



**April 2026 Newsletter**  
**(1st April to 15th April 2026)**

# Legal Zine

*A digest of important judgments and rulings*



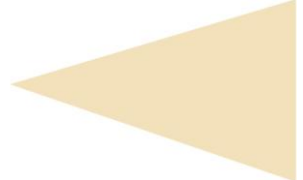
## About Us

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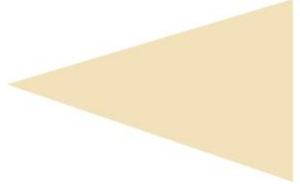


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## JUDICIAL PRONOUNCEMENTS

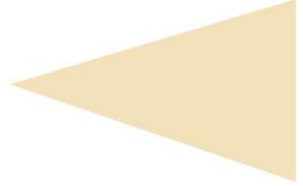
### SUPREME COURT AND HIGH COURT

**(a) No TCS liability on e-commerce operator not collecting consideration for supplies on its platform; Section 52 not attracted**

***[M/s Hiveloop Technology Private Limited vs. Additional Director, Directorate General of GST Intelligence & Ors., TS-215-HC(KAR)-2026-GST]***

#### **Facts:**

- The petitioner, Hiveloop Technology Private Limited, owns and operates an e-commerce portal 'www.udaan.com', a B2B platform for retailers and small business owners.
- The petitioner only grants access to the online portal and does not collect consideration/payment for the supplies made by other suppliers on its platform. Users registered on the portal undertake B2B transactions directly with each other.
- The petitioner entered into a licence agreement with a related entity (HLPL) for providing logistics and payment services directly to other entities on the online platform. HLPL is a separate legal entity, independently registered under GST, and is only one of several empanelled service providers on the portal.
- The respondents issued a show cause notice under Section 74(1) of the CGST/KGST Act alleging, inter alia, that the petitioner had violated Section 52 (failure to collect TCS at 1% on net value of taxable supplies made through its platform) and Section 17(2) (failure to restrict ITC attributable to exempt supplies on account of alleged "free supplies" / promotional activities).
- The petitioner challenged the SCN by way of a writ petition, restricting its challenge to the allegations under Sections 52 and 17(2) only.

**Issues:**

- Whether the impugned SCN alleging contravention of Section 52 of the CGST/KGST Act (failure to collect TCS) is sustainable when the petitioner does not collect consideration for supplies made through its platform?
- Whether the impugned SCN alleging contravention of Section 17(2) of the CGST/KGST Act (failure to restrict ITC attributable to exempt supplies) is sustainable when the petitioner's promotional activities do not constitute "free supplies" or "exempt supplies" under the Act?
- Whether the respondents were entitled to invoke Section 74(1) of the CGST/KGST Act for issuing the impugned SCN to the petitioner?

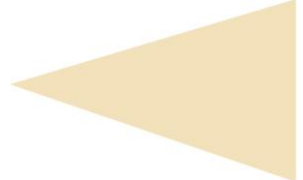
**Held:****On Issue 1 – Section 52 (TCS Liability):**

- The Court held that Section 52 is applicable only in cases where the e-commerce operator collects consideration in respect of supplies made through its electronic platform. The Court observed that the plain language of Section 52(1) expressly provides that the operator is required to collect tax at source ("TCS") on the net value of taxable supplies only "where the consideration with respect to such supplies is to be collected by the operator." The Court further relied upon CBIC Circular No. 194/06/2023-GST dated 17.07.2023, which clarifies that liability to collect TCS under Section 52 arises only when the e-commerce operator is entrusted with collection of the consideration for such supplies.
- In the present case, the petitioner does not collect consideration and the payment is settled directly between the buyer and seller or through separate service providers like HLPL. Therefore, the petitioner cannot be covered within the scope of Section 52.
- The Court observed that HLPL is a distinct legal entity separately registered under GST. The services provided by HLPL cannot be attributed to the petitioner. The fact that HLPL is empanelled on the portal does not make the petitioner liable for TCS on transactions where HLPL collects payment.

- The Court also noted that there is no provision under the CGST/KGST Act to treat the petitioner as an "assessee in default" for non-collection of TCS, unlike Section 201 of the Income Tax Act, 1961 which creates a legal fiction to make the person responsible for deduction liable 'an assessee in default'. In the absence of such a provision, the Revenue cannot demand tax from the e-commerce operator for the liability of the actual supplier.

### **On Issue 2 – Section 17(2) (ITC Reversal for Exempt Supplies):**

- The Court held that the impugned SCN erroneously assumed that the petitioner's promotional activities (promoting its platform along with all services provided therein) constitute "free supplies" requiring reversal of ITC under Section 17(2).
- The Court observed that promoting one's own platform primarily benefits the petitioner itself. The fact that others may also benefit incidentally does not convert the activity into a "free supply" or "exempt supply."
- The Court relied on the Supreme Court's judgment in ***Philips India Ltd. v. CCE (1997)***, where it was held that when an activity benefits both the manufacturer and the distributor, the cost of such activity cannot be added to the assessable value. Similarly, here, the promotional activities benefit the petitioner along with other participants and do not constitute exempt supplies.
- Further, under Section 17(2), the restriction applies only where goods or services are used partly for effecting taxable supplies and partly for effecting exempt supplies. The impugned SCN does not identify any specific exempt supplies. Mere non-charging of consideration to enhance footfall on the online portal cannot be treated as "free" or "exempt" supplies.
- Also, an activity without consideration gets excluded from the purview of "supply" under Section 7 unless it falls within Schedule I. The petitioner's promotional activities do not fall within Schedule I. Therefore, if a transaction does not qualify as a "supply" at all, it cannot be treated as an "exempt supply" for the purpose of Section 17(2).



### **On Issue 3 – Invocation of Section 74 (Extended Period and Fraud):**

- The Court held that the mandatory requirements for invoking Section 74 were not satisfied. Section 74 could not have been invoked for any non-compliance of Section 52 as the transactions on which demand is sought to be raised are not the supplies of the petitioner.
- The Court observed that the impugned SCN lacked specific allegations of such mens rea. The mere omission to collect TCS or to reflect certain transactions in returns does not amount to wilful suppression without a deliberate intention to evade tax.
- The jurisdictional facts required to invoke Section 74 were absent, and the SCN was held to be without jurisdiction

#### **TATTVAM COMMENTS:**

- This judgment provides clarity on the scope of Section 52 (TCS collection by e-commerce operators). It affirms that the obligation to collect TCS arises only where the e-commerce operator actually collects consideration for the supplies made through its platform. Operators who merely provide a platform for buyers and sellers to connect, without handling payments, are not liable to collect TCS.
- On Section 17(2), the judgment reinforces that promotional activities benefiting one's own business cannot be treated as "free supplies" or "exempt supplies" merely because others also benefit incidentally. The Revenue must identify specific exempt supplies and establish attribution before demanding ITC reversal.
- The judgment also reiterates the well-settled principle that Section 74 cannot be invoked mechanically; the allegations of fraud, wilful misstatement, or suppression must be specific and supported by material. Mere omissions or bona fide interpretational disputes do not attract the extended period of limitation.

**(b) Tirumala Tirupati Devasthanams (TTD) qualifies as "Governmental Authority/Entity" for 12% GST on works contracts**

*[M/s P. Venugopal Naidu & Ors. Vs. Union of India & Ors.,  
2026-VIL-303-AP]*

**Facts:**

- The petitioners are contractors who executed work contracts for Tirumala Tirupati Devasthanams (TTD) between 01.07.2017 and 01.07.2022.
- The petitioners contended that they are liable to pay GST at 12% from 01.07.2017 to 01.07.2022 and at 18% thereafter, relying on Notification No. 11/2017 dated 28.06.2017 as amended by Notification No. 24/2017 dated 21.08.2017 and Notification No. 20/2017 dated 22.08.2017, which reduced the GST rate on works contracts executed for "Government, a local authority or Governmental Authority" from 18% to 12%.
- The GST Authorities contended that the applicable rate is 18% throughout, arguing that TTD does not qualify as a "Governmental Authority" or "Governmental Entity" under the relevant notifications.
- The petitioners approached the Andhra Pradesh High Court challenging the show cause notices and assessment orders demanding GST at 18%.

**Issues:**

- Whether Tirumala Tirupati Devasthanams (TTD) can be considered a "**Governmental Authority**" or "**Governmental Entity**" under Notification No. 11/2017 (as amended) read with the definitions introduced by Notification No. 31/2017 dated 13.10.2017, thereby entitling contractors to the reduced 12% GST rate on works contracts executed for TTD?
- Whether the specific works executed by the petitioners fall within the nature of works covered under the notifications for the reduced 12% GST rate?

**Held:**

**On the status of TTD as a "Governmental Authority/Entity":**

- The Hon'ble Court held that TTD meets the requirements to be categorized as a "**Governmental Authority**" and also as a "**Government Entity**" under the relevant GST notifications.
- **Constitutional and Statutory Framework:** TTD was originally established by an Act of the Madras Legislature in 1932. Subsequently, it is governed by Chapter XIV (Sections 95-131) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. Section 96 of the Endowments Act creates a Board constituted by the Government, called the TTD Board.
- **Government Control:** The Board is appointed by the Government (Section 96). The Government has the power to suspend or remove the Chairman or any member of the Board (Section 103) and even dissolve the Board (Section 105). The Executive Officer and all higher authorities are appointed by the Government. Resolutions passed by the Board are subject to review and ratification by the Government. These provisions demonstrate that the Government of Andhra Pradesh has 100% control over the TTD Board.
- **Functions of Gram Panchayat:** Under G.O.Ms.No.746 dated 02.06.2007, the Tirumala Hills area was notified as a place of religious importance under Section 5(1) of the Andhra Pradesh Panchayat Raj Act, 1994. The G.O. stipulates that the civic administration of the Tirumala Hills area is placed in the hands of the Executive Officer of TTD, who shall exercise the authority normally exercised by a Gram Panchayat, the Sarpanch, Executive Officer, or Executive Authority under the Andhra Pradesh Panchayat Raj Act, 1994. This means that functions entrusted to a Panchayat under Article 243G of the Constitution (read with Schedule II) are carried out by TTD.
- Since TTD meets the criteria of being set up by a State Legislature, having 100% Government control, and carrying out functions entrusted to a Panchayat, it qualifies as both a "Governmental Authority" and a "Government Entity" under the definitions in Notification No. 31/2017 dated 13.10.2017.

### **On the reduced 12% GST rate:**

- The Court noted that the reduced rate of 12% (6% CGST + 6% SGST) was made available for works contracts executed for "Central Government, State Government, Union Territory, a local authority, a Governmental authority or a Governmental entity" pursuant to amendments introduced from 13.10.2017 onwards.
- However, the Court clarified that the reduced rate of 12% would be available to the petitioners only if the works executed by them fall within the nature of works stipulated under the notifications. This is a question of fact that has not been examined by the Assessing Authorities and cannot be gone into by the High Court under Article 226.

### **TATTVAM COMMENTS:**

- The judgment serves as a useful precedent for contractors of TTD and similar statutory bodies that are controlled by the Government and entrusted with municipal or panchayat functions. Such contractors can resist demands for GST at 18% and claim the benefit of the 12% rate.

**(c) Temporary GST Identification Number (GSTIN) allows the filing of a separate appeal in cases where liability is imposed jointly on both the Managing Director and the company.**

***[Mr. Bharat Kumar Agarwal & M/s. Sugna Metal Limited v. Joint Commissioner (AE), Medchal Commissionerate, (2026 (4) TMI 934 – Telangana High Court)]***

### **Facts:**

- The Petitioners were M/s. Sugna Metal Limited (Company) and its Managing Director, Mr. Bharat Kumar Agarwal (unregistered).
- A Show Cause Notice was issued alleging fraudulent ITC. Subsequently, an Order-in-Original and composite DRC-07 both dated 31.12.2025 was passed

to impose tax, interest, and penalty on the Company under Section 74 and penalty on the Managing Director under Section 122(1A).

- Since the DRC-07 was issued jointly, the Managing Director could not file an independent appeal due to absence of registration and separate order.
- The Petitioners approached the High Court seeking separate DRC-07 and temporary ID.

**Issue:**

- Whether a composite Form GST DRC-07 issued jointly to a Company and its Managing Director is valid for the purpose of filing independent appeals?
- Whether an unregistered person, such as a Managing Director, is entitled to obtain a temporary identification number under Rule 16A of the CGST Rules to enable filing of an appeal?

**Held:**

- The Hon'ble Telangana High Court held that the Managing Director, despite being an unregistered person, is entitled to avail the statutory right of appeal.
- Further, the Hon'ble Court accepted the submission of the Revenue that under Rule 16A of the CGST Rules (as amended in 2025), the Proper Officer is empowered to grant a temporary identification number and accordingly directed that such identification be issued to the Managing Director.
- It was further held that a composite Form GST DRC-07 issued jointly to both the Company and its Managing Director is not appropriate, as it prevents each person from exercising their independent appellate remedy.
- It was observed that where separate liabilities are imposed under different provisions of law, such as Section 74 for the Company and Section 122(1A) for the Managing Director, separate summary orders are required to be issued.
- Accordingly, the Court directed the Department to issue fresh separate Forms GST DRC-07, one for the Company and another for the Managing Director.
- The Court also clarified that the limitation period for filing appeal shall commence only from the date of issuance of such fresh DRC-07 orders.

**TATTVAM COMMENTS:**

- The judgment clarifies that composite DRC-07s are not sustainable where multiple persons are liable.
- The judgment also operationalizes Rule 16A, thereby ensuring that unregistered persons such as directors or other individuals penalized under GST law are not deprived of appellate remedies due to lack of registration.

**(d) GST registration cancellation set aside due to violation of natural justice and mechanical exercise of power.**

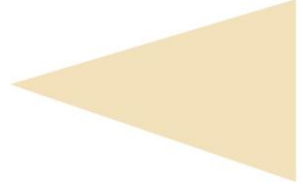
***[M/s. Ankit Choudhary v. Union of India, (2026 (2) TMI 1072 – Gauhati High Court]***

**Facts:**

- The proper officer issued a show cause notice alleging that the petitioner had availed input tax credit in violation of Section 16 of the CGST Act. However, the notice did not specify the relevant tax period, invoices, suppliers, or the quantum of alleged ineligible ITC.
- During the pendency of investigation, the GST registration of the petitioner was cancelled based on communication from the investigating wing (DGGI). Subsequently, the petitioner filed an application for revocation of cancellation, which was rejected through a non-speaking order reflecting a pre-determined approach.
- Aggrieved by the same, the petitioner challenged the show cause notice, the cancellation order, and the order rejecting the revocation application before the High Court.

**Issue:**

Whether the cancellation of GST registration based on a vague show cause notice, absence of independent application of mind and violation of principles of natural justice was legally sustainable.

**Held:**

- The Hon'ble High Court held that the show cause notice was invalid as it was vague and did not disclose any material particulars. A mere reproduction of statutory provisions without specifying allegations does not satisfy the requirement of a valid notice.
- The Court further held that the absence of necessary details deprived the petitioner of a meaningful opportunity of being heard, thereby violating the principles of natural justice.
- It was observed that the cancellation of registration was carried out under the dictation of the investigating authority without independent application of mind by the proper officer, which is impermissible in law.
- The Court also noted that the revocation proceedings were pre-determined, and the rejection order was a non-speaking order lacking any reasoning or analysis.
- Further, the Court held that cancellation of GST registration cannot be used as a coercive measure during the course of investigation, especially when the statute provides separate mechanisms for assessment and recovery.
- Accordingly, the show cause notice, the cancellation order and the order rejecting revocation were set aside and the GST registration of the petitioner was restored. However, the department was granted liberty to initiate fresh proceedings in accordance with law by issuing detailed and reasoned show cause notice.

**TATTVAM COMMENTS:**

- This judgment reinforces the principle that quasi-judicial authorities must exercise their powers independently and cannot act under the influence or direction of the investigating authorities.
- The judgment further clarifies that investigation and adjudication are distinct functions and one cannot substitute the other.

- It also reiterates that a valid show cause notice must contain specific allegations, including details such as tax period, invoices, suppliers, and quantification, failing which it would be rendered unsustainable in law.
- The key takeaway for taxpayers is that any action based on vague notices or non-speaking orders can be successfully challenged on the grounds of violation of natural justice and lack of independent application of mind.

**(e) Explanation in Notification No. 24/2018 deeming 70% supply as goods and 30% as services for Solar Power Generating Systems is not mandatory; assessment must first determine nature of supply (movable/immovable) and period of applicability.**

***[Mytrah Energy India Private Limited v. Union of India & Ors, 2026-VIL-374-AP– Andhra Pradesh High Court]***

**Facts:**

- The petitioner, Mytrah Energy India Private Limited, is engaged in manufacturing and installing Solar Panels and Solar Power Generating Systems.
- The 2nd respondent (Deputy Commissioner State Tax, Kurnool) initiated assessment proceedings for the period March 2018 to April 2019.
- Pending a writ petition challenging jurisdiction, the 2nd respondent passed an assessment order dated 11.07.2024, taxing the petitioner's turnover at 5% for 70% of the consideration and 18% for the remaining 30%.
- This bifurcation was based on an explanation inserted in Notification No. 24/2018 to Sl. No. 234 of Notification No. 1/2017-Central Tax (Rate), which deemed composite supplies of solar power generating systems as 70% supply of goods and 30% supply of services.
- The petitioner contended that its supplies constitute a composite supply of movable property (solar power generating system) taxable at a single rate of 5% under Sl.No. 234, as per Section 8 of the CGST Act.
- The respondent argued that the explanation created a mandatory legal fiction,

requiring the 70:30 split regardless of the nature of supply.

**Issue:**

Whether the explanation inserted in Notification No. 24/2018 (deeming 70% supply as goods and 30% as services for Solar Power Generating Systems) is valid and mandatory, thereby compelling the petitioner to be taxed at higher effective rate?

**Held:**

- The Hon'ble Andhra Pradesh High Court held that the Deputy Commissioner's view – that the explanation created a mandatory legal fiction resulting in higher taxation is incorrect.
- The explanation was added to aid the suppliers of goods mentioned in Sl.No. 234 and cannot be treated as a mandatory provision that would compel suppliers to pay a higher rate of tax than otherwise applicable.
- The adjudicating authority failed to examine two crucial question that whether the petitioner's supplies resulted in creation of immovable property (works contract attracting 18% tax) or were supplies of movable property (composite supply attracting 5% under Sl.No. 234) and whether the explanation applies prospectively from 01.01.2019 only, as the major part of the turnover related to the period prior to that date.
- Circular No. 163/19/2021-GST dated 06.10.2021 only extended the applicability of the explanation at the option of the taxpayer and did not give absolute retrospective effect from 01.01.2019.
- Relying on earlier coordinate bench judgments (*Sterling & Wilson Private Limited v. Joint Commissioner, 2025-VIL-29-AP*, and others), the Court reiterated that installation of a solar power generating system is a composite supply of movable goods and services taxable at 5%.
- The impugned assessment order dated 11.07.2024 was set aside and the matter remanded to the 2nd respondent for passing a fresh assessment.

**TATTVAM COMMENTS:**

- This judgment clarifies that the 70:30 bifurcation under Notification No.

24/2018 is facilitative and optional, not mandatory. The taxability of solar power system supplies must first be determined based on whether they result in movable or immovable property.

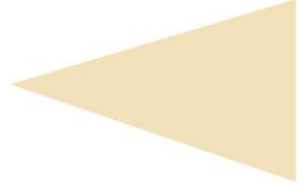
- Circular No. 163/2021 does not give mandatory retrospective effect; it merely allows taxpayers to opt for the explanation for past periods.
- The ruling provides significant relief to solar energy suppliers by preventing mechanical application of the 70:30 split without examining the true nature of supply. The vires of the explanation vis-à-vis Section 8 of the CGST Act remains open for future challenge.

**(f) State Tax Authorities cannot assess or recover IGST on import of goods – jurisdiction vests exclusively with Customs Authorities; cross-empowerment not applicable to centrally allotted taxpayers.**

***[Avanti Feeds Limited v. Deputy Commissioner of State Tax, 2026-VIL-319-AP - Andhra Pradesh High Court]***

**Facts:**

- The Petitioner is engaged in the business of manufacturing aquatic feed and imports various inputs such as fish meal, soya, and algal oil for its operations. It had claimed exemption from payment of IGST on certain imported inputs during the period from 2017–18 to 2022–23. The Petitioner was administratively assigned to the Central Tax authorities and not to the State authorities.
- The State Tax Authorities conducted inspection and issued intimation under Section 73(5), disputing the exemption claims and classification adopted by the Petitioner. Thereafter, a show cause notice was issued demanding IGST on such imports which was challenged on the ground of lack of jurisdiction.
- The Petitioner contended that IGST on import of goods can only be assessed and collected by Customs Authorities under the Customs Act. It was further argued that State GST authorities cannot exercise powers under the IGST Act, especially when the taxpayer is assigned to the Central jurisdiction.

**Issue:**

- Whether State GST Authorities have jurisdiction to assess and recover IGST on import of goods?
- Whether State GST officers can exercise powers under the IGST Act in respect of taxpayers allotted to the Central Government?

**Held:**

- The High Court held that IGST on imported goods is governed by the proviso to Section 5(1) of the IGST Act which mandates that such tax is to be levied and collected in accordance with the Customs Tariff Act. Consequently, the process of assessment, including classification, valuation, and applicability of exemptions, forms part of customs assessment and must be undertaken only by Customs Authorities.
- The Court clarified that State GST Authorities do not have jurisdiction to assess or recover IGST on imports, as such power exclusively vests with Customs Authorities. It was also observed that once Customs Authorities have initiated proceedings, parallel proceedings by State authorities are impermissible and without jurisdiction.
- On the issue of cross-empowerment, the Court held that such power can be exercised only when the taxpayer is administratively assigned to the State authorities. Since the Petitioner was assigned to the Central jurisdiction, State authorities could not invoke cross-empowerment provisions to assume jurisdiction under the IGST Act.
- Accordingly, the show cause notice issued by the State Tax Authorities was held to be without jurisdiction and was set aside.

**TATTVAM COMMENTS:**

- This judgment is a significant ruling on the demarcation of powers between Customs and GST authorities in the context of import transactions. The Court clarified that the levy, assessment, and recovery of IGST on imports are intrinsically connected with customs law and therefore, fall exclusively within the jurisdiction of Customs Authorities.
- In doing so, the decision reinforces the principle that statutory jurisdiction cannot be expanded or altered through administrative arrangements, cross-empowerment mechanisms, or circulars unless such authority is expressly conferred by law. The ruling also safeguards taxpayers from parallel or overlapping proceedings by different authorities in respect of the same transaction, thereby promoting certainty and consistency in tax administration.

**(g) Mandatory compliance of the requirements governing exercise of power under section 83 of the CGST Act prior to the attachment of bank accounts of the petitioner/ taxpayer.**

***[M/s. Nivara Infradevelopers LLP Versus Union of India, 2026 (4) TMI 782 – Bombay High Court]***

**Facts:**

- On 23 January 2026, the Joint Commissioner of State Tax (Investigation) issued an order in Form GST DRC-22 provisionally attaching the bank accounts of the petitioner under Section 83 of the CGST/MGST Act. On the very same day, a pre-attachment communication in Form GST DRC-23 was also issued to the petitioner.
- The petitioner filed a detailed objection on 30 January 2026, stating that no proper opinion was formed before attachment, the pre-attachment notice was vague and did not disclose any tangible material, and an alternate security was offered to protect revenue interest.
- Despite this, the attachment continued for three months, paralyzing the petitioner's business, which forced the petitioner to approach the Bombay High

Court under Article 226 of the Constitution of India via the present writ petition.

**Issue:**

Whether the provisional attachment of the petitioner's bank accounts under Section 83 was valid when the pre-attachment notice and the attachment order were issued on the same day and no tangible material or reasoned opinion was recorded?

**Held:**

- The Hon'ble Bombay High Court quashed the attachment orders, holding that the officer had failed to comply with the mandatory requirements of Section 83 of the CGST Act.
- Relying on *Radha Krishan Industries v. State of Himachal Pradesh* (SC, 2021) and *Chokshi Arvind Jewellers v. Union of India* (Bom HC, 2024), the Court reiterated that provisional attachment is a draconian measure and before ordering it the officer must form an opinion based on tangible material that it is necessary – not merely expedient – to protect government revenue.
- The pre-attachment notice and attachment order issued on the same day rendered the pre-notice a mere formality, violating natural justice. The Court found the officer's conduct high-handed and arbitrary, especially because the petitioner's objection and offer of alternate security were ignored while the attachment continued for three months, depriving the petitioner of its right to property under Article 300A of the Constitution of India.
- The Court set aside the attachment orders, permitted the department to issue a fresh show cause notice within six weeks if it has any tangible material and directed the Joint Commissioner of State Tax, Investigation-A to personally deposit Rs. 25,000/- as costs with the Maharashtra State Legal Services Authority.

**TATTVAM COMMENTS:**

- This judgment is a powerful reminder that provisional attachment under Section 83 is not a tool for routine recovery or pre-emptive coercion – it is

a draconian measure reserved for genuine, imminent threats to revenue, where the taxpayer is likely to defeat recovery absent immediate attachment.

- It is further observed that ignoring a taxpayer's offer of alternate security while continuing attachment for months makes the action arbitrary and amounts to abuse of power. Ignoring a taxpayer's offer of alternate security while continuing attachment for months makes the action arbitrary and amounts to abuse of power.

**(h) Denial of concessional GST rate cannot be justified merely due to wrongful availment of ITC; correct course is reversal of ITC with interest and penalty, not application of higher rate.**

***[M/s. GU Shipping India Pvt. Ltd. v. Assistant Commissioner of CGST & Central Excise, Chennai, 2026 (4) TMI 663 – Madras High Court]***

**Facts:**

- The Petitioner is engaged in providing freight services and time charter of vessels and discharged GST at concessional rate of 5% under Notification No. 11/2017-CT (Rate) (as amended), which was subject to the condition of non-availment of input tax credit (ITC) on specified goods.
- The Department issued a Show Cause Notice dated 25.07.2024 under Section 74, alleging that the Petitioner had wrongly availed and utilised ITC while simultaneously paying GST at concessional rate, thereby violating the conditions of the notification.
- Accordingly, reclassification of services was proposed and services were alleged to be taxed at the rate of 18% and recovery of differential tax along with applicable interest and penalty was also proposed. The Adjudicating Authority confirmed the demand by denying concessional rate and levying tax at 18% along with interest and penalty vide Order dated 08.01.2025.

- The Petitioner had subsequently reversed the wrongly availed ITC on 28.03.2025, albeit post issuance of the Impugned Order.
- Aggrieved, the Petitioner filed a writ petition challenging denial of concessional rate and consequential demand.

**Issue:**

Whether the denial of the concessional GST rate on freight and time charter services, on the ground of wrongful availment and utilisation of input tax credit, and the consequential demand, interest and penalty required to be sustained or interfered with.

**Held:**

- The Hon'ble Madras High Court held that Notification No. 11/2017-CT (Rate) is not merely a rate notification but also partakes the character of an exemption notification and therefore must be interpreted reasonably and fairly while applying its conditions.
- The Court observed that the denial of benefit of concessional rate of tax, on account of wrongful availment of input tax credit, cannot be justified, as the authorities under the statute are not expected to impose a higher tax liability merely on account of an inadvertent mistake committed by the assessee.
- It was held that the proposal in the Show Cause Notice ought to have been confined to denial and recovery of input tax credit wrongly availed and utilised, together with interest and penalty, instead of denying the substantive benefit of the notification and applying a higher rate of tax.
- Following the ratio of the Hon'ble Supreme Court in *Chandrapur Magnet Wires Pvt Ltd., Vs. CCE Nagpur, 1196(81) ELT 3 (SC)* and *Unichem Laboratories Vs. Commissioner of Central Excise, (2002) 7 SCC 145*, the Court held that it is no part of the duty of the Department to augment revenue by depriving the assessee of a benefit which is otherwise available in law.
- The Court further held that denial of concessional rate and imposition of higher tax liability merely due to wrongful availment of ITC results in imposition of disproportionate liability, which is not sustainable.

- However, the Court clarified that reversal of ITC post facto (after passing of the adjudication order) does not entitle the assessee to the benefit of reduced penalty under Section 74 and such reversal must be accompanied by payment of interest and penalty in accordance with statutory provisions.
- Accordingly, the Court held that the impugned order is liable to be quashed to the extent it denies the concessional rate and remitted the matter for determination of the actual amount of ITC wrongly availed and utilised, along with interest under Section 50 and penalty under Section 74.

#### **TATTVAM COMMENTS:**

- The judgment draws a clear distinction between eligibility to concessional rate and wrongful availment of ITC, holding that breach of a condition relating to ITC cannot be stretched to deny the substantive benefit of the notification itself. This is a significant restraint on the Department's tendency to re-characterise transactions to a higher tax bracket.
- The ruling is particularly relevant in disputes involving conditional rate/exemption notifications where the Department often proceeds to straightaway apply the higher rate instead of neutralising the breach. The Court clarifies that the correct statutory consequence is confined to reversal of ITC with interest and penalty under Section 74.

**(i) Services rendered by pigmy agents to bank are not liable to GST as they constitute employer-employee relationship covered under Schedule III; proceedings under RCM held without jurisdiction.**

***[Karnataka Vikas Grameena Bank v. Deputy Commissioner of Commercial Taxes & Ors., 2026 (4) TMI 668 – Karnataka High Court]***

#### **Facts:**

- The Petitioner, a banking institution, engaged pigmy agents (deposit collectors) for collection of deposits under its schemes and paid them commission-based remuneration.

- The Department issued Show Cause Notices proposing levy of GST under reverse charge mechanism (RCM) on the commission paid to pigmy agents, treating them as “business facilitators”.
- It was alleged that the services rendered by such agents fall within the ambit of taxable supply, and the Petitioner is liable to discharge GST under RCM.
- The Petitioner contended that pigmy agents are employees of the Bank, working under its control, supervision and disciplinary framework, and therefore, services rendered by them are covered under Schedule III (services by employee to employer) and not liable to GST.
- Reliance was placed on the judgment of the Hon’ble Supreme Court in *Indian Banks Association v. Workmen of Syndicate Bank, (2001) 3 SCC 36*, wherein pigmy agents/deposit collectors were held to be workmen and employees and their commission was held to partake the character of wages.
- The Department, however, sought to classify such agents as independent service providers/business facilitators, liable to GST under reverse charge.
- Aggrieved by the initiation of proceedings and classification adopted by the Department, the Petitioner filed a writ petition challenging the jurisdiction and validity of the show cause notices.

**Issue:**

Whether the petitioner was liable to discharge Goods and Services Tax on the services rendered and commission paid to its pigmy agents.

**Held:**

- The Hon’ble Karnataka High Court held that the nature of engagement of pigmy agents stands settled, and such agents are to be regarded as employees of the Bank, being subject to pervasive control and supervision.
- It was observed that the relationship is not one of independent contractual engagement, but one imbued with the attributes of a master-servant relationship, and the commission earned partakes the character of wages.

- The Court held that once such relationship is established, the services rendered by pigmy agents fall within Sl. No. 1 of Schedule III read with Section 7(2)(a) and are to be treated as neither supply of goods nor supply of services.
- The contention of the Department that pigmy agents are “business facilitators” was rejected, holding that such classification is misconceived and inapplicable, as the definition relied upon pertains to intermediaries under RBI-regulated models, which do not cover pigmy agents.
- It was further held that the entire proceedings under reverse charge mechanism were founded on an erroneous premise and therefore, the show cause notices suffer from lack of jurisdiction.
- Accordingly, the Court held that GST is not applicable on commission paid to pigmy agents and the impugned proceedings were liable to be set aside as being without authority of law.

#### TATTVAM COMMENTS:

- The judgment decisively settles that substance of relationship prevails over nomenclature and where elements of control, supervision and economic dependence exist, the arrangement must be treated as employment, irrespective of the terminology of “commission”.
- It reinforces that Schedule III exclusion operates fully once employer-employee relationship is established, thereby taking the transaction completely outside the scope of GST, not merely exempting it.
- The ruling curtails the Department’s tendency to **artificially classify arrangements as independent services or intermediaries**, especially in cases involving **commission-based engagements**, without examining the real nature of relationship.

**(j) Detention without formal seizure order and insistence on personal appearance – Entitlement to representation through advocate and determination of ownership based on accompanying documents.**

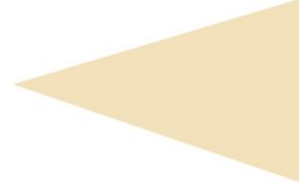
***[Nishu Versus The Union of India & Ors., 2026 (4) TMI 599 - Calcutta High Court]***

**Facts:**

- The petitioner, Nishu, sole proprietor of M/s. Sunshine Enterprises (Kanpur, UP), sold 480 cartons of pan masala valued at Rs. 36,24,000/- to Maa Kali Traders (Howrah, West Bengal) on December 15, 2025.
- Goods were transported with tax invoice, e-way bill, and consignment note. On December 18, 2025, the vehicle was intercepted and Form MOV-02 was issued; vehicle and goods were detained.
- Petitioner requested release on January 7, 2026. Authorities insisted on personal appearance (Jan 8, 2026). Petitioner sought representation through advocate (Jan 12, 2026).
- Authorities reported (Jan 14, 2026) that UP GST Authority stated petitioner's firm was non-existent/bogus. Again insisted on personal appearance.
- More than four months after interception, no formal seizure order was passed. Goods were perishable.
- Petitioner expressed willingness to pay penalty under Section 129(1)(a) of CGST Act, 2017. Consignee (Maa Kali Traders) also requested not to release goods without consent.

**Issue:**

- Whether the authorities could insist on personal appearance of the petitioner despite Section 116 permitting representation through an advocate?
- Whether detention proceedings could be stalled for over four months without passing a formal seizure order and whether ownership should be determined based on accompanying documents and departmental circular?



### **Held:**

- The Calcutta High Court held that the authorities' approach was unsatisfactory and unjustified.
- **On personal appearance:** Section 116 of CGST Act, 2017 expressly allows appearance through an authorized representative, including an advocate. The authorities were directed to permit representation through petitioner's advocate (Mr. Ghanashyam Jha).
- **On ownership and seizure:** Even after four months, no formal seizure order was passed. The circular dated December 31, 2018, issued by Department of Revenue clarifies that if invoice or other specified document accompanies the consignment, either consignor or consignee shall be deemed owner. Here, invoices clearly showed petitioner as consignor and Maa Kali Traders as consignee. Ownership should have been determined accordingly.

### **Directions issued by the Court:**

- Hearing Respondent No. 5 was directed to fix a hearing on April 10, 2026, and permit the petitioner to be represented through her advocate.
- Notice of hearing was to be issued to the consignee (Maa Kali Traders) within 24 hours.
- The petitioner was given liberty to deposit the amount under **Section 129(1)(a)** of the CGST Act (payment of applicable tax and penalty equal to 100% of tax payable) without prejudice to her rights and contentions.
- Upon granting an opportunity of hearing, the concerned respondent was directed to pass an order under **Section 129(5)** within 48 hours.
- It was made clear that if the authority accepts the payment offered by the petitioner under Section 129(1)(a), the goods and vehicle shall be released in accordance with law, with liberty to the petitioner to challenge such order before the appropriate appellate authority.

**TATTVAM COMMENTS:**

- This ruling reinforces the statutory right of a taxpayer to be represented by an advocate in GST proceedings. Authorities cannot insist on personal appearance as a precondition to move detention proceedings, especially when the taxpayer is a woman residing in another State. This protects assesseees from coercive or harassing tactics.
- The judgment also clarifies that detention proceedings cannot be kept pending indefinitely. The statutory time frame must be respected, and a formal seizure order must be passed promptly. Failure to do so for over four months – particularly for perishable goods – renders the authorities’ conduct unreasonable.
- On ownership determination, the court firmly applied the departmental circular of December 31, 2018. Where valid invoices and e-way bills accompany the consignment, the consignor or consignee is to be treated as owner. The authorities cannot create a stalemate by alleging the consignor’s entity is “non-existent” without first examining the documents on record.
- Practical takeaway for taxpayers: If goods are detained and authorities insist on personal appearance despite engagement of an advocate, this judgment can be cited to enforce the right to representation. Also, taxpayers should promptly seek release by offering to pay the penalty under Section 129(1)(a) without prejudice, as the court has endorsed that option.

**(k) Cancellation of GST registration cannot be sustained merely on the ground that suppliers’ registrations were cancelled; tangible evidence of fraudulent ITC availment is mandatory.**

***[Florida Solvent Private Limited v. Superintendent, CGST & Central Excise, 2026-VIL-332-BOM - Bombay High Court]***

**Facts:**

- The Petitioner is engaged in business activities and was holding a valid GST registration. The department initiated proceedings for cancellation of

registration on the allegation that the Petitioner had availed ineligible Input Tax Credit (ITC) from certain suppliers whose registrations were subsequently cancelled.

- An Order-in-Original was passed cancelling the GST registration of the Petitioner ab initio under Section 29 of the CGST Act, 2017 on the basis of alleged fraudulent ITC availment and buyer-supplier network analysis indicating involvement in fictitious transactions.
- The Petitioner contended that it had furnished all relevant documentary evidence, including tax invoices, e-way bills, ledger statements, and bank statements, substantiating the genuineness of the transactions. It was further submitted that the cancellation was passed without proper consideration of the documents and without adequate opportunity of hearing.
- The department, however, relied on the alleged linkage of the Petitioner with entities involved in fake ITC generation and prior adverse findings in separate proceedings.

**Issue:**

- Whether GST registration can be cancelled solely on the ground that suppliers' registrations were cancelled?
- Whether cancellation of registration for alleged fraudulent ITC availment can be sustained without establishing a clear trail of illegality and involvement of the taxpayer?

**Held:**

- The Hon'ble Bombay High Court held that mere cancellation of the suppliers' registrations cannot, by itself, be sufficient ground to cancel the registration of the Petitioner.
- The Court observed that although fraud in availment of ITC is a serious allegation, the Proper Officer is required to establish, through tangible material, the involvement of the taxpayer in such fraudulent activity. A clear trail demonstrating the taxpayer's participation or benefit from the alleged illegality must be recorded.

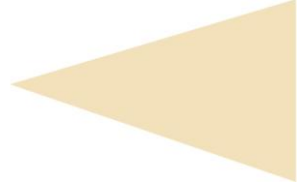
- It was noted that the Petitioner had placed on record relevant documentary evidence such as invoices, e-way bills, and bank statements, which were not adequately considered by the authorities. The Court further held that the impugned order suffered from non-application of mind and lack of proper reasoning, as it failed to substantiate the allegations with concrete findings.
- Accordingly, the matter was remanded back to the Proper Officer for fresh adjudication, with a direction to grant an opportunity of hearing to the Petitioner and to pass a reasoned order after examining the validity of the ITC claimed.

#### **TATTVAM COMMENTS:**

- This judgment reiterates that cancellation of GST registration, being a drastic measure, must be supported by cogent evidence and cannot be based on presumptions or indirect associations. The Court emphasized that serious allegations such as fraud require clear findings and proper evidentiary support.
- The ruling further clarifies that denial of ITC or cancellation of registration on account of supplier default can only be sustained where the department establishes a direct nexus between the taxpayer and the alleged fraudulent activity. Mere reliance on cancellation of supplier registration or network analysis, without independent verification, is insufficient.
- The decision also underscores the importance of adherence to principles of natural justice, particularly the obligation of authorities to properly consider the documentary evidence furnished by the taxpayer before taking adverse action.

**(I) Voluntary reversal of ITC before SCN under Section 74, with surplus ECL balance, renders interest and penalty unsustainable; Section 74 cannot be invoked mechanically**

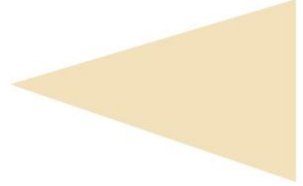
***[M/s Manoja Kumar Nayak & M/s Babamani Roadways & Borewells v. Commissioner, Goods and Services Tax and Central Excise, 2026-VIL-339-ORI]***

**Facts:**

- The petitioners are registered under GST, engaged in transportation and works contract business. They availed Input Tax Credit (ITC) on invoices issued by M/s. Auxesia Traders (Kolkata) during August-December 2017.
- The Superintendent (Anti-Evasion) issued a letter dated 12.07.2024 requesting the petitioners to reverse ITC of Rs. 4,39,970/-, as the supplier was alleged to be a non-existent entity issuing fake/bogus invoices.
- The petitioners voluntarily reversed the entire ITC amount in their GSTR-3B returns for April 2024 (Rs. 2,64,342/-) and June 2024 (Rs. 1,75,128/-) prior to the issuance of any show cause notice. The Electronic Credit Ledger (ECL) had surplus balance even after reversal.
- Despite this, the Adjudicating Authority issued Summary Show Cause Notice and Demand Show Cause Notice both dated 26.07.2024 under Section 74 of the CGST Act, proposing demand of tax (equivalent to the reversed ITC), interest under Section 50, and penalty under Section 74.
- The petitioners filed replies explaining the voluntary reversal and surplus ECL balance. However, the Adjudicating Authority passed Orders-in-Original dated 03.02.2025 / 04.02.2025 confirming the entire demand including tax, interest, and penalty.
- Aggrieved, the petitioners approached the Orissa High Court under Articles 226 and 227 of the Constitution.

**Issue:**

- Whether proceedings under Section 74 of the CGST Act (fraud/wilful misstatement/suppression) can be invoked when the taxpayer has voluntarily reversed the ITC before issuance of the show cause notice?
- Whether interest under Section 50 is chargeable when the ITC was reversed before utilization and the Electronic Credit Ledger had surplus balance throughout?
- Whether penalty under Section 74 can be imposed when the tax demand is for an amount already reversed by the taxpayer?



**Held:**

**On invocation of Section 74 – Mechanical reliance on DGGI Alert Notice and absence of independent inquiry:**

- The Court held that the Adjudicating Authority exceeded its jurisdiction in invoking Section 74. The provision requires "fraud, or any wilful misstatement or suppression of facts to evade tax." These ingredients were absent on the facts.
- The SCN was issued solely on the basis of an Alert Notice from DGGI, Kolkata Zonal Unit, which stated that the supplier (M/s. Auxesia Traders) was a non-existent firm. However, no independent inquiry was conducted by the Adjudicating Authority to ascertain the petitioner's complicity or intent to evade tax.
- The Court observed that ITC could be availed erroneously or on a mistaken interpretation of law. It would not be apposite to infer that in every case where a supplier defaults, the recipient has fraudulently availed ITC. Mere availability of balance in the ECL does not lead to an inference of utilization.
- No finding was returned on the status of the supplier's registration at the time of the transactions. The Adjudicating Authority blindly followed the Alert Notice without independent application of mind.
- The Court also noted that the period of limitation under Section 73 (three years) had already expired and the Adjudicating Authority mechanically invoked Section 74 to bypass the limitation bar without establishing the requisite mens rea.
- Relying on CBIC Instruction No. 05/2023-GST dated 13.12.2023, the Court held that Section 74(1) cannot be invoked merely on account of non-payment of GST without specific material evidence of fraud or wilful misstatement. Such evidence must also be made a part of the SCN.

**On interest under Section 50 – Surplus ECL balance and voluntary reversal before utilization:**

- The Court held that since the petitioner has reversed the ITC voluntarily before any SCN was issued and the ECL had surplus balance throughout, no interest under Section 50 is chargeable.

**On penalty under Section 74 – Double taxation:**

- The Court held that the demand of "tax" equivalent to the amount of ITC already reversed, along with penalty of the same amount, would tantamount to double taxation.
- Once the petitioner had voluntarily reversed the ITC, the net tax effect was zero. Raising a demand for the same amount without giving credit to the reversal was "unethical and without authority of law."
- Since the underlying tax demand itself was unsustainable, the imposition of penalty under Section 74 was also unsustainable.

**TATTVAM COMMENTS:**

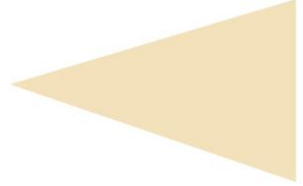
- This judgment provides critical protection for bona fide recipients who discover errors in ITC availment and voluntarily reverse the credit before any proceedings are initiated. It establishes that voluntary reversal before SCN issuance is a factor that negates any inference of fraudulent intent, thereby insulating the taxpayer from the harsh rigours of Section 74 (extended limitation, higher penalty, interest on utilized credit).
- The ruling reinforces that Section 74 cannot be invoked mechanically merely because a supplier is found to be non-existent. The Adjudicating Authority must conduct an **independent inquiry** into the recipient's conduct and must find tangible material to establish "fraud, wilful misstatement, or suppression of facts to evade tax" on the part of the recipient. Reliance on third-party statements or DGGI alerts without independent application of mind is impermissible.

**(m) Show cause notice under Section 73 quashed for being vague, lacking details, and based on factually incorrect premise; CAG report never supplied.**

***[Abbott Healthcare Private Limited v. Excise and Taxation  
Commissioner, Punjab & Ors., 2026-VIL-325-P&H]***

**Facts:**

- The petitioner, Abbott Healthcare Private Limited, received a show cause notice dated 31.01.2024 issued under Section 73(1) of the PGST Act and CGST Act read with the IGST Act, proposing demand of tax, interest, and penalty for the financial year 2018-19.
- The show cause notice stated that it was based on observations made during a special audit conducted by the Comptroller and Auditor General of India (CAG) of the petitioner's firm for the period 2018-19. The alleged observations included:
  - Excess ITC availed as per table 8D of GSTR-9 after considering subsequent year's adjustment (two separate amounts).
  - Excess ITC availed under ISD mechanism.
  - Short payment of tax under Reverse Charge Mechanism (RCM).
  - Mismatch in ITC availed between Annual Return and Financial Statements.
  - Mismatch of ITC as per table 8A of GSTR-9 and ITC available in GSTR-2A.
  - Undischarged tax liability.
- The show cause notice did not provide any details, calculations, or basis for these allegations. It merely listed the allegations in a cryptic manner.
- The petitioner challenged the show cause notice on the grounds that: (i) the very premise of the notice was factually incorrect as no such CAG audit was conducted of the petitioner company; (ii) the CAG report, which formed the sole basis of the notice, was never supplied to the petitioner; and (iii) the notice was vague and bereft of any details, violating the principles of natural justice.



**Issue:**

- Whether a show cause notice issued under Section 73(1) of the CGST Act is valid when the very premise (alleged CAG audit of the petitioner company) is factually incorrect?
- Whether the failure to supply the material (CAG report) forming the basis of the show cause notice to the assessee renders the notice invalid?
- Whether a show cause notice, that is vague and lacks specific details, violates the requirements of Section 73(3) of the CGST Act and the principles of natural justice?

**Held:**

**On factual incorrectness of the premise:**

- The Court noted that learned counsel for the respondent-State admitted that no such audit of the petitioner company was conducted by the CAG. The audit referred to in the show cause notice was by the CAG of the GST Department in the State of Punjab, not of the petitioner company.
- The Court held that the very premise on which the impugned show cause notice was based was factually incorrect, rendering the notice unsustainable.

**On non-supply of the CAG report:**

- The Court observed that the CAG report, which formed the sole basis behind the issuance of the show cause notice, was never supplied to the petitioner.
- Material that forms the basis of allegations must be shared with the assessee to enable an effective response. Non-supply of such material violates the principles of natural justice

**On vagueness of the show cause notice:**

- The Court held that the impugned show cause notice was absolutely vague. It made allegations regarding excess ITC availed, mismatches, short payment under RCM, and undischarged tax liability, but failed to provide any basis, details, calculations, or heads under which such conclusions were arrived at.

- The Court observed that the very purpose of issuing a notice before raising a demand is to make the assessee aware of the department's allegations and proposed action so as to enable an effective response. It held that a vague or non-specific notice defeats this objective and amounts to a mere empty formality, thereby violating the principles of natural justice. The Court further emphasized that a valid notice must clearly set out the allegations in a specific and detailed manner, and the material forming the basis of such allegations must also be supplied to the assessee along with the notice.

#### **On the requirement under Section 73(3):**

- The Court referred to Section 73(3) of the CGST Act, which provides that where a notice has been issued under sub-section (1), the proper officer may serve a statement containing the "details" of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised.
- The Court held that "details" must be brought to the assessee's notice through the show cause notice. The impugned notice was bereft of any such details and therefore violated the statutory requirement.

#### **TATTVAM COMMENTS:**

- This judgment serves as a **significant reminder to tax authorities** that show cause notices under Section 73 (and equally under Section 74) must be **specific, detailed, and based on correct factual premises**. A vague notice that does not disclose the basis of allegations or the calculations leading to the proposed demand is liable to be quashed.
- The judgment also aligns with the settled position that a show cause notice must enable the assessee to understand the case against him and respond effectively. A notice that fails this test is an empty formality and violative of natural justice.

**(n) Retrospective benefit of extended time limit under Section 16(5), the disallowance of ITC on such grounds is unsustainable.**

***[Saurabh Agarwalla v. Union of India & Ors., 2026 (4) TMI 502 – Gauhati High Court]***

**Facts:**

- The Petitioner was issued a Demand-cum-Show Cause Notice dated 20.10.2023 alleging wrongful availment of Input Tax Credit (ITC) amounting to Rs. 2,38,928/- for the F.Y 2018-19.
- The Department alleged that the petitioner had availed the ITC beyond the time limit prescribed under Section 16(4) of the CGST Act,2017.
- Pursuant to the said notice, the department passed an Order-in-Original dated 07.02.2024 confirming demand of Rs. 2,49,142/- along with interest of Rs. 553/- and penalty of Rs. 24,914/-.
- The Petitioner challenged the said proceedings before the Hon'ble High Court that after passing of the Order-in-Original, an amendment was introduced inserting sub-sections (5) and (6) to Section 16 of the CGST Act.
- As per Section 16(5), a non-obstante clause was introduced allowing availment of ITC for Financial Years 2017-18 to 2020-21 in returns filed up to 30.11.2021, thereby overriding the earlier restriction under Section 16(4).
- The Petitioner submitted that the ITC in question was availed within the extended time limit as prescribed under the amended provisions and hence the demand raised solely on the ground of limitation is unsustainable.
- Without prejudice, the Petitioner accepts the excess ITC utilization amounting to Rs. 10,214/- along with applicable interest of Rs. 553/-.
- The Revenue, on instructions, agreed that the matter may be disposed of if the Petitioner deposits the admitted excess amount along with interest.

**Held:**

- The Hon'ble Gauhati High Court held that the amendment introducing Section16(5) has an overriding effect over Section 16(4) due to the presence of a non-obstante clause.

- It was observed that in terms of the amended provision, ITC pertaining to F.Y 2018-19 could validly be availed in returns filed up to 30.11.2021.
- The Court noted that once the statutory time limit itself stands extended retrospectively, the very foundation of the demand raised under Section 16(4) ceases to exist.
- Accordingly, the challenge to the demand on the ground of delay in availing ITC no longer survives for adjudication.

#### **TATTVAM COMMENTS:**

- This judgment reaffirms that beneficial amendments having retrospective effect must be given to the taxpayer, especially where they contain a non-obstante clause overriding earlier restrictions.
- The ruling clarifies that demands raised solely based on limitation under Section 16(4) cannot survive once the legislature itself extends the timeline retrospectively.
- Taxpayers should revisit past ITC reversals or demands relating to FY 2017-18 to 2020-21 to evaluate eligibility under the extended time limit provided under Section 16(5).
- However, the benefit is not absolute—any excess or ineligible ITC utilized remains recoverable along with interest, as rightly upheld by the Court.

**(o) Pendency of rectification application – Dismissal of appeal without deciding rectification is unsustainable.**

***[JVT Trading Private Limited v. State of Haryana & Ors., 2026 (4) TMI 931 – Punjab & Haryana High Court]***

#### **Facts:**

- The Petitioner was subjected to an adjudication order dated 02.02.2024 passed under Section 74 of the HGST Act, 2017 for FY 2017-18, determining tax liability.

- Aggrieved by the said order, the Petitioner filed a rectification application dated 27.02.2024 under Section 161 seeking correction of errors apparent on record.
- While the rectification application was pending, the Petitioner initially approached the Hon'ble High Court; however, it was directed to avail the statutory appellate remedy.
- Accordingly, the Petitioner filed an appeal on 13.08.2024 along with an application for condonation of delay and specifically informed the Appellate Authority about the pendency of rectification proceedings.
- Despite this, the Appellate Authority, without deciding the rectification application, proceeded to dismiss the appeal on 19.09.2024 on the ground of delay.
- The Petitioner challenged the appellate order before the Hon'ble High Court on the ground that dismissal of appeal during pendency of rectification proceedings is arbitrary and unsustainable.
- The State contended that the rectification application could not be decided earlier as it had been misplaced, though later retrieved.

**Held:**

- The Hon'ble Punjab & Haryana High Court held that when a rectification application under Section 161 is pending, it ought to be decided before adjudicating the appeal.
- It was observed that the Appellate Authority acted prematurely in dismissing the appeal without first addressing the rectification request.
- The Court emphasized that procedural fairness requires consideration of pending rectification, as it may have a direct bearing on the outcome of the appeal.
- The explanation of the State regarding misplacement of the application does not justify bypassing the proper legal process.
- Accordingly, the appellate order dated 19.09.2024 was set aside.

- The Court directed the authorities to decide the rectification application afresh, after granting:
  - ✓ Opportunity of personal hearing, and
  - ✓ Passing a reasoned order.
  - ✓ The entire exercise was directed to be completed within one month from receipt of the order.

#### **TATTVAM COMMENTS:**

- This ruling reinforces that rectification proceedings and appellate proceedings are interconnected, and the former must be addressed first where pending.
- The judgment strengthens the principle of natural justice, ensuring taxpayers are not prejudiced due to administrative lapses such as misplacement of applications.
- Taxpayers should ensure that pendency of rectification applications is explicitly brought on record before appellate authorities to avoid premature decisions.

#### **(p) Negative blocking of Input Tax Credit impermissible under Rule 86A – Blocking restricted only to credit actually available in Electronic Credit Ledger.**

***[Hemang Bipin Varaiya Proprietor of M/s. Mahavir Metal Industries Versus State of Maharashtra & Ors., 2026 (3) TMI 1678 – Bombay High Court]***

#### **Facts:**

- The Petitioner, a proprietor engaged in the manufacture and trading of non-ferrous metals, was subjected to blocking of Input Tax Credit (“ITC”) amounting to Rs. 4.82 crores under Rule 86A of the CGST/MGST Rules vide order dated 19 June 2025.
- A show cause notice dated 22 April 2025 was issued to the Petitioner alleging wrongful availment of ITC from non-genuine suppliers whose registrations were cancelled. The Petitioner contended that the said notice was not properly

served and came to his knowledge only upon visiting the department's office on 5 June 2025.

- The Petitioner filed a reply on 19 June 2025; however, on the very same day, the impugned order was passed blocking the entire ITC of Rs. 4.82 crores. Consequent to such blocking, a negative balance of approximately Rs. 4.38 crores was reflected in the Electronic Credit Ledger.
- Aggrieved by the negative blocking of ITC and alleged violation of Rule 86A and principles of natural justice, the Petitioner approached the Hon'ble Bombay High Court under Article 226 of the Constitution of India.

**Issue:**

Whether Rule 86A of the CGST/MGST Rules permits blocking of Input Tax Credit beyond the amount actually available in the Electronic Credit Ledger, thereby resulting in a negative balance, and whether such "negative blocking" is sustainable in law.

**Held:**

- The Hon'ble Bombay High Court held that Rule 86A can be invoked only to the extent of ITC actually available in the Electronic Credit Ledger at the time of passing the blocking order and does not permit creation or continuation of a negative balance.
- The Court observed that the exercise of power under Rule 86A is conditional upon the existence of credit in the Electronic Credit Ledger capable of being blocked. In the absence of any available balance, or where the ledger already reflects a negative balance, the authorities lack jurisdiction to block any further amount.
- Placing reliance on judicial precedents including decisions of the Gujarat High Court, Delhi High Court, and its own coordinate bench, the Court reiterated that taxing statutes must be strictly construed and no words can be added to extend the scope of a provision beyond its plain language.
- However, the Court noted that a positive balance of Rs. 43,19,259/- was available in the Electronic Credit Ledger at a relevant point in time, and to that extent, the blocking of ITC was valid and within the scope of Rule 86A.

- Accordingly, the Court upheld the blocking of ITC to the extent of Rs. 43,19,259/-. The Court quashed the blocking of the remaining amount of Rs. 4,38,80,741/- and granted liberty to the Department to initiate adjudication proceedings by issuing a show cause notice for the disputed amount. The writ petition was disposed of in the above terms.

#### **TATTVAM COMMENTS:**

- This judgment reaffirmed that Rule 86A is not a recovery mechanism but merely a preventive tool to temporarily restrict utilization of ITC already available in the Electronic Credit Ledger. Any attempt to extend its operation to future or non-existent credit amounts to an impermissible expansion of statutory power.
- The ruling also highlights the importance of strict interpretation of fiscal statutes, reiterating that tax authorities cannot rely on presumed legislative intent to override the plain language of the provision.
- It further clarifies that “negative blocking” is impermissible, and any excess disputed ITC must be addressed through proper adjudication under Sections 73/74.

## ADVANCE RULING

**(q) Training services provided by NSDC approved training partner imparting NSQF-aligned courses are exempt under Entry 69 of Notification No. 12/2017-Central Tax (Rate), except for the intervening period 10.10.2024 to 15.01.2025 where liability is regularized on 'as is where is' basis.**

***[In Re: M/s ASDM Institute Private Limited, 2026-VIL-81-AAR, Gujarat Authority for Advance Ruling]***

### **Facts:**

- The applicant, M/s ASDM Institute Private Limited, is an approved Training Partner of the Ministry of Skill Development & Entrepreneurship (MSDE) and the National Skill Development Corporation (NSDC) (Training Partner ID TP325480).
- The applicant provides digital marketing training courses aligned with the National Skills Qualifications Framework (NSQF) (Qualification Pack Code: MES/Q0706) as part of the Government's Skill India initiative.
- Students are enrolled directly by the applicant which collects course fees. NSDC tracks enrolments, training progress and certifications via its Skill India Portal. No direct government funding is involved; the model is market-led and fee-based.
- Prior to 10.10.2024, such services were exempt under Entry 69 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.
- Notification No. 08/2024-CT(R) dated 08.10.2024 substituted Entry 69, omitting the explicit exemption for "training partner approved by NSDC" w.e.f. 10.10.2024.
- Notification No. 06/2025-CT(R) dated 16.01.2025 amended the entry again, reinstating the exemption for NSDC-approved training partners w.e.f. 16.01.2025.

- The applicant sought an advance ruling to clarify the GST exemption status, particularly for the intervening period (10.10.2024 to 15.01.2025)

**Issue:**

Whether the training services provided by ASDM Institute Private Limited as an MSDE/NSDC affiliated Training Partner imparting NSQF-aligned digital marketing courses to students (with enrolments tracked by NSDC and fees collected by ASDM) are exempt from GST under Sl. No. 69 of Notification No. 12/2017-Central Tax (Rate) dated 28-06-2017, as amended from time to time (including by Notification Nos. 08/2024-CT(R) and 06/2025-CT(R)) and the corresponding Gujarat State notification?

**Held:**

- The Gujarat Authority for Advance Ruling held that the training services provided by the applicant are exempt from GST under Entry 69 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.
- The applicant is a “training partner approved by the National Skill Development Corporation” and the digital marketing course (NSQF-aligned, Qualification Pack MES/Q0706) falls under “any other Scheme implemented by the National Skill Development Corporation” within the meaning of the said Entry.
- However, for the intervening period from 10.10.2024 to 15.01.2025 – when the exemption was temporarily withdrawn vide Notification No. 08/2024-CT(R) the applicant’s liability to pay GST is regularized on ‘as is where is’ basis as per CBIC Circular No. 245/02/2025-GST dated 28.01.2025.
- Relying on the Gujarat High Court judgment in J. K. Papad Industries v. Union of India (2024-VIL-987-GUJ), the Authority interpreted ‘as is where is’ basis to mean that firstly if no GST was paid during the interim period, the taxpayer is not liable to pay now and secondly if GST was paid during that period, no refund would be granted.
- The Authority did not accept the applicant’s alternative argument that its services would fall under clause (e) of the amended entry (Training Body

accredited with NCVET-recognized Awarding Body) – noting that the CBIC circular treated NSDC training partners separately and the exemption was specifically restored by a separate amendment.

#### **TATTVAM COMMENTS:**

- This ruling brings clarity to NSDC-approved training partners under the Skill India mission, confirming that their NSQF-aligned vocational training services are exempt from GST under Entry 69 of Notification No. 12/2017.
- It acknowledges the brief disruption in exemption from 10.10.2024 to 15.01.2025 but follows the CBIC's circular to regularise that period on an 'as is where is' basis protecting taxpayers who bona fide believed the exemption continued and did not charge GST.
- From a compliance perspective, taxpayers who paid GST during the interim period cannot claim a refund, while those who did not pay face no demand creating a fair, pragmatic outcome given the legislative flip-flop.

**(r) Foundation and Structural support for plant and machinery within the definition of 'Plant and Machinery' under section 17, thereby making Input Tax Credit (ITC) eligible.**

***[M/s. CPL Pharmaceutical Private limited, 2026-VIL-86-AAR (Guj. AAR)]***

#### **Facts:**

- The Applicant, M/s. CPL Pharmaceutical Private Limited, is engaged in the manufacture of Active Pharmaceutical Ingredients (APIs) and set up a new plant in GIDC Dahej, Gujrat.
- For installing various equipment (reactors, distillation columns, pumps, boilers etc.) used in API manufacturing, the Applicant procured various input services for the construction of Reinforced cement concrete (RCC) foundations and structural steel supports.
- These foundations were essential to provide stability, absorb vibration, and ensure proper alignment of heavy machinery.

- The supplier, M/s. Vimit Construction, charged GST at 18% on these work contract services, and the applicant availed ITC of approximately Rs. 2.97 Crore.
- The applicant sought an advance ruling on whether they are eligible to avail ITC On these input services in light of the restriction under section 17 (5)(c) of the CGST Act, 2017, which restricts ITC on work contract services for construction of an immovable property.

**Issue:**

Whether the Applicant is eligible to avail ITC on input services used for construction of foundation and structural support for plant and machinery installed within the factory in terms of section 17 (5)(c) of the CGST Act, 2017?

**Held:**

- The Gujarat Authority for Advance Ruling held that the applicant is eligible to avail ITC on input services used for construction of foundation and structural support for plant and machinery installed within the factory.

**On the Definition of "Plant and Machinery" under Explanation to Section 17:**

- The Explanation to Section 17 defines "plant and machinery" as "*apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports*" but excludes (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.
- The various equipment installed in the API plant (reactors, distillation columns, pumps, condensers, blenders, sifters, dryers, etc.) qualify as "apparatus/equipment/machinery" as they are a collection of instruments and tools used for a particular purpose (manufacturing of APIs).
- Since the equipment qualifies as "plant and machinery", the **foundation and structural support (RCC structures and structural steel)** also fall within

the definition of "plant and machinery" as they are specifically included in the Explanation.

**On the Exclusion of "Other Civil Structures":**

- The applicant argued and the AAR accepted, that while foundations and structural supports are composed of concrete and steel, they are not excluded as "other civil structures" because the Explanation explicitly includes foundation and structural support within the definition of plant and machinery.
- Relying on the Gujarat Appellate Authority for Advance Ruling (AAAR) in \*KEI Industries Limited (2025-VIL-37-AAAR), the AAR held that "*other civil structures' means civil structures other than foundation and structural support to plant and machinery.*" Therefore, foundation and structural support for plant and machinery are specifically carved out from the exclusion.

**On the Chartered Engineer's Report:**

- The AAR considered the Plant Inspection Report dated 21.01.2025 issued by a Chartered Engineer after site inspection, which certified that the majority of machinery is mounted on RCC and steel frameworks, and that such structures are essential to manage dead loads, torque, vibrations, and dynamic loads. Adherence to IS Codes is mandatory for operational stability.

**On the CBIC Circular Regarding Ducts and Manholes (Circular No. 219/13/2024-GST dated 26.06.2024):**

- The AAR drew an analogy from the CBIC Circular which clarified that ITC on ducts and manholes used in Optical Fiber Cable (OFC) networks is eligible, as they are basic components for providing telecommunication services and fall within the definition of "plant and machinery."
- Applying the same logic, since RCC foundations and structural steel supports are integral to the functioning of the plant and machinery and are specifically included in the definition of "plant and machinery," ITC is available on the input services used for their construction.

**On the Restriction under Section 17(5)(c):**

- Section 17(5)(c) restricts ITC on works contract services when supplied for construction of an **immovable property**. However, an exception is provided where such works contract services are used in the construction of **plant and machinery**.
- Since the foundation and structural support in this case constitute "plant and machinery" under the Explanation, the restriction under Section 17(5)(c) does not apply, and the applicant is entitled to ITC.

#### **TATTVAM COMMENTS:**

- This ruling provides clarity for the manufacturing sector, confirming that the ITC is available on RCC foundations and steel structure that are specifically designed to support plant and machinery. It draws a clear distinction between a general civil structure (e.g., a building's floor) and a specialized foundation for machinery.
- The eligibility hinges on the fact that the foundation/support is essential and integral to the installation and functioning to the machinery (absorb vibrations, providing stability). Taxpayer must document this technical necessity through chartered engineer reports or structural designs.
- Manufacture should segregate works contract invoices to clearly identify the portion of attributable to foundations/supports for machinery vs. general civil structures. This will help defend ITC claims in audits or assessment.

**(s) Crushing, screening and sizing of limestone does not amount to "manufacture" – Activity treated as supply of service under Schedule II.**

***[M/s The Bisra Stone Lime Company Limited, 2026-VIL-77-AAR –  
Odisha Authority for Advance Ruling]***

#### **Facts:**

- The Applicant, a government-owned mining company, entered into a contract with M/s Singhal Enterprises for processing raw limestone/dolomite extracted from its mines through activities such as crushing, screening, sizing, and grading to make it suitable for industrial use.

- The Applicant contended that such processing resulted in transformation of raw, unmarketable minerals into commercially viable products and therefore qualified as “manufacture” under Section 2(72) of the CGST Act. It was further submitted that the contractor bore complete operational and commercial risk, indicating a manufacturing activity rather than mere service provision.
- The jurisdictional authority, however, contended that the processes undertaken merely altered the physical form of the mineral without resulting in any new product and therefore did not satisfy the test of manufacture. It was also submitted that such activity constitutes job work/service under GST.
- Accordingly, the Applicant sought an advance ruling on whether the said activity amounts to “manufacture”.

**Issue:**

Whether the activity of crushing, screening and sizing of limestone/dolomite, carried out on goods belonging to another person, amounts to “manufacture” under Section 2(72) of the CGST Act, 2017.

**Held:**

- The Authority for Advance Ruling held that the activity does not amount to “manufacture” under Section 2(72) of the CGST Act.
- The Authority observed that for an activity to qualify as manufacture, it must result in emergence of a new product having a distinct name, character and use. In the present case, the raw material and the processed output remained limestone/dolomite, with no change in chemical composition, mineral identity or commercial nomenclature.
- It was held that the processes of crushing, screening and sizing merely alter the physical dimensions of the mineral to make it suitable for transportation or specific industrial use and do not result in transformation into a new and distinct commodity.
- The Authority further rejected the contention that commercial risk borne by the contractor determines the nature of supply, holding that GST classification is based on the nature of activity and not contractual terms.

- Relying on Section 7 of the CGST Act read with Schedule II, the Authority held that any treatment or process applied to goods belonging to another person constitutes a supply of service. Accordingly, the activity was classified as job work/service under SAC 9988.
- The question was answered in the negative.

**TATTVAM COMMENTS:**

- This ruling reiterates that mere physical processing without change in identity does not qualify as manufacture under GST.
- It clarifies that contractual risk or marketability is irrelevant, and classification must strictly follow the statutory test of “distinct name, character and use”.
- The decision reinforces that such activities are taxable as services (job work) and not as manufacture of goods.



TATTVAM

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