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Semi-Annual Indirect Tax Law Compendium 2025

July – December 2025

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Introduction

This Compendium consolidates the key decisions passed by the Hon'ble Supreme Court of India ("**Supreme Court**"), different High Courts, and the Kerala Authority for Advance Ruling ("**Kerala AAR**") regarding indirect tax laws in India, which were circulated as JSA Newsletters during the calendar period from July 2025 till December 2025.

Judgments/orders by the 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 Central Goods and Services Tax Act, 2017 ("**CGST Act**") 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 ("**Allahabad HC**") in a writ petition which was also denied.

In a special leave petition filed by the petitioner before the Supreme Court, 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

[1] TS-653-SC-2025-GST

to appeal. Failure to pass a reasoned order denying the right to appeal violates fundamental principles of natural justice and statutory safeguards. Further, Goods and Services Tax ("**GST**") circular[2] 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, 1950.

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.

Provisional attachment in terms of Section 83 of the CGST Act 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***[3], the Supreme Court overturned the decision[4] of Hon'ble Gujarat High Court ("**Gujarat HC**") and held that Section 83 of the 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 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 ("**Kerala HC**')[5] 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.

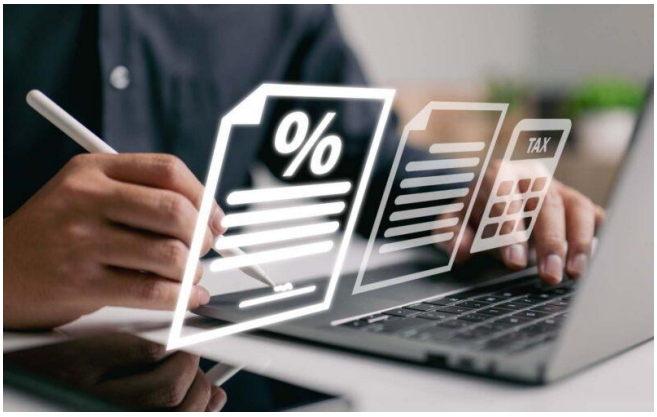
Considering the arguments advanced by both sides, the Supreme Court observed as follows:

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 1 (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;
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;

[2] Circular no. 41/15/2018-GST
[3] TS-714-SC-2025-GST
[4] *Kesari Nandan Mobile vs. Office of Assistant Commissioner of State Tax*, TS-68-HC(GUJ)-2025-GST
[5] *Additional Director General and Anr. vs. Ali K. and Ors.*, (2025) SCC OnLine Ker 758

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.***[6], 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 HC in *G.K. Trading*[7] and Kerala HC in *K.T. Saidalavi*[8] were affirmed, whereby the Allahabad HC rightly held that the issuance of summons cannot be conflated

[6] TS-711-SC-2025-GST
[7] 2020 SCC OnLine All 1907
[8] 2024 SCC OnLine Ker 5674

with a statutory step taken upon conclusion of an inquiry. Similarly, the Kerala HC was also correct in holding 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, 1950.

Input Tax Credit cannot be denied to a bona fide purchasing dealer merely because the selling dealer failed to deposit tax

The Supreme Court, in the case of ***Commissioner of Trade and Taxes, Delhi vs. Shanti Kiran India (P)***[9], held that Input Tax Credit ("**ITC**") under the Delhi Value Added Tax Act, 2004 ("**DVAT Act**") cannot be denied to genuine purchasers solely because the selling dealer failed to deposit the collected tax with the Government.

The purchasing dealer acquired goods from vendors or selling dealer, who were officially registered under the Value Added Tax ("**VAT**") system and paid the full price, which included the applicable tax. Later, it was discovered that these vendors had not remitted the collected tax to the Government, and their registrations were subsequently revoked. As a result, the tax authorities denied the purchaser's claim for ITC, under Section 9(2)(g) of the DVAT Act on the ground that ITC is admissible only if the selling dealer has deposited the tax with the Government.

Challenging this denial, the purchaser approached the Delhi HC. The Delhi HC ruled that ITC cannot be denied to purchasers who have paid VAT in good faith to sellers, registered under the law, as long as the transactions are authentic and there is no evidence of collusion. The Delhi HC placed its reliance on *On Quest Merchandising India Private Limited vs. GNCTD*[10], wherein the Delhi HC read down the provision of section 9(2)(g) which in effect precludes the Delhi VAT authorities to deny to a purchasing dealer who entered into a bona fide purchase transaction with a registered selling dealer and issued a tax invoice reflecting the taxpayer identification number.

The Delhi VAT authorities preferred an appeal before the SC which was dismissed. It was observed by the SC that where the selling dealer was registered at the time of transaction and neither the invoices nor transactions were found to be false, there is no justification to deny ITC to the purchaser merely because the seller failed to deposit the tax. The proper course for the Delhi VAT authorities is to proceed against the defaulting selling dealer, not to penalise the bona fide purchasing dealer.

Judgments/orders by the High Courts

Transfer of unutilised ITC 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***[11], the petitioner was formed in the wake of an amalgamation order issued by the National Company Law Tribunal. 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 Electronic Credit Ledger ("**ECL**") 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 Hon'ble High Court of Bombay at Goa ("**Bombay (Goa) HC**").

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 to be levied and collected by the Central Government and State GST ("**SGST**"), 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 do not provide for any restriction in transfer of unutilised ITC from 1 (one) company

[9] Civil Appeal Nos. 2042–2047 of 2015
[10] (2017 SCC OnLine Del 13037)
[11] Writ Petition No. 463 of 2024

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 GST Network ("**GSTN**") portal to transfer the ITC can be no ground for denial of transfer of ITC, which is otherwise entitled under the statute; and
5. while CGST and Integrated Goods and Services Tax ("**IGST**") 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.

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.***[12], 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 reverse charge mechanism 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 Hon'ble High Court of Karnataka ("**Karnataka HC**").

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

[12] W.P. No. 1779/2025

further highlighted that the decision of the Supreme Court in *CC, CE and ST vs. Northern Operating Systems Private Limited*[13] 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 cognisance of the GST circular[14] 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 in *Metal One Corporation India Private Limited vs. Union of India*[15].

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.

Reasons mentioned as 'cut and paste' of allegations in SCN 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***[16], 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 SCN. The order was vitiated by non-application of mind and is an unreasoned order which violates the principle of natural justice.

The Hon'ble High Court of Bombay ("**Bombay HC**") 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 SCN.

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 reflects a lack of independent application of mind. Merely reproducing the allegations in the SCN 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.

[13] Civil Appeal Nos.2289-2293 of 2021
[14] Circular No. 210/4/2024-GST
[15] 2024 DHC 8298 DB
[16] TS-601-HC(BOM)-2025-GST

Bunching of SCNs and assessment orders for more than 1 financial year is impermissible under GST laws

In the case of ***RA and Co. vs. The Additional Commissioner of Central Taxes***[17], the Hon'ble Madras High Court ("**Madras HC**") quashed the SCN covering 6 (six) financial years.

The revenue authorities issued a single SCN 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 SCN 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 SCNs and assessment orders for more than 1 (one) financial year is not permissible under the GST laws.

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***[18], 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.

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

The Bombay HC, in the matter of ***Rochem Separation Systems (India) Private Limited vs. Union of India***[19]**,** 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**")[20], *vide* circular[21] 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*

[17] W.P.No.17239 of 2025
[18] 2025 (9) TMI 1593
[19] 2025 (10) TMI 68
[20] Formerly known as Central Board of Excise and Customs
[21] No. 1053/02/2017-Cx-

circular[22] dated November 19, 2020. The petitioner also contended that the 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.***[23], 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 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.

'Negative blocking' of ITC held to be impermissible; blocking of ITC limited only to balance available in the ECL

In the case of ***Rawman Metal and Alloy vs. The Deputy Commissioner of State***[24], the Bombay HC held that blocking of ITC under Rule 86A of the CGST Rules is permissible only to the extent of credit available in the ECL on the date of the blocking order. Blocking future

[22] No. 1076/02/2020-Cx
[23] TS-643-HC-2025(BOM)-NT
[24] Writ Petition (L) No. 10928 of 2025

or non-existent credit commonly referred to as 'negative blocking' was found to be *ultra vires* the rule.

The Bombay HC emphasised that Rule 86A of the CGST Rules must be strictly construed, and its plain language permits blocking only of available credit. It rejected the revenue's argument that the rule could be used to block future ITC, noting that such an interpretation would require express legislative wording.

Relying on precedents from the Gujarat, Delhi, and Telangana High Courts, and noting the SC's refusal to interfere with similar findings, the Bombay HC quashed the blocking order and directed restoration of the ITC.

This judgment reinforces the principle that tax provisions must be interpreted literally, and administrative powers cannot be extended beyond the statute's express language.

Benefit of GST rate cut must be passed on by price reduction, not by increasing grammage or free offers

In ***Sharma Trading Company vs. Union of India and Ors.***[25], the Delhi HC upheld the National Anti-Profiteering Authority's ("**NAPA**") order, reiterating that the benefit of a GST rate reduction must be passed on to consumers through a commensurate reduction in price, not by increasing product quantity or offering promotional schemes.

Assessee, a distributor for Hindustan Unilever Limited, was found by NAPA to have profiteered by INR 5,50,370 (Indian Rupees five lakh fifty thousand three hundred and seventy) . When the GST rate on a 'vaseline' product was reduced from 28% to 18% (w.e.f. November 15, 2017), the assessee, however, did not reduce the MRP. Instead, it increased the base price to absorb the tax cut, keeping the final price to the consumer effectively the same. The assessee argued this was justified because the product's grammage/quantity was increased and it was offered as part of a scheme with a free soap.

The Delhi HC held that the anti-profiteering law's mandate is clear: the benefit must be passed on by 'commensurate reduction in the price'. Relying on *Reckitt Benckiser India Private Limited vs. Union of India*[26], the Delhi HC ruled that substituting this price reduction with an increase in volume or free offers is 'nothing but deception' as it curtails consumer's choice. The profiteered amount was directed to be deposited in the Consumer Welfare Fund, but the Delhi HC noted that penalty proceedings would not be applicable.

Educational consulting for foreign universities is 'export of service', not 'intermediary service'

In ***Commissioner of DGST vs. Global Opportunities Private Limited***[27], the Delhi HC reaffirmed that educational consultants providing services to foreign universities are not 'intermediaries' under Section 2(13) of the IGST Act, 2017 ("**IGST Act**"). Instead, such services qualify as 'export of services' under Section 2(6) of the IGST Act, entitling the provider to GST refunds.

The assessee, engaged in providing educational consultancy services to Indian students, entered into formal agreements with Foreign Educational Institutions ("**FEIs**") to offer counselling and advisory services. These services were rendered directly to the FEIs, and the assessee received commission payments in foreign exchange. Upon filing multiple refund claims for the tax paid on these services, the GST authorities denied the refunds, asserting that the assessee acted as an 'intermediary' under Section 13(8)(b) of the IGST Act. This classification would render the place of supply as India, thereby disqualifying the services from being treated as exports.

However, the Delhi HC rejected the Department's contention, holding that the assessee was not merely facilitating or arranging services between 2 (two) parties. Instead, the assessee was providing services on

[25] WP(c) 13194 of 2018
[26] W.P.(C) 7743/2019
[27] W.P.(C) 10189/2025 & CM APPL. 42299/2025

a principal-to-principal basis directly to the foreign institutions. Consequently, the services qualified as 'export of services' under GST law, entitling the assessee to claim the refund.

Importantly, the Delhi HC also noted the 56th GST Council's recommendation to omit Section 13(8)(b), aligning the place of supply with the recipient's location, further supporting the export classification of such services.

Consolidated SCNs clubbing multiple financial years held to be without jurisdiction

In the case of ***M/s. Milroc Good Earth Developers* vs. *Union of India***[28], the Bombay (Goa) HC quashed a consolidated SCN that 'bunched' together demands for multiple financial years (FY 2017-18 to 2023-24). The Bombay (Goa) HC held that the CGST Act is structured around distinct 'tax periods' and 'financial years', each with its own limitation period, and clubbing them in a single SCN is a 'jurisdictional overreach'. This case deals with GST assessment.

The petitioner, a real estate developer, received a single SCN under Section 74(1) of the CGST Act covering seven financial years, demanding GST, interest, and penalties related to construction services and ITC reversals. The petitioner challenged the SCN, not on merits, but on the fundamental legal ground that the GST authorities lack jurisdiction to issue a single, consolidated SCN for multiple financial years, arguing that each financial year is a separate assessment unit.

The Bombay HC rejected the department's preliminary objection that the petition was premature, holding that the challenge was to the jurisdiction itself. Analysing the CGST Act's scheme, particularly the provisions for furnishing returns (Section 39), annual returns (Section 44), and determination of tax (Sections 73 and 74), the Court found that assessment, returns, and limitation periods are all structured on a 'financial year' basis. It noted that the limitation period under Section 74(10) runs from the due date of the annual return for that specific financial year. The Bombay (Goa) HC concluded there is "*no scope for consolidating various financial years*" and followed similar rulings by the Madras HC and Kerala HC, setting aside the SCN as 'without jurisdiction'.

[28] W.P. No. 2203 of 2025

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***.[29], the 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 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 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,

[29] 2025 (12) TMI 435 (decided on November 27, 2025)

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.

Similar observations were also made by the Karnataka HC in the case of *Excelpoint Systems (India) Private Limited vs. Joint Commissioner of Central Tax (Appeals-1)*[30], 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 Karnataka HC in the case of *Informatica Business Solutions Private Limited vs. The Assistant Commissioner of Central Tax Bengaluru*[31]. 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.***[32], 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 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***[33],

[30] 2026 (1) TMI 145
[31] 2026 (1) TMI 84
[32] 2025 (12) TMI 435 (decided on November 28, 2025)
[33] 2025 (12) TMI 436 (decided on November 28, 2025)

the 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 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 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.

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.***,[34] the Hon'ble High Court of Madhya Pradesh ("**Madhya Pradesh 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 Madhya Pradesh 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 Madhya Pradesh 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.

Authority for Advance Ruling

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

The Kerala AAR, in the case of ***Nitta Gelatin India Limited***[35]***,*** determines the eligibility for claiming ITC

[34] 2025 (11) TMI 1925 (decided on September 22, 2025)

[35] 2025 (7) TMI 1181

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, the 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, the 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.

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