



JSA Newsletter Indirect Tax

June 2025

Recent rulings by courts and authorities

Supreme Court

Flavoured milk classifiable under HSN¹ 0402 attracting GST² at the rate of 5%

In the case of *Assistant Commissioner of Central Tax and Anr. vs. Sri Vijaya Milk Producers Company Limited and Anr.*³, Hon'ble Supreme Court⁴ dismissed the SLP⁵, thereby affirming the judgment of Hon'ble High Court of Andhra Pradesh ("AP HC"), which held that flavoured milk is classifiable under HSN 0402 attracting GST at the rate of 5%.

Sri Vijaya Milk Producers Company Limited ("**Respondent**") classified the product under HSN 0402⁶, whereas the Revenue Authorities ("**Petitioner**") contended that the concerned product should be classified under HSN 2202⁷.

The Petitioner argued that the addition of flavour transforms 'flavoured milk' into a 'special drink', thereby excluding it from HSN 0402 and instead classifying it under HSN 2202 as a 'beverage'. Reliance was placed on Rule 3(a) of the GRI⁸ prescribed under the Customs Tariff Act⁹, arguing that HSN 2202 is more specific and covers 'flavoured milk' as it constitutes a beverage.

The Respondent countered the arguments of the Petitioner by contending that 'flavoured milk' falls within the ambit of 'Milk' under HSN 0402, as it comprises of approximately 90.5% milk, 9% sugar, and 0.5% flavourings and colour. The Respondent asserted that HSN 0402 being a specific entry, it prevails over the general entry.

AP HC observed that HSN 0402 encompasses milk and milk products, including milk containing sugar or other sweetening matter, and a mere 0.5% addition of flavour does not alter flavoured milk's classification under HSN 0402. Further, applying the principle of *Noscitur a Sociis*, the AP HC observed that other entries within Chapter Heading 22 primarily describe water-based beverages. Therefore, the AP HC held that 'Beverages containing milk' under HSN 22029930 would pertain to beverages that contain both milk and water, which was affirmed by the Supreme Court.

¹ Harmonised System of Nomenclature.

² Goods and Services Tax.

³ SLP (Civil) Diary No. 18877/2025 (order dated May 5, 2025)

⁴ Supreme Court of India.

⁵ Special Leave Petition.

⁶ Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies (other than condensed milk).

⁷ Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured, and other non-alcoholic beverages, not including fruit, nut or vegetable juice of heading 2009.

⁸ General Rules for Interpretation.

⁹ Customs Tariff Act, 1975.

This conclusion was also reinforced by the Hon'ble Madras High Court's judgment in *Parle Agro Private Limited vs. Union of India*¹⁰, which similarly classified 'flavoured milk' under HSN 0402.

Pre-deposit payment can be made utilising amount available in the ECL¹¹

In *Union of India and Anr. vs. Yasho Industries Limited*¹², the Supreme Court dismissed the SLP filed by the Revenue Authorities (petitioner) seeking interference from the Supreme Court in relation to the Order¹³ passed by Hon'ble Gujarat High Court ("**Gujarat HC**") whereby it was held that pre-deposit paid by the assessee-company under Section 107(6) of the CGST Act¹⁴ utilising the amount available in its ECL is valid.

The Gujarat HC had relied upon its own decision¹⁵ (that had relied upon Hon'ble Bombay High Court ("**Bombay HC**") decision¹⁶) whereby *inter alia* the provision of Section 107(6) of the CGST Act was interpreted to mean that the said provision mandates payment of 10% tax as pre-deposit while filing an appeal. The amount of ITC¹⁷ available in the ECL can be utilised towards payment of Integrated Tax or Central Tax or State Tax or Union Territory Tax. Therefore, an assessee required to pay 10% pre-deposit can utilise the amount of ITC available in the ECL.

Further, the Bombay HC in its decision had relied upon Circular¹⁸ issued by the CBIC¹⁹ whereby it was clarified that any amount towards output tax liability, as a consequence of any proceeding instituted under the provisions of GST laws, can be paid by utilisation of the amount available in the ECL.

In light of the above, Hon'ble Gujarat HC had held that pre-deposit paid by the assessee-company under Section 107(6) of the CGST Act utilising the amount available in its ECL is valid. The position now stands settled in light of Supreme Court's dismissal of the extant SLP.

Negative-blocking of ECL under Rule 86A of the CGST Rules²⁰ impermissible

The Supreme Court in *Commissioner of Central Tax And GST, Delhi North and Ors. vs Raghav Agarwal*²¹ dismissed the SLP filed by the revenue authorities (petitioner) seeking interference in relation to the Delhi High Court's ("**Delhi HC**") order²² whereby it was held that ITC cannot be blocked in excess of ITC available in ECL, thereby creating an artificial negative balance.

The issue before Delhi HC was that orders were issued under Rule 86A of the CGST Rules purporting to block ITC in ECL in excess of the ITC available in the ECL. Resultantly, till the negative balance in the ECL of the respective assessee-company was not extinguished by further addition of ITC in the ECL, the assessee-company was disabled to utilise the ITC availed by them for payment of their dues. The Delhi HC observed that:

1. Rule 86A of the CGST Rules is not a provision for recovery of tax or other dues and it only enables the concerned authority to take temporary measures for protection of Revenue's interests. The said rule also does not impose a condition for the taxpayer to satisfy to be able to avail ITC, as the same already stands credited in the ECL;
2. Rule 86A of the CGST Rules is required to be interpreted bearing in mind that: (a) utilisation of ITC is a vested right albeit in respect of ITC that has been validly accrued; (b) the power under Rule 86A of the CGST Rules is a drastic power and the same may have serious consequences for the taxpayer; and (c) Rule 86A of the CGST Rules concerns

¹⁰ W.P. No. 16608 and 16613 of 2020 (order dated October 31, 2023)

¹¹ Electronic Credit Ledger

¹² Special Leave Petition (Civil) Diary No. 17547/ 2025 (order dated May 19, 2025)

¹³ R/Special Civil Application No. 10504 of 2023 (order dated October 17, 2024)

¹⁴ Central Goods and Services Tax Act, 2017

¹⁵ Special Civil Application No. 22979 of 2022 (order dated November 30, 2023)

¹⁶ *Oasis Realty vs. Union of India & Ors.*, Writ Petition (ST) No. 23507 of 2022 (order dated September 16, 2022)

¹⁷ Input Tax Credit.

¹⁸ F. No.CBIC-20001/2/2022- GST dated July 6, 2022

¹⁹ Central Board of Indirect Taxes and Customs.

²⁰ Central Goods and Services Tax Rules, 2017.

²¹ [TS-362-SC-2025-GST], SLP (Civil) Diary No. 21913/2025 (order dated May 9, 2025)

²² [TS-603-HC(DEL)-2024-GST], W.P. (C) 15380/2023 CM Appl. 61699/2023 (order dated September 24, 2024)

the power of the Commissioner, under defined circumstances, to interdict the taxpayer from accessing its valuable resource for discharging its dues or in given cases seeking a refund;

3. Section 49 of the CGST Act expressly provides that the amount available in the ECL 'may be used' for making payments towards tax, interest, penalty or any other amount. It is that amount that can be used or utilised by the taxpayer for payment of his dues; and
4. CBIC's Circular²³ supports the literal construct of Rule 86A of the CGST Rules by clarifying that the amount of debit to be disallowed from the ECL should not be more than the amount of ITC available in the ECL, which is believed to have been fraudulently availed or is ineligible.

In light of the above, it was observed that there is no ambiguity in the language of Rule 86A of the CGST Rules and the literal construction of the said rule does not lead to any absurdity. Therefore, it was held that ITC cannot be blocked in excess of the ITC available in the ECL, leading to an artificial negative balance.

High Court

Comparison of selling price with the market price is beyond the scope of scrutiny under Section 61 of the CGST Act/JGST Act²⁴

In the case of *Sri Ram Stone Works vs. State of Jharkhand and Ors.*²⁵, the issue for determination before the Hon'ble High Court of Jharkhand ("Jharkhand HC") was whether Form GST-ASMT-10 issued in terms of Section 61 of the CGST Act/JGST Act, alleging that Sri Ram Stone Works ("Petitioner") has quoted lower market price than the actual market price in their returns, was beyond the scope and jurisdiction of Section 61 of the CGST Act/JGST Act.

The Petitioners were issued SCNs²⁶ alleging that the stone boulders and chips were sold below the prevailing market price. The Petitioners contended that these notices lacked jurisdiction, arguing that Section 61 of the CGST Act/JGST Act empowers the proper officer only to scrutinise returns for discrepancies and not to question the pricing of goods reported in the monthly returns, solely on the basis of such prices being lower than market prices. The Petitioner further submitted that a dealer is entitled to arrange the affairs of its business in the manner best suited to it, and merely selling certain goods at an alleged lower rate (compared to the market price), cannot constitute a cause of action for initiating proceedings under Section 61 of the CGST Act/JGST Act. Reliance in this regard was placed on the decision of Hon'ble Jharkhand HC in *Nirmal Kumar Pradeep Kumar vs. State of Jharkhand and Ors.*²⁷.

Considering the arguments, the Jharkhand HC held that the SCNs issued on the basis of a comparison between the Petitioners' sale price and the prevailing market price were without jurisdiction and exceeded the scope of Section 61. It was further observed that unless transaction of sale is shown to be a sham/fraudulent transaction, the authorities cannot assess the difference between the market price and the price paid by the purchaser as transaction value.

Customs, Excise and Service Tax Appellate Tribunal

Lemon juice-concentrate classifiable as 'juice of a single citrus pulp' attracting 12% IGST²⁸

In the case of *Dabur India Limited vs. Commissioner of Customs (Preventive) Commissionerate, Patna*²⁹, Hon'ble Kolkata Bench of Customs, Excise and Service Tax Appellate Tribunal ("CESTAT") held that lemon juice concentrates are rightly classifiable under HSN 20093100 being juice of citrus pulp attracting IGST at the rate of 12%.

²³ Circular No. 20/16/05/2021-GST dated November 2, 2021.

²⁴ Jharkhand Goods and Services Tax Act, 2017.

²⁵ [TS-384-HC(JHAR)-2025-GST], W.P.(T) No. 5535 of 2024 (order dated May 9, 2025)

²⁶ Show Cause Notices.

²⁷ W.P. (T) No. 2222 of 2022 (order dated March 21, 2023)

²⁸ Integrated Goods and Services Tax.

²⁹ Customs Appeal No. 75364 of 2025 (order dated May05, 2025)

Dabur India Limited (appellant) argued that the said goods are appropriately classifiable under HSN 20093100 attracting IGST at the rate of 12%, whereas the revenue authorities (respondent) contended that the goods are classifiable under HSN 21069019 as edible preparation/ soft drink concentrate attracting IGST at the rate of 18%.

The said goods are manufactured by blending lemon juice concentrate with water to such extent that the water content is not more than that present in natural lemon juice; thereafter it is subjected to the process of pasteurisation and subsequently, preservatives are added, and is then filled, plugged, capped, labelled and box packed for final sales.

The CESTAT observed that classification under HSN 2009 and/ or 2106 is determined on the basis of the composition of the product and the methodology involved in preparing or extracting the same. The classification is not based on end usage of the products. Further, it was held that the term 'soft drink' is *per se* different from fruit juices *inasmuch as* soft drinks are commonly understood to be aerated beverages/ preparations containing merely essences or flavours with no actual juice content. The CESTAT also relied upon Supplementary Note 5 to Chapter 21 of the First Schedule to the Customs Tariff Act to observe that HSN 2106 covers preparations for lemonades which are primarily flavoured syrups and may contain fruit juices as additional ingredients.

Accordingly, treating the lemon juice concentrate as soft drink concentrate is factually as well as legally untenable and thereby, confirming that the subject goods are rightly classifiable under HSN 20093100 attracting IGST at the rate of 12%.

Authority for Advance Ruling

ITC disallowed in respect of inputs, input services, and capital goods utilised for construction of multi-utility building

The Gujarat AAR³⁰ in **HMSU Rollers (India) Pvt. Limited**³¹ analysed the issue regarding eligibility of proportionate ITC on inputs, input services and capital goods used in the execution of works contract service when supplied for the construction of an immovable property.

The AAR relied on the decision of Safari Retreats Private Limited³² and observed that the Supreme Court, while analysing Section 17(5)(c) of the CGST Act, concluded that in the case of works contract, benefit of ITC is not available in respect of services supplied for the construction of immovable property, subject to the following 2 (two) exceptions:

- a) when the goods, services, or both, are received for construction of 'plant and machinery'; and
- b) where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract.

It may be noted that as per second explanation to Section 17(5), of the CGST Act, land, building or any other civil structures have been excluded from the definition of plant and machinery.

In light of the above, the AAR held that in terms of Section 17(5)(c) & (d) of the CGST Act, proportionate ITC is not admissible on supply of inputs such as steel, cement, and other consumables etc., input services in the nature of installation and erection services and capital goods used in the execution of works contract service for the construction of immovable property in the form of Integrated Factory Building with Gantry Beam.

³⁰ Authority for Advance Ruling

³¹ Advance Ruling No. GUJ/GAAR/2025/15 dated April 30, 2025 (Application No. Advance Ruling/SGST & CGST/2024/AR/06)

³² 2024 INSC 756

Notifications, circulars and instructions

CBIC³³ notifies revised formats for arrest report and incident report

The CBIC has notified³⁴ the revised formats for arrest report and incident report to *inter alia* highlight that the details of DIGIT³⁵ id will mandatorily be made part of the arrest report and incident report.

The revised formats are notified in continuation to the revised guidelines³⁶ on intimation of arrest and incident report whereby the due process to be followed for intimation and monthly reporting was notified.

Tax Practice

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³⁴ CBIC Instruction No. 10/2025-Customs dated May 13, 2025.

³⁵ DRI Intelligence Gathering and Investigation Tool is CBIC's digital platform for recording details related to arrests, seizures, and prosecutions in customs-related matters (i.e., a central database and official repository of Customs offences and violations).

³⁶ CBIC Instruction No. 21/2021 dated October 5, 2021.



18 Practices and
41 Ranked Lawyers



7 Ranked Practices,
21 Ranked Lawyers



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12 Ranked Lawyers



12 Practices and 50 Ranked
Lawyers



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22 Ranked Lawyers



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