May 2026 Edition

Recent rulings by courts and authorities

High Courts

Show cause notice issued to amalgamating company after its cessation is *void ab initio*

In the case of ***Vodafone Idea Ltd. vs. Union of India & Ors.***[1], the Hon'ble Bombay High Court ("**Bombay HC**") held that the Show Cause Notice ("**SCN**") and the consequent demand order issued under the Central Goods and Services Tax ("**GST**") Act, 2017 ("**CGST Act**") against an amalgamating company are *void ab initio* for lack of jurisdiction. The Bombay HC noted that the SCN and the demand order had been issued after the amalgamating company had ceased to exist upon sanction of the scheme of amalgamation. It ruled that Section 87 of the CGST Act does not authorise initiation or continuation of proceedings against a non-existent entity post-merger.

In the present case, Vodafone Mobile Services Limited ("**VMSL**" or "**Petitioner**") transferred its tower business as a going concern prior to its amalgamation. After the National Company Law Tribunal ("**NCLT**") sanctioned the scheme of amalgamation, Directorate General of GST Intelligence ("**DGGI**") issued an SCN under Section 74 of the CGST Act. Subsequently the demand was confirmed by issuance of an order against VMSL. VMSL challenged the proceedings on the ground that it had ceased to exist in law upon amalgamation.

The Respondent *inter alia* contended that Section 87 of the CGST Act expressly authorised the issuance of the SCN against VMSL in respect of the period prior to the merger. It was also argued that since VMSL's GST registration had not been formally cancelled, the entity was treated to be existent for GST purposes, and that Section 29(3) of the CGST Act preserved the liability to pay tax even post-cancellation.

Rejecting the Respondent's reliance on Section 87 and the argument that GST registration had not been cancelled, the Bombay HC held that once the amalgamation scheme was sanctioned, VMSL lost its legal existence and no proceedings could be validly initiated or continued against it. Placing reliance on *Principal Commissioner of Income Tax vs. Maruti Suzuki India Limited*[2]*, Reliance Industries Limited vs. P.L. Roongta*[3], *HCL Infosystems Limited vs. Commissioner of State Tax*[4]**,** the Bombay HC quashed the SCN and demand order for lack of jurisdiction.

[1] 2026 (4) TMI 162 – Bombay High Court (decided on April 29, 2026)
[2] (2019) 416 ITR 613
[3] (2025) 479 ITR 770
[4] [(2024) SCC OnLine Del 8287]

Affiliation fee collected by a statutory university in discharge of its regulatory mandate does not constitute 'supply'

In the case of ***University of Mumbai vs. Union of India & Ors.***[5], the Bombay HC held that affiliation fee collected by a statutory university in discharge of its regulatory mandate under the Maharashtra Public Universities Act, 2016 does not constitute a 'supply' within the ambit of Section 7 of the CGST Act and thereby not being liable to GST.

The University of Mumbai ("**Petitioner**"), statutorily entrusted with granting and regulating college affiliations was issued an SCN under Section 74 of the CGST Act seeking to levy GST on affiliation fees collected during financial year ("**FY**") 2017-18 to 2022-23. The SCN and subsequent orders were challenged before the Bombay HC.

The Bombay HC accepted the Petitioner's contention that affiliation is a purely statutory and regulatory function aimed at maintaining educational standards, devoid of any commercial or business character. It held that Section 7(1)(a) of the CGST Act must be read as a whole, and the concept of 'supply' in furtherance of business cannot be extended to statutory functions such as affiliation, which do not resemble commercial transactions like sale, licence, lease, or rental. Reliance was placed on decisions in *Rajiv Gandhi University of Health Sciences*[6], *Goa University*[7] and *Rajasthan Technical University, Kota*[8].

The Bombay HC further observed that even if affiliation were treated as a service, it would be covered by the exemption under Entry 66 of Notification No. 12/2017-CT(R). dated June 28, 2017 Accordingly, the writ petition was allowed, and the impugned orders were quashed.

Relevant date for claiming refund of unutilised Input Tax Credit to be reckoned from end of FY as per unamended Explanation 2(e) to Section 54 of the CGST Act

In the cases of ***Kanika Exports vs. Union of India and Ors. and M/s Malik Seasoning and Spices Private Limited vs. Commissioner of GST***[9], the Hon'ble Delhi High Court ("**Delhi HC**") examined the limitation period for claiming refund of unutilised Input Tax Credit ("**ITC**") under Section 54 of the CGST Act. The Delhi HC held that the limitation period is to be reckoned in accordance with the unamended Explanation 2(e) to Section 54 of the CGST Act, i.e., from the end of the FY in which the refund claim arises.

The Delhi HC further held that the amendment to Explanation 2(e) to Section 54 of the CGST Act, effective from February 1, 2019, operates prospectively and that Explanation 2(a) to Section 54 of the CGST Act, which fixes the date of export as the relevant date, is inapplicable to refund claims of unutilised ITC.

The Petitioners contended that refund of unutilised ITC is a distinct category of refund, governed specifically by the first proviso to Section 54(3) of the CGST Act, read with unamended Explanation 2(e) to Section 54 to the CGST Act. According to the Petitioners, the said provision prescribes the relevant date as the end of the FY in which the refund claim arises.

It was urged that Explanation 2(a) to Section 54 of the CGST Act, applies exclusively to 'tax paid' refunds on exports and cannot be applied to cases of unutilised ITC. It was further argued that the amendment to Explanation 2(e), effective February 1, 2019, operates prospectively and cannot curtail the vested right of a taxpayer to claim refund in respect of transactions that preceded the amendment. Reliance was placed upon the decisions of the Bombay HC in *Babasaheb Keda Shetkari Sahakari Soot Girni Limited*[10] and the High Court of Jammu & Kashmir ("**J&K HC**") in *Bharat Oil Traders*[11].

The authorities contended that in cases involving export of goods, Explanation 2(a) to Section 54 of the CGST Act, which stipulates the date of export as the relevant date is the applicable provision, being specific to exports, and that

[5] 2026 (4) TMI 1800 – Bombay High Court (decided on April 27, 2026)
[6] 2025 (1) TMI 1550
[7] 2025 (4) TMI 1056
[8] 2026 (4) TMI 1641
[9] W.P.(C) 12512/2021 and W.P.(C) 17538/2022, (decided on April 18, 2026)
[10] W.P. (C) 5600/2021 [Bombay High Court]
[11] (2025) SCC Online J&K 1416

Explanation 2(e) to Section 54 of the CGST Act was merely a generic provision. It was further urged that the amendment to Explanation 2(e) is clarificatory in nature. Therefore, the amendment will be applicable retrospectively.

The Delhi HC held that Explanation 2(a) and Explanation 2(e) to Section 54 of the CGST Act operate on separate footings, the former governing 'tax paid' refunds on exports, and the latter being a special provision exclusively governing refund of unutilised ITC, whether arising on account of zero-rated supplies or inverted duty structure. The Delhi HC clarified that applying Explanation 2(a) to Section 54 of the CGST Act uniformly to all categories of exports would produce an anomalous result, potentially extinguishing the right to claim refund of unutilised ITC before it even accrues, thereby defeating the scheme of the Act. On retrospectivity, the Court held that the amendment to Explanation 2(e) cannot be treated as clarificatory and does not apply to transactions prior to February 1, 2019. Relying on the decisions of the Bombay HC and J&K HC, the Delhi HC set aside the rejection orders and directed the Department to process the refund claims on merits within 3 (three) months.

Andhra Pradesh High Court sets aside assessment order applying 70:30 bifurcation to solar- engineering, procurement, and construction contracts; remands the matter for fresh consideration

In the matter of ***Mytrah Energy India Private Limited vs. Union of India***[12], the Hon'ble Andhra Pradesh High Court ("**AP HC**") set aside an assessment order passed for FY 2018–19 which had subjected supply of solar power generating systems to a bifurcated tax treatment - GST at 5% on 70% of the turnover as supply of goods and GST at 18% on the remaining 30% as supply of services. The matter was remanded to the assessing authority for fresh consideration.

Mytrah Energy India Private Limited ("**Petitioner**"), engaged in the manufacture and installation of solar panels and solar power generating systems. The assessing authority, invoking the explanation inserted to Sl. No. 234 of notification no. 1/2017-CT(R) *vide* notification no. 24/2018 (effective January 1, 2019) ("**Sl. No. 234**"), to apply the aforesaid 70:30 bifurcation for the entire assessment period.

The Petitioner contended that the supplies constituted a composite supply of goods and services, taxable at a uniform rate of 5% under Sl. No. 234 read with Section 8 of the CGST Act. It was further contended that the explanation inserted to Sl. No. 234, being effective only from January 1, 2019, could not be applied retrospectively to turnover pertaining to the period prior thereto. The assessing authority relying on Circular No. 163/19/2021 GST dated October 6, 2021 ("**October Circular**"), asserted that the explanation inserted to Sl. No. 234 was clarificatory and mandatorily applicable even to composite supplies.

The AP HC referred to its earlier decisions in *Sterling & Wilson Private Limited*[13], *Siemens Gamesa Renewable Power Private Limited*[14], and *Arka Green Power Private Limited*[15], wherein it was held that supply and installation of a solar power generating system constitutes a composite supply of movable goods and services, attracting tax at 5% under Sl. No. 234.

The AP HC held that October Circular extends the benefit of the explanation inserted to Sl. No. 234 only at the option of the taxpayer and does not operate as an absolute retrospective application of the said explanation. Noting that the assessing authority had failed to examine whether the supplies resulted in immovable property and had not separately considered turnover prior to January 1, 2019, the AP HC set aside the assessment order and remanded the matter for fresh assessment. The question of whether the explanation to Notification No. 24/2018 is *ultra vires* Section 8 of the CGST Act, was left open by the court.

[12] Writ Petition No. 4725/2023, (decided on April 15, 2026 (High Court of Andhra Pradesh, at Amaravati))
[13] 2025 SCC Online AP 63
[14] 2025:APHC:56076
[15] 2025:APHC:59797

Damages paid under arbitral award not taxable as 'tolerating to do an act' under Integrated GST

In ***Tata Sons Private Limited vs. Union of India***[16], the Bombay HC held that amounts paid pursuant to an arbitral award as damages for breach of contract do not constitute 'supply of services' under Section 7 read with Entry 5(e) of Schedule II of the CGST Act, thereby, such payments not being liable to Integrated GST ("**IGST**").

The dispute arose from an international arbitration between Tata Sons Private Limited ("**Petitioner**") and NTT Docomo Inc. ("**Docomo**") concerning breach of a shareholders' agreement. An arbitral tribunal awarded damages to Docomo, which was subsequently enforced by the Delhi HC. As part of the enforcement proceedings, Docomo agreed to withdraw related execution actions initiated in the United Kingdom and the United States of America upon receipt of the awarded amounts.

The DGGI issued a pre-show cause intimation and a subsequent SCN alleging that Docomo's withdrawal of enforcement proceedings amounted to a supply of service in the nature of "*agreeing to refrain from an act*" or "*tolerating an act*" under Entry 5(e) of Schedule II of the CGST Act, with the damages paid being treated as consideration for such service. The department accordingly proposed levy of IGST on a reverse charge basis.

The Petitioner challenged the proceedings contending that:

1. damages awarded by an arbitral tribunal are compensatory in nature and do not represent consideration for any supply;
2. withdrawal of enforcement proceedings was merely a legal consequence of satisfaction of the arbitral award and not an independent contractual obligation; and
3. the impugned demand was contrary to Central Board of Indirect Taxes and Customs circulars dated August 3, 2022 and February 28, 2023, which clarify that damages for breach of contract are not taxable unless arising from an independent agreement to tolerate an act for consideration.

The Bombay HC accepted the Petitioner's submissions and held that Entry 5(e) of Schedule II of the CGST Act applies only where there is an independent agreement, entered into in the course or furtherance of business, under which one party agrees to tolerate an act or refrain from acting for consideration. The Bombay HC observed that the consent terms recorded before the Delhi HC were integral to enforcement of the arbitral award and did not create any independent contract or separate consideration. The amount paid retained its character as damages awarded by adjudication and could not be re-characterised as consideration for a taxable service.

The Bombay HC further held that the DGGI lacked jurisdiction to initiate proceedings on the erroneous assumption that the settlement of enforcement proceedings constituted a taxable supply. Given the jurisdictional defect, the writ petition was held to be maintainable despite availability of an alternate statutory remedy. Accordingly, the impugned intimation and SCN were quashed. The constitutional validity of Section 7 read with Entry 5(e) of Schedule II of the CGST Act was left open.

Bombay HC holds that the amendment to the formula prescribed in Rule 89(5) for refund in case of inverted duty structure is clarificatory in nature and applies retrospectively

In the matter of ***CHEC-TPL Line 4 Joint Venture vs. Union of India and Ors.***[17], the Bombay HC held that the amendment to the formula prescribed under Rule 89(5) of the Central Goods and Services Tax Rules, 2017 ("**CGST Rules**") introduced, *vide* notification no. 14/2022-Central Tax dated July 5, 2022 ("**July Notification**") is curative and clarificatory in nature and therefore applies retrospectively to refund applications filed prior to that date.

The ***CHEC-TPL*** ("**Petitioner**"), a works contract service provider engaged in metro rail construction, suffered accumulation of ITC due to inverted duty structure and had filed refund claims under Section 54(3)(ii) of the CGST Act

[16] 2026 (5) TMI 126 – Bombay High Court (decided on April 30, 2026)
[17] Writ Petition No. 2583 of 2025, (decided on April 23, 2026)

in June 2021, which were rejected by the authorities. The key issue before the Bombay HC was whether the amended formula could apply to such pre-amendment refund claims.

The Petitioner contended that the amendment to the formula prescribed under Rule 89(5) of the CGST Rules, was curative in nature, introduced pursuant to the direction of the Supreme Court of India ("**Supreme Court**") in ***Union of India vs. VKC Footsteps India Private Limited***[18], to rectify the anomaly in the pre-amendment formula which skewed refund computation in favour of the authorities, and therefore, such amendment had to operate retrospectively. Reliance was placed on the Gujarat High Court decision in *Ascent Meditech Limited vs. Union of India*[19], which had held that July Notification is clarificatory and retrospective in operation and that Circular No. 181/13/2022-GST dated November 10, 2022 ("**November Circular**"), which had restricted the amended formula's applicability to refund application filed post June 5, 2022, was contrary to the purport of the amendment. It was further submitted that the said decision had attained finality, the Supreme Court having dismissed both the special leave petition and the review petition filed by the Revenue. The Revenue opposed the petition primarily relying on the November Circular's clarification that the amended formula applied only prospectively.

Relying on the Gujarat High Court's decision in Ascent Meditech Limited (supra), which was affirmed by the Supreme Court, the Bombay HC held that the amendment was introduced to cure an anomaly in the earlier formula. Accordingly, the Bombay HC held that the amendment must operate retrospectively for all refund applications filed within the limitation period prescribed under Section 54(1) of the CGST Act. The Bombay HC further held that November Circular, to the extent it sought to restrict the amendment's applicability prospectively, was contrary to law.

Accordingly, the impugned original and appellate orders were quashed, and the petitioner was held entitled to refund of accumulated ITC on account of inverted duty structure.

Courtroom updates

The Division Bench of the Bombay HC refers the matter of consolidated SCN covering multiple FYs to Larger Bench

The division bench of the Bombay HC, in a batch of writ petitions[20], while examining the legality of issuance of consolidated SCN covering multiple FYs under Section 73 and Section 74 of the CGST Act has referred the matter to a larger bench by framing the following substantial questions of law:

1. whether the operation of sub-section (1) of Section 73/74 of the CGST Act read with the provisions of sub-section (3) is in any manner controlled by the provisions of sub-section (10), so as to create an embargo, on the department to issue a consolidated SCN for different FYs;
2. whether the provisions of sub-section (10) of Section 73/74 of the CGST Act *per se* prohibits the issuance of single consolidated SCN for multiple FYs;
3. what is the side effect of Section 160 of the CGST Act on the proceedings initiated by the proper officer under Section(s) 73/74 of the CGST Act by issuance of a consolidated SCN for different FYs;
4. whether the decision of the Division Bench in *Milroc Good Earth Developers vs. Union of India & Ors.*[21], when it holds that the proper officer lacks authority to club various financial years/tax periods, in issuing a single consolidated show cause notice under Section 73(1) & (3)/ 74(1) & (3) of the CGST Act lays down the correct position in law; and
5. In terms of Article 141 of the Constitution of India, what is the legal position as brought about in the order of the Supreme Court in the case of *Mathur Polymers vs. Union of India*[22]?

[18] 2021(52)-GSTL-512 (SC)
[19] 2024(24)-Centax-405 (Guj)
[20] Rollmet LLP vs. Union of India and Others [TS-265-HC(BOM)-2026-GST] (decided on April 17, 2026)
[21] [2026] 104 GSTL 45 (Bombay)
[22] 2025 SCC OnLine Del 6892

Notifications, Circulars and Instructions

GST Network enables modification of pre-deposit field while filing an appeal

Effective April 6, 2026, the GST Network ("**GSTN**") has issued an advisory[23] to enable editing of the pre-deposit percentage field in Form APL-01, which was earlier auto-populated at 10% in terms of Section 107(6) of the CGST Act. Taxpayers may now edit the pre-deposit field to reflect the correct quantum payable in their respective cases, including instances where the pre-deposit had already been discharged through alternate modes or where the demand stood incorrectly reflected under the relevant head. The appellate authority will verify the correctness of the pre-deposit amount and the mode of payment thereof during adjudication of the appeal.

GSTN issues advisory for rectification of adjudication order in cases where it reflects 'Nil' demand due to prior voluntary payment

GSTN has issued an advisory[24], addressing a technical impediment faced by taxpayers seeking to file appeals on the GST portal against adjudication orders that reflect a 'NIL' demand, arising in cases where tax, interest, or penalty was voluntarily paid during the adjudication of SCN without admission of the liability. In such cases, the adjudicating authority treats the prior payment as full discharge of demand without explicitly determining and recording the liability, consequently causing the GST portal to create a zero-value entry in the 'Demand and Collection Register' (DCR), which thereafter blocks the taxpayer from filing an appeal in Form APL-01, often displaying the error "*Disputed amount cannot be more than demand amount itself*".

GSTN has clarified that such voluntary payment during SCN proceedings does not constitute acceptance of the demand, and the taxpayer retains the statutory right to contest the liability and prefer an appeal under Section 107 of the CGST Act.

As an interim measure, taxpayers facing this situation have been advised to approach the adjudicating authority for issuance of a rectification order correctly reflecting the actual demand amount, which may be filed through the rectification option available on the GSTN, following which the appeal may be filed within the prescribed limitation period.

India and New Zealand Free Trade Agreement: Key Highlights

India and New Zealand signed a comprehensive Free Trade Agreement ("**FTA**") on April 27, 2026, with negotiations being concluded on December 22, 2025. While the FTA has been finalised, the same is pending completion of respective domestic ratification processes. The FTA is a landmark bilateral trade instrument spanning goods, services, investment, intellectual property, and regulatory cooperation. The benefits include:

1. **Trade in goods: 100% duty-free access to New Zealand market**: India secures duty-free access for 100% of its exports to New Zealand on all tariff lines from the date of entry into force, providing Indian products - particularly from labour-intensive sectors such as textiles, apparel, leather, footwear, gems and jewellery, engineering goods, and processed foods - a level playing field with New Zealand's other FTA partners.
2. **Calibrated market access: sensitive sectors protected**: India has offered tariff liberalisation on 70.03% of tariff lines covering 95% of bilateral trade value, while retaining 29.97% of tariff lines in exclusion to protect sensitive domestic sectors, including dairy, certain agricultural products, gems and jewellery, and specified metals.

   Of the liberalised tariff lines, 30% attract immediate duty elimination (covering wood, wool, sheep meat, and raw hides), 35.60% are subject to phased elimination over 3 (three), 5 (five), 7 (seven), and 10 (ten) years (including petroleum oil, vegetable oils, and selected machinery), and 4.37% face tariff reductions covering products such as wine, pharmaceutical drugs, polymers, and iron and steel articles.

[23] GSTN advisory dated April 10, 2026
[24] GSTN advisory dated April 3, 2026

3. **Agricultural sector: Tariff Rate Quotas ("TRQ") with safeguards**: Market access for select New Zealand agricultural products i.e. apples, kiwifruit, mānuka honey, and milk albumin, is governed through a TRQ mechanism with minimum import prices and seasonal windows, ensuring calibrated import access while protecting domestic farmers.
4. **Investment: USD 20 billion (US Dollars twenty billion) commitment**: The FTA incorporates a commitment to facilitate USD 20 billion (US Dollars twenty billion) in investment into India, supported by joint strategies on research, innovation, technology flows, and skill development, alongside a Rebalancing Clause to address any shortfall in investment delivery.
5. **Pharmaceuticals and medical devices: streamlined market access**: The FTA enables acceptance of inspection reports issued by other comparable regulators such as United States Food and Drug Administration, European Medicines Agency, Medicines and Healthcare Products Regulatory Agency, United Kingdom and Health Canada, thereby, reducing duplicative inspections, lowering compliance costs, and expediting product approvals for Indian pharmaceutical and medical device exports to New Zealand.
6. **Intellectual property: geographical indications**: New Zealand has committed to amending its domestic geographical indications law within 18 (eighteen) months of the agreement's entry into force, to enable registration of Indian wines, spirits, and other goods, extending to India treatment equivalent to that previously accorded to the European Union, thereby opening formal protection for iconic Indian geographical indications in the New Zealand market.

Tax Practice

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40 Ranked Lawyers

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22 Ranked Lawyers

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