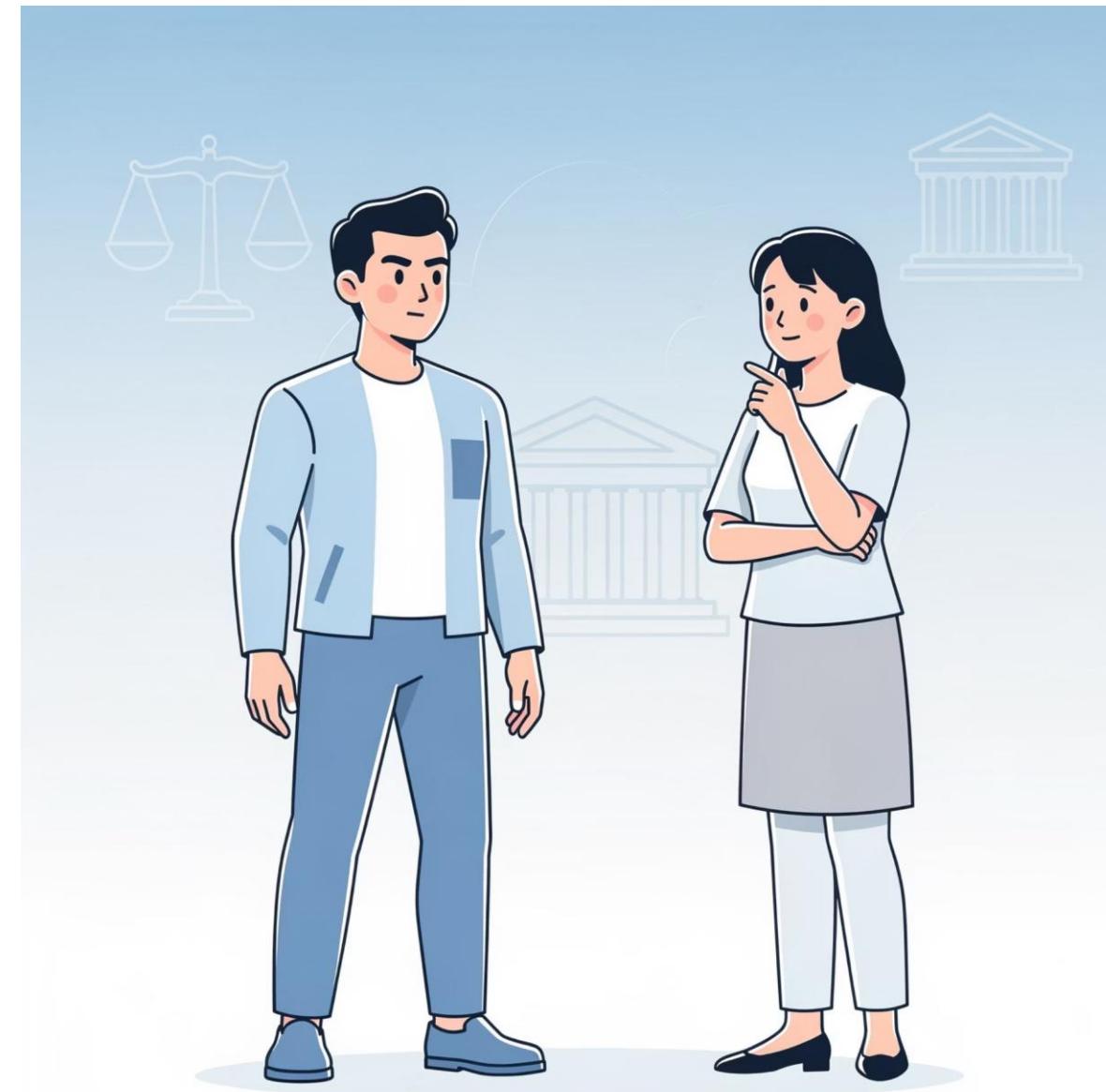
# Mens Rea Requirement in GST Penalty Provisions

## Legal Principles

The Gujarat High Court reaffirmed that Section 122 penalties require mens rea – a guilty mind or deliberate intent to evade tax. This principle distinguishes between:

- 1. Inadvertent Errors:** Honest mistakes in credit calculation or interpretation
- 2. Bona Fide Beliefs:** Reasonable interpretations of ambiguous provisions
- 3. Deliberate Evasion:** Intentional wrongful credit availment with knowledge of illegality

Only the third category attracts penalty liability. The Department must prove fraudulent intent through substantial, corroborative evidence.



# Bharat Aluminium Company v. State of Chhattisgarh

CHHATTISGARH HIGH COURT

2025 (8) TMI 245

This restrictive ruling holds that ITC is unavailable on coal used for electricity generation supplied to residential townships. The decision adopts a narrow interpretation of "in the course or furtherance of business" under Section 16(1), requiring direct and integral nexus with core business operations.

## Factual Background

Petitioner imported coal with Compensation Cess payment for 540 MW power plant. Part of generated electricity supplied to maintain township colony for employees.

## Court's Interpretation

"Course or furtherance of business" requires strict construction, including only activities with direct nexus to core operations. Employee welfare activities like township maintenance fall outside this scope.

## Department's Contention

Township electricity constitutes exempt supply under GST law. Proportionate ITC reversal mandatory under Rule 42 of CGST Rules for common inputs used in both taxable and exempt supplies.

## Proportionate Reversal

Where common inputs serve both business and non-business purposes, Rule 42 mandates proportionate ITC reversal for the non-business component.

# Defining "Course or Furtherance of Business"

The Bharat Aluminium ruling represents a significant judicial interpretation limiting the scope of eligible ITC by strictly construing the foundational phrase "in the course or furtherance of business" under Section 16(1).



## Narrow Interpretation Adopted

Unlike previous broad interpretations, this decision requires activities to have **direct and integral nexus** with core business operations. Remote, incidental, or peripheral connections are insufficient.



## Employee Welfare Exclusion

Township maintenance and residential electricity supply constitute **employee welfare activities** per Section 2(17), not business activities. Such expenditures benefit employees personally rather than advancing business objectives directly.

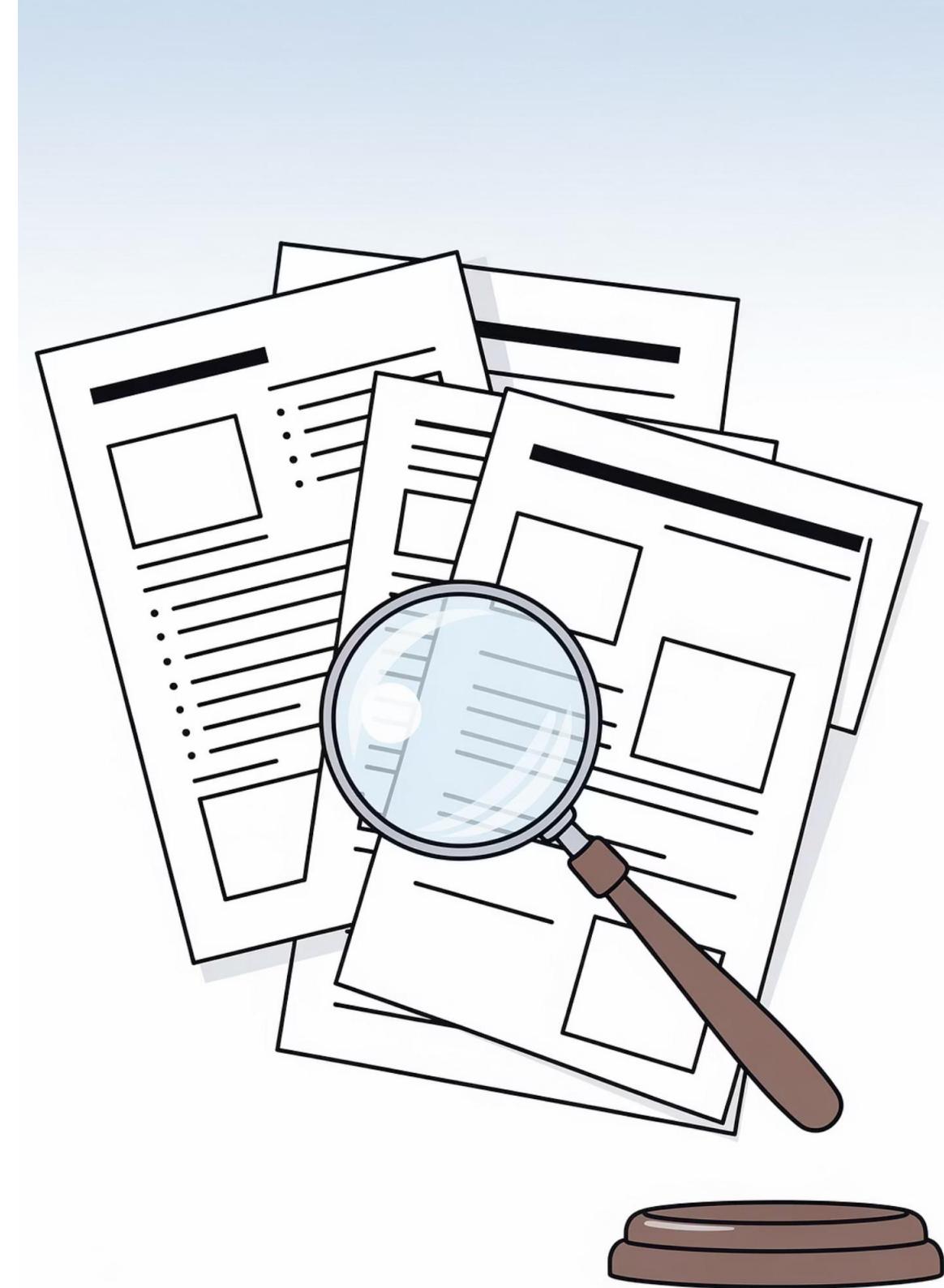


## Supreme Court Precedents

Court relied on Gujarat Narmada Fertilizers (2009 (8) TMI 15 – SC) and Maruti Suzuki (2009 (8) TMI 14 – SC), which established that business nexus cannot be stretched to encompass any activity with tangential connection to enterprise.

This ruling was reaffirmed by Division Bench in Bharat Aluminium Company Ltd v. State of Chhattisgarh, 2025 VIL 1070 CHG, solidifying the restrictive interpretation in Chhattisgarh jurisdiction.

# Investigation Proceedings: Procedural Safeguards



# Kesar Jewellers v. Additional Director General

MADRAS HIGH COURT

2025 (2) TMI 469

This landmark decision restricts the use of provisional attachment powers under Section 83 of the CGST Act, holding that mere pendency of proceedings under Chapters XII, XIV, or XV is insufficient to justify attachment. The power must be based on tangible material and reasoned opinion.



## Bank Account Attachment

Petitioner's bank accounts provisionally attached under Section 83. Attachment order merely reproduced statutory language without disclosing specific material or reasoning supporting necessity.



## Deficient Order

Order failed to demonstrate formation of opinion based on tangible material showing necessity to protect revenue. Mechanical reproduction of statutory text does not constitute application of mind.



## Natural Justice Violation

Non-disclosure of reasons renders right to object under Rule 159(5) illusory. Taxpayer cannot meaningfully object without understanding basis for attachment.



## Attachment Quashed

Provisional attachment set aside as jurisdictionally invalid. Court held exercise of draconian power requires strict statutory compliance and substantive reasoning.

# Section 83 Provisional Attachment: Safeguards and Limits

## Statutory Prerequisites

Section 83 requires satisfaction of two conditions before provisional attachment:

- Pending Proceedings:** Proceedings under Chapter XII (Payment of Tax), XIV (Inspection, Search, Seizure and Arrest), or XV (Demands and Recovery) must be ongoing
- Opinion Formation:** Proper officer must form opinion that attachment is necessary for protecting government revenue interests

The first condition is objective and verifiable. The second involves subjective satisfaction but must be based on objective materials and cannot be arbitrary or mechanical.

## Judicial Standards Established

"Power under Section 83 is draconian and must be exercised strictly in accordance with statutory conditions. Formation of opinion must be based on tangible material showing necessity to protect revenue."

Following Supreme Court precedent in *Radha Krishan Industries* [(2021) 6 SCC 771], the Madras High Court emphasized that:

- Reasons must be disclosed to enable meaningful objection
- Orders cannot be mechanical reproduction of statutory language
- Power protects revenue, not punishes taxpayers

# Kashish Optics Ltd. v. Commissioner

DELHI HIGH COURT

2025 (3) TMI 479

This significant ruling holds that seizure extension beyond six months under Section 67(7) requires prior notice and opportunity of hearing to the affected party. "Sufficient cause" for extension cannot be based on reasons known only to officials.

01

## Initial Seizure

Goods seized under Section 67 during investigation. Seizure continued beyond statutory six-month period without proper procedural compliance.

02

## Extension Mechanism

Extension based on internal extracts and note sheets not disclosed to assessee. No notice or hearing opportunity granted before extending seizure period.

03

## Section 130 Reliance

Authorities justified continued retention by citing pending confiscation proceedings under Section 130. Argued that Rule 140 provisional release provisions suffice.

04

## Natural Justice Requirement

Court held assessee entitled to notice of extension proposal and hearing before extension. "Sufficient cause" must be transparent reasons, not internal deliberations.

# Seizure Extension: Customs Law Parity and Procedural Rights

The Delhi High Court drew significant parallels between GST seizure provisions and Customs Act provisions, importing well-established natural justice principles from customs jurisprudence into GST law.

## Pari Materia Provisions

Section 67 CGST Act is pari materia (substantially similar) with Section 110 Customs Act. Both statutes permit seizure on "reasonable belief" and recognize serious civil consequences requiring procedural safeguards.

## Supreme Court Precedent

Court relied on I. J. Rao v. Bibhuti Bhushan Bagh [(1989) 3 SCC 202], where Supreme Court held that natural justice principles are ingrained in Customs seizure provisions, requiring notice before extension.

## Rule 140 Limitation

Provisional release mechanism under Rule 140 does not override or obliterate Section 67(7) requirements, including need to show "sufficient cause" through disclosed, contestable reasons.

## Practical Impact

Prevents unilateral, indefinite seizure extension based on undisclosed grounds. Authorities must balance revenue protection with taxpayer rights through transparent procedures.

# Sri Ram Stone Works v. State of Jharkhand

JHARKHAND HIGH COURT

2025 (5) TMI 772

This pro-taxpayer ruling restricts the scope of Section 61 scrutiny powers, holding that the provision cannot be invoked to challenge transaction values merely because goods are sold below market price. Section 61 is limited to verifying return correctness, not determining valuation.

## Factual Scenario

Revenue invoked Section 61 against assessee solely because declared transaction values in GST returns were lower than prevailing market prices. No allegations of sham transactions or lack of consideration.

## Section 61 Scope

Provision enables verification of returns and related particulars' correctness. It is not a valuation determination or market price assessment mechanism.

## Section 15 Primacy

Tax payable on transaction value – actual consideration between parties. Commercial freedom to sell at concessional rates cannot be questioned absent fraud or collusion.

## No Discrepancy Found

Mere comparison of declared prices with market rates does not constitute "discrepancy" in returns. Falls outside Section 61 jurisdictional scope.

# Transaction Value Primacy and Commercial Freedom

## Section 15 Valuation Principles

Section 15 of the CGST Act establishes transaction value as the primary basis for tax computation. This value represents the actual price paid or payable for the supply when buyer and supplier are not related persons.

### Key Principles:

- Transaction value prevails unless parties are related
- Commercial pricing decisions are within business discretion
- Selling below market price is not inherently suspicious
- Revenue cannot substitute its judgment for business decisions

Market prices become relevant primarily in related-party transactions under Section 15(4), where arm's length pricing principles apply to prevent value manipulation.

### □ Section 61 Jurisdictional Limits

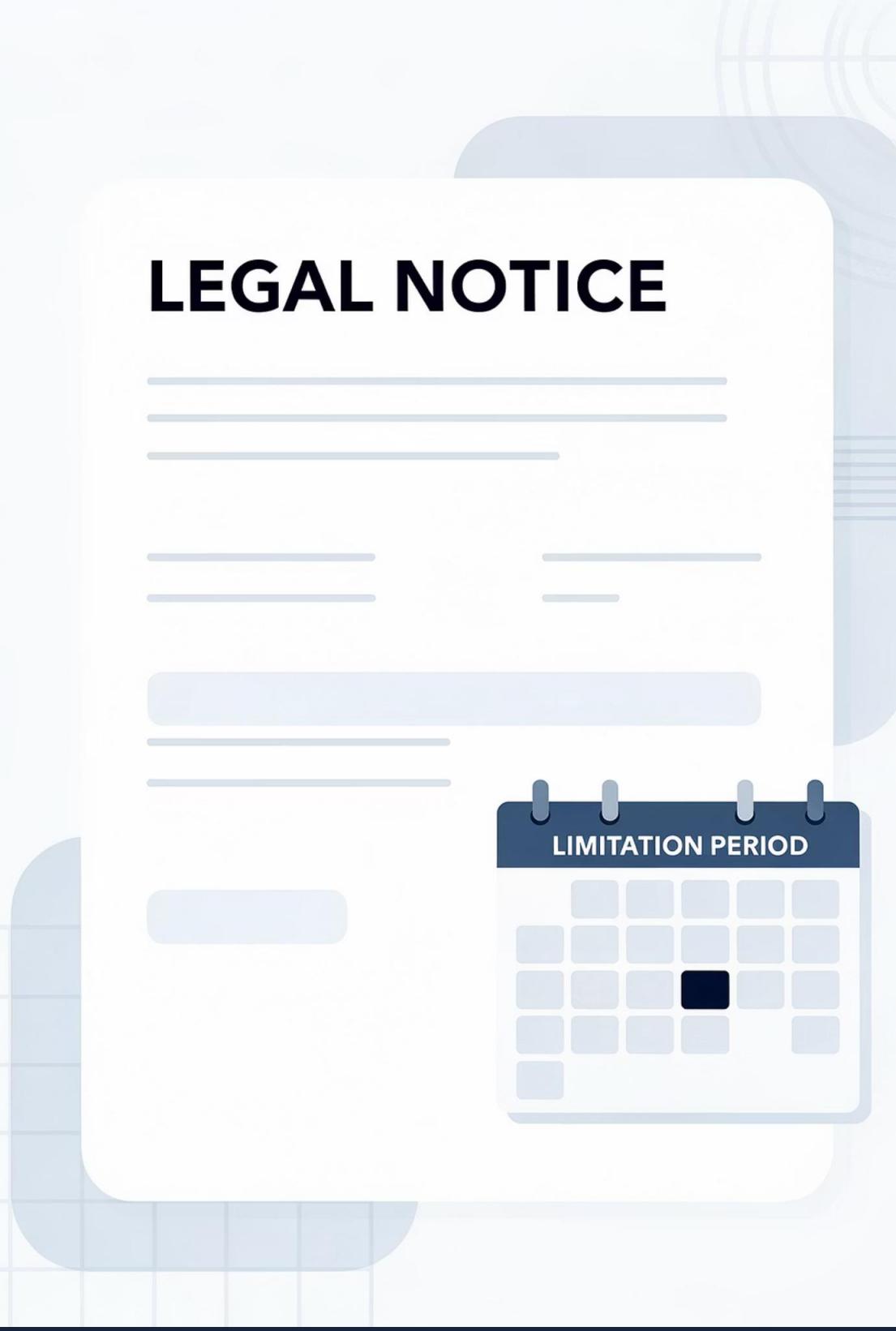
This decision clearly demarcates Section 61's scope, preventing its misuse for valuation challenges when no return discrepancy exists.

Section 61 scrutiny can address:

- Mathematical errors in returns
- Inconsistent data entries
- Missing mandatory information
- Mismatch with supporting documents

It cannot challenge bona fide commercial pricing decisions absent fraud evidence.

## LEGAL NOTICE



# Show Cause Proceedings: Limitation and Validity

# Tata Play Limited v. Union of India

MADRAS HIGH COURT

2025 (7) TMI 772

This comprehensive ruling severely restricts the government's power to extend limitation periods under Section 168A, holding that such extension requires force majeure as the proximate cause and prior GST Council recommendation. The decision strikes down Notification Nos. 9/2023 and 56/2023.

## Section 168A Framework

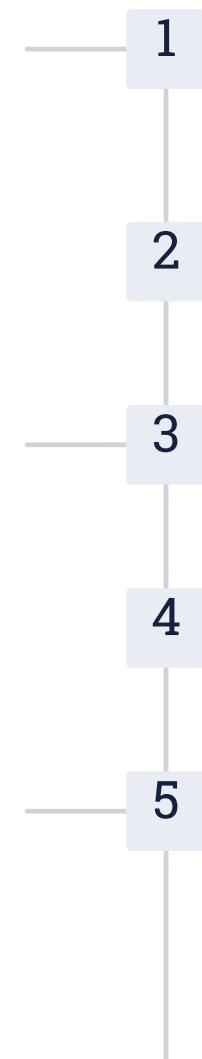
Exception provision to Section 73 limitation scheme. Must be strictly construed as it extends time for revenue to issue demands, prejudicing taxpayer rights.

## GST Council Recommendation

Mandatory prerequisite for invoking Section 168A. Post-facto ratification by Council does not cure initial absence of recommendation before notification issuance.

## Notifications Invalid

Extension notifications based on mistaken legal understanding and without proper causation analysis held legally unsustainable.



## Force Majeure Requirement

Force majeure must be proximate and dominant cause for authority's inability to act within statutory timelines. Mere existence of COVID-19 insufficient without direct nexus.

## Supreme Court Orders

Article 142 orders extending limitation operate independently. Section 168A notifications cannot reduce or curtail limitation already available under SC orders.

## Section 168A: Strict Construction and Conditions Precedent

The Madras High Court's analysis of Section 168A establishes rigorous conditions for validity of limitation extension notifications, protecting the legislative scheme that balances revenue interests with taxpayer certainty.

### Exception Provision Status

Section 168A represents an exception to the carefully calibrated limitation periods under Section 73. Exception provisions must be strictly construed and cannot be applied mechanically or casually. The legislative intent was to address genuine force majeure situations, not to routinely extend departmental deadlines.

### Proximate Causation Test

The force majeure event must be the proximate and dominant cause of the authority's inability to issue notices or pass orders timely. The notification must disclose or reflect that statutory actions could not be completed "only due to force majeure." Absence of such causation analysis vitiates the exercise of power.

### Delegated Legislation Standards

Notifications under Section 168A constitute delegated legislation subject to judicial review. Such notifications are challengeable if relevant factors are ignored or if they proceed on erroneous assumptions about the legal position, including the effect of Supreme Court limitation orders.

### GST Council's Role

While GST Council recommendations are not binding in strict legislative sense, they are mandatory prerequisites for Section 168A invocation. The Council's institutional role in tax policy consensus-building requires its prior recommendation, which cannot be satisfied through post-facto ratification.

# Riocare India v. Assistant Commissioner

BOMBAY HIGH COURT

2025 (1) TMI 518

This pragmatic decision holds that a single show cause notice can validly cover multiple financial years when limitation is not disputed. The ruling balances procedural flexibility with taxpayer protection, focusing on substantive prejudice rather than technical formalism.

## 1 Consolidated Notice Issued

Single SCN under Section 74 covered multiple financial years in one consolidated notice. Petitioner challenged notice directly in High Court, arguing separate notices required for each year.

## 2 Statutory Silence

CGST Act provisions do not mandate separate SCNs for each financial year. Only requirement is six-month notice period before Section 74(10) limitation expires.

## 3 No Limitation Dispute

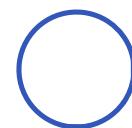
No controversy existed regarding limitation under Section 74(10) for any covered period. All periods were well within prescribed limitation timeframes.

## 4 Consolidated Notice Valid

Court found no *prima facie* illegality in consolidated SCN when limitation not disputed. Focus on substantive rights rather than procedural technicalities.

# Multi-Year SCN: Divergent Judicial Approaches

The question of whether a single show cause notice can cover multiple financial years has produced conflicting decisions across various High Courts, creating uncertainty in tax administration.



## Supporting Consolidated Notices

**Bombay HC (Riocare India):** Valid when limitation not disputed, focusing on substantive rather than procedural objections.

**Delhi HC (Ambika Traders):** Single SCN permissible for multiple years in fraudulent ITC availment cases.

**Rationale:** When different limitation periods are not at issue, consolidation promotes administrative efficiency without prejudicing taxpayer rights.



## Limitation-Based Objections

**Key Principle:** Where SCN covers periods subject to different limitation dates and some periods fall outside limitation, consolidated notice can be challenged.

**Taxpayer Strategy:** Separate SCNs become critical when arguing limitation bars for specific years.

**Courts' Concern:** Prevent time-barred demands from being bundled with valid demands, obscuring limitation defenses.



## Requiring Separate Notices

**Kerala HC (Lakshmi Mobile, Tharayil Medicals):** Multiple W.P. decisions requiring separate SCNs for each financial year.

**Madras HC (R.A. and Co):** Separate notices mandated regardless of limitation issues.

**Rationale:** Each financial year constitutes distinct tax period with separate compliance and assessment requirements.

# Saluja Motors v. State of Himachal Pradesh

HIMACHAL PRADESH HIGH COURT

2025 (5) TMI 136

This controversial ruling holds that issuance of summary notice in Form GST DRC-01 without detailed show cause notice does not vitiate proceedings when taxpayer was fully aware of allegations through audit report and no prejudice is demonstrated.

## Summary Notice Challenge

1 Petitioner challenged demand proceedings arguing show cause notice was merely in summary form (GST DRC-01) without detailed notice in proper format.

## Full Awareness Established

2 Court found petitioner fully aware of allegations through detailed audit report. All discrepancies and proposed demand basis were comprehensively disclosed in audit documentation.

## No Prejudice Demonstrated

3 Procedural lapse in notice format did not cause substantive prejudice. Petitioner understood case to meet and could respond meaningfully.

## Natural Justice Contextual

4 Principles of natural justice are contextual and prejudice-based, not mechanical. Breach of procedure not fatal unless something of substance lost.

# Procedural Lapses: Substance vs. Form Debate

## Himachal Pradesh HC Approach

The Saluja Motors decision adopts a substance-over-form approach to procedural compliance:

"Procedural lapse does not automatically vitiate proceedings unless prejudice is demonstrated."

Court relied on State of U.P. v. Sudhir Kumar Singh, holding that breach of procedure is not fatal unless something of substance is lost. The focus shifts to whether taxpayer could meaningfully respond to allegations despite format deficiency.

**Current Status:** Challenged before Supreme Court in SLP (C) Nos. 14145/2025. Stay granted on recovery proceedings pending appeal.

## Gauhati HC Contrary View

Shree Arihant Logistics [2025 (8) TMI 156 – Gauhati HC] adopted stricter approach:

- Show cause notice issuance mandatory
- Statement of tax determination required
- Both must exist in addition to GST DRC-01/02 summaries
- Summaries supplementary, cannot replace primary documents

This view emphasizes that proper authentication and formal documentation protect taxpayer rights and prevent arbitrary actions. Form serves substantive purpose of ensuring accountability.

## Practical Guidance for Taxpayers

Raise objections to procedural deficiencies at earliest stage. Clearly record protest if proceedings continue despite alleged defects. Demonstrate specific prejudice suffered from procedural lapse rather than making purely technical arguments.

# Sahiti Agencies v. Assistant Commissioner

ANDHRA PRADESH HIGH COURT

2025 (10) TMI 160

This significant decision establishes that unsigned notices and orders do not remain invalid once the assessee responds and participates in proceedings. The principle of waiver applies when taxpayer acts upon defective documents without contemporaneous objection.



## Signature Deficiency

Show cause notices and subsequent orders lacked physical or visible digital signatures. Petitioner challenged validity on this procedural ground after participating in proceedings.



## Active Participation

Assessee responded to SCN, submitted written submissions, attended personal hearings, and engaged substantively with adjudication process before raising signature objection.



## Waiver Doctrine Applied

Court held that responding to defective notices/proceedings constitutes implicit waiver of objection. Assessee cannot turn around post-participation to claim invalidity.



## Estoppel by Conduct

Technical plea of signature absence unavailable after acting upon proceedings. Conduct demonstrates acceptance of document validity despite technical defects.

# Strategic Implications: Preserving Procedural Objections

The Sahiti Agencies ruling creates important strategic considerations for taxpayers facing procedurally deficient notices or orders. Timing and documentation of objections become critical.

## Waiver Risk Factors

- Participation Without Protest:** Responding substantively without raising defect objection
- Multiple Engagements:** Attending hearings, submitting documents, arguing merits
- Delayed Objection:** Raising technical defects only after adverse order
- Substantive Defense:** Arguing case merits implies acceptance of proceedings validity

Each of these actions strengthens the Department's waiver argument, making subsequent procedural challenges difficult.

## Preservation Strategies

- Immediate Objection:** Raise all procedural defects in first response
- Written Protest:** Document objections clearly in writing with specific deficiencies identified
- Conditional Participation:** State participation is "without prejudice" to procedural objections
- Contemporaneous Record:** Maintain timeline showing when defects noticed and objected
- Separate Communications:** Send standalone objection letters, not just brief mentions in substantive responses

# Joint Commissioner v. Nishad K. U.

KERALA HIGH COURT

2025 (2) TMI 1247

This pro-taxpayer ruling reinforces that natural justice principles are implicit in Section 74(9) adjudication proceedings. Denial of cross-examination when third-party statements form the basis of adverse findings violates fundamental fairness and renders proceedings void.



## Third-Party Reliance

Proper Officer passed order under Section 74(9) relying substantially on statements of third parties recorded during departmental enquiry as primary evidence.



## Cross-Examination Sought

Assessee specifically requested opportunity to cross-examine third-party witnesses whose statements formed basis of adverse conclusions against him.



## Request Denied

Adjudicating authority denied cross-examination request and proceeded to pass order confirming demand based on uncontested third-party statements.



## Proceedings Void

High Court held denial of cross-examination integral to fair adjudication, rendering entire proceedings void for violation of natural justice.

# Natural Justice in GST Adjudication: Cross-Examination Rights

The Kerala High Court's decision in Nishad K. U. represents a significant affirmation of procedural fairness in GST adjudication, establishing that quasi-judicial proceedings must comply with natural justice principles even when not expressly mandated by statute.



## Implicit Natural Justice

Section 74(9) does not expressly provide for cross-examination, but natural justice principles are implicit in all quasi-judicial proceedings. These principles form part of the Basic Structure Doctrine of the Indian Constitution and cannot be excluded absent express legislative language.



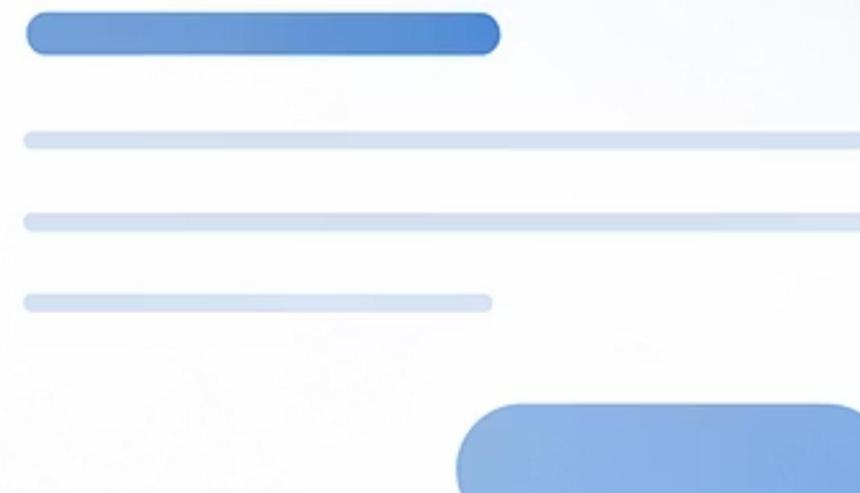
## Reliability of Oral Evidence

Where departmental case rests primarily on third-party oral statements, cross-examination becomes essential to test veracity, accuracy, and potential bias. Without cross-examination, such statements become hearsay evidence that should not form the sole basis for adverse findings.



## Writ Jurisdiction Maintainable

Despite availability of appellate remedy, writ petition maintainable when proceedings suffer from total violation of natural justice. Such violations constitute jurisdictional errors justifying extraordinary writ remedy without exhausting appeals.



# Issuance and Communication of Orders

# Sharp Tanks v. Deputy Commissioner

MADRAS HIGH COURT

2025 (9) TMI 1149

This landmark decision establishes that mere uploading of orders on the GST common portal does not constitute "communication" for purposes of Section 107(1) limitation. Active transmission to assessee is required to trigger the limitation period for filing appeals.

## 1 Order Upload Only

Adjudicating authority passed adverse order and uploaded it on GST common portal. No separate communication via email, post, or other active means made to petitioner.

## 2 Limitation Dispute

Department contended portal upload constitutes valid service under Section 169(1)(d), thereby commencing Section 107(1) limitation period for appeal filing.

## 3 Communication vs. Service

Court held "communication" under Section 107(1) and "service" under Section 169 are not synonymous terms and cannot be applied interchangeably in statutory interpretation.

## 4 Active Transmission Required

Communication requires active act to transmit order to assessee. Passive availability on portal insufficient without additional step bringing document to assessee's notice.

## 5 No Monitoring Obligation

Statute imposes no obligation on assessees to continuously monitor GST portal for orders. Limitation does not begin until order duly communicated.

# Communication vs. Service: Critical Distinction

## Madras High Court's Analysis

The Sharp Tanks decision draws a crucial distinction between two statutory concepts:

**Section 169 (Service):** Provides multiple modes of service including portal upload under Section 169(1)(d). Addresses how documents may be validly delivered.

**Section 107(1) (Communication):** Uses term "communicated" to trigger limitation for appeals. Requires active transmission ensuring assessee awareness.

"Communication requires an active act by the authority to transmit the order to the assessee. It is not a passive or unilateral act."

This interpretation prevents arbitrary rejection of appeals as time-barred when taxpayers were unaware of orders.

## Conflicting Judicial Views

### Supporting Portal Upload Sufficiency:

- **Madhya Pradesh HC (Shri Shyam Baba Edible Oils):** Portal upload sufficient for limitation commencement
- **Kerala HC (T. K. Navas):** Making available on portal constitutes effective communication

### Requiring Active Communication:

- **Madras HC (Sharp Tanks):** Active transmission mandatory
- **Rajasthan HC (Sahil Steels):** Section 107(1) requires purposive interpretation; mere upload inadequate

This split in judicial opinion necessitates Supreme Court clarification on this critical procedural issue.

# NRM Metals (India) v. Union of India

GUJARAT HIGH COURT

2025 (6) TMI 582

This decision clarifies that CBIC Circular No. 37/2019 mandating DIN on communications applies only to Central Tax authorities and has no automatic application to State Tax authorities unless adopted by the State. Absence of DIN does not invalidate State Tax orders.

## DIN Challenge

State Tax authorities issued search authorization, summons, and provisional attachment orders during investigation. Petitioners challenged these actions based on absence of DIN on documents.

## Circular Scope Limited

Circular No. 37/2019 mandating DIN was issued by CBIC addressing Central Tax Commissioners. Not addressed to State Tax Commissioners and lacks binding effect on State authorities.

## No State Adoption

State Tax authorities had not issued similar circular adopting DIN requirement. No mechanism existed for DIN issuance by State Tax Department at relevant time.

## Validity Upheld

Absence of DIN on State Tax communications does not vitiate validity of orders, summons, or attachments issued by State authorities.



# Filing of Appeals



# Laxman Das Jaisinghani v. Union of India

2025 (3) TMI 172

MADHYA PRADESH HIGH COURT

Delay in filing appeal condoned where assessee complied with Section 107 despite portal constraints

# Factual Matrix



# Key Issue and Judicial Determination

## Issue Before the Court

Whether the appeal could be dismissed solely on the ground of procedural delay when the assessee had taken bona fide steps to comply with Section 107 of the CGST Act within the limitation period?

The Department contended that electronic filing through the portal was mandatory and manual filing did not constitute valid compliance with statutory requirements.

## Court's Determination

The Court held that there was no failure on the part of the assessee in complying with Section 107 of the CGST Act. Electronic filing and payment through GST APL-01 was not possible until the order was uploaded on the GST portal by the Department.

Deposit in the Electronic Cash Ledger and filing of manual appeal through speed post constituted reasonable and bona fide compliance with statutory requirements.

# Ratio Decidendi

## Substantive Right Cannot Be Defeated

Appeal cannot be dismissed merely on procedural delay when the assessee acted within limitation period and deposited the mandatory 10% pre-deposit in cash ledger

## Bona Fide Compliance Recognised

Manual filing and deposit in Electronic Cash Ledger constitute reasonable compliance when electronic portal remains non-functional due to system constraints

## Portal Constraints Not Attributable

Technical limitations or delayed uploading of orders by the Department cannot prejudice taxpayers who have demonstrated intent to comply

- ☐ **Critical Observation:** This decision emphasises that statutory rights to appeal cannot be extinguished on hyper-technical grounds when the assessee has made genuine efforts to comply with substantive requirements within the prescribed time limit.

# Practical Implications

This decision establishes an important precedent for seeking relief where delays in filing appeals arise due to system constraints beyond the control of the taxpayer. However, taxpayers seeking such relief must be prepared to demonstrate bona fide intention and substantive compliance.



## Documentation is Critical

Maintain comprehensive records of all attempts to file appeals electronically, including screenshots of system errors, timestamps and correspondence with the Department

## Immediate Manual Filing

When portal constraints prevent electronic filing, immediately file manual appeal through speed post with proof of delivery to demonstrate timely compliance

## Pre-Deposit Compliance

Deposit the mandatory pre-deposit amount in Electronic Cash Ledger within the limitation period, even if formal appeal filing faces technical difficulties



# Barjinder Singh Kohli v. Assistant Commissioner

2025 (11) TMI 294

CALCUTTA HIGH COURT

No pre-deposit required for appeal filed before 1 October 2025 against order demanding penalty or interest

# Facts and Procedural History

The petitioner filed an appeal under Section 107 of the CGST Act, 2017 challenging an adjudication order that levied only penalty and interest, without any determination of tax liability. The appellate authority dismissed the appeal on dual grounds: alleged delay in filing and purported non-compliance with the requirement of statutory pre-deposit.

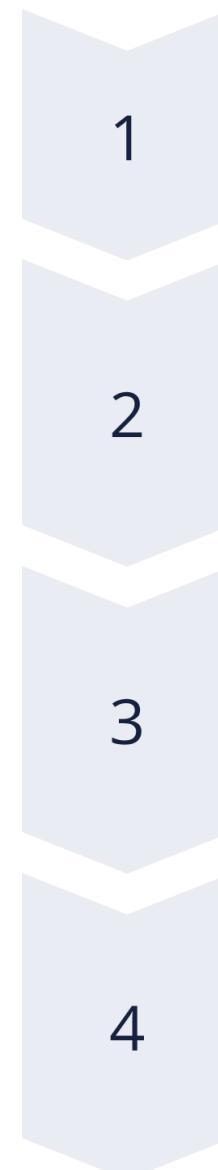
## Petitioner's Contentions

- At the relevant time when the appeal was filed, Section 107(6) did not prescribe any pre-deposit requirement for appeals involving only penalty or interest
- The dismissal was illegal as it imposed a condition that was non-existent in law at the material time
- Substantive right of appeal cannot be curtailed by reading conditions not prescribed by statute

## Department's Stand

- Pre-deposit under Section 107(6) is a condition precedent for maintaining an appeal
- The provision applies uniformly to all appeals, irrespective of whether they relate to tax, penalty or interest
- Non-compliance with mandatory pre-deposit renders the appeal not maintainable

# Legal Analysis and Ratio



## 1 Substantive Right to Appeal

The right to prefer an appeal is a substantive statutory right, though the legislature may validly impose conditions for its exercise

## 2 Nature of Pre-Deposit Provision

The opening words of Section 107(6) – "No appeal shall be filed" – make the pre-deposit requirement a condition precedent for filing an appeal, thereby giving it a substantive character

## 3 Temporal Application of Law

Where the statute, at the relevant time, did not prescribe any pre-deposit requirement for appeals involving only penalty or interest, the petitioner could not be compelled to comply with such a condition

## 4 Strict Construction Required

Non-existent statutory conditions cannot be read into the provision, as doing so would impermissibly curtail a substantive right of appeal

# Key Observations

A provision needs to be construed strictly when it involves a substantive right. Statutory right to appeal can only be curtailed in a manner expressly provided by law.

The Court emphasised that appellate authorities cannot impose conditions or requirements that do not find support in the statutory provisions as they existed at the material time. Reading implied conditions into fiscal legislation that curtails substantive rights would violate principles of strict construction and constitutional fairness.

This decision reinforces the principle that procedural requirements, especially those affecting substantive rights, must be clear, unambiguous and specifically prescribed by statute. Courts cannot fill perceived gaps in legislation by implying conditions that Parliament has not enacted.





# Interest & Penalty Issues

# M/s. Patanjali Ayurved Ltd v. Union of India

2025 (6) TMI 115

ALLAHABAD HIGH COURT

Dropping or conclusion of proceedings under Section 74 does not ipso facto abate or nullify independent penalty proceedings under Section 122



# Factual Background

Proceedings were initiated against Patanjali Ayurved Limited under Section 74 of the CGST Act for alleged tax evasion. Simultaneously, parallel proceedings proposing penalty under Section 122 of the CGST Act were initiated for alleged contraventions including issuance of fake invoices and facilitating tax evasion.

## 1 Petitioner's Primary Contention

Once proceedings under Section 74 are dropped or concluded in favour of the taxpayer, penalty proceedings under Section 122 must automatically abate as they are consequential and dependent on the determination under Section 74

## 2 Revenue's Counter-Argument

Sections 74 and 122 are independent charging provisions serving different purposes—Section 74 relates to tax determination whilst Section 122 addresses statutory contraventions warranting deterrent penalties

# Comprehensive Legal Analysis

## Nature of "Offence" in Tax Statutes

The expression "offence" under taxing statutes does not necessarily mean a criminal offence triable by a criminal court. It can include statutory contraventions visited only with civil penalties.

Penalty under tax statutes may be imposed for deterrence, compensation to public revenue, or enforcement of statutory discipline.

## Independent Operation of Provisions

Sections 74 and 122 are independent charging provisions and must be interpreted strictly but harmoniously to make the statute workable.

Proceedings under Section 122 are civil adjudicatory proceedings for imposition of penalty and are distinct from prosecution provisions under Sections 132 to 138.

## Proper Officer's Authority

Circular No. 254/2025-GST designates proper officers for adjudication of penalties under Section 122 based on monetary limits.

The proper officer is empowered to adjudicate penalty under Section 122, irrespective of the outcome of proceedings under Section 74.

# Critical Observations

1

## Explanation 1(ii) to Section 74

This provision does not state that penalty proceedings under Section 122 would abate merely because proceedings under Section 74 have concluded

2

## Independent Survival of Penalty

There may be situations where proceedings under Section 73 or 74 conclude against the main person, but penalty proceedings under Section 122, particularly for acts such as issuance of fake invoices, can independently survive

3

## Civil vs Criminal Distinction

Section 122 penalties are civil in nature and do not require mens rea, unlike criminal prosecution provisions which alone contemplate criminal intent and trial by criminal courts



# Implications for Practice

This judgment clarifies that adjudicatory provisions and penalty provisions have independent application in cases where the subject matter is different. It reinforces the legislative intent to treat tax determination and penalty for statutory contraventions as distinct enforcement mechanisms under the GST framework.



## Separate Defence Strategies

Taxpayers must prepare independent defence strategies for proceedings under Section 74 and Section 122, as favourable outcome in one does not automatically secure relief in the other



## Documentation Requirements

Comprehensive documentation demonstrating bona fide compliance and absence of intent to evade becomes critical for defending penalty proceedings



## Proportionality Arguments

Even where contraventions are established, taxpayers should raise proportionality arguments under Section 126 to moderate penalty quantum



# Satyadevi Alamuri v. Assistant Commissioner

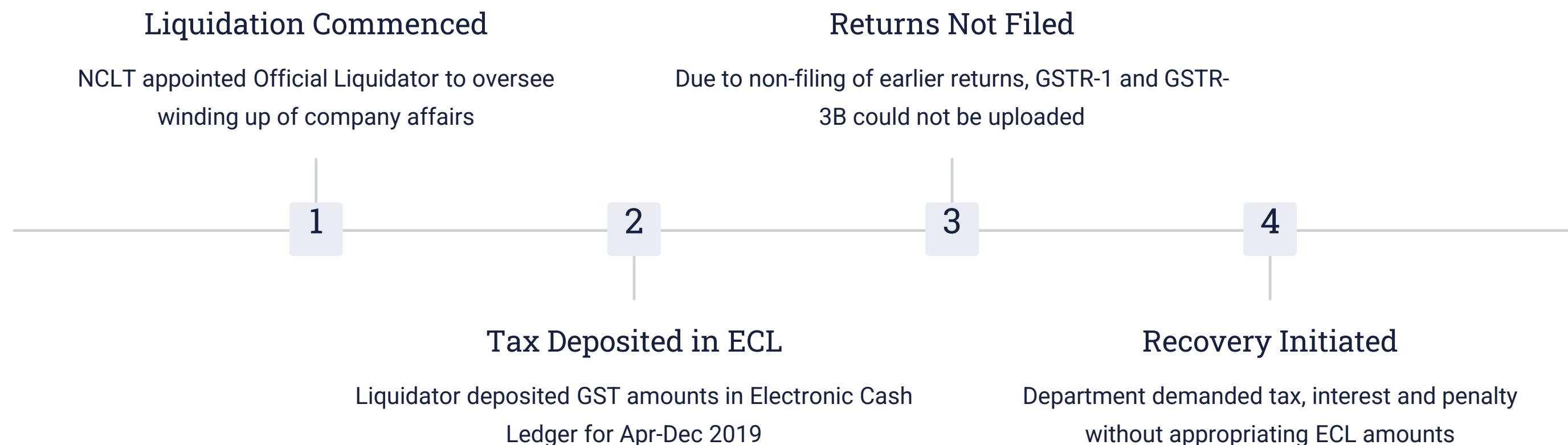
2025 (8) TMI 398

MADRAS HIGH COURT

Amounts deposited in Electronic Cash Ledger under Section 49 must be appropriated towards GST liability

# Facts and Context

The petitioner company entered liquidation pursuant to proceedings under the Insolvency and Bankruptcy Code, 2016, with an Official Liquidator appointed by the NCLT. During the liquidation process, the petitioner deposited amounts towards GST liability for the period April 2019 to December 2019, which were duly credited to the Electronic Cash Ledger maintained under Section 49 of the CGST Act.



# Legal Analysis

## Statutory Recognition of ECL

Section 49 of the CGST Act statutorily recognises the Electronic Cash Ledger as a valid mode for payment of tax. It was undisputed that the petitioner had deposited the tax amounts contemporaneously when the liability arose, and the amounts were reflected in the Electronic Cash Ledger.

Non-filing of returns does not efface or invalidate tax payments already made under the Act. The substance of payment cannot be negated by procedural non-compliance.

## Limitation on Circulars

Circular No. 134/04/2020-GST only provides a procedural facilitation mechanism (fresh registration and refund) for insolvency situations and does not override statutory provisions.

Circulars issued under Section 168 of the CGST Act are meant to ease compliance and reduce hardship, not to create additional substantive burdens on taxpayers.

- **Core Principle:** The Department cannot insist on fresh payment of tax followed by refund when amounts are already available in the Electronic Cash Ledger and properly reflected in government records.

# Judicial Observations



Cash lying in the Electronic Cash Ledger should be considered as cash lying with the government exchequer. Mere non-filing of returns cannot be treated as non-payment of tax where the tax liability has already been deposited in the Electronic Cash Ledger.

## Relief to Companies Under CIRP

This decision provides significant relief to companies under liquidation where procedural compliance is often constrained due to complex regulatory requirements and operational difficulties

## Circular Cannot Override Statute

Sets precedent that circulars which put additional burdens on taxpayers instead of easing compliance are ultra vires to the enabling provision under Section 168



# Kamal Envirotech Pvt. Ltd. v. Commissioner

2025 (1) TMI 983

DELHI HIGH COURT

Overriding Clause in Section 129 Does Not Dilute the Applicability of Section 126

# Facts and Contentions

Goods were detained during transit under Section 129 of the CGST Act for procedural lapses, including incomplete e-way bills. Other statutory documents were available and there was no allegation of tax evasion or fraudulent intent. Authorities imposed tax and penalty mechanically, invoking the non-obstante clause in Section 129.

## Petitioner's Arguments

Lapses were purely procedural and technical in nature. Complete documentation existed proving legitimacy of transaction. No intent to evade tax was present. Principles of moderation under Section 126 were ignored.

## Department's Position

Section 129 contains non-obstante clause giving it overriding effect. Penalty is automatic upon detention for incomplete e-way bills. Section 126 principles do not apply to detention proceedings.

# Judicial Reasoning

## Section 129 is Procedural

Section 129 is primarily concerned with detention and release of goods and conveyances, not with penalty determination per se

## Proportionality Required

Trivial or procedural lapses cannot justify harsh penalties when other valid documents are available and there is no intent to evade tax

## Section 126 is Controlling

Penalty levy must be guided by Section 126, which mandates moderation and reasonableness, especially for minor breaches

## Confiscation Needs Mens Rea

Confiscation under Section 130 can be invoked only where clear intent to evade tax is established; issuing notices without proper grounds would be arbitrary

# Practical Impact

This decision strongly affirms that penalty provisions under GST are not automatic or mechanical, even in cases of detention. It aligns with the broader judicial trend restricting misuse of Sections 129 and 130 for minor lapses and reinforces that Section 126 is a controlling provision, ensuring proportionality in penalty imposition.

## Critical Relief to Transporters

Provides critical relief to transporters and traders who are frequently penalised for technical e-way bill errors despite having legitimate documentation

## Curtails Coercive Practices

Curtails revenue practice of invoking confiscation as a coercive tool in absence of mens rea or deliberate intent to evade tax

## Documentation Defence

Strengthens the defence available to taxpayers who can demonstrate availability of other valid documents proving legitimacy of the transaction

# Refund-Related Issues

# Messrs Addwrap Packaging Pvt Ltd v. Union of India

2025 (6) TMI 1156

GUJARAT HIGH COURT

Omission of Rule 96(10) operates prospectively but applies to all pending proceedings



# Background and Controversy

Exporters had paid IGST on export of goods and claimed refund whilst having availed duty-free imports under Advance Authorisation for a portion of inputs. Rule 96(10) of the CGST Rules, as substituted with effect from 9 October 2018, restricted refund of IGST on exports where specified exemption or concessional notifications on inputs were availed.

## Rule 96(10) Controversy

The validity of Rule 96(10) has been challenged before multiple High Courts across India. The Kerala High Court in M/s. Sance Laboratories Private Limited has declared Rule 96(10) as ultra vires Section 16 of the IGST Act and manifestly arbitrary.

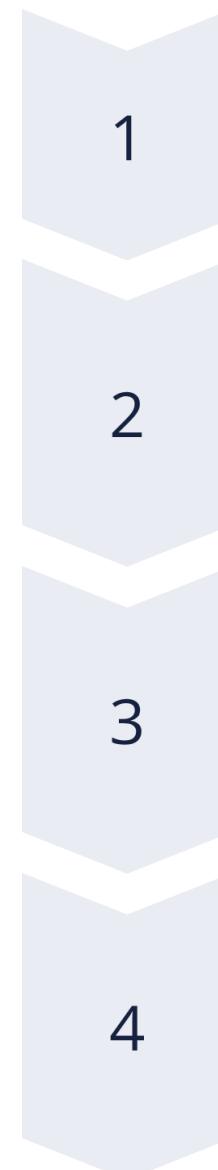
Considering the substantial stakes involved and conflicting judicial views, the issue is likely to attain finality only before the Supreme Court.

## Omission of Rule

During pendency of proceedings, Notification No. 20/2024 dated 8 October 2024 omitted Rule 96(10) following GST Council recommendation to remove hardships faced by exporters.

This raised the critical question of whether the omission operates retrospectively or prospectively, and its impact on pending refund claims.

# Judicial Analysis



## 1 Prospective Operation

Omission of Rule 96(10) is not curative or remedial and therefore does not operate retrospectively from the date of its insertion

## 2 Express Provision Controls

Notification expressly provides that amendments shall come into force from date of publication, i.e., 8 October 2024. GST Council itself recommended prospective omission

## 3 General Clauses Act Application

Applying principles under General Clauses Act, repeal without any saving clause would destroy any proceeding whether pending or not yet begun at the time of repeal

## 4 Pending Proceedings Benefit

Omission operates prospectively but applies to all pending proceedings, including pending refund claims and adjudications not yet finalised

# Conflicting Judicial Views

It is important to note conflicting judicial interpretations on the effect of omission on pending proceedings. The Bombay High Court in *Hikal Limited and Ors v. Union of India* 2025 (9) TMI 806 has taken a different view, holding that pending proceedings would stand lapsed in absence of any saving clause.

## Gujarat High Court View

Omission applies to all pending proceedings including refund claims not yet adjudicated, as repeal without saving clause destroys pending proceedings

## Bombay High Court View

Pending proceedings would lapse in absence of specific saving clause, as General Clauses Act provisions do not apply to omission of Rules

This divergence of judicial opinion necessitates clarity from the Supreme Court on the correct interpretation and its impact on plethora of pending refund claims across the country.



# West India Continental Oils Fats Pvt Ltd v. Union of India

2025 (10) TMI 1027

BOMBAY HIGH COURT

When IGST is collected without authority of law pursuant to unconstitutional notifications, taxpayer is entitled not only to refund but also to interest

# Facts and Legal Context

The petitioner imported goods on CIF basis and paid IGST on ocean freight under Reverse Charge Mechanism (RCM). Pursuant to the judgment of the Supreme Court in Mohit Minerals Pvt Ltd, the levy of IGST on ocean freight under RCM was declared unconstitutional and ultra vires to the GST Act.

Refund of Principal	Interest Denied	Present Proceedings
Revenue refunded the principal IGST amount paid on ocean freight following the Supreme Court judgment	However, interest on the refunded amount was denied, contending that Section 54 does not mandate interest payment	Petitioner challenged denial of interest, seeking constitutional remedy for deprivation of time value of money

# Judicial Reasoning

## Unconstitutional Levy

The Supreme Court judgment in Mohit Minerals Pvt Ltd conclusively declared that levy of IGST on ocean freight under RCM is ultra vires to the GST Act.

Once the levy itself is unconstitutional, the collection of tax is without authority of law. Consequently, revenue is under a constitutional obligation to refund the amount along with interest.

## Section 54 Inapplicable

Section 54 of the CGST Act applies only where tax is validly levied and collected under the GST framework.

In cases where tax is collected without authority of law, the right to interest flows independently as a matter of constitutional restitution and compensation for deprivation of money.



# Implications and Observations

## Constitutional Restitution

Decision correctly applies principle of restitution, reinforcing that State cannot retain money collected under unconstitutional levy without compensating taxpayer for time value of money

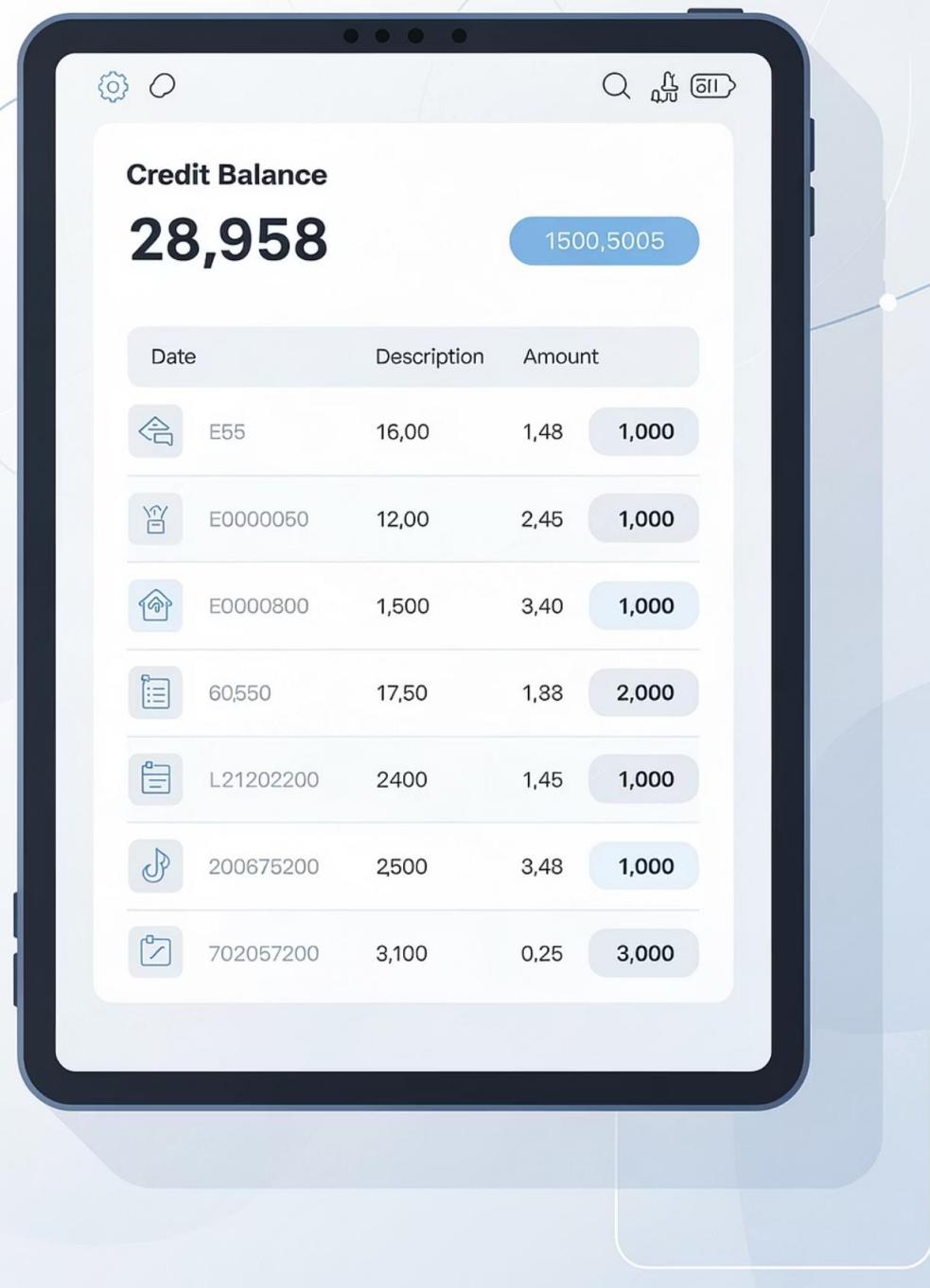
## Compensatory Nature

Since nature of interest is compensatory, it ought to be paid to taxpayer to compensate for wrongly depriving such person of money for a particular period

## Wide Ramifications

Ruling likely to have wide ramifications as substantial IGST refunds on ocean freight have already been processed without interest across the country

- ☐ **Constitutional Principle:** A taxpayer would be entitled to refund with interest where the levy was void ab initio, as the State cannot be unjustly enriched by retaining amounts collected without authority of law.



# Union of India v. SICPA India Private Limited

2025 (9) TMI 537

SIKKIM HIGH COURT

Section 49(6) does not confer independent right to refund unutilised ITC; refund is permissible only in accordance with Section 54

# Issue and Determination

The assessee sought refund of accumulated/unutilised ITC by invoking Section 49(6) of the CGST Act, contending that balance in electronic credit ledger was refundable independently of Section 54. The refund claim did not pertain to zero-rated supplies nor to inverted duty structure under Section 54(3).

01

## Section 49(6) is Not Standalone

Section 49(6) does not provide a substantive or standalone right of refund; it merely enables refund of balance in electronic cash/credit ledger in accordance with Section 54

02

## Subordinate to Section 54

The expression "may be refunded in accordance with the provisions of Section 54" clearly subordinates Section 49(6) to the refund framework of Section 54

03

## Limited Circumstances

Refund of accumulated ITC is permissible only in situations expressly covered by Section 54(3), namely zero-rated supplies without payment of tax or inverted duty structure

04

## Closure Governed by Section 29(5)

Accumulated ITC upon closure/discontinuance of business is governed by Section 29(5), which contemplates reversal of ITC, not refund



# Aculife Health Care Pvt Ltd v. Union of India

2025 (2) TMI 501

GUJARAT HIGH COURT

Limitation period for filing refund claims related to GST paid on notice pay recovery starts from date of issue of Circular No. 178/10/2022

# Facts and Judicial Analysis

Petitioner had self-paid GST on notice-pay recoveries made from employees at the time of separation under a mistaken belief of taxability. Circular No. 178/10/2022-GST dated 3 August 2022 clarified that notice-pay recovery is not taxable under GST. Petitioner filed refund applications in November 2022, which were rejected as time-barred.

## Limitation Analysis

GST paid earlier was under mistaken belief, and cause of action for refund arose only upon issuance of the circular clarifying non-taxability.

Court noted that assessee could not have had opportunity of filing refund claims till the date of the Circular as taxability was uncertain.

Limitation under Section 54 must be computed from 3 August 2022, i.e., the date of Circular No. 178/10/2022-GST.

## Unjust Enrichment

State is not entitled to unjustly enrich itself with amounts collected from citizens which are not sanctioned as 'Tax'.

This aligns with Article 265 of the Constitution of India, which provides that State cannot retain any amount without authority of law.

Refund claims were held to be filed within period of limitation and rejection was held unsustainable.

# BLA Infrastructure Private Limited v. State of Jharkhand

2025 (2) TMI 352

JHARKHAND HIGH COURT

Refund of pre-deposit cannot be denied based on limitation period prescribed under Section 54

Petitioner had made statutory pre-deposit for filing appeal under GST law. Appeal was allowed in favour of petitioner, entitling it to refund of pre-deposit. Refund application was rejected as time-barred under Section 54.

## Vested Right Cannot Be Forfeited

Refund of statutory pre-deposit is a vested right once appeal is decided in favour of assessee. Limitation under Section 54 cannot extinguish this vested right

## "May" is Directory

The word "may" in Section 54(1) makes limitation period directory, not mandatory. It does not mandate forfeiture of refund for delay

## Distinction from Ordinary Refunds

This decision correctly distinguished refund claim arising out of statutory exercise from ordinary refund claim, preventing Department from using limitation as tool for forfeiting refunds

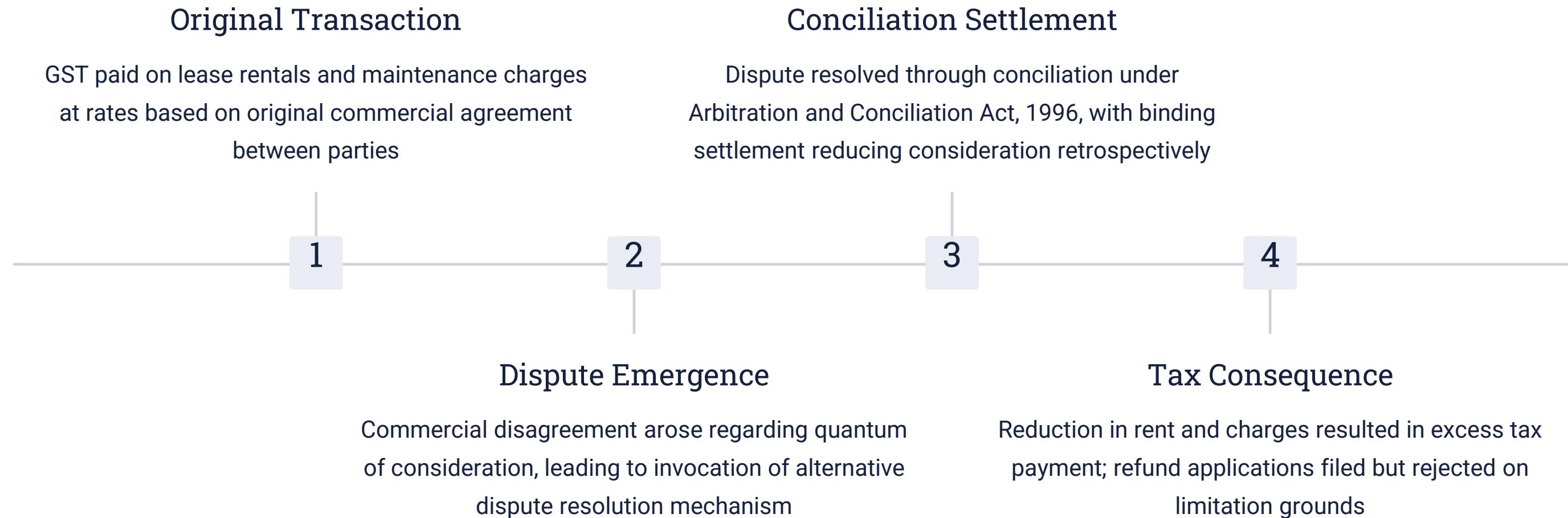


# Delhi Metro Rail Corporation v. Commissioner Appeals

**Citation:** 2025 (5) TMI 2084 – Delhi High Court

- ❑ **Core Legal Principle:** Where excess GST arises due to a conciliation settlement reducing consideration, limitation under Section 54 runs from the date of the settlement as the deemed date of decree, not from the original date of payment

# Delhi Metro Rail Corporation – Commercial Context



The central controversy revolved around determining the correct date from which the two-year limitation period under Section 54 of the CGST Act should be computed in circumstances where excess tax liability crystallised not at payment but at subsequent settlement.

# Statutory Framework and Judicial Interpretation

## Section 54 – Relevant Date Provisions

Section 54 prescribes a two-year limitation period for refund applications, measured from the "relevant date" as defined in various sub-clauses of Explanation 2.

### Key Provisions:

- Explanation 2(d): Date of communication of judgment/decree
- Explanation 2(h): Residual clause for other cases

## Delhi High Court's Determination

A conciliation settlement under Sections 73 and 74 of the Arbitration and Conciliation Act, 1996 has the status of an arbitral award and is enforceable as a decree of a civil court.

Once the settlement is signed, it becomes final and binding and conclusively determines the rights and liabilities of the parties. Therefore, the date of finalisation constitutes the deemed date of communication of judgment/decree.

In such circumstances, **Explanation 2(d) to Section 54** applies specifically, and not the residual provision under Explanation 2(h). The limitation period must be computed from the conciliation settlement date.

# Precedential Value and Legal Certainty



## Alternative Dispute Resolution

This judgment provides crucial clarity that conciliation settlements should be treated at par with civil court decrees for GST refund limitation purposes, thereby encouraging commercial dispute resolution through ADR mechanisms.



## Crystallisation Principle

The decision affirms that limitation runs from when the tax liability is conclusively determined or modified, not mechanically from the date of original payment, aligning with principles of fairness and commercial reality.



## Taxpayer Protection

Strengthens certainty on eligibility of refund claims arising from legitimate commercial modifications effectuated through legally recognised alternative dispute mechanisms, preventing arbitrary rejection on hyper-technical limitation grounds.



# Sun Tamil Nadu Security Management Services Pvt Ltd v. Commissioner

**Citation:** 2025 (9) TMI 1142 – Madras High Court

- ❑ **Core Legal Principle:** Beneficial amnesty schemes must be construed liberally and procedural lapses should not defeat substantive compliance, particularly where the taxpayer has discharged the entire tax liability and demonstrated bona fide intention to avail settlement benefits

# Section 128A Amnesty Scheme – Factual Matrix

A horizontal flow diagram with four light grey chevron-shaped boxes. The first box contains '1' and 'Assessment'. The second box contains '2' and 'Scheme Application'. The third box contains '3' and 'Pending Appeal'. The fourth box contains '4' and 'Rejection'.

1

## Assessment

Petitioner subjected to GST assessment proceedings; entire tax liability discharged partly before and partly after assessment order

2

## Scheme Application

Application filed under Section 128A(1) seeking waiver of interest and penalty within statutory timeline under Rule 164(6)

3

## Pending Appeal

Appeal against assessment order pending; petitioner initiated withdrawal steps but formal withdrawal not completed by notified date

4

## Rejection

Application rejected on ground that appeal not formally withdrawn by deadline, despite substantial compliance

# Judicial Reasoning and Purposive Interpretation

## Statutory Compliance Analysis

- **Rule 164(6):** Prescribed 30th June 2025 as last date for filing application under Section 128A; petitioner filed within this timeline
- **Section 128A(3):** Bars benefit where appeal/writ petition pending and not withdrawn; however, provision must be read contextually
- **Substantive Acts:** Petitioner paid entire tax liability and took steps to withdraw appeal, demonstrating bona fide intention

## Purposive Construction Principles

The scheme under Section 128A, introduced via Notification No. 21/2024-Central Tax dated 8th October 2024, is a one-time beneficial measure designed to reduce legacy disputes and litigation backlog. Such settlement-oriented schemes should not be defeated on hyper-technical grounds, particularly where no revenue loss is involved and the taxpayer has demonstrated substantial compliance with the scheme's underlying objectives.

# Implications for Amnesty Scheme Applicants



## Substantial Compliance Doctrine

Procedural delay in withdrawing an appeal should not override substantial compliance where the taxpayer has discharged all tax liabilities and taken demonstrable steps towards meeting scheme conditions. Technical formalities must yield to substantive compliance.



## Liberal Construction Principle

Beneficial fiscal schemes introduced to reduce litigation must be interpreted liberally in favour of taxpayers, especially when no revenue loss is involved. This aligns with settled jurisprudence on amnesty and settlement provisions across taxation statutes.



## Legislative Intent Prevails

The decision reinforces that Section 128A is a settlement-oriented provision promulgated with intent to reduce legacy disputes. Courts should not permit hyper-technical interpretations that would defeat the very purpose of introducing such beneficial measures.

# Pronouncements from Advance Ruling Authorities



# KEI Industries Ltd – ITC on Concrete Tower Construction

**Citation:** 2025 (8) TMI 551 – Appellate Authority for Advance Ruling, Gujarat

## Factual Background

The appellant manufactures Extra High Voltage (EHV) cables and installed Vertical Continuous Vulcanization (VCV) lines requiring multi-floor concrete towers.

### Tower Functions:

- Support heavy machinery and components
- Provide structural stability
- Absorb vibrations during manufacturing
- Ensure precision in cable production

Question arose whether ITC is admissible on goods and services used for constructing this concrete tower.

## AAAR Determination

The concrete tower is not a civil structure simpliciter, but a critical foundation and structural support for VCV lines, functioning as an integral part of the manufacturing infrastructure.

The **Explanation to Section 17(5)** expressly includes foundation and structural support within the definition of "plant and machinery". Once construction qualifies as foundation/structural support of plant and machinery, it falls outside restrictions imposed by Section 17(5)(c) and Section 17(5)(d), even if constructed on the assessee's own account.

**Key Principle:** Applying the functionality test, the purpose of annexation was not permanency but to provide stability and support machinery, making the tower moveable property rather than immovable property.

# Dynamic Techno Medicals – Treatment of Demonstration Items

**Citation:** 2025 (9) TMI 1053 – Authority for Advance Ruling, Kerala

## Business Model

Applicant procures medical equipment and issues demo items to Product Specialists for demonstration and educational purposes. Ownership remains with the applicant throughout the demonstration period.

## Operational Characteristics

Product Specialists act as representatives, not recipients. Demo items are repeatedly used for business promotion purposes. Once worn out, items are recorded as scrap and cleared on payment of GST.

## Legal Question

Whether issuance of demo items constitutes "disposal by way of gift or free samples" attracting Section 17(5)(h), thereby requiring reversal of input tax credit?

## AAR Ruling

Demo items not comparable to physicians' samples. No transfer of ownership occurs; goods remain applicant's property. Used in course of business for promotion of taxable supplies, not gifted or permanently disposed. Section 17(5)(h) not attracted.

# TATTVAM

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# Thank You