

JSA Newsletter

Indirect Tax


 January 2026

Recent rulings by courts and authorities

High Court

Services provided by wholly owned Indian subsidiary to the parent company in United States of America, held to be export of services and not intermediary services

In the matter of *Infodesk India Private Limited vs. Union of India and Ors.*¹, the Hon'ble High Court of Gujarat ("Gujarat HC") held that services provided by a wholly owned Indian subsidiary, Infodesk India Private Limited ("Petitioner") to its parent company in the United States of America ("USA") on a principal-to-principal basis, constituted export of services and not intermediary services, thereby allowing the claim for refund of unutilised Input Tax Credit ("ITC").

The dispute arose when the respondent authority rejected the Petitioner's refund application on the ground that the software consultancy services purportedly rendered by the Petitioner were intermediary services under Section 2(13) of the Integrated Goods and Services Tax ("GST") Act, 2017 ("IGST Act") and not export of services under Section 2(6) of the IGST Act. The Petitioner was established exclusively for servicing its parent organisation's technical requirements by providing software consultancy services, managing information technology infrastructure, editorial and content creation activities, and customer support services. The Petitioner contended that it was providing services to its parent company on a principal-to-principal basis and not as an intermediary, and therefore, the services qualified as export of services eligible for refund of unutilised ITC.

Considering the submissions, the Gujarat HC observed that on perusal of the service agreement between the Petitioner and its parent company, the Petitioner was required to assist the USA entity in carrying on the business of software development and to provide advisory services for expansion of business, marketing, advertisement, publicity, and personnel accounting. The Gujarat HC held that on a conjoint reading of the scope of services, it could not be said that the Petitioner was only working as an agent or broker between the parent company and its customers without supplying any goods or services on its own account. The payment terms provided for the Petitioner to receive monthly fees equal to costs incurred plus 8% markup, indicating that the Petitioner was earning profit on costs incurred. The dispute resolution clause also provided for arbitration between the Petitioner and its parent company, indicating an independent contractual relationship. The Gujarat HC held that the Petitioner, being an independent company incorporated in India with a distinct entity, provided services to its parent company in an independent capacity and not in the capacity of an agent, broker, or intermediary. Accordingly, the Gujarat HC directed the Respondent authority to process the refund claim considering the services provided by the Petitioner as export of services.

¹ 2025 (12) TMI 435 (decided on November 27, 2025)

Similar observations were also made by the Hon'ble Karnataka High Court in the case of *Excelpoint Systems (India) Private Limited vs. Joint Commissioner of Central Tax (Appeals-1)*², whereunder the High Court after relying upon the contract executed between the parties held that the services provided by the Petitioner amount to export of services. Further, similar judgment was also passed by the Hon'ble Karnataka High Court in the case of *Informatica Business Solutions Private Limited vs. The Assistant Commissioner of Central Tax Bengaluru*³. Further, the High Court also ordered payment of applicable interest on delayed refund of accumulated ITC.

Appeal filed within limitation by treating date of communication as 'day zero'

In the matter of ***Laxmi Metal and Machines Through its Partner Sh. Satish Kumar Joon vs. Union of India and Ors.***⁴, the Hon'ble High Court of Punjab and Haryana ("P&H HC") held that the day on which an order is passed or communicated must be treated as 'day zero' for computing the limitation period, and accordingly, an appeal filed within the extended statutory period was held to be within time.

The dispute arose when the First Appellate Authority dismissed the appeal filed by Laxmi metal and Machines ("Petitioner") as time barred. The proper officer had rejected the Petitioner's refund claim by order-in-original dated January 24, 2024, which was communicated on February 1, 2024. The Petitioner filed an appeal on June 1, 2024. The First Appellate Authority computed 3 (three) months up to April 30, 2024 and the condonable 1 (one) month up to May 30, 2024, thereby holding that the appeal filed on June 1, 2024 was delayed by 1 (one) day. The Petitioner contended that it was unable to file the appeal within 3 (three) months as it was out of the country during the relevant period and the counsel engaged earlier had not been in communication.

Considering the submissions, the P&H HC observed that the First Appellate Authority erred in computing the limitation period. The P&H HC held that the day on which the order was passed or communicated had to be treated as 'day zero'. The Petitioner was entitled to the 1 (one) month extended period under the statute in terms of Section 107(4) of the Central GST Act, 2017 ("CGST Act"). Computing thus, the 3 (three) month period would expire on May 1, 2024, and with the additional 1 (one) month, the appeal filed on June 1, 2024 was within the limitation period. The impugned order was set aside and the matter was remanded to the Appellate Authority for decision on merits.

Assignment of leasehold rights in a Gujarat Industrial Development Corporation industrial plot constitutes transfer of immovable property; not liable to GST

In the matter of ***Gopal Iron and Steel Co (Guj) Limited vs. Office of Assistant Commissioner of State Tax***⁵, the Hon'ble High Court of Gujarat ("Gujarat HC") addressed whether the assignment of leasehold rights in a Gujarat Industrial Development Corporation ("GIDC") industrial plot constitutes a taxable supply of service under GST.

The dispute arose when the respondent issued a summons and a subsequent Show-Cause Notice ("SCN") dated September 23, 2025, in Form GST DRC-01. The tax authorities sought to treat the petitioner's assignment of leasehold rights executed through a tripartite agreement with a bank and a buyer to settle a loan default as a 'supply of service' under Section 7(1)(a) of the CGST Act classifiable under Heading 9972. The petitioner challenged this, arguing that the transfer of GIDC leasehold rights for a 99 (ninety-nine) year term was effectively a transfer of immovable property and thus outside the scope of GST.

Considering the submissions, the Gujarat HC observed that the issue was already settled by its prior decision in the case of *Gujarat Chamber of Commerce and Industry vs. Union of India*. The Gujarat HC noted that while an initial allotment of land by GIDC is a supply of service, the subsequent assignment of such leasehold rights by the lessee to a third party for consideration is a transfer of "benefits arising out of immovable property". Such a transaction divests the

² 2026 (1) TMI 145

³ 2026 (1) TMI 84

⁴ 2025 (12) TMI 435 (decided on November 28, 2025)

⁵ 2025 (12) TMI 436 (decided on November 28, 2025)

assignor of all absolute rights in the property, making it equivalent to a sale of immovable property rather than a service.

The Gujarat HC held that the assignment of leasehold rights of land and building does not fall within the scope of 'supply of service' under Section 7(1)(a) of the CGST Act. Consequently, the provisions of Clause 5(b) of Schedule II and Clause 5 of Schedule III of the CGST Act are inapplicable to such transactions, and they are not subject to the levy of GST under Section 9 of the CGST Act. Accordingly, the Gujarat HC allowed the petition and quashed the impugned SCN issued under Section 74 of the CGST Act.

JSN Note: The judgement in the case of *Gujarat Chambers (supra)* has been challenged before the Hon'ble Supreme Court of India ("Supreme Court") and is currently pending disposal.

Writ petition against SCN not maintainable in absence of jurisdictional infirmity

In the matter of *VE Commercial Vehicles Limited through Mr Nitin Nagda, Vice President Indirect Taxation And Shared Servi vs. Union of India Dhar and Ors.*,⁶ the Hon'ble High Court of Madhya Pradesh ("MP HC") held that a writ petition challenging a SCN is not maintainable when the notice is issued by a competent authority possessing inherent jurisdiction.

The dispute arose when the Petitioner challenged the SCN issued under Section 74 of the CGST Act for recovery of tax of INR 168,19,65,129 (Indian Rupees one hundred and sixty-eight crore, nineteen lakh, sixty-five thousand, one hundred and twenty-nine) along with interest and penalty. The Petitioner outlined various flaws in the SCN such as: (a) the SCN did not contain necessary ingredients of Section 74 of the CGST Act, (b) the SCN was issued beyond the time limit prescribed under Section 44 of the CGST Act; and (c) the SCN was a third notice issued on the same issue, thereby attracting the principle of res judicata. The petitioner argued that the writ petition was maintainable on these grounds.

Considering the submissions, the MP HC observed that while there is no absolute bar for the High Court to exercise jurisdiction under Article 226 of the Constitution of India, 1950 against a SCN, interference is warranted only when the court is satisfied of the nullity of the SCN for want of jurisdiction of the authority. The MP HC held that there can be interference only if the notice was issued without jurisdiction or by an incompetent authority. In the present case, the impugned notice was not issued by an incompetent authority and the authority did not lack any inherent jurisdiction. The points canvassed before the court could very well be addressed by the competent authority. Accordingly, the writ petition was not entertained against the SCN.

Courtroom updates

Supreme Court admits Parle Agro's appeal on 'Frooti' classification under Chhattisgarh Entry Tax Act, 1976

The Hon'ble Supreme Court admits Parle Agro's appeal⁷ against Chhattisgarh High Court's classification of 'Frooti' as 'non-alcoholic drink or beverage' under Entry 14 of Schedule II to the Chhattisgarh Entry Tax Act, 1976, attracting 2% tax.

The Chhattisgarh High Court had upheld a Single Judge's ruling, rejecting Parle's claim that 'Frooti' constitutes 'fruit drink' under Residuary entry, observing that absence of specific entry for fruit juices or express inclusion thereof in Entry 14 does not alter its character as non-alcoholic beverage.

The appeal is now listed before Hon'ble Supreme Court for hearing on March 11, 2026.

⁶ 2025 (11) TMI 1925 (decided on September 22, 2025)

⁷ *Parle Agro Private Limited vs. Commissioner of Commercial Tax and Ors* [Order dated September 12, 2025 in SLP No. 17039/2025]

Notifications, circulars and instructions

Goods and Services Tax Network issues advisory dated November 1, 2025, for simplified GST registration scheme

Pursuant to Rule 14A of the CGST Rules, 2017, a simplified GST registration scheme has been introduced to reduce compliance burden and enhance ease of doing business for small taxpayers.

Any person who, on his own assessment, determines that his total output tax liability on supply of goods or services, or both, to registered persons will not exceed INR 2,50,000 (Indian Rupees two lakh fifty thousand) per month (including Central GST, State GST/Union Territory GST, Integrated GST, and Compensation Cess) will be eligible to register under this scheme. However, a person registered under this rule in a State or Union Territory will not be eligible to obtain another registration in the same State or Union Territory under this rule against the same permanent account number (PAN).

Whilst applying for registration in FORM GST REG-01, applicants must select 'Yes' under the 'Option for Registration under Rule 14A'. Aadhaar authentication is mandatory for the primary authorised signatory and at least 1 (one) promoter/partner. Registration will be granted electronically within 3 (three) working days from the date of generation of the Application Reference Number (ARN), subject to successful Aadhaar authentication.

Taxpayers opting for registration under Rule 14A of the CGST Rules intending to withdraw from the scheme at a later stage must ensure that all returns due from the effective date of registration up to the date of filing the withdrawal application have been filed, and must have filed returns for a minimum period of 3 (three) months if applying for withdrawal before April 1, 2026, or for a minimum period of 1 (one) tax period if applying on or after April 1, 2026, provided that no amendment or cancellation application for registration availed under Rule 14A of the CGST Rules is pending and no proceedings under Section 29 of the CGST Act for cancellation of registration have been initiated or are pending.

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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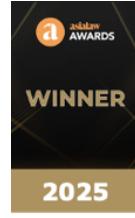


19 Practices and
40 Ranked Lawyers

7 Ranked Practices,
21 Ranked Lawyers

14 Practices and
12 Ranked Lawyers

13 Practices and
49 Ranked Lawyers



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24 Ranked Lawyers

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11 A List Lawyers in
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