TATTVAM

February 2026

Fortnightly Newsletter

(01st Feb to 15st Feb 2026)

Legal Zine

A digest of important judgments and rulings

JUDICIAL PRONOUNCEMENTS

SUPREME COURT AND HIGH COURT

(a) Show cause notice must quantify interest proposed; demand confirmed on grounds or amounts beyond the notice violates Section 75(7) of CGST Act.

[M/s Ziva Auto Sales Thru. Prop. Akhand Pratap And Another Versus State of U.P. Thru. Secy. State Tax Lko. And Another, 2026 (2) TMI 221 - ALLAHABAD HIGH COURT]

Facts:

- The petitioners were issued a show cause notice under Section 73 of the CGST Act on November 13, 2024, for the period April 2020 to March 2021.
- The show cause notice quantified the tax and penalty proposed to be demanded but did not quantify the amount of interest for the said period.
- Pursuant to the notice, an adjudication order dated February 11, 2025 was passed under Section 73(9) of the CGST Act, imposing a total demand of Rs. 10,04,955/-, which included tax, interest, and penalty.
- The petitioners challenged the order primarily on the ground that since interest was not quantified in the show cause notice, its demand in the final order was in violation of Section 75(7) of the CGST Act, which mandates that the demand in the order shall not exceed the amount specified in the notice.
- The Revenue, however, contended that even if interest was not specified in the show cause notice, it was payable by virtue of Section 75(9) of the CGST Act, which provides that interest on tax short-paid shall be payable whether or not specified in the order determining tax liability

Held:

- The Court observed that the interest liability pertained to FY 2020-21, which was well within the knowledge of the authorities at the time of issuance of the show cause notice on November 13, 2024. Failure to quantify the interest

amount in the notice, which was subsequently quantified in the order, amounted to a contravention of Section 75(7).

- The Court distinguished the applicability of Section 75(9), noting that it deals with a situation where interest is not quantified in the final order and clarifies that interest is payable even in such a scenario. However, it does not override the requirement of quantification in the show cause notice under Section 75(7).
- Relying on the Coordinate Bench decision in M/s Vrinda Automation vs. State of U.P. (Writ Tax No. 2006 of 2025, decided on 14.05.2025), the Court reiterated that demanding penalty or interest beyond what was specified in the show cause notice is *ex facie* contrary to Section 75(7).
- Accordingly, the impugned show cause notice and the adjudication order were quashed and set aside, with liberty granted to the authorities to issue a fresh show cause notice in accordance with law.

TATTVAM COMMENTS:

- This judgment reinforces the fundamental principle that show cause notices must be complete and specific regarding the quantum of demand proposed, including interest, to enable the assessee to mount an effective defence.
- It clarifies the distinct scope of Section 75(7) (limits of demand in order) and Section 75(9) (interest payable even if not in order). Section 75(9) cannot be used to cure a deficiency in the show cause notice; it only operates at the stage of the final order.
- The ruling serves as a crucial check against roving enquiries and surprise demands, ensuring that the taxpayer is fully aware of the proposed liability at the notice stage itself.

(b) Section 74 of the CGST Act does not permit best-judgment assessment or extrapolation.

[Amritha Marketing & Ors. vs. The Joint Commissioner of CGST & Central Excise, TS-1062-HC(MAD)-2025-GST]

Facts:

- The petitioners are wholesale dealers engaged in the supply of groceries and FMCG items.
- Based on information that the petitioners were underreporting sales turnover, search operations were conducted. Computer systems used for billing and documents containing sales data were seized.
- A private forensic agency (FDI Labs) retrieved data from the electronic devices for a limited period.
- Statements of the manager, accountant, software supplier, and customers were recorded under Section 70 of the CGST Act.
- Show cause notice dated 29.06.2024 were issued under Section 74 of the CGST Act proposing tax demand for different financial years together with penalty and interest.
- During the enquiry, the petitioners sought to cross-examine the person who retrieved the data. However, this request was rejected by the adjudicating authority.
- The petitioner challenged the rejection order by filing writ petitions, which were dismissed as infructuous as the final assessment orders were passed during the pendency of the writ petitions.
- In the final orders passed under Section 74, the proper officer extrapolated the data for the limited period available to cover the entire assessment period and raised demands, adopting a best-judgment approach.
- Aggrieved by the final orders, the petitioners filed the present writ petitions, raising two primary grounds: (i) denial of cross-examination of the data retriever, and (ii) lack of jurisdiction to resort to best-judgment assessment under Section 74.

Held:

On the issue of cross-examination:

- The Court held that the rejection of an interlocutory request for cross-examination can be challenged while assailing the final order. Since the earlier writ petitions were dismissed as infructuous without adjudication on merits, the principles of res judicata did not apply.
- However, on facts, the Court found no prejudice caused to the petitioners because the data retrieval took place in the presence of the assessees, and the process was certified by them.
- In their statements recorded under Section 70, the assessees admitted that the retrieved data was entered by them.
- The technical person who retrieved the data would not have been competent to describe the nature of the data as "actual sales data", and his cross-examination would not materially alter the evidentiary position.
- Applying the principle that cross-examination is not automatic and must be justified with specific reasons, the Court upheld the denial of cross-examination in this case.

On the issue of best-judgment assessment:

- The Hon'ble Madras High Court held that Section 74 of the CGST Act does not confer any power on the proper officer to assess tax liability by adopting best judgment method.
- Section 74(9) requires the proper officer to determine the amount of tax, interest and penalty due after considering the representation, but does not contain the words "to the best of his judgment".
- The Hon'ble court observed that omission of the power to make a best-judgment assessment in Section 74 is conscious and deliberate, as evident from the fact that Sections 62 and 63 expressly provide for best-judgment assessment in specific circumstances (non-furnishing of returns and unregistered persons).
- In matters relating to taxation, the principle 'what is not prohibited is permitted' cannot be invoked. There has to be a statutory basis for any action

to be taken by the assessing officer. The enabling power must flow from the statute. Only mystics can materialise objects from thin air.

- Therefore, the proper officer lacked jurisdiction to resort to extrapolation or best-judgment assessment under Section 74. The impugned orders were quashed on this ground.

TATTVAM COMMENTS:

- This judgment brings significant clarification on the scope of Section 74. It draws a clear distinction between provisions that expressly permit best-judgment assessment (Sections 62 and 63) and those that do not (Section 74).
- The ruling reinforces the strict interpretation of taxing statutes—tax authorities cannot assume powers not expressly conferred by law. Extrapolation of data to estimate demand for unverified periods is impermissible under Section 74.
- The judgment also provides guidance on cross-examination in GST proceedings: while it is an important facet of natural justice, a blanket request without specific reasons may be rightly denied, especially where the assessee has admitted to the underlying data.
- This decision will have significant implications for assessments involving search and seizure, where revenue authorities often rely on partial data to extrapolate demands.

(c) Electricity Regulatory Commission's statutory functions and fees charged are not subject to GST

[Punjab State Electricity Regulatory Commission Vs Union of India and others- 2026 (1) TMI 1213 - PUNJAB AND HARYANA HIGH COURT]

Facts:

- The Petitioner filed a writ petition to challenge and assail the show cause notice dated 28 June 2024 wherein the Department sought to discharge liabilities

arising in respect of the fees like petition fee, ARR, processing fee and license fee received by the Petitioner in the course of discharging their statutory/ regulatory functions under section 86 of the Electricity Act, 2003.

Held:

- The Hon'ble Punjab and Haryana High Court while placing reliance upon the stringent precedent laid down by the Hon'ble Delhi High Court in the matter of Central Electricity Regulatory Commission Versus the Additional Director Directorate General of GST Intelligence (DGGI) bearing WP(C) No. 10680 of 2024 allowed the petition. The relevant observation made by the Delhi High Court, which was subsequently upheld by the Apex Court in SLP No. 19662/2025**,** observed and held as under: -

- "Business" covers trade, commerce, profession, vocation, etc. Regulatory functions of Commissions are statutory obligations, not trade/commerce/profession.

- "Consideration" under the GST Law means payment made for inducement of supply of goods/services. Fees paid to Commissions are not inducements for supply in a business context; they are statutory levies.

- Even if fees are treated as "consideration," they should be received "in the course or furtherance of business" to attract the provisions of section 7 of the CGST Act. However, regulatory/adjudicatory functions are not business activities and accordingly, section 7 of the CGST Act not attracted.

-

TATTVAM COMMENTS:

- That the present case reaffirms the principle laid down by the Hon'ble Delhi HC (affirmed by SC) that the statutory regulatory and adjudicatory functions discharged by Electricity Commissions fall outside the ambit of GST. Consequently, fees collected in the course of such statutory functions cannot be treated as taxable "consideration."

- From the said judgment, it is evident that any amount received under a statutory mandate or obligation prescribed by law does not attract GST. Such

receipts are not in the nature of a "business activity," and therefore, the provision under Section 7 of the CGST Act fails to apply in these circumstances.

(d) Non-Consideration of specific grounds and return data available on GST Portal lead to clear abdication of duty on the part of the Appellate Authority.

[Shine Pharmaceuticals Ltd v. Joint Commissioner of Revenue, 2026 (2) TMI 107 – Calcutta High Court]

Facts:

- The present proceedings were initiated from issuance of a Show Cause Notice under Section 73 of the CGST Act on the ground of excess availment of ITC and the said ITC was found reversible and there was also a short payment of tax on outward supply.
- The Petitioner could not file a reply to the said SCN and accordingly, Adjudication Order dated 16.01.2024 was issued by the proper officer confirming the said demand.
- Further, the Petitioner, also preferred an Appeal under Section 107 of the CGST Act, however, the Appellate Authority passed the order dated 28.03.2025 whereby it refused to interfere into the Order to the extent of reversal of ITC.
- Accordingly, aggrieved by the Order, the Petitioner filed a writ petition challenging the order passed by the Appellate Authority on the ground that upon scrutiny of the petitioner return, it is evident that there is no liability of reversal of ITC since, the Petitioner had already reversed the ITC as per GSTR-3B.
- The said show cause notice and adjudication order were uploaded on the GST portal under the "Additional Notices and Orders" tab, and not on the main dashboard. Further, no separate proof was available to show that SMS or e-mail intimation of such upload was served upon the Petitioner.
- The State contended that these factual aspects were not properly placed before the Appellate Authority and since the SCN was not replied to, the appellate order should not be interfered with.

Held:

- The Hon'ble Calcutta High Court held that the figures relied upon by the petitioner were available on the GST portal in statutory returns (GSTR-1, GSTR-3B and GSTR-9). In such circumstances, the Appellate Authority ought to have examined the available return data before confirming the demand.
- Further, the High Court observed that there was no discussion whatsoever in the impugned order regarding the factual figures reflected in GSTR-3B and GSTR-9 returns. The order did not indicate any reason as to why the amounts disclosed in statutory returns available on the GST portal were not considered. Thus, on this ground alone, the Appellate Order date 28.03.2025 was set aside.
- The Court further noted that even the Adjudicating Authority had failed to consider the return data available on record. Accordingly, the adjudication order dated 16.01.2024 was also set aside.
- The matter was remanded to the Proper Officer for fresh adjudication.

TATTVAM COMMENTS:

- The ruling reinforces that GST adjudication cannot ignore statutory return data available on the common portal. Authorities are expected to examine self-declared return figures before confirming ITC reversals.
- The judgment emphasizes that failure to deal with specific grounds raised in appeal amounts to non-application of mind and vitiates the order.

(e) Refund of accumulated ITC after clarificatory amendment to Rule 89(5) of the CGST Rules are to be applied retrospective.

[M/s. Awl Agri Business Limited v. The Joint Commissioner, GST Appeals, 2026 (1) TMI 1333-Andhra Pradesh High Court]

Facts:

- The petitioner is engaged in import of edible oil, which is refined and packed for domestic supply.

- The Petitioner filed three separate refund applications claiming refund of accumulated ITC on account of inverted duty structure for the periods November 2018, March 2019 and April 2019.

- The Adjudicating Authority rejected the refund applications on the ground that Rule 89(5) of the CGST Rules precluded grant of refund in such cases. Thereafter, the Petitioner preferred three separate appeals under Section 107 of the CGST Act, which were dismissed by the Appellate Authority vide orders dated 25.02.2022.

- Aggrieved thereby, the Petitioner filed writ petitions before the High Court on the ground that whether the amendment to the formula in Rule 89(5) of the CGST Rules is clarificatory and retrospective in effect, and whether prior orders rejecting refund claims under the pre-amendment formula should be set aside and remitted for fresh consideration applying the modified formula.

Held:

- The High Court took note of the fact that the amendment to Rule 89(5) was introduced pursuant to deliberations of the GST Council, which had reconsidered the formula in light of the observations made by the Hon'ble Supreme Court in ***Union of India v. VKC Footsteps India Pvt. Ltd***., ***(2022) 2 SCC 60.*** The GST Council had acknowledged the anomalies in the earlier formula and accepted the recommendations of the Law Committee for modification of the computation mechanism.

- The Court observed that the very purpose of the amendment was to remove computational distortions and inequities embedded in the earlier formula for refund under the inverted duty structure. Such an amendment, aimed at correcting an anomaly and rationalising the mechanism, bears the character of a clarificatory provision.

- The Revenue's reliance on **Circular No. 181/13/2022-GST dated 10.11.2022**, which stated that the amendment would operate prospectively from 05.07.2022, was considered in light of the judgment of the Gujarat High Court in ***Tirth Agro Technology Pvt. Ltd. v. Union of India, 2025 (1) TMI 719***. In the said decision, the Circular was set aside to the extent it declared the amendment to be prospective and not clarificatory in nature.

- Thus, the Hon'ble High Court held that the amendment to Rule 89(5) must be treated as clarificatory and consequently retrospective in nature. The mere fact that the rejection orders and appellate orders were passed prior to the amendment would not disentitle the Petitioner from claiming the benefit of the corrected formula, especially when the refund claim had been consistently pursued and had not attained finality.
- The matter was remanded to the primary authority for fresh consideration of the refund applications by applying the modified formula under Rule 89(5) of the CGST Rules.

TATTVAM COMMENTS:

- The judgment provides substantial relief to taxpayers whose refund claims under the inverted duty structure were rejected under the pre-amended formula and are still under challenge.
- The decision underscores that beneficial amendments intended to rectify computational inequities should not be denied merely on the ground of timing of adjudication.

(f) Recovery under Section 75(12) not Permissible for Alleged Wrong Utilisation of ITC towards RCM Liability without Adjudication.

[M/s. Sona Enterprises v. Assistant Commissioner of Central Tax & Ors. 2026 (1) TMI 1214 – Andhra Pradesh High Court]

Facts:

- The Petitioner is a registered dealer engaged in the business of iron and steel scrap, purchasing scrap from Indian Railways.
- GST on such purchases was payable by the Petitioner under the Reverse Charge Mechanism (RCM), which is required to be discharged in cash and not by utilisation of ITC.
- The Petitioner had filed GSTR-3B returns for the period July 2017 to March 2021.

- The Department alleged that the Petitioner had wrongly utilised Input Tax Credit to discharge RCM liability, instead of paying the same in cash.
- Based on this allegation, the Department issued notices demanding tax and interest and initiated coercive recovery proceedings under Section 79(1)(c), including attachment of the Petitioner's bank account, without issuing any adjudication order under Sections 73 or 74.
- The Department sought to justify such recovery by invoking Section 75(12) of the CGST Act, treating the liability as an "admitted liability".
- Aggrieved by recovery of interest without adjudication, the Petitioner filed the present writ petition.

Held:

- The Hon'ble High Court held that Section 75(12) of the CGST Act permits recovery without adjudication only in cases of admitted self-assessed tax liability, as declared in returns filed under Section 39.
- The provision cannot be invoked where the dispute relates to alleged wrong utilisation of ITC, which does not amount to a clear admission of tax liability.
- In cases of mistake, suppression, or incorrect utilisation of ITC, the Department is required to initiate adjudication proceedings under Sections 73 or 74, after issuing notice and granting opportunity of hearing.
- Coercive recovery under Section 79 can be resorted to only after completion of the adjudicatory process and passing of a reasoned order.
- The Court held that the recovery proceedings initiated without adjudication were illegal and unsustainable.
- Accordingly, the High Court set aside the recovery action under Section 79(1)(c) and directed the Department to refund the interest amount recovered from the Petitioner's banker.
- However, liberty was granted to the Department to initiate appropriate proceedings in accordance with law, if so advised.

TATTVAM COMMENTS:

- The judgment draws a clear and categorical distinction between "admitted liability" and "alleged wrongful availment or utilisation of ITC," and confines the scope of Section 75(12) strictly to cases involving the former.
- It unequivocally reinforces the principle that alleged wrong availment or utilisation of ITC cannot be equated with self-assessed tax and, therefore, cannot be recovered without following due process of adjudication.
- The ruling significantly curtails the arbitrary invocation of coercive recovery provisions under Sections 75(12) and 79, particularly in matters arising out of Reverse Charge Mechanism (RCM) disputes.
- The decision serves as a strong precedent to challenge bank attachment, recovery of interest, and tax demands initiated without issuance of a Show Cause Notice (SCN) or proper adjudication, especially where the Department seeks to bypass the safeguards under Sections 73 or 74.
- The judgment assumes considerable importance in cases concerning RCM payments, disputes relating to ITC utilisation, and premature recovery proceedings undertaken by the Department without adherence to statutory procedure.

(g) GST registration cancellation and revocation require prior opportunity to be heard; restoration warranted when liabilities are discharged.

[M/s. Kishore Nichani Versus The Union of India, 2026 (1) TMI 1560 – Bombay High Court]

Facts:

- The Petitioner challenged the cancellation of GST registration for non-filing of returns and sought restoration after clearing all tax dues, interest, and penalty.
- Despite full compliance and a formal application for revocation, the authorities failed to restore the registration, prompting the writ petition.

- The Revenue conceded before the Court that no outstanding dues remained.

Held:

- The High Court held that cancellation of GST registration entails serious civil consequences and must comply with the proviso to Section 29 requiring an opportunity of hearing and any action on the part of the authority not adhering to the proviso renders the action void.
- Once statutory dues are discharged, authorities are empowered under Section 30 read with Rule 23 to revoke cancellation and must exercise such powers appropriately.
- The Court reiterated that keeping registration cancelled serves neither the taxpayer nor the Revenue and is disproportionate when the assessee has rectified defaults.
- Finding that the Petitioner satisfied all conditions for revocation, the Court allowed the writ petition and directed restoration of GST registration.

TATTVAM COMMENTS:

- The ruling affirms that revocation of cancellation of GST registration should follow once liabilities are cleared, preventing punitive exclusion from business.
- It reinforces adherence to natural justice in cancellation proceedings.
- The decision supports a taxpayer-friendly interpretation that promotes continued participation in the GST regime rather than permanent cancellation for procedural lapses.

(h) Goods seized under GST must be returned if no notice is issued within six months; belated confiscation proceedings cannot cure earlier statutory violations.

[M/s Reevan Creation v. State of Gujarat & Ors., 2026 (1) TMI 770 – Gujarat High Court]

Facts:

- The Petitioner, M/s Reevan Creation, is engaged in the trading of gold, silver, diamonds, and jewellery.
- On 09.03.2022, officers of the State Tax Department conducted a search under Section 67(2) of the CGST Act, 2017 at the Petitioner's registered business premises, pursuant to which a panchnama dated 09.03.2022 was drawn.
- On the very next day, i.e. 10.03.2022, the respondent authorities passed an order of provisional attachment under Section 83 of the CGST Act in Form GST DRC-22, attaching the Petitioner's bank accounts.
- Subsequently, on 14.03.2022, during continuation of the search proceedings, the authorities seized gold mixed with other metals and cash, and issued an order of seizure in Form GST INS-02.
- Despite being aware of the alleged magnitude of tax evasion, the department failed to issue any notice within six months of seizure as mandated under Section 67(7), nor was any order passed extending the period under the proviso to Section 67(7).
- Further, though Section 83(2) provides that provisional attachment ceases to have effect after one year, no fresh attachment order was passed after expiry of the statutory period.
- During pendency of the writ petition, the department issued a belated notice under Section 130 (confiscation) nearly two years after the seizure.
- Aggrieved by the continued seizure, attachment, and belated invocation of confiscation proceedings, the Petitioner approached the High Court challenging the legality and jurisdiction of the departmental action.

Held:

- The Hon'ble High Court noted that the respondents themselves admitted that, under Section 83(2), provisional attachment ceases to operate after one year, and no fresh order had been passed.
- The Court held that once the statutory period expires, attachment stands automatically dissolved, and its continuation amounts to illegal deprivation of property and business operations.

- Interpreting Section 67(7), the Court held that issuance of notice within six months of seizure is mandatory, and in the absence of such notice or a valid extension, the authorities lose the power to retain seized goods and cash.
- The Court held that the belated notice under Section 130, issued nearly two years after seizure and during pendency of the writ petition, was a clear afterthought.
- It was categorically held that statutory violations and jurisdictional lapses cannot be cured by belated confiscation proceedings.
- The plea of "lack of clarity" and "ongoing investigation" was rejected, the Court observing that the officers were fully aware of the alleged evasion but failed to act within statutory timelines.
- The Court found serious dereliction of duty on part of the officers and directed the Chief Commissioner of State Tax to conduct an appropriate inquiry against the officers responsible for the lapses.

TATTVAM COMMENTS:

- This judgment reinforces the mandatory nature of statutory timelines under Sections 67(7) and 83(2) of the CGST Act.
- It authoritatively holds that seizure and attachment are not open-ended powers and lapse automatically upon expiry of prescribed periods.
- The ruling clearly establishes that Section 130 (confiscation) cannot be invoked retrospectively to legitimise earlier illegal seizure or attachment.
- It draws a firm distinction between investigative powers and confiscatory powers, preventing their misuse as coercive tools.
- The judgment strengthens taxpayer protection against administrative overreach and procedural abuse during GST investigations.
- This decision will be highly persuasive in cases involving delayed SCNs, prolonged seizure, expired provisional attachments, and mechanical invocation of confiscation provisions.

(i) Directors' bank accounts cannot be attached for GST dues of company under liquidation without giving opportunity under Section 88(3), attachment vacated and liberty granted to prove absence of negligence.

[Directors of M/s. Infinitas Energy Solutions Pvt. Ltd. v. State Tax Authorities – 2026 (1) TMI 1396 - HC – IBC Madras High Court]

Facts:

- The Petitioners were directors of M/s. Infinitas Energy Solutions Pvt. Ltd., a company against which proceedings under IBC, 2016 were initiated and an Interim Resolution Professional (IRP) was appointed on 08.09.2017.
- Subsequently, by order dated 06.02.2019, the company was ordered to be liquidated and a Liquidator was appointed.
- GST liability was incurred by the company for the period April 2019 to March 2021, i.e., after appointment of the Liquidator.
- Recovery proceedings were initiated by attaching the personal bank accounts of the petitioners (directors) for the company's tax dues.
- The Petitioners contended that after appointment of the IRP/Liquidator, they were no longer in control of the company and therefore could not be made liable for its GST dues.
- The core issue was whether directors of a company under liquidation can be held jointly and severally liable under Section 88(3) of the GST Enactments without giving them an opportunity to prove absence of gross neglect, misfeasance, or breach of duty.

Held:

- The Hon'ble Madras High Court examined Section 88 of the GST Enactments dealing with liability of a company in liquidation.
- Under Section 88(3), directors of a private company are jointly and severally liable for unrecovered tax dues only if such non-recovery is attributable to their gross neglect, misfeasance, or breach of duty.

- The Court observed that directors must be given an opportunity to prove that non-recovery is not attributable to them.
- The attachment of the petitioners' bank accounts was vacated.
- The Petitioners were granted liberty to file a suitable application before the authorities within 15 days to extricate themselves from liability.
- The authorities were directed to pass appropriate orders on merits, after granting personal hearing, preferably within 15 days thereafter.

TATTVAM COMMENTS:

- The judgment clarifies that directors of a company under liquidation cannot automatically be held liable for GST dues merely because tax remains unrecovered.
- Section 88(3) creates a conditional liability, requiring proof of gross neglect, misfeasance, or breach of duty.
- The decision reinforces principles of natural justice by mandating opportunity of hearing before fastening personal liability on directors.

(j) Proceedings for FY 2024-25 cannot be initiated under Section 74 after insertion of Section 74A; assessment order passed under wrong provision is without authority of law.

[Tvl. Fancy Agency v. Deputy State Tax Officer-I – 2026 (182) taxmann.com 529 – High Court of Madras]

Facts:

- The Petitioner challenged an ex parte assessment order dated 09.04.2025 passed under Section 74 of the TNGST/CGST Act for FY 2024-25.
- A show cause notice in Form GST DRC-01 was issued under Section 74 alleging fraud.
- The Petitioner contended that multiple notices were uploaded on the GST portal, causing confusion, and it became aware of the proceedings only upon receipt of the assessment order.

- It was argued that with effect from 01.04.2024, proceedings for fraud-related matters must be initiated under Section 74A and not under Section 74.
- The Respondent fairly admitted that after insertion of Section 74A, notice ought to have been issued under Section 74A and not under Section 74 for FY 2024-25.

Held:

- The Hon'ble Madras High Court held that from 01.04.2024, proceedings must be initiated under Section 74A and not under Section 74.
- Since the show cause notice was issued under Section 74 and culminated in the impugned assessment order, the initiation itself lacked authority of law.
- Accordingly, the impugned assessment order was set aside.
- However, to avoid multiplicity of proceedings, the Court directed that the SCN issued under Section 74 be treated as a notice under Section 74A.
- The Petitioner was directed to file a reply within four weeks, and the Respondent was directed to pass fresh orders on merits after granting an opportunity of personal hearing.

TATTVAM COMMENTS:

- The judgment clarifies that after insertion of Section 74A w.e.f. 01.04.2024, proceedings for fraud for FY 2024-25 cannot be initiated under Section 74.
- It reinforces the principle that invocation of a wrong statutory provision renders the entire proceeding void for lack of jurisdiction.
- The decision is significant for assesses facing notices under Section 73/74 for FY 2024-25 and onwards.

(k) Rectification of Wrong ITC head in GSTR-3B Permissible; Proceedings Barred Once ASMT-12 Issued under Section 61(2).

(Periyasamy Karthikeyan v. State Tax Officer., 2026 (1) TMI 1272 - MADRAS HIGH COURT)

Facts:

- The petitioner, a registered person under GST, while filing GSTR-3B for FY 2018-19, erroneously claimed Input Tax Credit (ITC) of ₹1,94,77,496/- under CGST and SGST instead of under IGST.
- The error was voluntarily disclosed while filing GSTR-9 (Annual Return), and GSTR-9C, duly certified by a Chartered Accountant, wherein the mistake was rectified.
- The Department initially issued Form GST ASMT-10 (Scrutiny Notice) on 02.12.2021. after considering the petitioner's reply, the respondent accepted the explanation and dropped proceedings by issuing ASMT-12 on 18.03.2022.
- Despite this, the respondent subsequently issued DRC-01A and DRC-01 and passed an assessment order dated 09.12.2024, alleging excess ITC and revenue loss.
- The petitioner challenged the assessment order, seeking permission to rectify the GSTR-3B entries and to quash the subsequent proceedings.

Held:

- Section 61(2) of the CGST Act creates a statutory bar: once the explanation offered during scrutiny is accepted and ASMT-12 is issued, no further proceedings can be initiated on the same issue.
- Issuance of DRC-01A and DRC-01 after ASMT-12 was held to be without jurisdiction and legally impermissible.
- The Court held that the error was clerical in nature relating to wrong head of ITC, and the same was fully rectified through GSTR-9 and GSTR-9C.
- There was no revenue loss, as ITC was available with the Government, and excess ITC under CGST and SGST was merely a misclassification of IGST credit, not an ineligible claim.
- Revenue loss would arise only if ITC were availed without actual entitlement, which was not the case here.

- Consequently, the impugned assessment order dated 09.12.2024 was quashed and the writ petition was allowed.

TATTVAM COMMENTS:

- This judgment reaffirms that Section 61(2) of the CGST Act is mandatory, and once scrutiny proceedings are concluded in favour of the taxpayer through ASMT-12, the Department cannot reopen the same issue through adjudication proceedings.
- Wrong reporting of ITC under an incorrect tax head, when transparently disclosed and rectified through GSTR-9 and GSTR-9C, does not amount to excess availment or revenue loss.
- The ruling provides significant relief to taxpayers facing mechanical reassessment orders despite prior acceptance of explanations during scrutiny.
- It strengthens the principle that procedural errors, when corrected within the statutory framework, should not be penalised.

(l) Failure to Consider Reconciliation Statement and limitation and invocation of extended period under Section 74.

(Neutral Glass & Allied Industries Private Limited v. Union of India & Ors., [R/Special Civil Application No. 17520 of 2025 – Gujarat High Court])

Facts:

- The petitioner challenged an adjudication order dated 16.10.2025, passed under the GST law, primarily on the ground that the adjudicating authority failed to consider the reconciliation statements submitted by the petitioner.
- In the impugned order, the authority recorded that no reconciliation statement with respect to the MIS report generated from the SAP system was submitted and proceeded to confirm demand accordingly.

- The petitioner contended that reconciliation statements were in fact submitted on 11.08.2025, 13.10.2025 and 14.10.2025, and that the observation in the impugned order was factually incorrect and contrary to record.
- Additionally, the petitioner had specifically raised the issue of limitation and invocation of extended period under Section 74 of the CGST Act, 2017, which was allegedly not dealt with in the adjudication order.
- During the hearing, the respondent's counsel fairly admitted, on instructions, that the reply dated 11.08.2025 and reconciliation statement were not considered while passing the impugned order, and subsequently tendered an e-mail dated 05.01.2026 confirming submission of reconciliation statement by the petitioner.

Held:

- The Gujarat High Court observed that the findings recorded in the impugned order, stating that no reconciliation statement was submitted, were incorrect and contrary to the record.
- The Court held that an adjudication order based on factually erroneous assumptions and without consideration of material placed on record cannot be sustained.
- It was further held that the petitioner's contention regarding limitation and applicability of Section 74 was dealt with perfunctorily, without any proper reasoning or analysis by the adjudicating authority.
- A bare observation alleging intentional suppression of turnover, without addressing the specific plea on limitation, was held to be insufficient.
- Accordingly, the impugned order was quashed and set aside, and the matter was remanded to the adjudicating authority.
- The authority was directed to consider the reconciliation statements submitted by the petitioner, deal with the issue of limitation raised under Section 74, provide a proper opportunity of personal hearing, and pass a fresh order within 12 weeks from receipt of the High Court's order.

TATTVAM COMMENTS:

- This ruling reaffirms that GST adjudication orders passed without considering replies and reconciliation statements are unsustainable in law.
- The High Court has clarified that limitation under Section 74 must be examined with reasoned findings and cannot be brushed aside through vague or mechanical observations.
- The judgment strengthens the principle that adjudication based on incorrect factual assumptions violates natural justice and warrants judicial interference.
- It provides strong support to taxpayers in mismatch and reconciliation-based disputes, particularly where authorities ignore material already on record.

(m) Adjudication order invalid when based on grounds not mentioned in show cause notice — Violation of Section 75(7).

[M/s. Duakem Pharma Pvt. Ltd. & Anr. v. Deputy Commissioner of Revenue & Ors., 2026 (1) TMI 1273 – Calcutta High Court]

Facts:

- The Petitioner was engaged in supply of Dicalcium Phosphate (DCP), which was treated as exempt under HSN 2309.
- A show cause notice dated 11.11.2024 was issued under Section 73(1) proposing reversal of ITC in proportion to exempt supplies. The notice mainly questioned the quantum of exempt turnover and applicability of Section 17(2), and required submission of documents.
- The notice did not allege that the goods supplied were wrongly classified or not eligible for exemption. The Petitioner filed a reply denying liability to reverse ITC.

- An adjudication order dated 24.02.2025 was passed under Section 74, holding that the Petitioner failed to prove that DCP was of exempted category and confirming tax demand and ITC reversal.
- Aggrieved, the Petitioner filed a writ petition challenging the order as being beyond the scope of the show cause notice. The dispute arose as to whether the adjudicating authority could deny exemption and confirm demand on grounds not raised in the notice.

Held:

- The Hon'ble High Court held that the show cause notice only dealt with reversal of ITC in proportion to exempt supplies and did not raise any issue regarding classification or exemption.
- It was observed that the adjudicating authority travelled beyond the scope of the notice by holding that the product was not exempt.
- The Court held that a notice must clearly specify all grounds on which liability is proposed, as required under Section 75(7) of the CGST Act.
- Proceeding on grounds not mentioned in the notice violates principles of natural justice. Since the impugned order was based on new grounds, it was held to be unsustainable and was set aside.
- However, liberty was granted to the department to initiate fresh proceedings in accordance with law. The period from 24.02.2025 to 21.01.2026 (or till receipt of certified copy, whichever is later) was directed to be excluded for limitation purposes.

TATTVAM COMMENTS:

- The judgment reaffirms that adjudication cannot go beyond the scope of the show cause notice.
- Denial of exemption or reclassification of goods must be specifically proposed in the notice.
- The decision strengthens procedural safeguards under Section 75(7) of the CGST Act.

- It is particularly relevant in ITC reversal cases involving exempt supplies.
- The ruling promotes fairness and transparency in GST adjudication proceedings.

(n) Summons under Section 70 are part of inquiry and not initiation of proceedings — Writ against summons held premature.

[Naveen & Suraj Kumar v. Directorate General of GST Intelligence, 2026 (2) TMI 108 – Delhi High Court]

Facts:

- The Petitioners, two brothers engaged in trading of biri, were subjected to search and seizure under Section 67 of the CGST Act in March 2024.
- During the search, documents, goods, and mobile phones were seized, and statements were recorded. Summons under Section 70 dated 06.05.2024, 20.05.2024 and 28.05.2024 were issued for recording statements and production of documents.
- The Petitioners alleged that the summons were mechanically issued, violated departmental guidelines, and were meant to harass them. It was claimed that Petitioner No. 2 was illegally detained and coerced, and that there was apprehension of arrest.
- The Petitioners sought quashing of summons, release of seized goods, and protection against arrest.
- The Respondent-DGGI alleged large-scale GST evasion involving clandestine trading and non-payment of tax exceeding ₹39 crores. The Respondent contended that the Petitioners were non-cooperative and that summons were lawfully issued during investigation.
- The dispute arose as to whether summons under Section 70 could be challenged at the inquiry stage and whether writ protection was maintainable.

Held:

- The Hon'ble High Court held that summons under Section 70 are issued for inquiry and evidence-gathering and do not amount to initiation of proceedings.

It was observed that investigation and summons are only precursors to proceedings under Sections 73 or 74.

- The Court relied on earlier judgments to hold that inquiry cannot be equated with assessment or adjudication.
- It was held that Section 69 contains sufficient safeguards against arbitrary arrest. Mere apprehension of arrest during investigation does not justify quashing of summons. Seeking quashing of summons at this stage was held to be equivalent to seeking anticipatory bail.
- The Court found no illegality in the issuance of summons. The writ petition was held to be premature and dismissed. Liberty was granted to the Petitioners to approach appropriate forums at a later stage, if required.

TATTVAM COMMENTS:

- The judgment reiterates that summons under Section 70 are only tools for investigation and cannot be challenged as final proceedings.
- It discourages premature writ petitions filed to stall GST investigations.
- It clarifies that apprehension of arrest alone is insufficient for court interference at the investigation stage.
- The ruling reinforces departmental powers to conduct inquiry, while recognizing statutory safeguards under Section 69.

(o) Transfer of R&D Unit as Going Concern not a taxable "Supply" and ITC Transfer cannot be Denied on Technical Grounds.

[Shilpa Medicare Limited vs Union of India & Ors [TS-46-HC(AP)-2026-GST]

Facts:

- The Petitioner, engaged in pharmaceutical R&D, operated two units with separate GST registrations under the same PAN.
- In June 2019, it executed a Business Transfer Agreement transferring one R&D unit to its Bengaluru unit as a going concern, along with all assets, liabilities, employees and intangibles, for nil consideration.

- Seeking clarity, the Petitioner approached the Authority for Advance Ruling (AAR) on taxability and eligibility to transfer unutilised ITC. The Authority for Advance Ruling (AAR) ruled in its favour, holding the transaction as exempt supply of services and permitting ITC transfer.

- However, the Appellate Authority for Advance Ruling (AAAR) reversed the ruling, treating the transaction as taxable supply of goods and disallowing cross-State ITC transfer.

- The Petitioner challenged the AAAR order before the High Court.

- The issues involved in the matter were:

  - ✓ Whether transfer of an entire business unit as a going concern constitutes a "supply" under Section 7 of the CGST/APGST Acts.

  - ✓ Whether unutilised ITC can be transferred between distinct registrations under Section 18(3) of the CGST Act.

Held:

- The High Court observed that GST is charged only when there is a "supply" made in the course or furtherance of business. Relying on earlier sales tax and VAT decisions, the Court clarified that selling goods during business operations is different from transferring the entire business itself. When a business undertaking is transferred as a going concern, what is transferred is the business as a whole and not individual goods sold in the course of trade.

- Applying this principle, the Court held that transfer of the entire R&D unit along with all its assets and liabilities is not a taxable supply under Section 7. Further, Notification No. 12/2017-CT (Rate) treats transfer of a going concern as supply of services and grants exemption.

- On the issue of ITC, the Court rejected the narrow view taken by the AAAR. Section 18(3) of the CGST Act clearly allows transfer of unutilised ITC in cases of sale or transfer of business. Since GST law treats registrations in different States as "distinct persons" under Sections 25(4) and 25(5) of the CGST Act, the benefit of ITC transfer cannot be denied merely because both registrations belong to the same legal entity.

- The AAAR ruling was therefore set aside.

TATTVAM COMMENTS:

- The ruling clarifies that transfer of a business as a going concern is not a taxable supply under GST as it is different from sale of goods in the course of business.
- It adopts a practical interpretation of Section 18(3) of the CGST Act and ensures that transfer if accumulated ITC is not denied during genuine business transfers.

(p) On Amalgamation, Statutory Mandate Requires Complete Transfer of Unutilised ITC through ITC-02 and bifurcation between Transfer and Refund Not Permissible.

[M/s. Alstom Transport India Limited Through Its Authorised Signatory Shah Diptej Harshadkumar Versus Additional Commissioner, CGST And Central Excise (Appeals) & Ors. [2026(1) TMI 1337-Gujarat High Court]

Facts:

- Alstom Rail Transportation India Pvt. Ltd (ARTIPL), before its amalgamation, had accumulated substantial unutilised ITC amounting to Rs. 242.02 crore, mainly due to exports made without payment of tax. After the amalgamation was approved, ARTIPL filed FORM GST ITC-02 on 20.10.2023 and transferred Rs. 192.87 crore of ITC to the transferee company, Alstom Transport India Limited (ATIL). However, it retained Rs. 49.14 crore in its own Electronic Credit Ledger.
- Later, on 04.01.2024, ARTIPL filed a refund application under Section 54(3) of the CGST Act seeking refund of the retained ITC relating to exports for April 2023. The refund was initially sanctioned. However, the Appellate Authority set aside the refund on 08.01.2025, holding that after amalgamation, ITC could only be transferred through ITC-02 and not claimed as refund.

- ATIL approached the High Court contending that ARTIPL's registration continued till 29.11.2024 and that Section 18(3) of the CGST Act permitted partial transfer of ITC, allowing retention and refund of the balance credit.
- The core issue before the court was whether, after amalgamation, the transferor company could transfer part of the unutilised ITC through ITC-02 and claim refund of the remaining ITC under Section 54(3) of the CGST Act.

Held:

- The High Court observed Section 87(2) of the CGST Act, which begins with a non-obstante clause. The Court held that once an amalgamation is sanctioned, the amalgamating companies are treated as distinct persons only up to the date of the order, and their registrations are required to be cancelled from that date. This provision overrides any argument that the transferor can continue to act independently beyond the effective date of amalgamation.
- The Court further held that FORM GST ITC-02 is the only mechanism provided under the law for transfer of unutilised ITC in cases of amalgamation. Section 18(3) of the CGST Act and Rule 41 of the CGST Rules refer to transfer of "the unutilised input tax credit" and do not permit splitting the credit between transfer and refund. Once ARTIPL chose to transfer ITC under ITC-02, it could not retain part of the credit and seek refund separately.
- The Court clarified that although the ITC arose from exports made by ARTIPL, after amalgamation, the benefit of such credit could pass to ATIL only through complete transfer under ITC-02. Since ATIL itself had not made the exports, it could not independently claim refund under Section 54(3) of the CGST Act.
- The Court also observed that both the assessee and the authorities failed to strictly follow the statutory scheme, particularly regarding cancellation of registration. Applying the doctrine of pari delicto (where both parties are at fault), the Court declined to grant relief.
- Accordingly, the writ petitions were dismissed, and the denial of refund was upheld.

TATTVAM COMMENTS:

- The judgment makes it clear that after amalgamation, ITC cannot be divided between transfer and refund, and it must be entirely transferred through ITC-02.
- It stresses strict compliance with the statutory scheme governing amalgamations and ITC transfer.
- The ruling serves as a warning that improper handling of ITC during restructuring may lead to permanent loss of credit.

(q) Grant of regular bail is appropriate where the maximum sentence for GST related offences is five years, the possibility of compounding exists under Section 138.

[Vinod Chandra Sahay v. State of Madhya Pradesh, [2026] (1) TMI 1070 (Madhya Pradesh)]

Facts:

- The applicant was accused of being part of a conspiracy involving the creation of multiple bogus firms to generate fake GST returns and fraudulently utilize Input Tax Credit (ITC).
- It was alleged that the accused misused the documents and OTPs of an unsuspecting agriculturist to register these firms, resulting in a wrongful loss of approximately Rs 33.80 Crores to the State exchequer.
- The applicant was in custody from July 2, 2025, facing charges under various sections of the IPC (120-B, 409, 420, etc.) and the IT Act, while the primary allegations fell under Section 132 of the CGST Act.
- Issue in the case was whether the applicant was entitled to regular bail given that the GST Act is a special statute and a complete code, and whether the mandatory procedure of obtaining previous sanction from the Commissioner under Section 132(6) of the CGST Act was followed.

Held:

- The Court noted that for GST offences involving amounts exceeding Rs 5 Crores, the maximum sentence is five years. Furthermore, it noted the

provision for compounding of offences under Section 138, suggesting that the possibility of a settlement cannot be ruled out.

- It was observed that the GST Act is a special legislation; authorities cannot bypass its procedural safeguards (like the Section 132(6) sanction requirement) by simply invoking IPC provisions
- The application was allowed, and the applicant was released on bail subject to a personal bond of Rs 5,00,000, surrender of passport, and a requirement to share his live location (Google Map PIN) with the investigating officer.

TATTVAM COMMENTS:

- It balances the seriousness of alleged economic offences against the right to liberty, granting bail where custodial interrogation is unnecessary, the maximum sentence is limited, and prolonged detention harms the accused's livelihood.

(r) Summary of DRC-01 Is Not a Substitute for a Proper Show Cause Notice under Section 73 – Order Quashed for Lack of Authentication and Hearing

[Md. Shoriful Islam Versus the State of Assam– 2026 (2) TMI 507 - GAUHATI HIGH COURT]

Facts:

- The petitioner was issued a Summary of Show Cause Notice (SCN) dated 02.05.2024 in Form GST DRC-01.
- The DRC-01 mentioned that a Show Cause Notice was attached. However, the attachment only contained determination of tax details, and:
- It did not specifically require the petitioner to "show cause". It did not bear the signature or digital authentication of the Proper Officer.
- No separate proper Show Cause Notice under Section 73(1) was issued. The petitioner did not file a reply because there was no valid SCN attached.

- Subsequently, an Order dated 29.08.2024 was passed in Form GST DRC-07, stating, since no reply was filed, it was presumed that the taxpayer agreed with the notice.
- The attachment to DRC-07, also did not contain any digital signature or authentication of the Proper Officer. The petitioner had opted for personal hearing in Form GST DRC-06, but no opportunity of hearing was granted. The petitioner's bank accounts were frozen pursuant to the impugned order. Being aggrieved, the petitioner filed the writ petition.

Held:

- The Summary of Show Cause Notice issued in Form GST DRC-01 is not a substitute for a proper Show Cause Notice required under Section 73(1) of the CGST/AGST Act.
- The attachment containing determination of tax cannot be treated as a valid Show Cause Notice under Section 73(1).
- Issuance of a proper Show Cause Notice by the Proper Officer is a mandatory requirement before initiating proceedings under Section 73.
- Notices, statements, and orders must be duly authenticated by the Proper Officer in terms of Rule 26(3); absence of signature or proper authentication renders them invalid.
- Failure to grant personal hearing, despite the petitioner opting for it, violates Section 75(4) and the principles of natural justice.
- The impugned order dated 29.08.2024 was set aside and quashed.
- Liberty was granted to the department to initiate de novo proceedings in accordance with law, and the petitioner's bank accounts were directed to be de-freeze.

TATTVAM COMMENTS:

- Summary in DRC-01 cannot substitute a mandatory Show Cause Notice under Section 73(1).
- Statement of tax determination under Section 73(3) is distinct and cannot be treated as SCN.
- Lack of authentication by the Proper Officer renders proceedings invalid.
- Non-grant of personal hearing violates Section 75(4) and vitiates the order.
- Order quashed with liberty for fresh proceedings and direction to de-freeze bank accounts.

GSTAT

(s) Profiteering confirmed on invoice-wise base price comparison; no interest or penalty leviable retrospectively under Rule 133(3)(c) and Section 171(3A).

[DG Anti-Profiteering v. C.G. Foods, 2026 (2) TMI 273 - GSTAT NEW DELHI]

Facts:

- The proceedings arose from a DGAP investigation under Section 171 of the CGST Act alleging non-passing of GST rate reduction benefit on instant noodles (HSN 1902).
- The GST rate on instant noodles was reduced from 18% to 12% w.e.f. 15.11.2017 vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017.
- The Respondent, a manufacturer of instant noodles, revised its prices w.e.f. 16.11.2017, citing increase in raw material costs (wheat flour, palm oil, seasoning), packaging costs, diesel and freight expenses.
- The DGAP conducted invoice-wise comparison of average base prices during the pre-rate reduction period (01.11.2017 to 14.11.2017) with actual base prices charged in the post-rate reduction period (15.11.2017 to 31.12.2018). It was found that the Respondent increased base prices of several SKUs

contemporaneously with GST rate reduction, thereby neutralising the tax benefit.

- The matter was placed before the GSTAT for consideration of the DGAP Report.

Held:

- While relying on ***Reckitt Benckiser India Private Limited v. Union of India*** *in the W.P. (C) 7743/2019*, the Hon'ble Tribunal held that though suppliers may revise base prices, increase coinciding with tax reduction must be justified by cogent evidence.
- However, the Respondent failed to establish that the GST rate reduction benefit was fully absorbed by contemporaneous cost escalation, and it was directed to deposit the profiteered amount in the Consumer Welfare Fund of the Centre and States equally.
- Further, the invoice-wise base price comparison adopted by DGAP was upheld, and profiteering of ₹90,90,310/- for the period 15.11.2017 to 31.12.2018 was confirmed.
- However, interest under Rule 133(3)(c) (18% on profiteered amount) was held to be inapplicable, as the provision came into force only w.e.f. 28.06.2019.
- The GSTAT relied upon on the Constitution Bench judgment in ***Commissioner of Income Tax (Central)-I v. Vatika Township Pvt. Ltd.,*** the Hon'ble Tribunal held that fiscal provisions imposing additional liability cannot operate retrospectively unless expressly provided.
- Similarly, penalty under Section 171(3A), which came into force w.e.f. 01.01.2020, could not be imposed retrospectively for violations during 15.11.2017 to 31.12.2018.

TATTVAM COMMENTS:

- The decision clarifies that the presumption under Section 171 is rebuttable, but the burden lies on the supplier to demonstrate cogent and contemporaneous cost justification.

- Important precedent on non-retroactive application of interest and penalty provisions in anti-profiteering matters.

(t) Profiteering in construction services and failure to pass on the benefit of input tax credit through commensurate reduction in price which is a violation of section 171 of the CGST Act.

[DGAP Vs. Arkade Developers Private Limited NAPA/131/PB/2026]

Facts:

- That a complaint was filed by Shri Pratik Poojary alleging profiteering in the Respondents project *'Arkade Earth- Bluebell'* (Mumbai) on the ground that builder failed to pass on Input Tax Credit (ITC) benefits through commensurate price reduction as held mandatory under the provisions of section 171 of the CGST Act.
- Furthermore, the standing committee on Anti- profiteering found a prima facie case of Profiteering and referred the matter to Director general of Anti Profiteering (DGAP)
- The respondent furnished various documentary evidence such as GST fillings, ledgers, sale agreements, RERA fillings, bank statements etc.

Held:

- In the present facts and circumstances of the case, the Hon'ble GSTAT, New Delhi observed and held that: -
- DGAP's computation showed an incremental ITC benefit of 4.92%, total savings Rs. 1,05,71,445 while translating to Rs. 263.78 per sq. ft. Applicant's unit benefit computed at Rs. 1,37,672 (incl. GST).
- Respondent provided proof of passing benefit which reflected that cheque of Rs. 1,40,732 issued and the same has been paid to the Applicant, bank transfer confirmed, along with Applicant's signed acknowledgement. Therefore, the amount passed on, exceeded the amount of liability on account of ani-profiteering by Rs. 3,060.

- In light of the above the Tribunal categorically held that while profiteering of Rs. 1,37,672 did initially arise, the Respondent's voluntary act of passing on Rs. 1,40,732 which exceeds the computed liability — constitutes full and fair discharge of obligations under Section 171 of the CGST Act. This establishes that voluntary compliance, backed by documentary proof, extinguishes liability and closes proceedings.
- The Respondent submitted an unqualified acceptance of the DGAP's report (03.12.2025), thereby acknowledging the computation and its discharge.
- **The Tribunal observed that profiteering did arise but was fully discharged, with the Respondent acting prudently and even overpaying the benefit.** Consequently, no contravention of Section 171 of the CGST Act was established.
- Final Order passed by the Tribunal (20.01.2026): The DGAP's report was accepted in entirety; proceedings against Arkade Developers were closed; and the Respondent was held to have satisfied the statutory mandate under Section 171 of the CGST Act.

TATTVAM COMMENTS:

- In line with the Delhi High Court's ruling in Reckitt Benckiser India Pvt. Ltd. v. UOI, the DGAP applied the area-based computation method rather than the ITC-to-turnover ratio. This judgment confirms that area-based methodology is now the accepted standard in real estate profiteering cases, ensuring uniform benefit distribution per square foot.
- This case highlights that over-payment of benefit, even marginally, reflects prudence and strengthens the Respondent's position. For developers and corporates, the lesson is clear: proactive discharge of liability, coupled with acceptance of DGAP's findings, is a strategic route to resolution and reputational protection.

Authority of Advance Ruling

(u) ITC on Food & Beverages Admissible When Used as Element of Composite Event Management Supply

[Re: M/s. Citius Holidays Private Limited, 2026 (1) TMI 1277 – AAR, West Bengal]

Facts:

- The applicant, M/s. Citius Holidays Private Limited, is engaged in event management and tourism services for corporate clients. Its services include booking of hotels, conference halls, arranging accommodation and providing food & beverages as part of a comprehensive business event package.
- Hotels supply bundled services such as room accommodation, conference facilities and food. Invoices are sometimes issued as itemized bills and sometimes as consolidated "conference packages." The applicant raises a consolidated invoice on its clients for event management services and sought advance ruling on:
  - ✓ Eligibility of ITC on food & beverages under Section 17(5)(b)(i).
  - ✓ Whether separate invoices for food are mandatory.
  - ✓ ITC eligibility where food is re-invoiced with margin
  - ✓ ITC in case of consolidated or inseparable hotel packages.

Held:

- Event management services provided by the applicant qualify as a composite supply under Section 2(30) of the CGST Act, wherein event management is the principal supply and food, accommodation, conference facilities etc. are ancillary supplies.
- ITC on food and beverages is admissible in terms of the proviso to Section 17(5)(b)(i), since such inward supplies are used as an element of outward taxable composite supply of event management services.
- A separate invoice for food and beverages is not mandatory. A single consolidated invoice issued by the hotel is sufficient for availing ITC, subject to fulfilment of conditions prescribed under Section 16 of the CGST Act.
- Where food and beverage charges are invoiced separately by the hotel and subsequently re-invoiced to the client with a margin, ITC remains available, as the supply continues to form part of outward taxable composite supply.

- In cases where the hotel issues a consolidated invoice under a single head such as "conference package" or bundled room + hall + food services, ITC is admissible on the entire invoice value.

TATTVAM COMMENTS:

- The ruling reinforces that the proviso to Section 17(5)(b)(i) operates as a substantive exception, allowing ITC on food and beverages when used as part of a taxable composite supply of event management services.
- The Authority has clarified that procedural aspects such as absence of separate invoices do not defeat substantive ITC eligibility when statutory conditions are fulfilled.
- The ruling underscores the commercial principle that re-invoicing with margin does not alter the character of supply or impact credit entitlement.
- Overall, the ruling adopts a purposive interpretation of GST law and provides clarity for businesses engaged in event management.

s

TATTVAM

CONTACT US

A-17, Pushpanjali Enclave, New Delhi - 110034

Oahfeo Workspaces, Building No 618P, Durga Colony, Sector 39, Gurugram, Haryana 122002

501, Sheetal Enclave, Mindspace, Nr. Tangent Showroom, Off New Link Road, Malad (W), Mumbai - 400064

+91 11 4904 0239

tushar.aggarwal@tattvamgroup.in