August 2025

Recent rulings by courts and authorities

Supreme Court

Final adjudication order a substantive safeguard and not mere formality, ensures right to appeal

In the case of ***ASP Traders vs. State of Uttar Pradesh***[1], the petitioner, a dealer of goods, was transporting goods from one State to another. During transit, the entire consignment of goods was transhipped to another vehicle, barring a few bags which went missing unintentionally. The vehicle was detained by the authorities during transit, who issued a notice under Section 129(3) of the CGST Act[2] to the petitioner demanding tax and penalty for the shortfall in goods. While contesting the allegations, the petitioner paid the demand under protest. The authorities released the detained goods, however failed to pass a formal order under Section 129(3) of the CGST Act. The petitioner repeatedly requested the passing of a final adjudicating order to enable exercising statutory remedies but was denied. This denial was challenged before the Hon'ble High Court of Allahabad in a writ petition which was also denied.

In a special leave petition filed by the petitioner before the Hon'ble Supreme Court[3], the Supreme Court held that Section 129(3) of the CGST Act mandates the officer to issue a notice and thereafter pass an order. The phrase 'and thereafter' indicates the statutory obligation to pass a final adjudicating order, regardless of whether payment is made. Section 129(5) of the CGST Act providing that proceedings will be deemed concluded on payment of tax and penalty cannot be interpreted to mean waiving the right to appeal or abandoning adjudication responsibilities. Payment made under protest or out of compulsion should not be treated as voluntary admission of discrepancy and waiver of right to appeal. Failure to pass a reasoned order denying the right to appeal violates fundamental principles of natural justice and statutory safeguards. Further, GST[4] circular[5] dated April 13, 2018, clarifies the procedural requirement that a speaking order in Form GST MOV-09 must be passed after hearing objections, and a summary in Form GST DRC-07 must be uploaded on the common portal. Absence of a formal order renders the levy of tax and penalty as without authority of law, contrary to Article 265 of the Constitution of India.

The Supreme Court held that even after payment of tax and penalty under Section 129(1) of the CGST Act, the statutory requirement to pass a formal, reasoned order under Section 129(3) of the CGST Act cannot be dispensed with and therefore, directed the revenue authorities to file a reasoned order after giving the appellant an opportunity of being heard under Section 129(4) of the CGST Act.

[1] TS-653-SC-2025-GST
[2] Central Goods and Services Tax Act, 2017.
[3] Supreme Court of India.
[4] Goods and Services Tax.
[5] Circular no. 41/15/2018-GST

High Court

Transfer of unutilised ITC[6] from transferor company in one State to transferee company in another State allowed

In the matter of ***Umicore Autocat India Private Limited vs. Union of India***[7], the petitioner was formed in the wake of an amalgamation order issued by the NCLT[8]. The transferor company was registered in the State of Goa while the transferee company was registered in the State of Maharashtra. The transferor company requested to transfer unutilised ITC in its ECL[9] to the transferee company through filing Form GST IDT – 02. However, the same was rejected since the 2 (two) companies were registered in 2 (two) different States. Aggrieved, the petitioner moved the Bombay (Goa) HC[10].

The Bombay (Goa) HC observed the following:

1. GST was introduced as a tax applicable on 'Taxable Supply', unlike the old regime tax on manufacturing, sales and services. It introduced 2 (two) components namely, CGST[11] to be levied and collected by Central Government and SGST[12], to be levied and collected by the State Government, with benefits of set off against outward tax liability. The new regime permitted CGST credit in a seamless manner, irrespective of intra State or inter State supply though restricted cross functional set-off, i.e., use of CGST credit for output SGST liability and vice-versa is restricted.
2. Section 18(3) of the CGST Act read with Rule 41(2) of the CGST Rules[13] do not provide for any restriction in transfer of unutilised ITC from 1 (one) company to another on the basis of the registration of the 2 (two) companies.
3. Had the legislature intended to impose a restriction to the effect that, unless and until the transferee is registered in the State as that of transferor, ITC cannot be availed, it should have so specified, but Section 18(3) of the CGST Act is merely suggestive of allowing the transfer of unutilised ITC in the ECL of the transferor to the transferee, whenever there is change in the constitution of the registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with a specific provision of transfer of liability.
4. Mere difficulty of the GSTN[14] portal to transfer the ITC can be no ground for denial of transfer of ITC, which is otherwise entitled under the statute.
5. While CGST and IGST[15] are collected by the Central Government, the benefit of which can be claimed by the Central Government (for CGST) or by the Central Government or the State Government (for IGST), the Central Government has nothing to lose. However, the SGST collected by one State but permitted to be utilised in another State will result in financial loss to the former State.

Basis the above and upon the petitioner foregoing its claim for transfer of SGST credit, the Bombay (Goa) HC directed that the IGST and CGST credit lying in the transferor's ECL be transferred to the transferee by physical mode with a request to the GST Council and the GSTN to provide for a mechanism to transfer ITC in such circumstances.

[6] Input tax credit.
[7] Writ Petition No. 463 of 2024
[8] National Company Law Tribunal.
[9] Electronic Credit Ledger.
[10] Hon'ble High Court of Bombay at Goa.
[11] Central Goods and Services Tax.
[12] State Goods and Services Tax.
[13] Central Goods and Services Tax Rules, 2017.
[14] Goods and Service Tax Network.
[15] Integrated Goods and Services Tax.

Secondment of employees is not supply of manpower services if the Indian entity exercises effective control over the seconded employees

In the case of ***Alstom Transport India Limited vs. Commissioner of Commercial Taxes and Ors.***[16], the petitioner was engaged in the business of designing, manufacturing, supplying, installing, and commissioning goods along with providing design and engineering services, including software upgradation and modification for railway and metro infrastructure projects. During the course of its business activities, the employees of overseas group companies were seconded to work in India for a fixed tenure. The petitioner executed separate employment agreements with each of these expatriate employees, detailing their appointments, salaries, and allowances. During the term of their secondment, these expatriates were placed on the payroll of the petitioner in India, and their salaries were paid directly by the petitioner after deducting applicable tax as per Income Tax Act, 1961. The overseas group entities continued to provide social security and related benefits available to these expatriates in their home countries, for which the overseas group entities raised debit notes upon the petitioner for reimbursement.

The petitioner paid applicable GST under RCM[17] on these reimbursements. The revenue authorities alleged that the petitioner was in receipt of manpower services from its overseas group companies and sought to recover GST on total value of salaries and reimbursements made by the petitioner for these seconded employees. Aggrieved by the same, the petitioner moved the Karnataka HC[18].

The Karnataka HC observed that as per the agreement between the petitioner and its overseas group companies, the expatriates worked exclusively for the petitioner in India, were on its payroll, were extended statutory employment benefits under Indian labour laws, received salary from the petitioner after deduction of tax at source, and followed its internal rules and code of conduct. Further, social security, which was a regulatory requirement of the home country, was reimbursed by the petitioner. In sum and substance, complete operational control was with the petitioner in India. In this regard, the Karnataka HC further highlighted that the decision of the Supreme Court in *CC, CE and ST vs. Northern Operating Systems Private Limited*[19] should not be treated as a blanket precedent for all secondment arrangements. Key questions to evaluate a secondment arrangement from a tax perspective include the following:

1. who bears the economic burden and controls long-term employment?
2. whether the posting is task-specific or open-ended?
3. how salary is paid directly by the Indian entity or via the foreign company?
4. whether the secondee is absorbed into the Indian organisation or reverts to the foreign entity post-assignment?

The Karnataka HC further took cognizance of GST circular[20] dated June 26, 2024, which clarified that in related party transactions, where the Indian recipient is eligible for full ITC, the declared value may be accepted as the open market value, and where no invoice is raised, the value may be deemed 'NIL'. The view finds endorsement by the Delhi HC[21] in *Metal One Corporation India Private Limited vs. Union of India*[22].

Basis the above and considering the agreement between the petitioner and the overseas group entities, the Karnataka HC held that the relation between the petitioner and the expatriates was an employer-employee relationship, which is outside the scope of GST under Schedule III of the CGST Act. Be that as it may, even if there was a supply of manpower services, as alleged by the revenue authorities, there could be no charge of GST since there was no invoice raised for such services and therefore the invoice value would be 'Nil'.

Accordingly, the Karnataka HC held that GST is not payable on renumeration paid to the seconded employees as no supply of manpower services was involved in the present case.

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[16] W.P. No. 1779/2025
[17] Reverse charge mechanism.
[18] Hon'ble High Court of Karnataka.
[19] Civil Appeal Nos.2289-2293 of 2021
[20] Circular No. 210/4/2024-GST.
[21] Hon'ble High Court of Delhi.
[22] 2024 DHC 8298 DB

Reasons mentioned as 'cut and paste' of allegations in show cause notice amounts to non-application of mind and breach of natural justice

In the case of ***GlobeOp Financial Services (India) Private Limited vs. Deputy Commissioner of State Tax*** [23], the petitioner has challenged the adverse order passed by the adjudicating authority on the premise that the so-called reasoning and findings in the order were nothing but an exercise of cutting and pasting statements from the show cause notice. The order was vitiated by non-application of mind and is an unreasoned order which violates the principle of natural justice.

The Bombay HC[24] observed that the adjudicating authority failed to independently apply its mind to the various contentions raised in the replies filed by the petitioner. Instead, the adjudicating authority has chosen to copy or rather cut and paste verbatim the allegations in the show cause notice.

The Bombay HC highlighted that the adjudicating authority is obliged to issue a reasoned order after duly considering all relevant arguments. A failure to address key contentions or to provide supporting reasons reflect a lack of independent application of mind. Merely reproducing the allegations in the show cause notice without meaningful analysis undermines the credibility of the decision-making process or that the decision is made after its due consideration. These requirements stem from the principles of natural justice which focuses on the process of decision-making rather than the final outcome.

In light of the above, the Bombay HC held that this is a case of complete non-application of mind and violation of principles of natural justice and there is no point in directing the petitioner to pursue alternate remedy, thereby leading to quashing of the order.

Bunching of show cause notices and assessment orders for more than 1 (one) financial year is impermissible under GST Laws

In the case of ***RA and Co. vs. The Additional Commissioner of Central Taxes***[25], the Madras HC[26] quashed the show cause notice covering 6 (six) financial years.

The revenue authorities issued a single show cause notice and subsequently passed a single assessment order covering 6 (six) financial years i.e. 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23 stating that the GST laws do not explicitly prohibit issuance of a single show cause notice for multiple years.

The Madras HC in a writ petition filed by the petitioner, held that Section 2(106) of the CGST Act defines 'tax period' as the period for which the return is required to be filed. Therefore, notices should be issued based on these tax periods, either monthly or yearly, but cannot be beyond a financial year. Section 73(3) of the CGST Act or Section 74(3) of the CGST Act allows a statement for period other than those covered under initial notice only if the grounds are the same, but this does not permit combining multiple financial years into 1 (one) notice. Combining multiple years frustrates the scheme of limitation by forcing assessees to respond hurriedly and blocks their ability to avail benefits like compounding or amnesty schemes on a per-year basis. Therefore, the Madras HC held that the bunching of show cause notices and assessment orders for more than 1 (one) financial year is not permissible under the GST laws.

[23] TS-601-HC(BOM)-2025-GST
[24] Hon'ble High Court of Bombay.
[25] W.P.No.17239 of 2025
[26] Hon'ble Madras High Court.

Advance ruling authority

Fresh water storage tank and effluent guard pond are 'plant and machinery' and thereby eligible for ITC

The Kerala AAR[27] in the case of ***Nitta Gelatin India Limited***[28] determines the eligibility for claiming ITC on GST paid for goods and services used in the construction of freshwater storage tank and effluent guard pond.

The applicant is engaged in manufacturing gelatin using ossein derived from animal bones. The applicant proposes to construct a freshwater storage tank and an effluent guard pond for enhancing operational efficiency. These facilities are crucial for maintaining uninterrupted plant operations through proper water storage and effluent management and are capitalised in the books of accounts of the applicant.

Kerala AAR highlights that upon reading of Section 17(5)(c) and Section 17(5)(d) of the CGST Act along with explanation thereto, it is evident that the statute contemplates if freshwater storage tank and effluent guard pond are considered as 'construction of an immovable property', ITC would ordinarily be blocked unless they fall within the exception for 'plant and machinery'. 'Plant and machinery' mean apparatus, equipment, and machinery fixed to the earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports. This creates an important exception that even though something may be immovable property in the ordinary sense (being fixed to the earth), if it qualifies as 'plant and machinery', ITC of GST paid on its construction is not blocked under clauses (c) and (d) of Section 17(5) of the CGST Act.

Applying the above in the present case, Kerala AAR observed that assets that perform such specific, process-integrated roles are typically treated as 'plant' rather than as mere buildings. Though constructed using civil work elements like concrete and steel, the tanks serve as functional apparatus, more akin to large equipment used for fluid storage and waste treatment.

In view of the above, Kerala AAR held that as freshwater storage tank and the effluent guard pond constructed by the applicant are integral to the core manufacturing operations of the applicant and are capitalised in its books as part of 'plant and machinery', these are 'plant and machinery' under Explanation to Section 17 of the CGST Act and hence, eligible for ITC.

Courtroom updates

Supreme Court to decide Sutherland's plea to transition pre-GST cesses into GST regime

In a SLP[29] filed by Sutherland Global Services Private Limited[30], against the adverse judgement passed by the Madras HC in the matter of ***Sutherland Global Services Private Limited vs. Assistant Commissioner Of CGST and Central Excise & Ors.***[31], the Supreme Court will decide on the eligibility to transition credit of Education Cess, Secondary Higher Education Cess and Krishi Kalyan Cess from the pre-GST regime to the GST regime.

The Madras HC had held that Education Cess, Secondary Higher Education Cess and Krishi Kalyan Cess are not eligible duties under Section 140 of the CGST Act and observed that such cesses were levied for specific purposes. Accordingly, the Madras HC held that credit of these cesses are not intended to be carried forward into the GST regime. The matter is listed for hearing before the Supreme Court on September 2, 2025.

[27] Authority for Advance Ruling, Kerala.
[28] 2025 (7) TMI 1181
[29] Special Leave Petition.
[30] SLP (C) No(S). 7780/2021 registered on June 17, 2021
[31] WA NO. 53/2020

Supreme Court to evaluate the constitutional validity of taxability of supply of services by an association to its members

In a SLP filed by the revenue authorities in the matter of ***Union of India vs. Indian Medical Association and Another***[32], challenging the judgement passed by the Kerala HC[33] in the matter of ***Indian Medical Association vs. UOI and Ors.***[34], the Supreme Court will decide on the constitutional validity of taxability of supply of services by an association to its members.

The Kerala HC struck down Section 7(aa) of the CGST Act holding it unconstitutional for disregarding the principle of mutuality[35]. It ruled that services provided by an association to its members is non-taxable. While declaring so, the Kerala HC had remarked that "*the decision of the SC in the matter of Calcutta Club Limited*[36] *is authority for the proposition that the principle of mutuality has survived under the Constitution even after the 46th Amendment. If that be so, then the amendment exercise carried out by the Parliament would itself have to be seen as unconstitutional since it incorporates a definition of supply that militates against the constitutional understanding of the term*". The matter is likely to be listed for hearing before the Supreme Court in September 2025.

Supreme Court dismisses SLP filed by the revenue authorities against Delhi HC judgement quashing levy of GST on license fee collected by State Electricity Regulatory Commission

The Supreme Court *vide* order dated July 21, 2025 *in limine* dismissed the SLP filed by the revenue authorities against the judgement passed by the Delhi HC wherein the Delhi HC quashed the demand notices issued by the revenue authorities seeking recovery of GST on the license fee collected by the State Electricity Regulatory Commission and declared that GST is not leviable on the license fee in as much as the State Electricity Regulatory Commissions are 'Tribunals' under Schedule III of the CGST Act and thus, not leviable to GST.

Gujarat HC[37] to examine time of supply for mobilisation advance paid by NHAI[38] to contractors

In the matter of ***SPS Construction India Private Limited (formerly known as S P Singla Construction Private Limited) vs. Union of India and Ors.***[39], the Gujarat HC will examine the time of supply for mobilisation advance received by the road contractors from NHAI. The petitioner argues that mobilisation advance is in the nature of loan or deposit on which GST has to be deferred till the time the supplier (i.e., road contractor) adjusts the same towards invoices for supply of goods and/or services. The petitioner further challenges AAAR[40] order, arguing that its conclusion requiring the road contractor to pay GST on receipt of mobilisation advance overlooks the proviso to Section 2(31) of the CGST Act. This proviso clarifies that a deposit is not considered payment for a supply unless applied as consideration by the supplier. The matter is listed for hearing on August 21, 2025.

[32] SLP (C) NO. 18349-18350/2025
[33] Hon'ble High Court of Kerala.
[34] TS-248-HC(KER)-2025-GST
[35] The principle of mutuality made services to members by a club non-taxable.
[36] TS-779-SC-2019-VAT
[37] Hon'ble High Court of Gujarat.
[38] National Highway Authority of India.
[39] Special Civil Application No. 9604 of 2025
[40] Appellate Authority for Advance Ruling.

Delhi HC to examine whether supplier can be penalised for a bona-fide supply if buyer's registration is retrospectively cancelled

In the matter of ***Exclusive Motors Private Limited vs. Union of India and Ors.***[41], the petitioner, a dealer of Bentley cars in India, sold a car to a buyer. The petitioner recovered applicable GST and compensation cess on the supply from the buyer and paid it to the Government. However, the GST authorities upon discovering that the buyer is non-existent and its GST registration has been cancelled retrospectively, issued a show cause notice upon the petitioner to recover a hefty penalty.

Aggrieved by the said notice, the petitioner moved the Delhi HC contesting that the tax was collected and duly deposited with the Government for the supply and there was no default by the petitioner. It is further argued that both the car and the buyer are easily traceable. The car is also being serviced by the petitioner.

In view of the above circumstances, the Delhi HC will hear the matter on October 8, 2025.

Notifications, circulars and instructions

India and United Kingdom sign the bilateral Free Trade Agreement

In accordance with Article XXIV of GATT 1994 and Article V of GATS, India and UK[42] have signed the CETA[43] to strengthen economic ties and boost bilateral trade. Key takeaways of CETA include:

1. duty-free access to 99% of India's exports to the UK market, covering nearly 100% of the trade value;
2. boost to the (a) labour-intensive sectors including agriculture and allied goods, textiles, leather, marine products, gems and jewellery, toys; (b) high-growth sectors such as engineering goods, chemicals, auto components, electronics and software, pharmaceuticals, medical devices, steel and products of iron and steel; (c) information technology/information technology enabled services, financial and professional services, business consulting, education, telecom, architecture, engineering, global capability centres; and (d) digital economy, etc.;
3. simplifying the Rules of Origin by allowing exporters to self-certify the origin of products, reducing time and paperwork. Product Specific Rules of Origin for key sectors such as textiles, machinery, pharmaceuticals, processed food;
4. Double Contribution Convention exempts Indian workers and their employees from paying UK social security contributions for up to 3 (three) years when on temporary assignments;
5. mutual recognition agreements for professional qualifications within 12 (twelve) months of CETA's entry into force, promoting fields like nursing, accountancy and architecture; and
6. ensuring professional mobility for professionals temporarily entering and staying in the UK such as business visitors, intra-corporate transferees, contractual service suppliers, independent professionals, and investors.

Directorate General of Foreign Trade clarifies regarding warehousing of goods pending authorisation

DGFT[44] has issued policy circular[45] dated July 22, 2025, to clarify regarding applicability of Para 2.12 of FTP[46]. Para 2.12 of FTP provides that goods already imported/shipped/arrived in advance but not cleared from customs may also

[41] Special Civil Application No. 9604 of 2025
[42] United Kingdom.
[43] Comprehensive Economic and Trade Agreement.
[44] Directorate General of Foreign Trade.
[45] Circular no. 02/2025-26.
[46] Foreign Trade Policy 2023.

be cleared against an authorisation issued subsequently, subject to warehousing these goods first against bill of entry for warehousing and later clearing for home consumption against an authorisation issued subsequently.

However, in the garb of the said provision, the importers were insisted to mandatorily warehouse the goods before clearance, if these were shipped (date of shipment as per date of bill of lading) prior to issuance of authorisation, even though the importer has an authorisation in hand for the landed goods while approaching customs for clearance of such goods.

DGFT has clarified that goods already imported/shipped/arrived, prior to authorisation, but not yet cleared from Customs may be cleared for home consumption against an authorisation issued subsequent to the date of shipment (date of bill of lading) but before their clearance from customs, without any mandatory warehousing. This excludes 'Restricted' items or items traded via State Trading Enterprises, unless specifically permitted by DGFT.

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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