TATTVAM

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Legal Zine

A digest of important judgments and rulings

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JUDICIAL PRONOUNCEMENTS

SUPREME COURT AND HIGH COURT

a) Mere uploading of SCN/adjudication order on GST portal does not constitute "communication" u/s 107 for limitation; requires actual service u/s 169; physical service prevails over electronic.

(Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh and Anr., TS-1033-HC(ALL)-2025-GST)

Facts:

- M/s. Bambino Agro Industries Ltd. and other Petitioners approached Hon'ble High Court aggrieved by the fact that the show cause notices and the adjudication orders were never served upon them physically or through any offline mode and were merely uploaded on the Common Portal maintained by the GST authorities.
- The Petitioners became aware of the proceedings only upon initiation of recovery actions, by which time the statutory period for filing an appeal under Section 107 of the CGST Act being 120 days including the condonable period of 30 days had already expired. Thereby, such mode of service deprived the Petitioners of effective notice and a meaningful opportunity to file replies to the show cause notices and further impaired their statutory right to challenge the impugned orders within the rigid period of limitation prescribed under the Act.
- The Revenue contended that service of SCNs and orders were effected through uploading on the GST portal and/or email in terms of Section 169(1)(c) and (d) of the CGST Act. However, the Revenue has admittedly failed to produce any electronic trail or system-generated proof evidencing actual delivery, retrieval, or viewing of the alleged communications by the Petitioner.
- In this case the main issue involved was:
    - Whether mere uploading of SCNs/adjudication orders on GST common portal constitutes "communication" under Section 107 for 3-month appeal limitation to start or requires actual/constructive service as per

Section 169 modes (tender, post, etc.) read with IT Act Sections 4, 12 and 13?

Held:

The Hon'ble High Court allowed the writ petitions subject to the petitioners depositing 10% of the disputed demand of tax and matters remitted to the Adjudicating Authority for fresh consideration subject to specified conditions, on the basis of below observations:

- Service of show cause notices and adjudication orders by making them available on the GST Common Portal or by dispatch through electronic modes is permissible in law under Section 169(1)(a) to (e) of the State/Central GST Acts. There is no statutory hierarchy or priority prescribed among these modes, and the Revenue is free to choose any of them, except in the case of affixation.

- The requirement of recording satisfaction regarding impracticability of other modes applies only before resorting to affixation under Section 169(1)(f).

- The deeming fiction of constructive service is available only with respect to service effected through modes specified in Clauses (a), (b), (e) and (f) (where applicable), of Section 169(1) of the Act. Mere uploading of a notice or order on the GST common portal cannot, by itself, be treated as "tendering", "sending by post", "publication" or "affixation" under Section 169, because the statute has not created any deeming fiction equating portal upload with those physical modes for purposes of Section 107 limitation.

- The provisions of the Information Technology Act, 2000 may be invoked only to a limited extent of the concepts of electronic "dispatch" and "receipt" where the GST Acts are silent. However, the IT Act provisions are not invokable to actual or constructive service provided under Section 169 of the GST laws.

- Where no acknowledgement is generated and the GSTN or Revenue authorities are unable to establish when a notice or order uploaded on the Common Portal was actually retrieved or downloaded by the assessee, no inference can be drawn regarding the date or time of service for the purpose of computing limitation under Section 107 of the GST Acts.

- Disputes regarding receipt of emails would require complex forensic examination of computer resources, which is impractical and undesirable. In the absence of proof of email delivery and particularly where the adjudication order itself was not served by email such electronic service cannot be treated as valid "communication" for triggering limitation.

- Since limitation under Section 107 begins from the date of effective "communication" of an order, such communication must be established through actual or legally recognised constructive service under Section 169. Where an assessee files an appeal claiming it to be within time from the date of actual communication, a presumption may arise in favour of the assessee, and the burden shifts to the Revenue to prove an earlier valid communication.

TATTVAM COMMENTS:

- This ruling strikes a balance between statutory permissibility of electronic service and the practical realities of its implementation. While upload of notices and orders on the GST portal is a valid mode of service under Section 169, such electronic availability by itself cannot automatically trigger limitation unless the Revenue is able to establish effective communication to the assessee. In the absence of any system-generated evidence of retrieval or acknowledgement, no presumption can be drawn as to the date of service for the purpose of Section 107.
- The decision reinforces that limitation for filing appeals must be computed from the date of actual or legally recognised constructive communication, with the burden resting on the Revenue to prove earlier service where disputed. Significantly, where both electronic and physical modes coexist, the Court has clarified that physical/offline service would prevail unless proved otherwise. The ruling underscores the need for certainty and uniformity in service procedures to avoid procedural prejudice and avoidable litigation.

b) Levy of general penalty under Section 125 is impermissible where late fee under Section 47 is imposed for delayed GSTR-9 and amnesty benefit applicable to returns filed before 01.04.2023.

(M/s Kandan Hardware Mart And Others, 2026 (1) TMI 383 - Madras High Court)

Facts:

- The Petitioners are registered persons under GST Law who had filed their GSTR-9 returns for FY 2017-18 to 2021-22 belatedly, i.e., beyond the due date prescribed under Rule 80 of the CGST Rules.
- The returns were filed prior to 01.04.2023, i.e., before the amnesty window notified under **Notification No.7/2023-Central Tax dated 31.03.2023** as amended by **Notification No.25/2023-Central Tax dated 17.07.2023**.
- The Department levied late fee under Section 47 of CGST Act and, in certain cases, also imposed general penalty under Section 125 of the CGST Act for the same delay in filing annual returns.
- The dispute arose as to whether:
    (a) the benefit of the amnesty scheme under Notification No. 7/2023–CT (as amended) could be denied to petitioners who had filed GSTR-9 belatedly but before 01.04.2023; and
    (b) General penalty under Section 125 of the CGST Act could be imposed in addition to late fee under Section 47 of the CGST Act for delayed filing of annual returns.

Held:

- Late fee under Section 47 of the CGST Act is penal in nature and once levied, general penalty under Section 125 of the CGST Act cannot be imposed for the same default.
- The amnesty benefit must be extended to all GSTR-9 filed before 01.04.2023, even if belated and denial of such benefit was held discriminative and violative of Article 14 of the Constitution of India.
- Accordingly, petitioners were held liable only to the capped late fee of ₹10,000 each under CGST and SGST with complete waiver of general penalty under Section 125 of the CGST Act.

TATTVAM COMMENTS:

- This judgment clarifies that Section 125 of the CGST Act can be applied only when no specific penalty is provided, and it cannot be used where late fee under Section 47 is prescribed for the default.
- It also clarifies that filing of GSTR-9 within or prior to the amnesty cut-off date entitles the taxpayer to the full benefit of the waiver, thereby preventing arbitrary denial of relief.

c) Refund of unutilised ITC cannot be denied solely due to delay in furnishing LUT/Bond if exports are established (Writ Petition No. 11076 of 2024 (T-RES) - Karnataka High Court)

(M/s. Prime Perfumery Works Versus Assistant Commissioner of Central Tax Bengaluru, 2025 (12) TMI 1365- Karnataka High Court)

Facts:

- The Petitioner exported goods during FY 2022-23 as zero-rated supplies under the GST law.
- The exports were made without payment of IGST, i.e., under the mechanism prescribed in Section 16(3)(a) of the IGST Act read with Rule 96A of the CGST Rules, 2017.
- The Petitioner thereafter filed a refund application dated 03.12.2023 in Form GST RFD-01 seeking refund of unutilised Input Tax Credit (ITC) under Section 54 of the CGST Act, 2017.
- A Show Cause Notice dated 28.12.2023 was issued proposing rejection of refund.
- Despite the Petitioner filing a detailed reply, the refund was rejected vide order dated 31.01.2024 (Form GST RFD-06) solely on the ground that the Petitioner

had not furnished LUT/Bond prior to export, as required under Rule 96A of the CGST Rules.

Held:

- The Hon'ble High Court set aside the rejection order, holding that non-furnishing of LUT/Bond prior to export is not an incurable defect.
- The Court observed that CBIC Circular No. 37/11/2018 dated 15.03.2018 clearly permits condonation of delay and allows the facility of export under LUT on an ex-post facto basis, provided exports are genuine and undisputed.
- It was further held that the refund authority failed to consider and apply the binding Circular, which is impermissible in law.
- Since the fact of export was not disputed, denial of refund merely on procedural grounds was held to be unsustainable.
- Accordingly, the refund rejection order dated 31.01.2024 was set aside, and the matter was remanded back to the adjudicating authority for fresh consideration in accordance with law and the Circular dated 15.03.2018

TATTVAM COMMENTS:

- This judgment reinforces the principle that **procedural lapses** (such as the delay in filing LUT) should not defeat **substantive benefits** (Refund/Zero-rating) provided the core condition of 'actual export' is satisfied.
- It serves as a helpful precedent for exporters who may have inadvertently missed filing the LUT at the beginning of the Financial Year but have otherwise complied with export regulations.

d) Assessment order set aside for demand exceeding show cause notice and violation of principle of natural justice.

(Mi Industries India Private Ltd. Vs Union of India and 4 others [TS-1040-HC(ALL)-2025-GST])

Facts:

- An adjudication order under the GST regime was passed against the Petitioner, confirming a demand of ₹9.40 crore, which was substantially in excess of the demand proposed in the Show Cause Notice (₹1.71 crore).
- Aggrieved thereby, the Petitioner invoked the extraordinary writ jurisdiction of the Hon'ble Allahabad High Court under Article 226 of the Constitution of India, seeking quashing of the impugned adjudication order.
- The principal grievance of the Petitioner was that the adjudication order:
    - Travelled beyond the scope of the Show Cause Notice, and
    - Was passed ex-parte, without granting any opportunity of personal hearing, in patent violation of the principles of natural justice, particularly *audi alteram partem*.

Held:

- The Hon'ble High Court quashed the impugned adjudication order, holding that it suffered from serious procedural infirmities, inter-alia:
    - The order travelled beyond the grounds raised in the Show Cause Notice, and
    - It was non-speaking and bereft of reasons, reflecting absence of due application of mind.
- The Court reiterated that an adjudication order must strictly confine itself to the allegations and proposals contained in the Show Cause Notice, and must be a reasoned and speaking order, disclosing the rationale for the conclusions arrived at.
- The Court further held that even where an adjudication order does not travel beyond the Show Cause Notice, the existence of a jurisdictional error or violation of principles of natural justice entitles the Petitioner to invoke the writ jurisdiction under Article 226, notwithstanding the availability of an alternate appellate remedy.
- On the issue of remand, the Court observed that:

"No useful purpose would be served by relegating the petitioner to the appellate authority once a jurisdictional error or violation of the principles of natural justice is established. In such circumstances, the petitioner is entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India."

TATTVAM COMMENTS:

- This judgment **reaffirms the foundational importance of natural justice** in fiscal adjudication, particularly the right of hearing embodied in the doctrine of *audi alteram partem*.
- The decision crystallises the following settled principles:
  - **An adjudication order cannot exceed the scope of the Show Cause Notice**; doing so renders the order without jurisdiction.
  - **Every adjudicatory order must be a speaking order**, demonstrating clear reasoning and proper application of mind.
- A **non-reasoned** or **cryptic order** is violative of:
  - **Article 14 of the Constitution of India** (prohibition against arbitrariness), and
  - The **principles of natural justice**.

e) GST Authorities Lack Power to Seize Cash as "Unaccounted Wealth" under section 67 of CGST Act, 2017

(M/s Puspa Furniture Private Limited & Anr. Vs Union of India & Ors - Calcutta High Court)

Facts:

- The Petitioners are engaged in the business of supply of taxable goods under the GST regime.

- Search and seizure proceedings were conducted at the office/sale office-cum-residential premises of the Petitioners under Section 67 of the CGST Act.
- During the search, cash amounting to ₹24 lakhs was found and sealed by the GST authorities on the allegation that the same represented unaccounted cash arising from clandestine supply of goods.
- The cash was not seized as evidence linked to any specific transaction but was detained merely due to the inability of the Petitioners to explain its source at the time of search.
- The GST authorities themselves intimated the Income Tax Department, admitting that investigation into unaccounted cash falls within the jurisdiction of the Income Tax authorities.
- Aggrieved by the action of sealing and detention of cash, the Petitioners challenged the search and seizure proceedings before the Calcutta High Court.

Held:

- The Hon'ble Calcutta High Court held that cash does not fall within the definition of "goods" under Section 2(52) of the CGST Act, as money is expressly excluded from the ambit of goods.
- The word "things" appearing in Section 67(2) must be interpreted ejusdem generis with the words "documents" and "books" and refers only to items having evidentiary or informational value for GST proceedings.
- Cash can be seized only where the specific currency notes have direct evidentiary value in establishing a GST offence; mere possession of unexplained cash does not confer seizure powers on GST authorities.
- The GST Act is not a machinery for recovery or investigation of unaccounted wealth, which squarely falls within the domain of the Income Tax Department.
- Since the GST authorities failed to demonstrate that the seized cash was useful or relevant to any proceedings under the CGST Act, the action of sealing and detention of cash was held to be without jurisdiction.

- Accordingly, the Court directed the GST authorities to forthwith de-seal and release the cash amount of ₹24 lakhs, while clarifying that such release does not bar action by other statutory authorities under applicable laws.

TATTVAM COMMENTS:

- This judgment reiterates that Section 67 of the CGST Act does not empower GST authorities to seize cash merely on suspicion of it being unaccounted wealth.
- It reinforces the principle that drastic powers of search and seizure must be exercised strictly within the statutory limits and for purposes directly connected to GST proceedings.
- The ruling provides significant relief to taxpayers by preventing misuse of GST provisions for matters falling outside the GST framework and upholds the constitutional safeguards against arbitrary state action.

f) ITC cannot be denied to a bona fide purchaser merely because the supplier failed to deposit tax.

(M/s Sahil Enterprises v. Union of India, Tripura High Court, 2026 (1) TMI 385 | WP(C) 688/2022)

Facts:

- The Petitioner, M/s Sahil Enterprises, is a registered trader dealing in rubber products.
- During the period July 2017 to January 2019, the Petitioner purchased goods from M/s Sentu Dey and paid GST amounting to ₹1,11,60,830 to the supplier.
- The supplier duly filed GSTR-1, reflecting outward supplies made to the Petitioner.
- However, the supplier failed to discharge GST liability by filing Nil GSTR-3B returns and did not deposit tax with the Government.
- The Department held that since tax was not "actually paid" to the Government, the condition under Section 16(2)(c) of the CGST Act, 2017 was not fulfilled.

- Consequently, the Petitioner's ITC ledger was blocked and SCN and demand order were issued under Section 73 of the CGST Act (non-fraud).
- Aggrieved, the Petitioner challenged the constitutional validity of Section 16(2)(c) to the extent it denied ITC to a bona fide purchaser for the supplier's default.

Held:

- The Hon'ble Tripura High Court held that a statutory condition which requires a purchasing dealer to ensure that the supplier deposits tax with the Government, despite there being no statutory mechanism or control available to the purchaser, imposes an impossible burden.
- The Court observed that such an interpretation of Section 16(2)(c) would render the provision arbitrary and violative of Article 14 of the Constitution.
- Relying upon ***Quest Merchandising India Pvt. Ltd. v. GNCT of Delhi***, the Court reiterated that law cannot compel a person to do the impossible, and a bona fide purchaser cannot be expected to anticipate or control the seller's future default. The Court further held that uniform application of Section 16(2)(c) to both bona fide purchasers and collusive/fraudulent purchasers, without any intelligible differentia, results in hostile discrimination, attracting Article 14.
- It was held that where the transaction is genuine and tax has been paid to the supplier, the State's remedy lies against the defaulting supplier and not in denying ITC to the purchaser which would amount to economic double taxation.
- Following the principles laid down in ***B.R. Enterprises v. State of U.P. and CST v. Radhakrishnan***, the Court held that reading down is mandatory where literal interpretation leads to constitutional infirmity.
- Accordingly, the Court held that Section 16(2)(c) can survive constitutional scrutiny only when read down to apply exclusively to non-bona fide, collusive or fraudulent transactions.
- ITC cannot be denied to a genuine purchaser merely because the supplier failed to deposit tax.

TATTVAM COMMENTS:

- This judgment is a significant reaffirmation of the principle that ITC denial cannot be mechanically enforced against bona fide recipients for defaults committed by suppliers.
- It clarifies that Section 16(2)(c) is not unconstitutional *per se* but must be read down to prevent arbitrary application and constitutional violations.
- The ruling strengthens the doctrine that the State's remedy is recovery from the defaulting supplier, and not penalisation of the recipient through ITC denial.
- It also recognizes that denying ITC after tax has already been paid to the supplier leads to impermissible economic double taxation, absent explicit legislative intent.
- The judgment provides strong constitutional backing for taxpayers facing ITC denial solely on account of supplier non-compliance, particularly in Section 73 (non-fraud) cases.
- This decision will be highly persuasive in ongoing and future litigation concerning Section 16(2)(c), supplier-side defaults, and GST credit blockages.

g) Refund of Unutilised Compensation Cess on Zero-Rated Exports of Non-Cess Goods.

(M/s Aurobindo Pharma Limited v. State of Telangana & Ors., Writ Petition No. 2391 of 2023, Order dated 10.12.2025)

Facts:

- The Petitioner is engaged in manufacture and export of pharmaceutical products and supplies to SEZ units. Further, Coal was procured as an input for manufacturing, on which Compensation Cess was paid under the Cess Act.

- Finished goods exported by the Petitioner are not leviable to Compensation Cess, being non-specified goods under the Schedule to the Cess Act.
- Refund of unutilised Compensation Cess (paid on coal) was rejected on the ground that exports were made on payment of IGST, relying on CBIC Circular No. 45/19/2018-GST.
- Aggrieved, the Petitioner approached the High Court.

Held:

- The Hon'ble Court noted that the issue is squarely covered by the Gujarat High Court judgments in *Patson Papers Pvt. Ltd.* and *Atul Limited*, which allow refund of unutilised Compensation Cess on zero-rated exports.
- It was further noted that the SLP against *Patson Papers* was dismissed by the Supreme Court, affirming the legal position.
- It was held that payment of IGST on exports does not bar refund of accumulated Compensation Cess, particularly when such cess cannot be utilised for payment of IGST due to statutory restriction under Section 11(2) of the Cess Act.
- Accordingly, the impugned orders were set aside and the matter was remanded to the original authority for fresh consideration after granting opportunity of hearing.

TATTVAM COMMENTS:

- The ruling reinforces that **unutilised Compensation Cess on inputs is refundable** when used in manufacture of goods exported as zero-rated supplies, even if the final product is not exigible to cess.
- The said decision provides relief to exporters using cess-paid inputs like coal, ensuring that accumulated cess does not become a cost.

h) State GST Lacks Jurisdiction without Cross-Empowerment from Central GST; Insistence on toll receipts to prove movement is without any statutory basis.

(M/s Raghuvansh Agro Farms Ltd. Versus State of U.P. and 2 others, 2025 (12) TMI 1236 - Allahabad High Court)

Facts:

- The Petitioner, engaged in trading of agricultural goods, was subjected to proceedings under Section 74 of the UPGST Act alleging circular trading and wrongful availment of ITC.
- Demands were confirmed despite transactions being supported by tax invoices, e-way bills, GSTR-1, GSTR-2A, GSTR-3B and bank payments.
- The proceedings were initiated by State GST authorities, though the Petitioner was under Central GST jurisdiction.
- The dispute arose as to whether:

    (a) The proceedings under Section 74 can be initiated without recording any specific categorical finding of fraud, willful misstatement or suppression of fact to evade payment of tax?

    (b) The State GST authorities had jurisdiction to initiate proceedings against the petitioner in the absence of any cross-empowerment notification?

    (c) The authorities were justified in drawing adverse inference against the petitioner for non-production of toll plaza receipts?

Held:

- The High Court held that Section 74 can be invoked only where fraud, wilful misstatement or suppression of facts is specifically alleged and established; absence of such foundational allegations renders proceedings without jurisdiction. Further, the allegations of circular trading were rejected as unsupported by evidence, especially when transactions were duly reflected in statutory returns and supported by documents.

- It was further observed that State GST authorities lacked jurisdiction in the absence of any cross-empowerment notification, as the Petitioner fell under Central GST jurisdiction.

- The Hon'ble Court held that the petitioner had produced tax invoices, e-way bills, and bilty along with the bank statements showing the payments made to the transporter, which were sufficient to establish the actual movement of goods. Non-production of toll plaza receipts is not a statutory requirement, and adverse inference on that basis is unsustainable.

TATTVAM COMMENTS:

- The ruling clearly affirms that State GST officers cannot assume jurisdiction over Central assessees in the absence of valid cross-empowerment.
- It further affirms that tax authorities cannot deny ITC or allege circular trading merely because toll plaza receipts are not produced, when all statutorily recognized documents evidencing movement of goods are on record.

i) Works contract for laying of roads in an industrial area qualifies as public infrastructure; GST leviable at 12% and not 18%.

(M/s RK Infracorp Private Limited v. Assistant Commissioner, State Tax, Kadapa Division & Ors., Andhra Pradesh High Court, 2026-VIL-12-AP | WP No. 32737 of 2025)

Facts:

- The Petitioner, M/s RK Infracorp Private Limited, is a registered dealer under the GST law engaged in the business of work contract services.

- The Petitioner executed infrastructure development works relating to laying of internal roads pursuant to contracts dated 25.02.2019 and 08.03.2019 awarded by Andhra Pradesh Industrial Infrastructure Corporation (APIIC).

- For FY 2021-22 and FY 2022-23, the Petitioner discharged GST at the rate of 12%, treating the said works as public infrastructure covered under Entry 3 of Notification No. 24/2017-Central Tax (Rate) dated 21.09.2017.
- The Department conducted audit and issued a Show Cause Notice in Form DRC-01 proposing levy of tax at 18% on the ground that the works executed were on internal roads and not public roads.
- An adjudication order dated 14.08.2025 was passed under Section 73 of the CGST/SGST Act, levying differential tax at 18% along with interest under Section 50 and penalty.
- The Petitioner approached APIIC for reimbursement of the differential tax, which was refused on the ground that the applicable rate was only 12%.
- During the pendency of the writ petition, the Petitioner produced certificates dated 11.12.2025 issued by the Executive Officer of the Industrial Area Local Authority (IALA), certifying that the roads were laid for facilitating industrial activity and for the benefit of the general public.
- Aggrieved by the levy of higher rate of tax, the Petitioner challenged the adjudication order before the Hon'ble High Court.

Held:

- The Hon'ble Andhra Pradesh High Court held that the certificate issued by the Industrial Area Local Authority is a crucial and determinative document for deciding the nature of the works executed.
- The Court observed that roads laid for facilitating industrial activity as well as movement of the general public, vehicles and goods cannot be treated as private or exclusive infrastructure.
- It was held that such works fall squarely under Entry 3 of Notification No. 24/2017-Central Tax (Rate), attracting GST at the rate of 12% and not 18%.
- The Court held that the adjudicating authority erred in ignoring the material evidence on record, particularly the IALA certificate, while determining the applicable rate of tax.

- Accordingly, the adjudication order dated 14.08.2025 was set aside to the extent it levied GST at 18% on road works executed by the Petitioner.
- The assessing authority was directed to redo the assessment afresh, year-wise, after considering the certificate issued by the Industrial Area Local Authority.
- The Court clarified that the assessment relating to other components of the work's contract was not interfered with.

TATTVAM COMMENTS:

- This decision provides authoritative clarity that the character of infrastructure works must be determined on their functional and public utility, and not merely on their location within an industrial area.
- The judgment underscores the evidentiary significance of certificates issued by competent local authorities, such as the Industrial Area Local Authority, in resolving GST rate classification disputes.
- It curbs arbitrary reclassification by the Department and reinforces that concessional rates under Notification No. 24/2017 cannot be denied by ignoring contemporaneous documentary evidence.
- The ruling will have strong persuasive value in disputes involving 12% vs 18% GST on road and infrastructure works, particularly in industrial and development corridor projects.

j) Violation of Principles of Natural Justice — Service of Notice Through GST Portal — Requirement of Effective Opportunity of Hearing.

(Tvl. Sri Samy Agencies Rep. by its Proprietor S. Velusamy S/o. Sengoda Gounder Versus the Commissioner of Commercial Taxes, The Deputy State Tax Officer-i, 2026 (1) TMI 384 - Madras High Court)

Facts:

- The petitioner is a registered dealer under the GST regime and was subjected to assessment proceedings by the department for the relevant tax period.
- The department issued the show cause notice and subsequent communications only by uploading them on the GST common portal.
- The petitioner contended that he was not aware of the issuance of the show cause notice, as no physical copy or alternative mode of service was effected upon him.
- Due to lack of knowledge of the proceedings, the petitioner failed to submit any reply or objections within the prescribed time.
- Despite the absence of any response from the petitioner, the assessing authority passed the impugned assessment order dated 25.10.2024, confirming the proposals contained in the show cause notice.
- No opportunity of personal hearing was afforded to the petitioner before passing the impugned order.
- Aggrieved by the ex parte order and alleging violation of the principles of natural justice, the petitioner approached the High Court seeking judicial intervention.

Held:

- The High Court stated that no tax order can be passed without giving the taxpayer a proper and fair chance to be heard. This is a basic requirement of justice.
- Although the law allows notices to be uploaded on the GST portal, the Court clarified that just uploading the notice is not enough if the taxpayer does not actually become aware of it.
- When the taxpayer does not respond to portal notices, the officer must make serious efforts to communicate using other legal methods mentioned in Section 169 of the GST Act, especially by sending the notice through Registered Post (RPAD).

- The Court criticised the practice of passing orders without real hearing, saying that such mechanical actions only increase litigation and waste the time of both tax authorities and courts.
- Since the petitioner was not given any opportunity of personal hearing, the assessment order dated 25.10.2024 was found to be unfair and legally unsustainable.
- Therefore, the Court cancelled the assessment order and sent the matter back to the department for fresh consideration, on the condition that the petitioner pays 25% of the disputed tax within four weeks.

TATTVAM COMMENTS :

- Fairness in tax proceedings is mandatory, not optional.
- Uploading notices on the GST portal alone does not guarantee effective communication with the taxpayer.
- Tax authorities must ensure that the taxpayer is given a real and meaningful opportunity of hearing.
- When there is no response to portal notices, officers should use other legally permitted modes of service, especially Registered Post (RPAD).
- Mechanical passing of ex parte orders leads to unnecessary litigation and wastes valuable time of both tax authorities and courts.
- The judgment strengthens taxpayer rights and promotes transparent and responsible tax administration.

k) Rule 39(1)(a) of the CGST Rules (pre-01.04.2025) struck down to the extent it mandated same month ITC distribution by Input Service Distributors.

(M/s BirlaNu Ltd v. Union of India – 2026-VIL-26-TEL)

Facts:

- The Petitioner, M/s BirlaNu Limited is registered as an Input Service Distributor (ISD) under the CGST Act.
- During audit proceedings for FY 2017–18 and FY 2018–19, the GST authorities observed that the Petitioner accumulated ITC during the year and distributed such accumulated credit in the last month of the financial year, instead of distributing it on month-to-month basis.
- According to the department, this violated Rule 39(1)(a) of the CGST Rules, 2017, which mandates that ITC available for distribution in a month "shall be distributed in the same month."
- Consequently, a Final Audit Report dated 22.01.2024 was issued, followed by a Show Cause Notice dated 30.01.2024, proposing imposition of penalty under Section 122(1)(ix) of the CGST Act, 2017.
- Aggrieved, the petitioner approached the High Court challenging the validity of the Rule 39(1)(a) of the CGST Rules (as applicable prior to 01.04.2025) along with audit proceedings and show cause notice.
- The core issue before the High Court was whether Rule 39(1)(a) of the CGST Rules can impose a mandatory "same month" time limit for ISD ITC distribution when Section 20 of the CGST Act does not prescribe any such time limit (prior to 01.04.2025)?

Held:

- The Hon'ble High Court observed that Section 20 of the CGST Act is intended to ensure seamless flow and equitable distribution of ITC. Any interpretation of the rule-making power that imposes rigid time constraints not envisaged by the statute would defeat this object and run contrary to the purpose of the provision.
- The absence of any provision related to time limit under Section 20 of the CGST Act is intentional and not accidental. This legislative choice cannot be altered by delegated legislation.

- The court reiterated that the rule-making power under Section 164 of the CGST Act is intended to enable the implementation of the provisions of the Act and cannot be exercised to introduce substantive conditions or restrictions not envisaged by the legislature.
- It was held that Rule 39(1)(a) imposes an inflexible condition which has the effect of denying or forfeiting legitimately accrued ITC, thereby defeating the fundamental objective of the GST regime, namely, the elimination of cascading of taxes.
- The High Court observed that a normal recipient can avail ITC till the September/November cut-off of the next financial year. Denying the same flexibility merely because credit flows through an ISD is arbitrary and discriminatory, violating Articles 14 and 300-A of the Constitution.
- Therefore, in view of the above observations, the High Court declared Rule 39(1)(a), to the extent it mandates same-month distribution of ITC, as ultra vires Section 20 of the CGST Act as it stood before 01.04.2025 and the same is struck down.

TATTVAM COMMENTS:

- This judgment decisively reinforces the doctrine that delegated legislation cannot travel beyond the contours of the parent statute, particularly where such delegation results in denial of substantive tax benefits.
- This ruling offers direct and actionable relief to ISDs for periods prior to 01.04.2025, where ITC was accumulated and distributed on a periodic or year-end basis. Such distributions can no longer be treated as non-compliant merely on the ground of delay under Rule 39(1)(a).

l) GST Refund cannot be curtailed retrospectively by Amendment.

(M/s Bharat Oil Traders v. Assistant Commissioner, 2026-VIL-08-J&K)

Facts:

- The Petitioner, M/s Bharat Oil Traders, is engaged in business of refilling and sale of edible oil and ghee registered under GST.
- The petitioner's business operations involve a situation where the rate of tax applicable on inputs is higher than the rate applicable on outward supplies, resulting in an "Inverted Tax Structure."
- Accordingly, the Petitioner filed a refund application on 02.02.2021 under Section 54(3)(ii) of the CGST Act, 2017 for the accumulated ITC pertaining to period 01.07.2017 to 31.03.2019, relying upon Notification No. 13/2022 dated 05.07.2022 read with suo moto orders of the Hon'ble Supreme Court excluding limitation period due to Covid-19 pandemic.
- Prior to amendment, Explanation (2)(e) to Section 54 of the CGST Act defined the "relevant date" as the end of the financial year in which the claim arose, allowing a two-year window from that date. Thereby allowing a two-year limitation period from such financial year end.
- With effect from 01.02.2019, the definition of 'relevant date' was substituted to mean "the due date for furnishing the return under Section 39 for the period in which the claim for refund arises." This shift effectively shortened the limitation period for many claims, tying it more closely to monthly or quarterly return filings rather than annual financial year ends.
- The said refund application was rejected on the ground that the application is time barred by applying the post-amendment definition of "relevant date," retrospectively to periods prior to 01.02.2019 and also cited ineligibility of inputs for January to March 2019 without specifics.
- Aggrieved, the Petitioner filed writ petition challenging the rejections as arbitrary and violative of vested rights.

Held:

- The Hon'ble High Court held that the right to claim refund for periods preceding the amendment constitutes a vested and substantive right which cannot be curtailed or unilaterally revoked by a subsequent amendment unless the legislature expressly provides for retrospective operation.

- It was observed that the amendment to Explanation (2)(e) of Section 54 is substantive in nature, as it alters the limitation framework governing refund claims, and therefore carries a presumption of prospective application. The Court reiterated the settled principle that statutes affecting vested rights must be construed prospectively, unless a contrary legislative intent is clearly expressed.

- The Court categorically held that the amended definition of "relevant date" cannot be applied retrospectively to claims pertaining to periods prior to 01.02.2019, and the unamended provision would continue to govern such claims.

- With respect to the claim for January 2019 to March 2019, the Court noted that the rejection was based on an alleged absence of eligible inputs, but no reasoning or factual finding has been recorded by the Adjudicating Authority in this respect.

- The court further held that refund claims for July 2017 to December 2018 were not barred by limitation particularly in light of the extended limitation available under the Covid-19 related notifications and Supreme Court orders and therefore could not be rejected on technical grounds.

- Accordingly, the Court set aside the impugned order dated 30.09.2022 on the ground that the claim of the petitioner cannot be thrown out solely on technical grounds of delay and remanded the matter back to the adjudicating authority for fresh determination in accordance with law and the observations contained in the judgment.

TATTVAM COMMENTS:

- These observations encapsulate the balance between statutory evolution and right preservation, directly attributable to the bench's deliberations.

- The decision sends a clear signal that procedural amendments cannot be applied to unsettle rights already crystallized under prior law. It also reaffirms that pandemic-era relaxations under CBIC notifications must be given full effect while computing statutory limitation periods.

- Overall, the judgment is a useful precedent for reopening wrongly rejected refund claims, resisting audit objections, and contesting limitation-based denials, especially in cases involving inverted duty structure for the initial GST years.

m) GST Demand unsustainable on mere return mismatch arising from Reporting Errors

(M/s Hindustan Construction Company Ltd Vs Union of India, 2025 LiveLaw (Kar) 431)

Facts:

- The Petitioner, M/s Hindustan Construction Company Limited, is an infrastructure construction company involved in the business of construction of public-utilities and projects like roads, bridges, hydropower and nuclear plants, tunnels and rail facilities.
- During the FY 2018-19, following reporting errors were incurred by the petitioner:
    - Certain B2C supplies were wrongly reported as B2B supplies in GSTR-1
    - IGST paid on Imports were reported under Table 4(A)(5) instead of Table 4(A)(1) of GSTR-3B.
    - Invoices related to ABB Global Industries were reported with GSTIN of ABB India Ltd.
- These reporting errors resulted in discrepancies between GSTR-1, GSTR-3B and books of account. Based on such discrepancies, proceedings were initiated alleging short payment of tax and excess availment of ITC.
- An order was passed merely on the basis of mechanical comparison of GST returns without reconciling transactional nature.

Held:

- The Hon'ble Karnataka High Court held that mere mismatch or arithmetical difference between GSTR-1, GSTR-3B and books of account cannot automatically lead to tax demand.
- The court held that human errors and mistakes are normal, and errors are also made by the Revenue. Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction.
- The Court emphasized that there was no revenue loss to the government if petitioner is permitted to amend the GST returns filed since taxes had been paid and ITC was otherwise eligible.
- The Court held that Petitioner be allowed to rectify/amend its GSTR-1 and GSTR-3B returns, either electronically or manually.
- The writ petition was allowed with the above directions. Consequently, the demand raised on this account was set aside.

TATTVAM COMMENTS:

- The judgment provides significant relief to assessees facing demands due to inadvertent reporting errors.
- The judgment reiterates that GST demands cannot be sustained merely on the basis of return mismatches.
- The ruling draws a clear distinction between procedural / reporting errors and substantive tax evasion, holding that the former cannot be the basis for confirmation of demand.
- It reinforces the settled position that mechanical comparison of GSTR-1, GSTR-3B and financial statements, without transaction-wise reconciliation, amounts to non-application of mind.

Advance Rulings

n) Instant premix tea with other tea as a package for testing market will be determined as a 'composite supply' or a 'mixed supply'

(M/s Jivraj Tea International (P.) Ltd., Ruling No. GUJ/GAAR/R/2025/60-2025-GST)

Facts:

- The applicant, a Gujarat-based manufacturer and supplier of various types of tea and premix tea, proposed to bundle premix tea sachets with other varieties of tea as an introductory offer to analyse and assess the demand of the premix tea in the market.
- The Applicant sought an advance ruling on the following:
    1. Whether such supply of premix tea along with other tea would constitute a **'composite supply'** or **'mixed supply'**.
    2. What would be the applicable GST tax rate on such supply.
    3. What would be the appropriate HSN code to be used in the instant case.

Held:

- The Gujarat AAR ruled that the supply of premix tea sachets with other teas as an introductory offer would be treated as '**mixed supply**' since none of the indicators outlined in **CBIC Flyer No. 4, dated 5-8-2019** were satisfied in the present case. Therefore, it is apparent that the said bundled supply was not naturally bundled and each item could be sold independently.
- In terms of section 8(b) of the CGST Act, a mixed supply must be taxed at the highest applicable rate among the items supplied. In the present case, all items including premix tea (on or after 22.09.2025), attract similar tax rate i.e. 5%, hence the applicable rate is 5%.
- With reference to the HSN classification, the AAR clarified that since, all items in a mixed supply attract the same rate of tax, any of the relevant HSN codes

may be used. However, if the tax rates differ, the HSN code of the item attracting the highest rate must be applied.

TATTVAM COMMENTS:

- This judgment underscores the importance of determining whether a supply constitutes a 'mixed supply' or 'composite supply'. The principle of "naturally bundled" as clarified in **CBIC Flyer No. 4, dated 05.08.2019**, serves as a practical guide in this assessment. Once the nature of the supply is established, the applicable tax rate and corresponding HSN code to be used follow accordingly.
- It is equally significant to note that where free samples are bundled as an introductory offer, such supplies cannot be regarded as naturally bundled and must therefore be treated as a 'mixed supply' and in such cases, GST must be levied at the highest tax rate among the items supplied. Consequently, the HSN code to be adopted will be that of the item bearing highest tax rate.

TATTVAM

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