



**March 2026**

**Newsletter**

**(1st March to 31st March 2026)**

# Legal Zine

*A digest of important judgments and rulings*



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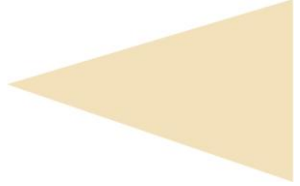
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## INDEX

(a) GSTAT possesses inherent and incidental power to grant interim relief, including stay of recovery during pendency of appeal. ....	5
(b) Payment of penalty under protest does not extinguish the right to challenge demand under GST law. ....	7
(c) Challenge to show cause notice at pre-adjudication stage not maintainable; adjudicating authority must grant cross-examination and rebuttal opportunity. .	9
(d) Coercive recovery via garnishee notice set aside; opportunity granted to submit documents for reconsideration of alleged tax mismatch due to deferred credit note reporting. ....	11
(e) Imposition of penalty under Section 129(1)(a) where no tax is payable on zero-rated export – procedural lapse without intent to evade tax. ....	13
(f) General penalty under Section 125 dropped where late fee already imposed for same tax period. ....	15
(g) Denial of access to seized documents vitiates adjudication; impugned order treated as additional show cause notice. ....	16
(h) Rule 39(1)(a) requiring distribution of ITC in the same month is valid when interpreted to mean distribution only of ITC that is legally available upon fulfilment of conditions under Section 16(2). ....	18
(i) Crossing Limitation Period for GST Appeal Cannot Defeat Substantive Right – Delay Condoned in Genuine Cases. ....	21
(j) Penalty under section 122(1A) of the CGST Act, cannot be imposed on employees who are not "taxable persons" and the said provision applies only to those who retain benefit of transaction at whose instance it is conducted. ....	23
(k) Tariff petition fee and licence fee collected by State Electricity Regulatory Commission is not 'consideration' for 'supply'; GST levy quashed. ....	26
(l) Whether hookah (tobacco and non-tobacco) served in the restaurant shall be termed as supply of goods or services?.....	29
(m) Corporate card rebates on excise duty payments escape GST, as they are merely financial adjustments and not consideration for any supply. ....	30
(n) Emergency care and life support training courses conducted by a charitable trust held taxable at 18% as commercial training and coaching services; not eligible for exemption as charitable activities or educational services. ....	32
(o) Supply of water by RWA forms part of composite supply of services and is not exempt under Entry 99 of Notification No. 2/2017-Central Tax (Rate).....	35
(p) Printing of examination question papers supplied to universities is exempt from GST under Sl. No. 66(b)(iv) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended. ....	37
(q) Pure labour services for construction of single standalone residential dwelling units (not part of a residential complex) are exempt from GST under Entry No. 11 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended. ....	39
(r) Construction of villas under Joint Development Agreement (JDA) with	



outsourcing to contractor constitutes taxable service; classification under Heading 9954(ia) at 7.5% GST with 1/3rd land deduction..... 41

## JUDICIAL PRONOUNCEMENTS

### SUPREME COURT AND HIGH COURT

**(a) GSTAT possesses inherent and incidental power to grant interim relief, including stay of recovery during pendency of appeal.**

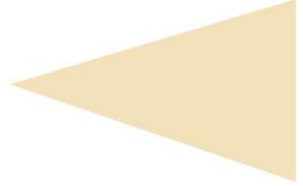
***[Hongkong and Shanghai Banking Corporation Ltd. v. State of Maharashtra, (2026) 40 Centax 54 (Bom.)]***

#### **Facts:**

- Order-in-Original dated 18.12.2023 was issued in the case of the Petitioner confirming GST liability. The first appeal filed by the Petitioner was rejected vide Order-in-Appeal dated 12.06.2024. Aggrieved, the Petitioner filed an appeal before the GSTAT on 05.02.2026.
- During the pendency of the appeal:
  - ✓ The Department issued demand intimations vide emails dated 03.02.2026 and 06.02.2026.
  - ✓ A Recovery Notice dated 06.02.2026 was also issued.
- The Petitioner informed the Department that:
  - ✓ The demand amount had been deposited/adjusted through Form GST DRC-03A.
  - ✓ The appeal was pending before the GSTAT.
- The Petitioner filed a writ petition before the Bombay High Court seeking quashing of demand intimations and recovery notice. Further, the petitioner sought impose interim stay on recovery proceedings till the disposal of the writ petition.

#### **Issue:**

Whether the Appellate Tribunal has jurisdiction to pass interim orders including stay of recovery pending disposal of appeals?



**Held:**

- The Hon'ble Bombay High Court held that GSTAT possesses inherent and incidental powers to grant interim relief, including stay of recovery during pendency of appeal.
- On conjoint reading of Sections 111 and 113 of the CGST Act, it was noted:
  - ✓ Section 111 confers powers akin to a civil court and procedural autonomy.
  - ✓ Section 113 empowers the Tribunal to pass such orders "as it thinks fit".
- The Hon'ble Court further held that:
  - ✓ The scope of appellate powers was wide and it necessarily includes incidental powers to grant interim relief.
  - ✓ Absence of an express provision for stay does not negate such inherent power.
  - ✓ Without such power, the appellate remedy would become illusory and defeat legislative intent.
- The Hon'ble High Court also relied on the Supreme Court decision in *ITO v. M.K. Mohammed Kunhi 1968 SCC OnLine SC 71*, wherein it was held that appellate authorities inherently possess powers necessary to make their jurisdiction effective, including grant of stay.
- Reference was also made to GSTAT (Procedure) Rules, 2025 (Notification No. GSR 256(E)):
  - ✓ Recognizing inherent powers of Tribunal.
  - ✓ Providing for filing of interlocutory applications including stay.
- Finally, it was held that the Petitioner ought to approach the GSTAT for interim relief and High Court cannot be converted into a forum for interim relief when appellate remedy exists.
- As the GSTAT portal does not provide for filing of interim application as of now, the High Court allowed the Petitioner to file the application manually.

**TATTVAM COMMENTS:**

- This is a landmark procedural ruling clarifying that GSTAT has extensive powers and can grant interim stay of recovery, despite absence of an explicit statutory provision.
- The ruling limits filing of writ petitions before High Courts where remedy can be sought from GSTAT, reinforcing the doctrine of alternative remedy.

**(b) Payment of penalty under protest does not extinguish the right to challenge demand under GST law.**

***[M/s. Deutsche Cars Pvt. Ltd. v. State of Haryana & Ors.,  
2026 (2) TMI 823 – Punjab and Haryana High Court]***

**Facts:**

- The Petitioner, M/s. Deutsche Cars Pvt. Ltd., was an automobile dealer and was registered under GST in Delhi. The Petitioner had sent one car for the purpose of its exhibition/display at its Faridabad Branch.
- During the course of transit, the goods being transported by the Petitioner were intercepted by the GST authorities. Upon inspection, the authorities alleged discrepancies in the accompanying documents and initiated proceedings under Section 129 of the CGST Act, 2017.
- In order to secure the release of the detained goods and avoid further disruption to its business operations, the Petitioner deposited the penalty amount as demanded by the authorities. However, such payment was explicitly made under protest.
- In the SCN issued to the Petitioner, a specific date was provided for filing of reply and personal hearing. However, the order confirming penalty was passed before the said date of the hearing.
- Subsequently, the Petitioner challenged the legality of the order confirming the penalty, contending that the demand was arbitrary and not in accordance with law. The Department opposed the challenge, arguing that once the

penalty had been paid, the Petitioner had effectively accepted the demand and was precluded from contesting the same under Section 129(5) of the Act.

**Issue:**

Whether payment of penalty under protest under Section 129 of the CGST Act amounts to acceptance of liability and bars the taxpayer from subsequently challenging the demand?

**Held:**

- The Hon'ble Punjab and Haryana High Court held that payment of penalty under protest does not amount to acceptance of liability, nor does it extinguish the taxpayer's statutory right to challenge the demand.
- The Court observed that Section 129(5) of the CGST Act, which provides that proceedings shall be deemed to be concluded upon payment of penalty, cannot be interpreted in a manner that defeats the fundamental right of a person to seek legal remedy against an unlawful demand.
- It was further held that payments made under protest are inherently conditional and cannot be construed as voluntary acceptance of the allegations or waiver of legal rights.
- The Court emphasized that a taxpayer, compelled by business exigencies to secure release of goods, cannot be deprived of the right to question the validity of the proceedings at a later stage.
- Accordingly, the Court allowed the writ petition and held that the Petitioner was entitled to challenge the penalty despite having made payment under protest.

**TATTVAM COMMENTS:**

- This judgment reinforces the settled legal principle that payment under protest preserves the right to challenge a demand, even in proceedings under Section 129 of the CGST Act. The earlier Supreme Court ruling in the case of ASP Traders, was relied upon wherein it was held that mere payment

by assessee does not absolve Proper Officer of his responsibility to pass an order justifying demand of tax and penalty.

- The ruling provides significant relief to taxpayers who, due to practical business constraints, are compelled to deposit penalties to secure release of goods during transit.
- It clarifies that Section 129(5) cannot be applied mechanically to bar judicial remedies, especially where the payment is not voluntary but made under compulsion.
- The decision also upholds the broader principle that statutory provisions must be interpreted in a manner consistent with access to justice and fairness.
- From a practical standpoint, taxpayers should ensure that any such payments are clearly recorded as being made “under protest” to safeguard their right to contest the demand subsequently.

**(c) Challenge to show cause notice at pre-adjudication stage not maintainable; adjudicating authority must grant cross-examination and rebuttal opportunity.**

***[M/s Ishan Industries v. Director Directorate General of GST Intelligence and Another, 2026 (2) TMI 224 - Allahabad High Court]***

**Facts:**

- The petitioner filed a writ petition challenging a show cause notice dated 24.09.2025 issued under Section 74(1) of the CGST Act, 2017 for the tax period April 2019 to January 2024, alleging tax evasion.
- The petitioner claimed that it had filed regular returns and availed refunds under the inverted tax structure, which were duly granted. One refund was denied, leading to an earlier writ petition which was pending.
- The petitioner argued that the adjudication proceedings were frivolous and aimed at defeating its refund claims. It contended that there was no

documentary evidence doubting its supplies, and that a search was conducted at a third party's (Vijay Agrawal) premises, not at the petitioner's.

- The Revenue contended that recipients to whom the petitioner claimed to have supplied Hand Pumps had disputed the supplies, and the transactions appeared to be sham, justifying the show cause notice.

**Issue:**

Whether interim judicial interference should be granted to quash or suspend the show cause notice issued under Section 74(1) of the Central Goods and Services Tax Act, 2017?

**Held:**

- The Allahabad High Court observed that the writ petition was filed at the very initiation of adjudication proceedings, and no final conclusion had been drawn by the adjudicating authority.
- The Court instructed that the petitioner may not be compelled to deposit any proposed amount before adjudication, as it has disputed the show cause notice.
- Regarding the statements of recipients recorded during investigation, the Court held that if the Revenue seeks to rely on such witnesses, the petitioner must be given adequate opportunity to cross-examine them before any adverse inference is drawn, ensuring compliance with rules of natural justice.
- As to other relied-upon documents (RUDs), the petitioner has the right to rebut their reliability and challenge any inferences drawn therefrom.
- Since the matter involved disputed facts requiring thorough examination on facts and law, the Court declined to interfere at this stage and disposed of the writ petition with the above observations.

**TATTVAM COMMENTS:**

- This judgment reinforces the principle that writ courts do not ordinarily interfere with show cause notices at the pre-adjudication stage, especially where disputed factual questions exist. It clarifies that the proper forum for testing evidence – including cross-examination of witnesses and rebuttal of documents – is before the adjudicating authority. The Court’s observations serve as a safeguard for assessees, ensuring that principles of natural justice (right to cross-examine and rebut) are mandatorily followed before any adverse order is passed under Section 74 of the CGST Act.

**(d) Coercive recovery via garnishee notice set aside; opportunity granted to submit documents for reconsideration of alleged tax mismatch due to deferred credit note reporting.**

***[(Wipro Limited v. State of Maharashtra & Ors., 2026 (3) TMI 244 - Bombay High Court]***

**Facts:**

- The petitioner, Wipro Limited, issued credit notes for supplies made during April 2021 – September 2022 and reported them in GSTR-1 during September – November 2022. However, the corresponding adjustment in outward liability was reflected later in GSTR-3B filed in July 2023.
- This timing difference triggered a system-based mismatch proceeding under Rule 88C of the CGST Rules, 2017, via Form DRC-01B, alleging a differential liability.
- Thereafter, the Revenue issued a recovery intimation in Form DRC-01D under Section 75(10) read with Section 79 of the CGST Act, 2017, and subsequently issued a garnishee notice to the petitioner’s banker (HSBC Bank) for freezing the bank account of the Petitioner.
- During the course of the investigation, the petitioner had furnished detailed replies explaining that the difference arose only due to timing of credit note adjustments and that the tax had been duly accounted for. The Department

had sent an email on 09.01.2025 to the Petitioner wherein the Petitioner was directed to submit certain documents.

- The Petitioner was in the process of submitting all the credit notes and other data, as required, however, before the same could be submitted, the Department initiated recovery proceedings in the nature of garnishee notice issued to the Petitioner's Bank.

**Issue:**

Whether the garnishee notice issued to the petitioner's bank and the resulting freezing of account should be withdrawn pending submission and review of documents against the disputed GST demand?

**Held:**

- The Bombay High Court observed that the petitioner had already furnished explanations and was a reputed entity with no apprehension of tax evasion. The amounts involved were not so large as to warrant freezing of bank accounts without proper consideration of the petitioner's submissions.
- The Court directed that the garnishee notice dated 3rd February 2026 issued to HSBC Bank be withdrawn forthwith, and the petitioner be allowed to operate its bank account.
- The petitioner was granted ten days to submit all required documents/material to the Department.
- Respondent No.2 was directed to examine the documents and take an appropriate view on the recovery within one month from the date of submission, after giving an opportunity of clarification or hearing if required.

**TATTVAM COMMENTS:**

- This judgment underscores that coercive recovery measures like garnishee notices and freezing of bank account should not be resorted to mechanically, especially where the assessee has provided plausible explanations and is a creditworthy entity. The Court balanced the Revenue's interest in recovery with the principles of natural justice by granting a final opportunity to submit documents and directing reconsideration of the matter on merits. It also affirms that minor delays in responding to notices may be condoned when the assessee demonstrates bona fides and readiness to cooperate during the proceedings.

**(e) Imposition of penalty under Section 129(1)(a) where no tax is payable on zero-rated export – procedural lapse without intent to evade tax.**

***[Balkrishna Industries Limited v. Union of India & Ors.,  
2026 (3) TMI 79 (Gujarat High Court)]***

**Facts:**

- The petitioner sought to export goods (zero-rated supply) and during transit the E-way bill expired due to a vehicle breakdown, shortly before interception of the vehicle.
- A penalty of ₹18,00,140 was imposed under Section 129(1)(a) of the CGST Act for expiry of the E-way bill.
- The petitioner challenged the penalty order and appellate order (Form GST APL-04), contending that:
  - The supply was zero-rated; hence no tax was payable.
  - The lapse was purely procedural and without any intent to evade tax.
  - Penalty under Section 129(1)(a) of the CGST Act cannot be imposed for expiry of an E-way bill in case of zero-rated export supplies, where no tax is payable.

- The lapse occurred due to bona fide reasons (vehicle breakdown) without intent to evade tax.

**Issue:**

Whether penalty under Section 129(1)(a) of the CGST Act, 2017 is imposable for expiry of an e-way bill in respect of exported (zero-rated) goods where no tax is payable and the e-way bill could not be extended due to conveyance breakdown.

**Held:**

- Export supplies are zero-rated, and though tax may be leviable, no tax is payable by the exporter.
- Violation of E-way bill provisions under rule 138 is procedural in nature.
- In absence of tax liability, penalty computation under Section 129 fails.
- The expiry of the E-way bill due to breakdown was a bona fide reason, and there was no intent to evade tax.
- The penalty imposed was harsh and unsustainable.
- The authorities were directed to refund ₹18,00,140 with interest within 12 weeks.

**TATTVAM COMMENTS:**

- This judgment reinforces that procedural lapses should not attract harsh penalties, especially in cases of zero-rated supplies.
- It emphasizes that GST penalties must be linked to tax liability and intent to evade.
- This ruling provides relief to exporters who often face practical issues during transit, ensuring that logistical delays do not result in disproportionate penalties.

(f) **General penalty under Section 125 dropped where late fee already imposed for same tax period.**

**[Prajith Enterprises v. State Tax Officer, Vellore, 2026  
(2) TMI 278 - Madras High Court]**

**Facts:**

- The petitioner challenged an assessment order in Form GST DRC 07 for the tax period 2021-2022, which imposed a late fee under Section 47(2) and a general penalty of ₹50,000 under Section 125 of the respective GST Enactments.
- Another assessment order dated 13.05.2025 was passed for the same tax period, also imposing a penalty of ₹50,000. The petitioner had already appealed against that order on 11.08.2025.
- The petitioner contended that imposing both a general penalty and a late fee for the same period was unsustainable, relying on the decision in ***Kandan Hardware Mart v. Asst. Commissioner (ST) (FAC)***

**Issue:**

Whether a general penalty under Section 125 of the CGST/TNGST Act can be imposed when a specific penalty in the form of late fee under Section 47 has already been levied for the same tax period and default?

**Held:**

- The Madras High Court, taking note that two assessment orders had been passed for the same tax period, disposed of the writ petition by dropping the general penalty of ₹50,000 under Section 125.
- The petitioner's liability was confined to the late fee of ₹1,67,200, which was directed to be paid within 30 days.
- Upon such payment, the impugned order dated 15.04.2025 was to stand quashed and recovery proceedings dropped.

- The Appellate Authority was directed to pass a final order on merits in the appeal against the other assessment order (dated 13.05.2025) within three months of the deposit.

#### **TATTVAM COMMENTS:**

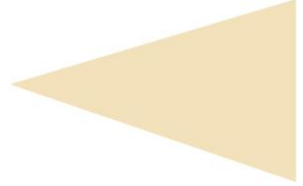
- This judgment clarifies that where a late fee is already levied for delayed filing of returns, a general penalty under Section 125 cannot be imposed for the same tax period. The Court followed the principle that a general penalty applies only in the absence of any other penalty under the GST Acts. By dropping the penalty and giving the assessee an opportunity to pay only the late fee, the decision balances revenue interest with fairness, avoiding double penalisation for the same default.

**(g) Denial of access to seized documents vitiates adjudication; impugned order treated as additional show cause notice.**

***[M/s. Priti Builders v. Deputy Commissioner of State Tax, 2026 (2) TMI 387 – Calcutta High Court]***

#### **Facts**

- Pursuant to a search conducted on 25 January 2024, the GST authorities seized books of accounts, documents and the CPU of the petitioner. An intimation under Section 74(5) alleging short payment of tax was issued, to which the petitioner responded requesting copies of seized documents and return of the CPU to enable proper defence.
- Despite repeated requests, the seized material was neither furnished nor returned. Thereafter, a show cause notice under Section 74(1) was issued and adjudication proceedings were undertaken.
- The petitioner reiterated its request for access to the material in its reply; however, the adjudicating authority passed the impugned order dated 18 December 2024 confirming the demand without providing the seized documents or granting an effective opportunity of hearing.

**Issue:**

Whether adjudication under Section 74 can be sustained when seized documents and electronic records are not made available to the taxpayer? Whether passing an order without affording a meaningful opportunity of hearing, especially after submission of a reply to the show cause notice, violates the principles of natural justice?

**Held:**

- The Calcutta High Court held that denial of access to seized documents and electronic records deprived the petitioner of a meaningful opportunity to participate in adjudication, amounting to a violation of principles of natural justice.
- It was observed that without access to the relied-upon material, the petitioner could neither effectively defend the proceedings nor prefer an appeal. Accordingly, the impugned order was directed to be treated as an additional show cause notice, with liberty provided to the petitioner to file a reply within two weeks of receipt of the seized material.
- The Court further directed the authorities to provide the seized documents and CPU within a stipulated timeline and to conclude the proceedings afresh after granting an opportunity of hearing to the petitioner. All issues were left open on merits.

**TATTVAM COMMENTS:**

- This ruling reinforces that access to relied-upon material is integral to the right of defence, and mere issuance of notice of hearing does not satisfy the principles of natural justice, if such access is denied.
- The judgment is significant in GST search cases, where authorities often proceed with adjudication without returning seized records to the assessee. The Court clarifies that such proceedings are fundamentally flawed.
- Notably, instead of quashing the proceedings, the Court adopts a balanced approach by downgrading the adjudication order to an additional show cause notice, thereby ensuring procedural fairness.
- The decision serves as a strong precedent to challenge Section 74 orders where documents forming the basis of allegations are not provided to the assessee and underscores that “meaningful opportunity” requires proper access to evidence.

**(h) Rule 39(1)(a) requiring distribution of ITC in the same month is valid when interpreted to mean distribution only of ITC that is legally available upon fulfilment of conditions under Section 16(2).**

***[Reliance Jio Infocomm Ltd. v. Union of India & Ors.,  
2026 (3) TMI 298 – Madras High Court]***

**Facts:**

- The Petitioner was engaged in providing telecommunication services and had multiple GST registrations across States/UTs, with a centralized Input Service Distributor (ISD) registration for distribution of input tax credit (ITC).
- The Petitioner had distributed ITC through ISD invoices in calendar months later than the months in which the underlying input service invoices were issued. Accordingly, in pursuance of the audit proceedings, a Show Cause Notice was issued to the Petitioner.

- Aggrieved, the Petitioner filed the writ petition before the Hon'ble Madras High Court, challenging the validity of Rule 39(1)(a) of the CGST Rules, which mandates that ITC available for distribution in a month shall be distributed in the same month, contending that such requirement is arbitrary and ultra vires the CGST Act.
- It was contended that requiring ITC distribution in the same month as invoice receipt, without regard to whether the credit had legally become available, was:
  - ✓ ultra vires Section 20 of the CGST Act for the pre-01.04.2025 period, and
  - ✓ manifestly arbitrary and violative of Article 14 of the Constitution for both periods.
- The department contended that Rule 39(1)(a) is clearly worded and ITC 'available for distribution in a month' must be distributed in that month. The rule assists in proper tracking and real-time credit availment of credit. The ISD mechanism is an internal distribution mechanism within branches of the same entity. It does not involve fresh availment of ITC, it distributes credit already received by the head office. Further, it was also contended that rule is intra vires the parent Act and has a rational nexus to the objective of maintaining accurate monthly credit records and there was no violation of Article 14.

**Issue:**

Whether Rule 39(1)(a) of the CGST Rules, mandating that input tax credit (ITC) available for distribution in a month must be distributed in the same month, is ultra vires Section 20 of the CGST Act and violative of Article 14 of the Constitution, particularly when ITC has not yet become legally available under Section 16(2) of the CGST Act?

**Held:**

- The Hon'ble Madras High Court examined the interplay between Sections 16 and 20 of the CGST Act and the distinction between receipt of an invoice and availability of ITC. The Court categorically held that a tax invoice, upon its receipt by the ISD, does not automatically create an entitlement to

ITC. Credit becomes available and therefore distributable only when all conditions prescribed under Section 16(2) of the CGST Act are satisfied.

- The Court observed that language of Section 20 of the CGST Act which uses the term 'credit' not 'invoice' as the subject of distribution. The Court held that this legislative choice is deliberate. The ISD distributes ITC, not invoice documents. Therefore, the trigger for distribution is the availability of credit upon fulfilment of conditions under Section 16 of the CGST Act, not the mere receipt of an invoice.
- The Court applied the principle of harmonious and purposive construction and held that Rule 39(1)(a) must be read in consonance with Sections 16 and 20 of the CGST Act. If read in isolation, it will result in distribution of credit that has not yet legally accrued.
- In view of the above findings, the court noted that the present case was not a case where Rule 39(1)(a) of the Rules was required to be declared ultra vires the enabling Act and did not answer the said question
- Accordingly, the Court directed that the show cause notices alleging delayed distribution be adjudicated afresh, applying the interpretation laid down in the judgment, and granted liberty to the Petitioners to file replies where not already filed.

#### **TATTVAM COMMENTS:**

- The ruling of the Madras High Court adopts a balanced and interpretative approach by upholding Rule 39(1)(a) while reading it down to align with Sections 16 and 20, thereby ensuring that distribution is linked to legally available ITC rather than mere invoice receipt.
- However, it is significant that the Telangana High Court, in in the case of M/s. BirlaNu Ltd., Versus Union of India, 2026 (1) TMI 894, has taken a more stringent view by striking down Rule 39(1)(a) to the extent it mandates same-month distribution, holding that Section 20 did not empower prescription of any such time limit.

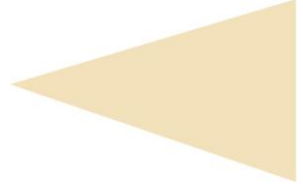
- While the Madras High Court preserves the rule through harmonious construction, the Telangana High Court emphasizes strict adherence to legislative competence, reinforcing that rule-making power cannot override or supplement substantive conditions absent clear authorization in the parent statute.
- From a practical standpoint, both rulings converge on a key principle that ITC distribution cannot be mechanically enforced in the same month without considering eligibility under Section 16(2), thereby protecting taxpayers from premature or erroneous distribution leading to reversal, interest and penalty exposure.
- The conflicting views are likely to lead to uncertainty and potential Supreme Court intervention, and taxpayers may rely on these judgments to argue that ISD distribution timelines are directory rather than mandatory.

**(i) Crossing Limitation Period for GST Appeal Cannot Defeat Substantive Right – Delay Condoned in Genuine Cases.**

***[M/s M.R. Traders v. Union of India & Others, 2026 (2) TMI 99 – Rajasthan High Court]***

**Facts:**

- The GST registration of the Petitioner, M/s M.R. Traders, was cancelled, which adversely impacted its business operations.
- Aggrieved by the cancellation, the Petitioner intended to file an appeal under Section 107 of the CGST Act, 2017. However, the appeal was filed beyond the prescribed limitation period due to negligence and omission on the part of the Petitioner’s accountant/consultant.
- The appellate authority rejected the appeal solely on the ground that it was time-barred and beyond the condonable period prescribed under the statute.
- The Petitioner thereafter approached the High Court under Article 226 of the Constitution of India, seeking relief against the rejection of appeal and restoration of the opportunity to contest the matter.

**Issue:**

Whether the High Court, in exercise of its constitutional jurisdiction under Article 226, can condone delay in filing a statutory appeal beyond the outer limit prescribed by Section 107(4) of the CGST Act, 2017?

**Held:**

- The Rajasthan High Court held that the right to appeal is a valuable statutory right and should not be defeated on account of technical or procedural lapses.
- It was observed that the delay in filing the appeal occurred due to the fault of the professional engaged by the Petitioner, and a litigant should not suffer for the mistake of counsel or accountant.
- The Court emphasized that strict adherence to limitation provisions should not result in denial of substantive justice, especially when no malafide intent is involved.
- It was further held that procedural laws are meant to advance justice and not to defeat it, and therefore, a liberal approach should be adopted in cases involving genuine hardship.
- The Court also recognized that cancellation of GST registration severely impacts the Petitioner's right to carry on business and livelihood, thereby attracting considerations under Articles 14 and 21 of the Constitution.
- The High Court held that it has the power under Article 226 to grant relief even where the statutory limitation period has expired, in order to prevent miscarriage of justice.
- Accordingly, the delay in filing the appeal was condoned, and the Petitioner was allowed to avail the appellate remedy subject to compliance with statutory requirements.

**TATTVAM COMMENTS:**

- This judgment reinforces that procedural limitations under GST law should not override substantive rights, particularly the right to appeal. It upholds the settled legal principle that a taxpayer should not be penalized for the mistakes or negligence of professionals.
- The ruling highlights the importance of adopting a justice-oriented approach rather than a strictly technical interpretation of limitation provisions. It also emphasizes that denial of appeal or cancellation of registration can have serious consequences on business continuity and livelihood, warranting judicial intervention.
- The decision strengthens the principle that High Courts can exercise writ jurisdiction to remedy genuine hardship and ensure fairness, even in cases involving statutory time limits. Overall, the judgment promotes a taxpayer-friendly approach and aligns with the objective of GST as a facilitative and compliance-driven regime.

**(j) Penalty under section 122(1A) of the CGST Act, cannot be imposed on employees who are not "taxable persons" and the said provision applies only to those who retain benefit of transaction at whose instance it is conducted.**

***[Amit Manilal Haria & Ors. v. The Joint Commissioner, CGST & Central Excise & Anr., 2026-VIL-196-BOM]***

**Facts:**

- The petitioners are individuals who served as the Chief Financial Officer, Chief Executive Officer, and Director & Joint Managing Director of M/s. Shemaroo Entertainment Ltd. (the Company). Search and investigation was initiated against the Company regarding alleged wrongful availment and utilisation of Input Tax Credit (ITC).
- During the investigation, summons were issued to the petitioners, their statements were recorded, and they were arrested (later granted bail).

- Separate show cause notices dated 2 August 2024 were issued to the petitioners under Section 122(1A) of the CGST Act, proposing penalty for the period FY 2017-18 to FY 2021-22.
- The petitioners filed replies, relying on the ***Bombay High Court decision in Shantanu Sanjay Hundekari v. Union of India (against which SLP was dismissed by Supreme Court)***, contending that Section 122(1A) cannot be invoked against employees who are not "taxable persons."
- Notwithstanding their objections, the Joint Commissioner passed an Order-in-Original dated 1 February 2025, imposing a penalty of Rs. 133,60,60,889/- on each petitioner (aggregating to over Rs. 400 crores) under Section 122(1A).
- Aggrieved, the petitioners filed the present writ petition challenging the show cause notices and the above order.

**Issue:**

Whether the penalty under Section 122(1A) can be retrospectively applied for the period prior to 1st January 2021 and whether the petitioners, being executive employees of the company, can be held liable to pay penalty under Section 122(1A)?

**Held:**

- The Hon'ble Bombay High Court allowed the writ petition, holding that the show cause notices and the impugned order imposing penalty on the petitioners under Section 122(1A) are without jurisdiction and illegal.
- The Court analyzed Section 122, noting that sub-section (1) applies to a "taxable person" as defined under Section 2(107) (a person registered or liable to be registered).
- Sub-section (1A) provides that "any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted" shall be liable to penalty.

- The Court held that the legislative intent of sub-section (1A) is clear: it applies only to a person who (a) retains the benefit of the specified transactions, and (b) at whose instance such transactions are conducted. These conditions must be read conjointly with clauses (i), (ii), (vii), and (ix) of sub-section (1), which themselves apply to a "taxable person."
- Therefore, it was held that the expression "any person" in sub-section (1A) must be understood in the context of a "taxable person". A mere employee, who is not a registered person under the Act and does not retain any personal benefit from the transactions, cannot be brought within the purview of Section 122(1A).
- The Court applied its earlier decision in ***Shantanu Sanjay Hundekari v. Union of India***, which had quashed similar proceedings against employees, and which was affirmed by the Supreme Court in *Union of India v. Shantanu Sanjay Hundekari*. The ratio of that decision squarely applies to the present case.
- The Court also held that applying Section 122(1A) of the CGST Act for the period prior to its insertion (i.e., before 1 January 2021) is violative of Article 20(1) of the Constitution, which prohibits penalizing a person under a law not in force at the time of commission of the alleged act.
- The impugned show cause notices and the Order-in-Original were quashed and set aside in their entirety insofar as they relate to the petitioners.

#### TATTVAM COMMENTS:

- This judgment is a significant affirmation of the limits of vicarious liability under GST. It clarifies that penal provisions under Section 122(1A) cannot be mechanically invoked against directors, officers, or employees of a company merely because they hold responsible positions.
- The ruling reinforces that to attract Section 122(1A), the Revenue must establish two essential elements: (i) retention of benefit by the person, and

(ii) the transaction being conducted at their instance. Both must be proved with material, and the person must be a "taxable person" under the Act.

- The decision also underscores the constitutional protection under Article 20(1) against retrospective application of penal provisions. Penalties cannot be imposed for periods prior to the insertion of a provision unless the statute expressly provides for retrospective operation.
- This judgment provides strong protection to professionals and employees who are dragged into tax disputes merely by virtue of their employment. It reinforces the principle that corporate veils cannot be pierced for imposing personal penalties without clear statutory authority and factual foundation.
- The Revenue's attempt to distinguish Shantanu Hundekari on the ground that the petitioners herein held higher positions (CFO, CEO, Director) was rejected, as the Court found no material to show that they retained personal benefit from the transactions.

**(k) Tariff petition fee and licence fee collected by State Electricity Regulatory Commission is not 'consideration' for 'supply'; GST levy quashed.**

***[Haryana State Electricity Regulatory Commission v. Union of India & Ors., 2026 (3) TMI 499 - Punjab and Haryana High Court]***

**Facts:**

- The petitioner is a statutory body constituted under the Electricity Act, 2003, discharging regulatory, quasi-judicial, and statutory functions under Section 86 of the said Act.
- The respondents issued a Show Cause Notice dated 09.07.2024, seeking to levy GST on the amounts received by the petitioner as tariff petition fee and licence fee.
- The petitioner contended that these amounts are received while discharging statutory functions and do not constitute "consideration" for any "supply"

under Section 7 of the CGST Act, 2017. The petitioner approached the Punjab & Haryana High Court for quashing of the SCN.

**Issue:**

Whether fees received by a State Electricity Regulatory Commission (tariff petition fee and licence fee) for discharging functions under Section 86 of the Electricity Act, 2003 constitute consideration for supply of goods or services in the course or furtherance of business and are liable to GST?

**Held:**

- The Hon'ble Punjab & Haryana High Court allowed the writ petition and set aside the impugned Show Cause Notice by relying on the ***Delhi High Court's decision in Central Electricity Regulatory Commission v. The Additional Director, DGGI (W.P.(C) 10680/2024, decided on 15.01.2025***, which dealt with an identical issue.
- The Delhi High Court had held that regulation of tariff, inter-State transmission of electricity, and issuance of licences cannot be construed as activities undertaken or functions discharged in the furtherance of business. These are statutory obligations placed upon a Commission to regulate these subjects, and not activities akin to trade, commerce, or profession under Section 2(17) of the CGST Act.
- It was further held that the fee received by such Commissions, even if assumed to be "consideration" under Section 2(31), was not obtained in the course or furtherance of "business" and therefore, such activities do not constitute as "supply" under Section 7.
- The Delhi High Court also observed that Schedule III of the CGST Act expressly excludes services rendered by a court or tribunal. The Electricity Act makes no distinction between regulatory and adjudicatory functions vested in the Commission, which has all the trappings of a tribunal. Therefore, such functions cannot be artificially segregated to treat regulatory actions as taxable services.

- The Punjab & Haryana High Court noted that the SLP filed against the Delhi High Court's judgment was dismissed by the Supreme Court on 21.07.2025, and the review petition filed thereafter has no stay.
- The Revenue fairly conceded that the controversy was identical and could not demonstrate any distinguishing feature. Accordingly, the Show Cause Notice was quashed.

#### **TATTVAM COMMENTS:**

- This judgment provides authoritative clarity that statutory regulatory functions discharged by Electricity Regulatory Commissions (and similar statutory bodies) do not constitute "supply" under GST, even where fees are collected.
- The ruling reinforces the principle that to constitute a taxable "supply" under Section 7 of the CGST Act, the activity must be:
  - (i) for consideration.
  - (ii) in the course or furtherance of business.
- It has been held that statutory functions such as tariff regulation, grant of licences, and oversight of transmission are sovereign/regulatory functions and not "business" activities. The fees collected are not "consideration" for any supply but are statutory levies for discharge of public duties.
- Taxpayers and statutory bodies facing similar SCNs for GST on statutory fees or regulatory charges can rely on this judgment to seek quashing of proceedings. However, the specific facts and governing statutes of each body must be examined to determine applicability.

## **ADVANCE RULINGS**

**(I) Whether hookah (tobacco and non-tobacco) served in the restaurant shall be termed as supply of goods or services?**

***[In Re: Indian Wire Products Company, 2026 (3) TMI 186- Authority for Advance Ruling, West Bengal]***

### **Facts:**

- The Applicant sought an advance ruling on the issue that whether serving tobacco / non-tobacco (herbal) hookah in a restaurant along with food qualifies as restaurant service under Clause 6(b) of Schedule II, CGST Act, 2017 and the said service will thus be taxable at 5% as specified under Notification No. 11/2017- CT(Rate) as amended from time to time.
- That the Appellant's stance is that the preparation and service of Hookah to the customers is not a mere trading activity, but an elaborate culinary-type process carried out within a restaurant's kitchen.
- Furthermore, it was contended that in light of the section 2(30) read with section 8(a) of the CGST Act, the service of hookah is ancillary and incidental to the principal supply i.e. the restaurant service and is naturally bundled in the ordinary course of business. Therefore, supply of hookah should be taxed at concessional rate of 5%, being part of restaurant service.

### **Issue:**

Whether serving non-tobacco or tobacco-based hookah in a restaurant along with food is a supply of goods or services and what rate of tax applies to such supply?

### **Held:**

- Clause 6(b) of Schedule II to the CGST Act provides that supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), for consideration, shall be treated as supply of service.

- The West Bengal Authority for Advance Ruling observed that if 'ejusdem generis' is applied to "any other article for human consumption", it will refer to items ingested via alimentary canal, not smoke inhaled into the respiratory tract.
- It was held that although serving hookah involves restaurant infrastructure and service elements (apparatus, ambience, attendance), these constitute a composite supply in which the goods used for smoking are the principal supply because the customer's basic purpose is to obtain the smoking product and the service merely facilitates consumption.
- Consequently, it was held that the supply of hookah does not fall within Clause 6(b) and cannot be treated as restaurant service merely because it is supplied in a restaurant setting. It was further held that in the present case, the supply of tobacco/ non tobacco hookah, the principal supply is goods (tobacco/non-tobacco mix) and the restaurant service is ancillary. Therefore, hookah is to be taxed as goods under relevant HSN.

#### **TATTVAM COMMENTS:**

- This ruling provides restaurants cannot club hookah with food service to claim concessional 5% GST. Each supply must be segregated and classified correctly.
- This ruling underscore the importance of ejusdem generis in interpreting "any other article for human consumption." The Authority drew a sharp line between ingestion (food/drink) and inhalation (smoke).

**(m) Corporate card rebates on excise duty payments escape GST, as they are merely financial adjustments and not consideration for any supply.**

***[In Re: M/s. John Distilleries Pvt. Ltd., 2026 (4) TMI 416 - Authority for Advance Ruling, Karnataka]***

#### **Facts:**

- The applicant, M/s John Distilleries Pvt. Ltd., is engaged in the manufacture of liquor, which is outside the scope of GST.

- However, the applicant is registered under GST for certain ancillary activities such as royalty income, scrap sales and GTA services under RCM.
- The applicant obtained a corporate credit card from HSBC Bank for making payments towards excise duty. Further, based on the monthly volume of excise duty payments, HSBC provides a rebate @ 0.515%, which is adjusted against the outstanding credit card balance and not received as a separate payment.
- The applicant contended that:
  - ✓ Such rebate is a transaction in money;
  - ✓ There is no quid pro quo or supply involved;
  - ✓ Hence, it is not liable to GST

**Issue:**

Whether rebates received from HSBC Bank for payment of excise duty through a corporate card are liable to GST?

**Held:**

- The Authority for Advance Ruling held that the rebates received by the applicant do not constitute a supply under Section 7 of the CGST Act, 2017, as there is no element of consideration or quid pro quo involved in the transaction.
- It was observed that the rebate is granted by the bank as a post-transaction financial adjustment linked to the usage of the corporate card and is not attributable to any independent or identifiable supply of goods or services by the applicant to the bank.
- The Authority further held that the rebate merely results in a reduction of the outstanding liability payable by the applicant to the bank and is in the nature of a transaction in money falling within the definition provided under Section 2(75) of the CGST Act, 2017. Accordingly, such a transaction does not qualify as consideration for any supply and is therefore outside the scope of GST.
- Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of *Intercontinental Consultants and Technocrats Pvt. Ltd. 2018 (3) TMI*

357 - SUPREME COURT], wherein it was held that only amounts constituting consideration for a service can be subjected to tax. Since the rebate does not represent any such consideration for any taxable service, it cannot be brought to tax.

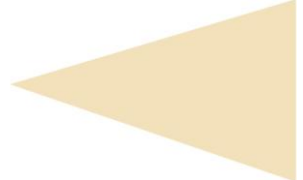
- Additionally, the Authority observed that even otherwise, such transactions would be covered under Entry 27 of Notification No. 12/2017-Central Tax (Rate), which exempts services by extending loans or advances where the consideration is represented by way of interest or discount.
- Accordingly, it was concluded that the rebates received by the applicant are not liable to GST.

#### **TATTVAM COMMENTS:**

- The present ruling provides important clarity on the taxability of financial incentives such as rebates or cashback received from banks. It reiterates the fundamental principle that for a transaction to qualify as a supply under GST, there must be a clear element of consideration flowing as quid pro quo for a service or goods. In the absence of such a nexus, the transaction cannot be brought within the ambit of taxation.
- The ruling also strengthens the position that mere financial adjustments, including rebates or discounts granted by banks, fall within the scope of “transactions in money” and are therefore excluded from the definition of supply.
- From a practical perspective, the ruling provides significant relief to taxpayers by confirming that rebates or cashback received from banks, where there is no underlying supply or obligation, would not attract GST.

**(n) Emergency care and life support training courses conducted by a charitable trust held taxable at 18% as commercial training and coaching services; not eligible for exemption as charitable activities or educational services.**

***[In Re: M/s. JeevaRaksha Trust, 2026-VIL-88-AAR  
Authority for Advance Ruling, Karnataka]***

**Facts:**

- The Applicant, M/s JeevaRaksha Trust, is a charitable trust registered under Section 12AA of the Income Tax Act and engaged in providing emergency care and life support training courses such as c-ECLS (for medical students), ENLS (for nursing students), and BCLS (for paramedical staff and general public).
- These courses are mandatory for students of colleges affiliated with Rajiv Gandhi University of Health Sciences (RGUHS), and fees are collected by colleges and distributed among colleges (70%), the Applicant (20%), and RGUHS (10%).
- The Applicant provides training support, course material, evaluation, certification support, and quality control services. Certificates are valid for 5 years, after which renewal training is required.
- The Applicant contended that its activities fall under “charitable activities” as per Entry No. 1 of Notification No. 12/2017-CT (Rate), being services relating to “public health by way of public awareness of preventive health” and hence should be exempt from GST.
- Alternatively, it was argued that since the courses are part of the curriculum of RGUHS-affiliated colleges, the services should qualify for exemption under Entry No. 66 as services related to an “educational institution”.

**Issue:**

- Whether the services provided by the Applicant (c-ECLS, ENLS, BCLS courses and their renewal) qualify as “charitable activities” under Notification No. 12/2017-CT (Rate) and are exempt from GST?
- Whether the Applicant qualifies as an “educational institution” to claim exemption under Entry No. 66?
- Whether GST is payable on fees (including renewal fees) and at what rate?

**Held:**

- The Authority observed that exemption under Entry No. 1 applies only to activities strictly falling within the definition of “charitable activities” under

paragraph 2(r) of Notification No. 12/2017-CT (Rate), which must be interpreted narrowly. The expression “public awareness of preventive health” refers to activities aimed at educating the general public at large, such as health campaigns and outreach programmes, and not to specialised or institutional training.

- In the present case, the courses conducted by the Applicant (c-ECLS, ENLS, BCLS) are structured, skill-based training programmes provided to a specific and identifiable class of beneficiaries, namely medical, nursing, and allied healthcare students. These courses are mandatory academic requirements and are conducted for consideration. Therefore, such activities cannot be equated with general public awareness programmes, and any indirect benefit to society does not qualify them as “charitable activities”.
- The Authority further held that the Applicant does not qualify as an “educational institution” under the notification, as it neither provides education leading to a recognised qualification nor conducts approved vocational education. The certificates issued are only skill-based certifications and do not amount to qualifications recognised by law. Hence, exemption under Entry No. 66 is also not available.
- Accordingly, the services provided by the Applicant are in the nature of commercial training and coaching services, classifiable under SAC 999293, and are liable to GST at the rate of 18%. This taxability applies to fees received from affiliated colleges, fees collected from the general public for BCLS courses, as well as fees charged for renewal or recertification of the courses.

#### **TATTVAM COMMENTS:**

- This ruling clearly distinguishes “public awareness” from “professional training”, emphasizing that GST exemptions for charitable activities are to be interpreted strictly and cannot be expanded using broad public health concepts. Even if an activity contributes to public welfare (like emergency response training), it will not qualify as a charitable activity unless it is directly aimed at the general public without commercial consideration.
- The ruling also clarifies that being a charitable trust under Income Tax law does not automatically grant GST exemption—the nature of activity is

decisive. Further, institutions providing skill-based certification or training (even if mandatory for students) may still be treated as commercial coaching centres, unless they meet the strict definition of “educational institution”.

- Practically, organisations engaged in training, certification, or skill development must carefully evaluate GST implications, as such services are likely to be taxed at 18%, even if they have social or healthcare objectives.

**(o) Supply of water by RWA forms part of composite supply of services and is not exempt under Entry 99 of Notification No. 2/2017-Central Tax (Rate).**

***[M/s Prestige North West Country Owners Associations ,2026-VIL-85-AAR (Karnataka AAR)]***

**Facts:**

- The Applicant, M/s Prestige North West Country Owners Associations (PNWCOA), is a Resident Welfare Association (RWA) engaged in providing maintenance and allied services to its members.
- The Applicant supplies unprocessed water to its members sourced from its own borewells as well as from third-party vendors, without any filtration or treatment.
- The Applicant collects water charges separately from maintenance charges on the basis of actual consumption recorded through individual meters.
- In certain cases, members whose maintenance charges were below Rs. 7,500/- per month crossed the threshold when water charges were added.
- The Applicant contended that supply of unprocessed water is exempt under Entry 99 of Notification No. 02/2017-CT (Rate) and that such recovery constitutes pure reimbursement not includable in taxable value.

**Issue:**

- Whether supply of unprocessed water by an RWA to its members qualifies as an exempt supply under Entry 99 of Notification No. 02/2017-CT (Rate)?

- Whether water charges collected separately are required to be included in aggregate value for determining the Rs. 7,500/- per member per month exemption threshold?

**Held:**

- The Authority held that the Applicant is not supplying water as independent goods but is providing services as a Home Owners' Association to its members.
- Accordingly, supply of water cannot be treated as an independent exempt supply under Entry 99 of Notification No. 02/2017-CT (Rate).
- The Authority further held that recovery of water charges, even if separately invoiced and based on actual consumption, forms part of the value of supply of services.
- The contention of the Applicant regarding exclusion as "pure agent" under Rule 33 was rejected, as the prescribed conditions were not satisfied.
- It was further observed that the activities of the RWA constitute supply under Section 7(1)(aa), and the association and its members are distinct persons for GST purposes.
- Accordingly, water charges are required to be aggregated with maintenance charges for determining the ₹7,500 per member per month exemption threshold under Notification No. 12/2017-CT (Rate).
- The services are classifiable under SAC 999598 and are taxable at 18% GST, subject to threshold exemption.

**TATTVAM COMMENTS:**

- The ruling clearly establishes that separately billed components such as water charges cannot be artificially segregated when they are intrinsically linked to the principal supply of RWA service.
- It reinforces the principle of composite supply under GST and clarifies that exemption entries applicable to goods cannot be claimed when the dominant supply is service.

- The ruling further emphasizes strict interpretation of “pure agent” provisions and prevents misuse of reimbursement structures to avoid tax liability.

**(p) Printing of examination question papers supplied to universities is exempt from GST under Sl. No. 66(b)(iv) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.**

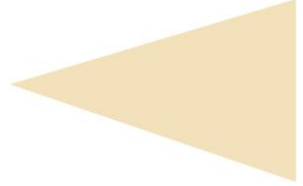
***[M/s Codeword Process and Printers, 2026-VIL-78-AAR (Kar. AAR)]***

**Facts:**

- The Applicant, M/s Codeword Process and Printers, is engaged in supplying printing services of exam papers to various universities.
- The applicant prints and supplies question papers as per the specifications, format, quality, size, and design provided by the universities. The applicant cannot deviate from these specifications.
- The applicant claimed exemption under **Sl. No. 66(b)(iv)** of Notification No. 12/2017-CT (Rate), which exempts “*services provided to an educational institution by way of services relating to admission to, or conduct of examination by, such institution*”.
- The applicant argued that universities are “educational institutions” under paragraph 2(y) of the said notification, and printing of question papers is a service “relating to” conduct of examination.
- Reliance was placed on multiple AAR rulings (Orient Press Ltd., Ashok Kumar Basu, Hitech Print Systems Ltd., Management & Computers Consultants) and the Karnataka High Court judgment in *Rajiv Gandhi University of Health Sciences* (affirmed by the Supreme Court), which held that a university is an educational institution

**Issue:**

Whether the printing of exam papers provided to universities is exempt from tax in terms of Sl. No. 66(b)(iv) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended?



**Held:**

- The Karnataka Authority for Advance Ruling (AAR) held that printing of exam papers provided to universities is exempt from GST under Sl. No. 66(b)(iv) of Notification No. 12/2017-Central Tax (Rate).
- On “educational institution”: Universities fall under sub-paragraph (ii) of paragraph 2(y) of the notification, i.e., “*education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force*”. They are established under Central/State enactments, empowered to prescribe curricula, conduct examinations, and award recognized degrees.
- On “services relating to conduct of examination”: The expression “relating to” is of wide amplitude and covers not only the core activity but also all ancillary and incidental services having a direct and proximate nexus with examinations. Printing question papers is indispensable and integrally connected to the conduct of examinations.
- The AAR relied on CBIC Circular No. 151/07/2021-GST dated 17.06.2021, which explicitly clarifies that “*printing of notification for examination, admit card and question papers etc.*” when provided to educational boards are covered under Sl. No. 66(b)(iv).
- The AAR also followed the Karnataka High Court judgment in *Rajiv Gandhi University of Health Sciences* (affirmed by SC), which categorically held that a university is an educational institution for exemption purposes.
- The AAR distinguished between printing of question papers (exempt) and general commercial printing (taxable), holding that when services are provided to an educational institution and are directly related to conduct of examination, the exemption applies.

**TATTVAM COMMENTS:**

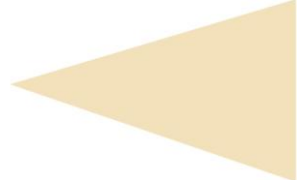
- This ruling (consistent with other AARs) confirms that printing of question papers for universities and educational boards is eligible for GST exemption. It adopts a purposive interpretation of the phrase “relating to conduct of examination.”
- The exemption applies only when the recipient is an educational institution (as defined). If the service is provided to a private entity or a commercial printer acting as an intermediary, exemption may not be available.
- The ruling does not exempt printing of question papers for private coaching centers, competitive exams conducted by private bodies, or general printing services. The nature of the recipient and the direct nexus with examination conduct are critical.

**(q) Pure labour services for construction of single standalone residential dwelling units (not part of a residential complex) are exempt from GST under Entry No. 11 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.**

***[M/s House Construct Infra (Krishnappa Gangadhar),  
2026-VIL-79-AAR (Kar. AAR)]***

**Facts:**

- The Applicant is engaged in the supply of **pure labour services** to various single residential dwelling units. The Applicant does not provide any goods or materials – the scope is strictly restricted to pure labour.
- The Applicant does not provide such services to residential apartments, residential complexes, or housing projects. Services are confined exclusively to stand-alone residential dwelling units.
- The Applicant sought an advance ruling on the taxability of supply of pure labour services to single standalone residential dwelling units



**Issue:**

Whether the supply of pure labour services for construction, erection, commissioning, or installation of original works pertaining to single residential dwelling units (otherwise than as part of a residential complex) is exempt from GST?

**Held:**

- The Karnataka Authority for Advance Ruling (AAR) held that such services are exempt from GST under Entry No. 11 of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.
- The AAR examined the essential ingredients of Entry No. 11:
  - The service must be pure labour contract (no transfer of property in goods, no material supplied by the service provider).
  - The activities must relate to construction, erection, commissioning, or installation.
  - Such activities must pertain to original works (new construction or first-time installation).
  - The services must be provided with respect of a single residential unit and not forming part of a residential complex.
- The definitions under the notification were applied:
  - "*Original works*" (para 2(zs)): all new constructions; erection, commissioning or installation of plant, machinery, equipment or structures.
  - "*Residential complex*" (para 2(zzb)): any complex comprising a building or buildings having more than one single residential unit.
  - "*Single residential unit*" (para 2(zze)): a self-contained residential unit designed for use wholly or principally for residential purposes for one family.

- The phrase “otherwise than as a part of a residential complex” clearly excludes services rendered in respect of apartment buildings, housing projects, or residential complexes comprising multiple dwelling units with common infrastructure and shared facilities.
- Since the Applicant provides services only to individual owners of stand-alone residential houses and not to residential apartments or complexes, all conditions for exemption are satisfied.
- The supply of pure labour services for construction, erection, commissioning, or installation of original works pertaining to single residential dwelling units, otherwise than as part of a residential complex, is exempt from GST, subject to fulfilment of the conditions that the activity qualifies as original works, the residential unit is a single stand-alone dwelling unit, and the same does not form part of a residential complex.

#### **TATTVAM COMMENTS:**

- This ruling provides clear GST exemption for pure labour contractors working on standalone residential houses, provided no materials are supplied and the dwelling is not part of a multi-unit complex. Key conditions: (i) pure labour only – no supply of goods; (ii) single residential unit for one family; (iii) standalone – not part of a residential complex; (iv) original works (new construction, not repair). Contractors must document the pure labour nature, obtain homeowner declaration, and issue nil-rated invoices. Any material supply (even incidental) will disqualify exemption. Builders of apartments or gated communities cannot claim this exemption.

**(r) Construction of villas under Joint Development Agreement (JDA) with outsourcing to contractor constitutes taxable service; classification under Heading 9954(ia) at 7.5% GST with 1/3rd land deduction.**

***[M/s VARAHA LAND PRIVATE LIMITED, 2026-VIL-89-AAR – AAR, Karnataka]***

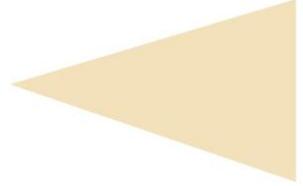
#### **Facts:**

- The applicant, M/s Varahaland Private Limited, is engaged in the development of a residential villa project under a Joint Development Agreement (JDA) with multiple landowners, wherein the applicant is entitled to a 75% share in the developed area and the landowners to the remaining 25%.
- The applicant enters into two separate agreements with prospective buyers: (i) an agreement for sale of an undivided share of land/plot, and (ii) a separate agreement for construction of a villa on the said plot.
- The applicant proposes to outsource the entire construction activity to an independent contractor, while retaining overall responsibility towards the buyers for completion and delivery of the villas.
- The applicant sought an advance ruling on whether the agreement for construction of villas results in a supply of goods or services (given the outsourcing), the applicable classification and GST rate, and the valuation mechanism

**Issues:**

- Whether the agreement entered into by the applicant with the customers for construction of villa results in a supply of goods or services, considering that the entire construction is proposed to be outsourced to a contractor?
- If answered in the affirmative, whether such supply is classifiable under:
  - (a) Heading 9954(xii) (works contract service) at 18% GST (9% CGST + 9% SGST); or
  - (b) Heading 9954(ia) (construction of residential apartments by a promoter) at 7.5% GST (3.75% CGST + 3.75% SGST)?
- If classifiable under Heading 9954(ia), whether the consideration for construction as per the construction agreement alone can be treated as the value of supply (with deduction of actual land value), or must the valuation be done as per paragraph 2 of Notification No. 11/2017-CT(Rate) (deeming 1/3rd of total consideration as land value)?

**Held:**



### **On Issue 1 - Whether outsourcing negates supply:**

- The agreement for construction of villas constitutes a supply of service under the CGST Act, 2017, notwithstanding the fact that the actual construction activity is outsourced to a third-party contractor.
- The applicant enters into direct contractual arrangements with buyers, receives consideration, and assumes full contractual responsibility for execution, completion, and delivery. Outsourcing is merely a mode of performance and does not dilute or negate the applicant's independent supply to the customers.
- The reliance on the Supreme Court's judgment in Larsen & Toubro (pre-GST regime) is misplaced, as under the GST regime, the scope of "supply" has been consciously widened under Section 7 and works contracts relating to immovable property are expressly classified as a supply of services under paragraph 6(a) of Schedule II to the CGST Act.

### **On Issue 2 – Classification under Heading 9954(ia) (7.5% GST):**

- The applicant is engaged in the development of a residential villa project under a JDA and enters into agreements with buyers prior to completion of construction, receiving consideration linked to construction milestones. This activity squarely falls within the scope of construction of residential units intended for sale where consideration is received before issuance of completion certificate.
- While transfer of title in land is covered under Schedule III to the CGST Act (not exigible to GST), the agreements are executed in pursuance of a single economic objective—supply of a completed residential villa to the buyer. The sale of land and construction of villa are naturally bundled and supplied in conjunction with each other in the ordinary course of business.
- Therefore, the transaction qualifies as a composite supply under Section 2(30) of the CGST Act, with construction service being the principal supply. In terms of Section 8, a composite supply is treated as a supply of the principal supply.

- Works contract services involving construction of residential units intended for sale, where consideration is received prior to completion, are classifiable under Heading 9954(ia) as a specific classification for real estate projects. This prevails over the general works contract classification under Heading 9954(xii) claimed by the applicant.
- Accordingly, the supply is liable to GST at 7.5% (CGST 3.75% + SGST 3.75%) under Sl. No. 3 of Notification No. 11/2017-CT(Rate) dated 28.06.2017, as amended.

### **On Issue 3 – Valuation (1/3rd land deduction mandatory):**

- **Paragraph 2** of Notification No. 11/2017-CT(Rate) provides that for supply of construction services involving transfer of land or undivided share of land, the value of supply shall be the total amount charged less the value of land, and the value of land shall be **deemed to be one-third (1/3rd) of the total amount charged**.
- This is a statutory valuation mechanism notified under Section 15 of the CGST Act and must be uniformly applied to all supplies falling within its scope.
- The judgment of the Gujarat High Court in Munjaal Manishbhai Bhatt v. Union of India (which held that actual land value may be deducted where ascertainable) does not lay down a universal proposition and is currently pending before the Supreme Court in SLP (C) No. 21703 of 2022. In any event, a judicial pronouncement in an individual case cannot override an express statutory rate notification that remains in force.
- The applicant's contention that a separate agreement for sale of land makes the actual land value ascertainable is rejected. Where multiple agreements are executed in respect of a single transaction intended to provide a bundled supply, the **substance of the transaction** must be examined rather than the form. The consideration received under both agreements' forms part of the "total amount charged" for the supply of construction service.
- Accordingly, the value of supply shall be determined strictly in accordance with paragraph 2 of Notification No. 11/2017-CT(Rate), by deeming **one-third of the total amount charged** (including consideration towards land and

construction) as the value of land, and the remaining amount as the taxable value of construction services.

#### **TATTVAM COMMENTS:**

- This ruling exhibits that outsourcing the actual execution of work does not insulate a promoter from GST liability. The person who contracts with the customer, receives consideration, and bears contractual responsibility for delivery is the supplier, regardless of whether the work is sub-contracted.
- The ruling reaffirms the principle of substance over form in GST. Even where separate agreements for land and construction are executed, if they are part of a single economic transaction for delivery of a completed residential unit, they will be treated as a composite supply with construction as the principal supply.
- On valuation, the ruling takes a strict view that the deeming fiction of 1/3rd deduction for land is mandatory under the notification, regardless of whether actual land value is ascertainable. Taxpayers who wish to claim deduction of actual land value must await the final outcome of the Munjaal Manishbhai Bhatt case before the Supreme Court.



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