October 2025

Recent rulings by courts and authorities

Supreme Court of India

Provisional attachment in terms of Section 83 of the Central Goods and Services Tax Act, 2017 cannot be renewed upon lapse of 1 (one) year time limit

In the matter of ***Kesari Nandan Mobile vs. Office of Assistant Commissioner of State Tax***[1], the Hon'ble Supreme Court of India ("**Supreme Court**") overturned the decision[2] of Hon'ble Gujarat High Court ("**Gujarat HC**") and held that Section 83 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") cannot be read to bestow any additional power upon the tax authorities to renew provisional attachment order upon the lapse of 1 (one) year time limit.

The dispute arose on account of the passing of fresh provisional attachment orders by the Goods and Services Tax ("**GST**") authorities terming the same as 'renewal' of earlier orders. The Kesari Nandan Mobile ("**Appellant**") initially had challenged the said 'renewal' orders before the Gujarat HC, which dismissed the contention of the Appellant by observing that the law did not provide an embargo on issuance of a second provisional attachment order after the lapse of an earlier order.

The Appellant contended that once a provisional attachment order (issued in terms of Section 83 of the CGST Act) had lapsed, the same could not be renewed as, the tax authorities had no jurisdiction conferred under the statute to pass fresh/renew previous provisional attachment orders. The Appellant also contended that unlike Section 11DDA of the Central Excise Act, 1944 and Section 28BA of the Customs Act, 1962, Section 83 of the CGST Act does not provide for extending the validity of a provisional attachment order after its lapse. Accordingly, in absence of such provisions, the tax authorities cannot extend the provisional attachment order and once gain attach the bank accounts. To substantiate its contention, the Appellant relied on the decision of Hon'ble Kerala High Court[3] wherein it was held that there is clear absence of any enabling provision in Section 83 of the CGST Act permitting the authorities to re-issue the order of attachment.

Considering the arguments advanced by both sides, the Supreme Court observed as follows:

1. a plain reading of Section 83(2) establishes that any order of provisional attachment would cease to have any effect after a period of one year;
2. the inherent executive power cannot be exercised, in respect of any matter covered by statutory law/rules, in a manner inconsistent therewith. While so, law is also well-settled that the inherent executive power could be exercised to supplement the statutory law but not supplant it;

[1] TS-714-SC-2025-GST
[2] *Kesari Nandan Mobile vs. Office of Assistant Commissioner of State Tax*, TS-68-HC(GUJ)-2025-GST
[3] *Additional Director General and Anr. vs. Ali K. and Ors.*, (2025) SCC OnLine Ker 758

3. a reading of the statute in its entirety would reveal that the provisional attachment is a pre-emptive measure to protect the interests of the revenue, and it cannot function as a recovery measure;

4. conceding power to the revenue to issue a fresh provisional order of attachment after the initial order has lapsed by operation of law or to renew the same would render the text of sub-section (2) of Section 83 otiose; and

5. the agenda framed for GST Council's 53rd meeting had recommended necessary amendments to align the extant procedure under Rule 159 of the Central Goods and Services Tax Rules, 2017 ("**CGST Rules**") with Section 83 of the CGST Act to the extent that Rule 159 provided that provisional attachment of a property will be removed only on the written instructions from the Commissioner to that effect. Therefore, it is notable that the GST Council is also conscious that a provisional attachment order would have no life after a year.

Basis the above, the Supreme Court held that there is no reason to read Section 83 of the CGST Act in a manner to confer any additional power over and above the draconian power conferred by Sub-section (1) and upon lapse as ordained by Sub-section (2).

The bar under Section 6(2)(b) of the CGST Act is not applicable to parallel inquiry, investigation, search and seizure proceedings

In the matter of ***Armour Security (India) Limited vs. Commissioner, CGST, Delhi East Commissionerate and Anr.***[4], the Supreme Court held that the phrase 'initiated any proceedings' in Section 6(2)(b) of the CGST Act, does not include issuance of summons or gathering of evidence, and affirmed that such evidence-gathering activity is a preliminary step and does not constitute formal proceedings that would bar a parallel investigation by another authority.

The core legal issue was whether a summons and ongoing investigation under the CGST Act could be considered 'proceedings' initiated in respect of a 'same subject matter' to invoke the bar under Section 6(2)(b) of the CGST Act, thereby preventing a parallel investigation by a different GST authority. The question also arose as to the scope and meaning of 'subject matter' in this context.

The petitioner filed the present special leave petition being aggrieved by the order of Hon'ble Delhi High Court ("**Delhi HC**"), whereby the Delhi HC had declined to interfere with the summons issued to the petitioner by observing that the expression 'any proceeding' in Section 6(2)(b) of the CGST Act cannot be construed to include a search or investigation, and a summons or investigation pursuant to a search constitutes only a precursor to the formal proceedings. It distinguished such summons from assessment, noting that summons is primarily intended to elicit information.

The Petitioner argued that the issuance of a summons and the subsequent investigation by one GST authority constituted 'proceedings' regarding the 'same subject matter' and a parallel investigation by another authority was barred by the provisions of Section 6(2)(b) of the CGST Act. The Petitioner sought to quash the parallel proceedings on the grounds that they were initiated without jurisdiction.

Considering the arguments advanced, the Supreme Court observed as follows:

1. summons is merely a step in the course of an investigation and not the culmination of it. During this stage, the tax authorities are still in the process of determining whether to initiate formal proceedings. Thus, an evidence-gathering and inquiry stage does not fall within the ambit of 'proceedings' as contemplated under Section 6(2)(b) of the CGST Act. Further, the phrase 'initiation of any proceedings' refers to the formal commencement of adjudicatory proceedings by way of issuance of a show cause notice ("**SCN**"), and does not encompass the issuance of summons, or the conduct of any search, or seizure;

2. the view adopted by the Allahabad High Court in *G.K. Trading*[5] and Kerala High Court in *K.T. Saidalavi*[6] were affirmed, whereby the Allahabad High Court rightly held that the issuance of summons cannot be conflated with a statutory step taken upon conclusion of an inquiry. Similarly, the Kerala High Court was also correct in holding

[4] TS-711-SC-2025-GST
[5] 2020 SCC OnLine All 1907
[6] 2024 SCC OnLine Ker 5674

that initiation of inquiry or the issuance of summons does not amount to the initiation of 'any proceedings'. The phrase 'initiation of any proceedings' refers specifically to the issuance of a notice under the relevant provisions of the GST enactment;

3. the phrase 'subject matter' must be understood in the context of the initiation of formal proceedings, which involves a conclusive determination of tax liability. A mere overlapping aspect of investigation does not automatically render the subject matter 'same'. It was held that where the proceedings concern distinct infractions, the same would not constitute a 'same subject matter' even if the tax liability, deficiency, or obligation is same or similar, and the bar under Section 6(2)(b) of the CGST Act would not be attracted;
4. the Supreme Court also alluded to discussions from the 11th GST Council Meeting to underscore that 'subject matter' must be viewed from the perspective of formal proceedings, and not preliminary inquiries; and
5. consequently, the Supreme Court laid down a twofold test to determine whether a subject matter is 'same':
    a) first, the subject matter will be considered the same if an authority has already proceeded on an identical liability of tax or alleged offence by the assessee on the same facts; and
    b) secondly, if the demand or relief sought is identical.

Additionally, the Supreme Court laid down the following guidelines to be followed in cases where, after the commencement of an inquiry or investigation by one authority, another inquiry or investigation on the same subject matter is initiated by a different authority:

1. mere issuance of summons does not enable either the issuing authority or the recipient to ascertain that proceedings have been initiated. Hence, where a summons or a SCN is issued either by the Central or the State tax authority to an assessee, the assessee is, in the first instance, obliged to comply by appearing and furnishing the requisite response, as the case may be;
2. the assessee will forthwith inform, in writing, to the authority that initiated the subsequent inquiry or investigation, in case the assessee becomes aware that the matter is being inquired into or investigated by another authority;
3. upon receipt of such intimation form the assessee, the respective tax authorities will communicate with each other to verify the veracity of the assessee's claim;
4. if the claim of overlap of inquiry is found untenable, and the investigation pertains to different subject matters, an intimation along with reasons and a specification of the distinct subject matters will be conveyed in writing to the taxable person;
5. taxing authorities are in their rights to conduct an inquiry until it is ascertained that both authorities are examining the identical liability, the same contravention alleged, or the issuance of a SCN;
6. Central or State tax authority will decide *inter-se* which of them will continue with the inquiry or investigation;
7. where the authorities are unable to reach a decision as to which of them will continue with the inquiry or investigation, the authority that first initiated the inquiry or investigation will be empowered to carry it to its logical conclusion; and
8. if it is found that the authorities are not complying with these guidelines, it will be open to the taxable person to file a writ petition before the concerned High Court under Article 226 of the Constitution of India.

High Courts

Issuance of notice in Form GST ASMT-10 mandatory before issuance of SCN under Section 73 of the CGST Act for scrutiny of returns

In the case of ***PepsiCo India Holdings Private Limited vs. Union of India***[7], the Hon'ble High Court of Gauhati ("**Gauhati HC**") reinforced procedural discipline under the GST regime by setting aside the SCN issued to PepsiCo India Holdings Pvt. Ltd. ("**Petitioner**"). The SCN was set aside on the ground that the GST authorities failed to follow the procedure prescribed under Section 61 of the CGST Act, which requires issuance of Form ASMT-10 for undertaking scrutiny of returns, prior to initiation of proceedings under Section 73 of the CGST Act.

The Petitioner contended that the SCN was issued under Section 73 of the CGST Act, bypassing the statutory requirement of scrutinising the returns and thereafter communicating the discrepancies *via* Form ASMT-10 in accordance with Section 61 of the CGST Act read with Rule 99 of the CGST Rules.

The Gauhati HC agreed with the contentions of the Petitioner and held that procedural safeguards under Sections 61 and 73 of the CGST Act are not a mere formality. The GST authorities are mandated to follow the procedure prescribed under the statute by concluding scrutiny proceedings by issuance of Form ASMT-10 prior to issuance of a SCN. Failure of complying with the prescribed procedure can be challenged as being without jurisdiction.

JSA Note: JSA successfully represented the Petitioner before the Gauhati HC and secured the favourable judgement, setting aside the SCN.

SCN quashed for failure to abide by the requirement of pre-SCN consultation

The Hon'ble Bombay High Court ('**Bombay HC**') in the matter of ***Rochem Separation Systems (India) Private Limited vs. Union of India***[8] ruled upon the validity of SCN being issued without a pre-consultation hearing.

The Petitioner contended that the Central Board of Indirect Taxes and Customs ("**CBIC**")[9] *vide* circular[10] dated March 10, 2017, had made pre-consultation hearings prior to the issuance of SCN mandatory. These hearing are for cases where the demand involved is more than INR 50,00,000 (Indian Rupees fifty lakh). The said requirement was also reclarified *vide* circular[11] dated November 19, 2020. The petitioner also contended that Circulars issued by CBIC are binding on authorities and any deviation thereof is bad in law. The tax authorities argued that such consultation was merely directory and its omission did not invalidate the proceedings.

The Bombay HC rejecting the tax authorities contention held that the requirement of a pre-consultation, introduced to promote transparency and reduce unnecessary litigation, is a mandatory procedural step, particularly where the proposed demand exceeds the prescribed monetary threshold. It was observed that non-compliance with such a requirement constitutes a serious procedural lapse which vitiates the SCN itself. The Bombay HC also reiterated that adherence to prescribed procedure is indispensable even in fiscal matters, and administrative convenience cannot override statutory or procedural safeguards.

Levy of entertainment duty on convenience fee charged on online booking of movie tickets upheld

In the matter of ***FICCI – Multiplex Association of India and Anr. vs. State of Maharashtra and Ors.***[12], the Bombay HC has upheld the constitutional validity of the seventh proviso to Section 2(b) of the Maharashtra Entertainments Duty Act, 1923 ("**Entertainment Duty Act**"). The said proviso seeks to recover entertainment duty on the convenience fee

[7] 2025 (9) TMI 1593
[8] 2025 (10) TMI 68
[9] Formerly known as Central Board of Excise and Customs
[10] No. 1053/02/2017-Cx-
[11] No. 1076/02/2020-Cx
[12] TS-643-HC-2025(BOM)-NT

paid for booking movie tickets online by treating the same as 'payment of admission'. As per the proviso, if convenience fee of less than INR 10 (Indian Rupees ten) per ticket is charged, the same is not to be treated as 'payment for admission'. However, if convenience fee is of more than INR 10 (Indian Rupees ten) per ticket, the same will be treated as 'payment for admission', on which the applicable entertainment duty will be applicable. The petitioner challenged the insertion of the said proviso.

The Bombay HC dismissed the writ petitions based on the following observations:

1. the proviso does not treat the activity of selling tickets online as a separate and distinct form of entertainment, thereby retaining the nature of tax. Therefore, there is no need to amend the definition of 'entertainment' since no new form of entertainment is sought to be introduced;
2. the convenience fee charged in addition to the ticket price squarely falls within Section 2(b)(iv) of the Entertainment Duty Act which defines 'payment of admission'. It forms the measure of tax on which the duty is to be paid under Section 3 of the Entertainment Duty Act;
3. the proviso providing for levy of duty only on amounts charged more than INR 10 (Indian Rupees ten) per ticket is not a colourable exercise of power by the State;
4. the payment of convenience fees has a clear and direct link to entertainment activities serving as a valid basis for levying entertainment duty; and
5. the proviso is not *ultra vires* since there is no transgression by the State on the subjects enumerated in the Union List. The Union taxes the service of online ticket booking under the Finance Act, 1994 and the State is taxing the act of entertainment involving films. Therefore, the legislative competency of the State to enact the impugned proviso by exercising power under Article 246 (3) read with Entry 62 List II of the Seventh Schedule is constitutional.

Courtroom updates

Supreme Court tags matter for listing in relation to Revenue challenging the order of Gujarat HC, where in it was held that GST is not leviable on assignment of leasehold rights

The Supreme Court has tagged the matter in the case of ***Union of India and Anr. vs. Alfa Tools Private Limited***[13] for listing with the case of ***Gujarat Chamber of Commerce and Industry and Ors. vs. Union of India and Ors.***[14], wherein it was held that GST is not leviable on the assignment of leasehold rights as the transaction is covered under Clause 5 of Schedule III of the CGST Act.

Jurisdiction of police authorities *vis-à-vis* tax authorities to detain goods in-transit as per the provisions of CGST Act to be evaluated by the Supreme Court

The Supreme Court in the matter of ***Abhishek Kumar Kashyap vs. State of West Bengal and Ors.***[15], to examine the jurisdiction of police authorities *vis-à-vis* the tax authorities to detain any goods in transit, in accordance with the provisions of the CGST Act.

The petitions were filed challenging the Order[16] passed by Calcutta High Court ("**Calcutta HC**"), whereby, in a matter relating to transportation of betel nuts/areca nuts by procuring fraudulent documents, suspicion regarding ownership

[13] Special Leave to Appeal (C) No. 20007/2025 (Order dated August 1, 2025)
[14] TS-03-HC(GUJ)-2025-GST
[15] Special Leave to Appeal (Criminal) No(s). 8484 – 8486/ 2025 (Order dated August 12, 2025)
[16] CRR No(s). 468, 469 and 471 of 2024 (Order dated April 28, 2025)

of seized goods, and fabrication of documents, the Calcutta HC *inter alia* upheld the order of Trial Court directing disposal of the seized betel nuts/areca nuts in terms of Section 505 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Notifications, circulars and instructions

Notifications issued in pursuance to 56th GST Council Meeting

1. Exemption from filing of annual return for FY 2024-25 for registered person whose aggregate turnover is less than INR 2,00,00,000 (Indian Rupees two crore) – Notification No. 15/2025 – Central Tax, dated September 17, 2025.
2. Exemption from levy of GST on supply of health insurance by an insurer to the insured - Notification No. 16/2025 – Central Tax, dated September 17, 2025.
3. Withdrawal of exemption to transportation services/local delivery services provided by/through Electronic Commerce Operator - Notification No. 16/2025 – Central Tax, dated September 17, 2025.

Directorate General of Foreign Trade issues guidelines regarding export of items suspected to be covered under Special Chemicals, Organisms, Materials, Equipment, and Technologies

CBIC, *vide* instruction[17] dated August 14, 2025 ("**Instruction**"), provides guidelines for export of products potentially covered under the Special Chemicals, Organisms, Materials, Equipment, and Technologies ("**SCOMET**") list. The Instruction addresses the challenges in classifying highly technical SCOMET items. It directs customs formations to consult a consolidated repository of clarifications issued by Directorate General of Foreign Trade ("**DGFT**"), which is periodically updated.

In the absence of a suitable clarification in the repository, and where a determination cannot be made by the customs officer or exporter, the matter may be referred to the Customs-III Section of the CBIC with prior written approval of the Commissioner. The reference must include all relevant technical documentation. Customs formations are prohibited from directly referring such matters to the DGFT.

The Instruction also clarifies that a Chartered Engineer Certificate is not a prerequisite for SCOMET classification and export clearance under the Foreign Trade Policy, 2023. Additionally, it mentions the Directorate of International Customs' role in examining the Authorised Economic Operator program with Dual Use Qualified status and its coordination with relevant agencies.

[17] No. 26/2025-Customs

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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