

JSA Newsletter Indirect Tax

May 2025

Recent rulings by courts and authorities

High Court

A detailed SCN¹ is not required, where a well spelt audit report is issued – no violation of principles of natural justice

In the matter of *Saluja Motors Pvt. Ltd. vs. State of H.P and others*², audit proceedings were initiated against the petitioner for irregular availment of ITC³ and a final audit report was issued. Subsequently, a summary SCN was issued in Form GST DRC – 01, followed by an order confirming the demand.

The order was challenged before the High Court at Himachal Pradesh (“**Himachal HC**”) wherein the petitioner contested that the action of the authorities was absolutely illegal in terms of Sections 73(1) and 74(1) of the CGST Act⁴ read with Rule 142(1) of the CGST Rules⁵, whereby a detailed SCN is to be issued along with the summary notice in Form GST DRC – 01. In the present case, only a summary notice was issued (without the detailed SCN), which is in violation to the provisions of the statute, thereby being unsustainable.

The Himachal HC taking note of the fact that a detailed final audit report wherein the case was made out against the petitioner was issued by the authorities, it can be concluded that the petitioner was fully aware of the case made out against it and therefore, the petitioner cannot argue violation of principles of natural justice. It is to be established that non-furnishing of the notice caused prejudice to the petitioner and prevented the petitioner from effectively defending its case. Where the procedure and substantive provisions of law embody the principles of natural justice, the infraction *per se* does not lead to invalidity of the order passed. The petitioner was well aware of the case and the issues raised against it by virtue of the audit report, and therefore, no prejudice was caused by non-issuance of the SCN.

Furnishing of notice through common portal is a valid mode of service

In the case of *Poomika Infra Developers vs. State Tax Officer*⁶ (batch of writ petitions), the petitioners had challenged notices issued to them on the ground that the same were only uploaded on the common portal and never served to them physically, and therefore, cannot be considered as a valid mode of service. The High Court at Madras (“**Madras HC**”) in a series of earlier judgements has held that merely uploading the notices on the common portal is not a valid mode of service and it is the responsibility of the officers to ensure effective servicing of notices. However, the Madras

¹ Show Cause Notice.

² CWP No. 2293 of 2024

³ Input Tax Credit.

⁴ Central Goods and Services Tax Act, 2017.

⁵ Central Goods and Services Tax Rules, 2017.

⁶ W.P. No. 33562 of 2025

HC in the present case, differed from its earlier view by placing reliance on the language of Section 169 of the CGST Act.

The modes of services prescribed in Section 169 of the CGST Act are mutually exclusive and the language of the provision does not envisage a scenario where if service in person (through post or *via* mail) is not practicable, only then can the notice be said to be served if uploaded on the common portal. The language of Section 169 is unambiguous, and the role of the court is limited to interpret the law made by the legislature. Addition of words or supplying omission through a process of interpretation would amount to judicial legislation which ought to be avoided.

Relying upon decision of Division Bench of the Madras HC in the case of *A Sanjeevi Naidu vs. The Deputy Commercial Tax Officer Kanchipuram and others*⁷ pertaining to erstwhile law the Madras HC held that the modes of services prescribed under Section 169 of the CGST Act are mutually exclusive and hence it is not open to the petitioners to contend that the notice was not physically served before uploading the same on the common portal. Following the aforesaid decision, the Madras HC also dismissed another batch of writ petitions in *Axiom Gen NXT India Private Limited vs. Commercial State Tax Officer*⁸.

JSA Comment: In light of the various judicial precedents, it can be said that the settled law is that notice uploaded on the common portal can be said to be a valid service of the notice.

ITC can be claimed on 'deemed receipt', physical delivery not mandatory

In the matter of *Sane Retails Limited vs. The State of Bihar and Ors.*⁹, the Patna High Court ("Patna HC") has interpreted Section 16(2)(b) of the CGST Act to examine whether physical delivery of goods is envisaged as a condition to avail ITC under the said Section. In the preset case, the goods were directly delivered to the end customer as per the petitioner's instructions. The petitioner had made 100% payment of tax by way of utilisation of ITC and the same was under scrutiny wherein it was pointed out that the petitioner had not 'received' the goods and therefore, not entitled to ITC. Accordingly, ITC was disallowed and payment of tax to that extent was demanded. Aggrieved by the same, the petitioner approached the Patna HC.

Referring to the explanation to Section 16(2)(b) of CGST Act, the Patna HC observed that the goods are deemed to be received by the registered person where goods are delivered by the supplier to a recipient or to any other person on the direction of such registered person, whether acting as an agent or otherwise, such direction may be given before or during movement of goods and the goods may be delivered either by way of transfer of document of title to goods or otherwise. The said explanation expands the interpretation of 'received' to include specific situations where registered person may not have physical possession of the goods. This explanation ensures that physical possession is not the sole criteria for deeming goods 'received'. CGST Act does not mandate that goods must be physically received at a specific location for eligibility of ITC. ITC can be claimed on deemed receipt basis, even if the goods are physically received at a later stage or at a different location. Therefore, subject to compliance of other conditions under Section 16 of the CGST Act, the petitioner was allowed to claim ITC of goods on deemed receipt of the same.

⁷ 1972 SCC OnLine Mad 347

⁸ TS-296-HC(MAD)-2025-GST

⁹ TS-249-HC(PAT)-2025-GST

Notifications, circulars and instructions

Ministry of Finance notifies GSTAT¹⁰ Procedure Rules¹¹

The Ministry of Finance has notified GSTAT Procedure Rules *vide* notification no. G.S.R. 256(E) dated April 24, 2025, in order to regulate the operations and procedural framework of the GSTAT. The following are the key procedural aspects:

1. **Computation of period of limitation:** Rule 3 of the GSTAT Procedure Rules excludes: (a) the day from which such period is to be computed; and (b) if the last day expires when the Appellate Tribunal remains closed, such day(s), from the computation of period of limitation.
2. **Filing of appeals:** Rule 18 of the GSTAT Procedure Rules provides for online filing of the appeals on the GSTAT portal in the prescribed manner.
3. **Documents required to accompany Form of appeal:** Rule 21 of the GSTAT Procedure Rules requires (online) submission of all relevant documents including the certified copy of the decision or order appealed against along with prescribed fees.
4. **Interlocutory applications:** Rule 29 of the GSTAT Procedure Rules provides for filing of interlocutory applications such as application for stay of demand, condonation of delay, amendment of pleadings or any other interim relief in prescribed manner.
5. **Rejection or amendment of Form of appeal:** Rule 32 of the GSTAT Procedure Rules empowers the registrar to: (a) allow necessary amendments to the form of appeal and seek additional documents; and (b) reject the form of appeal if such amendment is not made or documents are not submitted within the prescribed time.
6. **Appeal referred to larger bench:** As per Rule 50 of the GSTAT Procedure Rules, an appeal may be referred to a larger bench by the President, in case of difference of opinion between members of the bench while hearing an appeal.
7. **Pronouncement of order:** As per Rule 103 of the GSTAT Procedure Rules, GSTAT is required to pronounce the order within 30 (thirty) days from the date of final hearing.
8. Additionally, the GSTAT Procedure Rules outline the manner of filing the appeals and other documents, issuance of order, procedure to be followed by and before the registrar, applicable fees, etc.

CBIC¹² issues instructions for processing of applications for GST registration

In light of the difficulties being faced by the applicants in getting a GST registration, CBIC has issued instruction nos. 03/2025 – GST dated April 17, 2025, and 04/2025 – GST dated May 2, 2025, outlining certain guidelines for processing of application for registration, the key instructions are summarised below:

1. **Documents in respect of principal place of business:** The authorities are directed to accept the documents uploaded by the applicant, if the same are in line with those mentioned in the list of documents prescribed in Form GST REG – 01 or any similar document such as water bill establishing the ownership. In case of rented premise, a valid rent agreement (in absence, an affidavit to that effect or consent letter from the owner of premises) along with any one of the documents mentioned in the list of documents prescribed in Form GST REG – 01 indicating ownership of the lessor should suffice.
2. **Constitution of business:** If applicant is a partner, the partnership deed for proof of constitution of business is required to be uploaded. If the applicant is a society, trust, club, government department, association or person or

¹⁰ Goods and Services Tax Appellate Tribunal.

¹¹ Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025.

¹² Central Board of Indirect Taxes and Customs.

body of individuals, local authority, statutory body and others etc., registration certificate/proof of constitution is required to be uploaded.

3. **Processing of applications:** Specific timelines are prescribed for issuance of the registration or notice of deficiency for adherence by the authorities.
4. **Grievance redressal:** It has been provided that any applicant whose application reference number has been assigned to central jurisdiction and who has a grievance in respect of any query raised regarding the grounds rejection of application may approach the jurisdictional zonal principal chief commissioner/chief commissioner.

Tax Practice

JSA offers a broad range of tax services, both direct and indirect, in which it combines insight and innovation with industry knowledge to help businesses remain compliant as well as competitive. The Tax practice offers the entire range of services to multinationals, domestic corporations, and individuals in designing, implementing and defending their overall tax strategy. Indirect Tax services include services such as (a) advisory services under the Goods and Services Tax laws and other indirect taxes laws (VAT/CST/Excise duty etc.), and includes review of the business model and supply chain, providing tax implications on various transactions, determination of tax benefits/exemptions, analysis of applicability of schemes under the Foreign Trade Policy (b) transaction support such as tax diligence (c) assistance in tax proceedings and investigations and (d) litigation and representation support before the concerned authorities, the Appellate Tribunals, various High Courts and Supreme Court of India. The team has the experience in handling multitude of assignments in the manufacturing, pharma, FMCG, e-commerce, banking, construction & engineering, and various other sectors and have dealt with issues pertaining to valuation, GST implementation, technology, processes and related functions, litigation, GST, DRI investigations etc. for large corporates. Direct Tax services include (a) structuring of foreign investment in India, grant of stock options to employees, structuring of domestic and cross-border transactions, advising on off-shore structures for India focused funds and advise on contentious tax issues under domestic tax laws such as succession planning for individuals and family settlements, (b) review of transfer pricing issues in intra-group services and various agreements, risk assessment and mitigation of exposure in existing structures and compliances and review of Advance Pricing Agreements and (c) litigation and representation support before the concerned authorities and before the Income Tax Appellate Tribunal, various High Courts and Supreme Court of India.

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18 Practices and
41 Ranked Lawyers



7 Ranked Practices,
21 Ranked Lawyers



14 Practices and
12 Ranked Lawyers



12 Practices and 50 Ranked
Lawyers



20 Practices and
22 Ranked Lawyers



8 Practices and
10 Ranked Lawyers
Highly Recommended in 5 Cities



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Among Best Overall
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14 Ranked Practices

9 winning Deals in
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11 A List Lawyers in
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Asia M&A Ranking 2024 – Tier 1

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of the Year 2024

Innovative Technologies Law Firm of
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2022

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