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Glimpses of The Tax Futures Summit ..... The Play of Tax in a World Without Borders held on 5th September 2026, Saturday, at the Auditorium, S Block, High Court of Delhi, New Delhi



Hon'ble Justice S. Ravindra Bhat, Former Judge, Supreme Court of India inaugurating the session. *Members standing (L-R) CA Saurav Bhattacharya, CA Harpreet Singh, CA Neha Gada (President), CA Hinesh Doshi*



Hon'ble Justice S. Ravindra Bhat, Former Judge, Supreme Court of India giving his keynote address



CA Neha Gada giving is opening remarks



Panel Discussion *– Sitting (L-R) Mr. Saurav Bhattacharya, Mr. Prabhat Lath (Moderator), Mr. Karanjot Singh Khurana, Mr. Sandeep Chaufla, Mr. Akhilesh Ranjan, Mr. Balbir Singh (Chairman of the session) & Prof. Stef Van Weeghel (Virtual)*



Panel Discussion *– Sitting (L-R) Mr. Aseem Chawla (Moderator), Mr. Pramod Kumar, Hon'ble Justice Saurav Banerjee (Chairman of the session), Ms. Richa Sawhney, Ms. Divya Mittal, Mr. Chander Talreja*



Panel Discussion *– Sitting (L-R) Mr. Gaurav Singhal (Moderator), Mr. Vijay Iyer, Ms. Karishma Phatarphekar, Mr. Jitendra Jain, Mr. Himanshu Sinha, Ms. Parul Jolly*



Panel Discussion *– Sitting (L-R) Mr. Naveen Gupta (Moderator), Mr Rajat Bansal, Ms. Suranjali Tandon, Mr. Sachit Jolly, Mr. Mukesh Butani, Mr Arijit Prasad (Chairman of the session), Mr. Dhruv Janssen Sanghavi (Virtual)*



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From the President

CA Neha Gada

Respected Seniors and my dear friends

September beats a special rhythm for us professionals. It's a month of intense professional activity with the tax audit deadline fast approaching and at the same time giving us moments of reflection through the festivals of Janmashtami, Paryushan and Ganpati. Maybe this blending of work and reflection reminds us that personal values and professional excellence do not have to be in separate places.

On the occasion of Janmashtami, we are reminded of the timeless message of Lord Krishna on Dharma - the courage to do what is right, the wisdom to act responsibly and the compassion to stand by others in times of adversity.

These values seem to be particularly relevant when we look beyond our immediate context. The tragic floods in Nepal and loss of lives have reminded us once again about the fragility of life and the increasing impact of extreme weather events. Natural disasters have always been present, but the rising rate and severity of these events also make us consider climate change and global warming. We all have a role to play in building a sustainable and resilient future – government, institutions, businesses and individuals. Our thoughts and prayers are with all those affected and with the families who have suffered an irreplaceable loss.

Responsibility is another key idea in the profession we represent. As tax and allied law professionals, our role is much more than compliance and technical advice. We support the operations of institutions, the integrity of businesses and the broader economic ecosystem. It is therefore important that we continue to invest in knowledge, governance, ethics and professional excellence.

In this vein, the Chamber was delighted to be an Ecosystem Partner at the SME Governance Summit 2026, where promoters, founders, independent directors and investors gathered for meaningful boardroom conversations on what governance really means for the growth and sustainability of SMEs. Good governance is more than simply complying with regulatory requirements. It's about creating institutions that can grow responsibly and endure.

We continued our commitment to learning with a number of initiatives during the month. A lecture meeting on FCRA, Financial Reporting and Audit of Non-Corporate Entities, with special focus on charitable and not-for-profit organizations gave valuable insights into an area of increasing importance. The program was complemented by a

takeaway session on the ICAI Code of Ethics 2026, reiterating the principle that knowledge and ethics must always go hand in hand.

Technology is changing the way we practice too. Our two-day workshop on Excel Power Query aimed to help professionals automate away repetitive tasks and simplify data extraction and analysis. With the profession evolving, the adoption of technology is no longer a nice-to-have – it's becoming a must-have to stay effective and future-ready.

The CTC Delhi Branch carried forward the spirit of professional engagement through the "Tax Futures Summit" hosted at the High Court of Delhi. It was our privilege to have the keynote address by Hon'ble Justice S. Ravindra Bhat, Former Judge, Supreme Court of India. His thought-provoking and well-articulated address added an immense value to the program, and I am pleased that the same has been published in this month's Chamber Journal so that wider professional audience can benefit from his insights. My heartfelt thanks to Delhi Chair Mr. Saurav Bhattacharya, Vice Chair Mr. Harpreet Singh. Secretary Ms. Richa Juneja and Past Chair Prakash Sinha for or their efforts in organizing this enriching programme.

Learning from Experience, Giving Back through Mentorship, One of the meaningful ways for Knowledge to Grow is by Sharing Experience.

On Teachers' Day we are reminded that the influence of a teacher extends beyond the four walls of a classroom. Teachers shape our thinking, build our confidence and often inspire the choices that shape our professional journeys. In the same spirit, I am also excited to launch CTC Mentorship Connect, a structured mentorship program that pairs CTC members with seasoned professionals from across the tax and allied professions.

My hope is that this project will foster positive intergenerational relationships,



where experience can be shared, questions can be asked and young professionals will find not just answers but will also gain guidance.

Following this focus on specialized knowledge, CTC is also happy to announce a Masterclass on the Framework for Transfer Pricing, based on four important pillars – Documentation, Database, Design and Defense. Each of these pillars must work together for a strong transfer pricing practice. The Masterclass aims to present professionals with a practical and structured perspective on the subject.

RBI has released the Draft Foreign Investment Rules, 2026 for public comments. Chamber has made a representation on certain aspects of the said Draft Foreign Investment Rules, 2026. The Representation was handed over personally to the Chief General Manager, Foreign Exchange Department of the Reserve Bank of India at the time of a meeting held on August 27, 2026. The suggestions given by the Chamber are well appreciated. Chamber also had an opportunity to give its suggestions and recommendations for strengthening the existing Quality Assurance Review (QAR) Framework for GST Audit before Additional Director General (Audit), Indirect Taxes and Customs, Bengaluru Zonal Unit on August 6, 2026.

I would also like to take this opportunity to make a humble appeal to all our members to renew their membership at Chamber. The Chamber Office and all our Office Bearers are always available to assist you with the renewal process. Your continued support and association are the strength of the Chamber. I request you to kindly renew your membership at the earliest and encourage us as we strive to bring greater value, meaningful initiatives, and enriching opportunities for our members.

This month's Journal has a well-crafted articles dealing with 'GST Litigation & Emerging Controversies". This publication brings together contemporary developments in GST and Customs, addressing critical issues faced by tax professionals and businesses. The articles provide valuable insights into emerging legal aspects, procedural challenges, and compliance risks, enabling readers to navigate complex tax matters with greater clarity. It serves as a practical and informative resource for professionals seeking to stay abreast of evolving tax jurisprudence and regulatory developments. I thank all the authors for their contribution and the Journal Committee led by CA Ameya Kunte, CA Jagruti Sheth and CA Ritesh Kanodia for bringing out this useful issue for all our readers.

A Time to Reflect, Renew and Reconnect

September is often a busy month for all of us professionally, but **Paryushan** gives us a meaningful opportunity to pause, reflect and reconnect with what truly matters.

On the occasion of Kshamapana, I sincerely seek **Michhami Dukkadam** from each one of you for anything I may have said or done, knowingly or unknowingly, that may have caused hurt or inconvenience to you. May we move forward with a renewed sense of positivity, humility and goodwill towards one another.

Ganesh Chaturthi brings the joy of new beginnings, wisdom and the removal of obstacles. As we welcome Lord Ganesha, may we be blessed with clarity in our decisions, the strength to face challenges and the wisdom to make the most of the opportunities ahead. May this festive season bring happiness, prosperity and renewed energy to all our members and their families.

As we continue through a demanding professional season, may these festivals remind us of the values that guide us—not only in our work, but also in the way we lead and support one another:

Perform with diligence. Lead with integrity. Learn with humility. And give back with generosity.

Wishing you and your families a meaningful and fulfilling month ahead.

Jai Hind !

Warm regards,

CA Neha Gada
President

From the Editor's Desk

CA Anish M. Thacker

My Brothers and Sisters,

" We are deciding India's future course.
We will chart a new course for the country
at midnight with the launch of GST
which is not an achievement of
any party or government but
a collective achievement.
Its scope is not limited
to the financial system."

– Prime Minister, Shri Narendra Modi

These words echo the sentiment of the Indian taxpayers when Goods and Services Tax (GST) was launched on 1st July 2017. Nine years later, it is probably required to conduct a check on whether these expectations have been met or indeed, as has been the case many times, the taxpayers are left with wanting for that 'something more'. GST was probably the biggest and most significant tax reform since independence and probably the boldest. It was an opportunity to shed the baggage of the 'old' and 'confusing' indirect tax laws, to make it a truly 'Good and Simple Tax' as envisioned.

The reality, nine years later, unfortunately appears to be different. Simplicity has given way to cumbersome compliance and the multiplicity of tax rates, having admittedly reduced, still remains a cause for concern. Conflicting decisions of the Authority of advance Rulings, different positions taken in different states and the delay in the set up of the GST Tribunal, which has only recently stated taking the first steps towards functioning, are some of the issues that still bother taxpayers quite a bit. This is not to take away any thing from the good work done to date where, coming from a mountain of disputes under the old indirect tax laws, the new(er) GST law does much better. But, as is the case with implementation of any law in the country, maybe due to our diversity, maybe due to our mindset, its difficult to pin point exactly what, issues in enforcement remain.

Coupled with this, we have now signed various Free Trade Agreements (FTAs) and compliance required to enforce those also are now engaging our members' attention. Looking at all of this, it was felt that a special issue of the 'Chamber's Journal' that deals with 'GST Litigation & Emerging Controversies' be brought out to help the readers gain perspective as to some timeless litigation areas like real estate which continue to be hotbeds of litigation as well as customs valuations which again, have enough to engage professionals and vex taxpayers. There are also newer areas such as corporate guarantees and the ever present issues

on input taxes which also feature in this issue.

I thank the Journal Committee, especially CA Ritesh Kanodia and CA Jagruti Sheth for their contribution in bringing out the journal. I also express my sincere gratitude to the learned authors and all the reviewers of the articles for their significant efforts. I am sure this issue will also be a very useful referencer for our readers.

My best wishes to all on the occasion of Ganesh Chaturthi and the Paryushan festivals. I pray to the Almighty to bring success, happiness and prosperity to all. Best wishes for the income-tax compliance season ahead.

I end this editorial with a quote I am very inspired by and which I have tried to live by, in my life's journey.

"Try not to become a person of success, but rather try to become a person of value."

– **Albert Einstein**

Jai Hind!

CA Anish M. Thacker
Editor




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Keynote Speech by Honorable Justice S. Ravindra Bhat

Former Supreme Court of India at The Tax Futures Summit held by CTC Delhi Branch

In a world without borders, where does Tax stand?

1. Good morning, distinguished speakers, Hon'ble judges of the High Court, members of ITAT (present and former), senior advocates, tax practitioners, ladies and gentlemen – all fellow connoisseurs of semi colons and provisos. Franklin warned us that in this world, nothing is certain but death and taxes; though, he never met a tax lawyer, or he would have added a third certainty – sleepless nights before the annual budget, and provision for clients' emergency medical treatment after the budget speech. Churchill said that there was no such thing as a good tax. Tell that to the draftsmen of Explanations 4 and 5, who treat them as novelists deal with plot twists – introduced late, explained never. Lord Clyde once said that no man is bound to arrange his affairs to attract maximum tax. Today, we will examine how far "arrangement" can travel before it constitutes tax avoidance.

2. Every so often the Supreme Court hands the tax bar a judgment that does not merely decide a case but reshapes the doctrine. ***Authority for Advance Rulings (Income Tax) & Ors. vs. Tiger Global International II Holdings & Ors. (Tiger Global)*** is such a judgment. In one stroke, it resurrects the ghost of McDowell and informs two decades of Mauritius-routed investment structuring that its passport — the humble Tax Residency Certificate — is no longer a diplomatic immunity but merely a visa, revocable the moment there is a finding of intent to avoid tax.

3. The Court's held that off-shore transactions that shift value stored in Indian assets are taxable in India under Section 9(1)(i) read with Explanation 5, and a tax residency certificate, while a necessary ticket of entry under Section 90(4), is no longer a golden one. Where the facts reveal a conduit - a company with a registered address, a rented mailbox, and precious little else, the certificate collapses under the weight of its own paperwork.

4. To appreciate the scale of the doctrinal demolition, one must first walk through the rubble. The saga begins, as so many great Indian tax disputes do, with Flipkart. Between 2011 and 2015, Tiger Global's Mauritian vehicles, entities holding Category 1 Global Business Licences and, naturally, immaculate tax residency certificates, acquired shares in Flipkart Private Limited, a Singapore company whose commercial soul resided almost entirely in India. In 2018, Walmart acquired Flipkart. The Mauritian entities sold their stakes to a

Luxembourg entity, Fit Holdings, for a consideration exceeding ₹ 14,000 crores. The assessees sought nil-withholding certificates under Section 197, invoking Article 13 of the India–Mauritius DTAA. The Assessing Officer (AO) declined, observing that the real "head and brain" of these companies sat not in Port Louis but under the direction of a Mr. Charles P. Coleman in the United States.

5. The matter travelled to the Authority for Advance Rulings (AAR), which rejected the applications at the threshold under Section 245R(2), finding the arrangement was *prima facie* designed for tax avoidance. The Delhi High Court disagreed, holding that the tax residency certificate settled the question of residency once and for all, courtesy of Circular No. 789 and *Azadi Bachao Andolan*. The Supreme Court has now set that reasoning aside and restored the AAR's order.

6. The judgment, authored by Justice R. Mahadevan with a concurrence from Justice J.B. Pardiwala, rests on five strands of reasoning. *First*, the statutory taxing nexus. Section 9(1)(i), fortified by Explanations 4 and 5 inserted by the Finance Act of 2012, deems capital gains taxable in India where a foreign company's value is substantially derived from Indian assets. The Court was careful to remind everyone of a point often forgotten in the excitement of treaty analysis: that a DTAA does not create a charge to tax; it merely allocates an existing one between two claimant states.

7. *Second*, and most consequentially, the evidentiary status of the tax residency certificate (TRC) was considered. Post the amendments to Section 90(4) and 90(5), it was found that a TRC is a necessary condition for treaty eligibility, not a conclusive one.

8. The *third* question concerned grandfathering under Article 13(3A) of the amended India–Mauritius DTAA, which protects share acquisitions from capital gains tax when made prior to 01 April 2017, so long as they are shares of an Indian company. The Court held that this protection cannot be stretched to cover indirect transfers of a third-country company such as Flipkart Singapore.

9. *Fourth*, was the interplay of the General Anti-Avoidance Rules (GAAR) under Chapter X-A, Section 90(2A), and Rule 10U with the ***Judicial Anti-Avoidance Rule inherited from McDowell & Co. Ltd. vs. Commercial Tax Officer***. The Court noted that Section 90(2A) expressly overrides treaty provisions where an impermissible avoidance arrangement is found, and while Rule 10U(1)(d) grandfathers investments made before 1 April 2017, Rule 10U(2) applies GAAR to any arrangement, yielding a tax benefit thereafter.

10. Fifth, in respect of the threshold standard under Section 245R(2), it was held that the AAR need only form a *prima facie* view that an application is designed for tax avoidance, not conduct a full trial before declining jurisdiction.

11. To place *Tiger Global* in its proper constellation, one must revisit its two illustrious predecessors, each once thought to be the last word on the subject — a reminder that in tax law, "timeless" rarely survives more than two decades. ***Union of India vs. Azadi Bachao Andolan*** (2004) upheld CBDT Circular No. 789, which treated a Mauritian TRC as conclusive proof of residence and beneficial ownership. The Court there held that treaty shopping, absent an express Limitation of Benefits clause, was a perfectly legitimate exercise of taxpayer ingenuity. This was a view that also, memorably, clipped the wings of Justice Chinnappa Reddy's expansive anti-avoidance philosophy in McDowell. Arranging one's affairs to minimise tax was, the Court said, a taxpayer's prerogative.

12. ***Vodafone International Holdings B.V. vs. Union of India (2012)*** went further still, articulating the "look at" doctrine: courts must view a transaction holistically in its commercial setting rather than dissect it layer by layer in search of tax mischief. The Court held that a transfer of a single share in a Cayman Islands company, however tightly wound around Indian assets, escaped Section 9(1)(i) as it then stood. An indirect transfer tax, the Court said, required Parliament's explicit say-so, not judicial improvisation.

13. *Tiger Global* does not overrule these precedents so much as it declares them creatures of their statutory moment, since expired. Where *Azadi Bachao Andolan* treated the TRC as an unassailable passport, and *Vodafone* respected corporate form, *Tiger Global* treats the certificate as a mere threshold and insists on locating the actual seat of decision-making.

14. The Court's re-engineering of the treaty-shopping debate is equally striking. What *Azadi Bachao Andolan* permitted in a statutory vacuum has since been filled to the brim: Section 90(2A), Chapter X-A, and a decade of judicial refinement have together retired the laissez-faire approach. Conduit structures lacking independent commercial rationale are now classified as impermissible avoidance arrangements.

15. On the "look at" versus "substance over form" question, *Tiger Global* effectively completes a doctrinal pendulum swing. *Vodafone's* "look at" test examined the transaction as a whole but stopped short of interrogating who truly pulled the strings. Tiger Global insists that "looking at" the transaction necessarily includes asking who actually made the decisions — and where resident directors

merely rubber-stamp resolutions drafted elsewhere, the entity is unmasked as a conduit. A signature obtained without deliberation, the Court effectively holds, is no more a decision than a rubber stamp is a hand.

16. The treatment of direct versus indirect transfers marks a further departure. *Vodafone* operated in a statutory silence on indirect transfers that Parliament has since filled with Explanations 4 and 5. *Tiger Global* confirms that indirect offshore transfers of a foreign holding company deriving value from India receive no automatic shelter under Article 13.

17. Underlying all this is a robust restatement of *fiscal sovereignty*. Justice Pardiwala's concurrence emphasizes that the power to tax is an inherent, sovereign attribute that cannot be contracted away through artful corporate choreography, however elegantly the steps are executed. The judgment situates India within the global drift toward source-based taxation, ensuring that income generated by economic activity within its territory remains within its taxing reach unless genuine residence and commercial substance exist on the other side of the treaty. It also affirms Parliament's competence to enact retrospective clarifications such as Explanations 4 and 5, and anti-avoidance codes. *Retrospectivity*, so often treated as a dirty word in tax discourse, is here considered to be a legitimate act of legislative housekeeping.

18. A brief word, too, on the procedural architecture that made this substantive reset possible - The Court's endorsement of a modest threshold standard under Section 245R(2) is not a footnote but a structural enabler. It allows the AAR and, on review, the courts to intercept avoidance arrangements at the gate. What emerges, in sum, is a comprehensive doctrinal transition — from a formalistic, TRC-centric regime (epitomised by *Azadi Bachao Andolan* and *Vodafone*), to an anti-avoidance regime governed by source-based taxation. TRCs are now rebuttable; indirect offshore transfers are taxable under Section 9(1)(i) without the safety net of Article 13 grandfathering; and GAAR and JAAR together authorise a searching gaze through the corporate veil. Form, once treated as sovereign in its own right, must now make its case before substance.

19. I am grateful to the Chamber of Tax Consultants, which has completed 100 memorable years of its existence, and witnessed numerous stalwarts, jurists and illustrious leaders as its members, for inviting me to speak here today.

Thank you.

INPUT TAX CREDIT UNDER THE LENS: NAVIGATING SUPPLIER COMPLIANCE RISKS





Sarika Goel *Purva Juneja*

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* See Disclaimer on page 4

Overview

Input Tax Credit (ITC) is a key cornerstone of the GST framework, designed to avoid cascading taxes and ensure tax neutrality across the supply chain. However, in recent years, the entitlement to ITC has increasingly become intertwined with supplier compliance obligations, giving rise to complex legal and practical challenges for businesses. As legislative amendments, technological controls, and judicial pronouncements continue to evolve, taxpayers are faced with a fundamental question: to what extent should a bona fide recipient bear the consequences of a supplier's non-compliance?

This article examines the shifting contours of ITC eligibility under Section 16 of the CGST Act, tracing the transition from a recipient-focused credit mechanism to one that places significant emphasis on supplier conduct and reporting compliance. It analyzes the evolving role of GSTR-2A and GSTR-2B, recent constitutional and judicial developments, fake invoice investigations, and the evidentiary burdens placed on taxpayers. The article also draws comparative insights from international jurisprudence and highlights practical strategies that businesses can adopt to mitigate ITC risks. Ultimately, it seeks to provide readers with a comprehensive understanding of the current legal landscape and the measures necessary to safeguard ITC in an increasingly compliance-driven GST environment.

Every indirect tax system eventually confronts the same question: who bears the loss when a supplier defaults or commits fraud: the exchequer, the supplier, or the recipient. This issue existed under MODVAT, CENVAT and State VAT regimes, where judicial outcomes varied between denying credit for supplier-side deficiencies and protecting bona fide recipients.

GST has inherited this tension but added a statutory and technological dimension.

GST has inherited this tension but added a statutory and technological dimension. Through successive amendments to Section 16 of the Central Goods and Services Tax Act, 2017 ("CGST Act"), the recipient's entitlement to input tax credit ("ITC") has become increasingly dependent on supplier compliance.

Through successive amendments to Section 16 of the Central Goods and Services Tax Act, 2017 ("CGST Act"), the recipient's entitlement to input tax credit ("ITC") has become increasingly dependent on supplier compliance. The resulting allocation of risk between supplier, recipient and tax administration has now reached the Supreme Court on constitutional grounds.

This article examines the evolution of Section 16, the changing relevance of GSTR-2A and GSTR-2B, judicial standards of recipient diligence, fake-invoice investigations, burden-of-proof issues and practical safeguards for businesses.

Evolution of Conditions Under Section 16

Section 16(2), as originally enacted in 2017, prescribed several conditions for claiming ITC. These included possession of a prescribed tax document, receipt of the goods or services, payment of tax by the supplier to the Government and furnishing of the relevant return.

The provision broadly reflected the CENVAT approach, under which the recipient established entitlement through specified statutory conditions. Subsequent amendments, however, have materially altered this position.

Rule 36(4) of the Central Goods and Services Tax Rules, 2017 ("CGST Rules") was introduced in October 2019 and progressively tightened the amount of credit that could be availed in respect of invoices not reflected in the supplier's relevant filings.

The permitted percentage of unmatched credit was reduced from 20 per cent to 10 per cent and subsequently to 5 per cent. In practical terms, the Rules imported an invoice-matching discipline even before Parliament expressly converted reflection of the invoice into a statutory condition under Section 16.

Section 16(2)(aa), introduced with effect from 1 January 2022, made reflection of the relevant invoice or debit note in the recipient's statement a statutory precondition for ITC.

This provision materially changed the legal significance of the GST returns architecture. What was earlier viewed primarily as a reconciliation and facilitation mechanism became an eligibility filter linked to the supplier's filing of GSTR-1 and the recipient's corresponding statement, practically leading to discontinuation of provisional credit based solely on the recipient's own records. A recipient could have received the goods or services, possessed a valid invoice and paid the supplier, yet still face a credit issue if the supplier did not upload the invoice accurately and within the relevant reporting cycle.

The next stage was the introduction of Section 16(2)(ba) and Rule 37A[1], which extended the supplier-linked conditions beyond invoice reporting to the supplier's filing of GSTR-3B and payment of the corresponding tax.

As may be seen, these amendments progressively shifted supplier-compliance risk to recipients, while occasional corrective measures tempered their impact. The retrospective insertion of Sections 16(5) and

1. *Introduced vide Notification No. 26/2022-Central Tax dated 26.12.2022 and inserted a new mechanism for reversal and re-availment of ITC where the supplier has not furnished GSTR-3B and paid the corresponding tax.*

16(6), granting relief for specified FY 2017-18 to FY 2020-21 cases subject to prescribed conditions, illustrates that approach.

The evolution of Section 16 is consequently not merely a technical history of amendments. It reflects a deeper change in the allocation of risk between the department, supplier and recipient.

GSTR-2A, GSTR-2B and the Matching Architecture

GSTR-2A was not originally intended to operate as an independent legal gate for ITC. CBIC press releases issued in 2018[2] described GSTR-1 and GSTR-2A as taxpayer-facilitation and reconciliation tools, clarifying that ITC could be availed on a self-assessment basis under Section 16.

GSTR-2B fundamentally changed that framework. As a static statement directly linked to Section 16(2)(aa), it transformed what was once a reconciliation aid into a statutory reference point for determining ITC eligibility.

The shift from GSTR-2A to GSTR-2B as the operative reference point is not a mere technical upgrade; it reflects a considered legislative choice to convert what was once a facilitative reconciliation tool into a statutorily prescribed fixed, binary reference point for determining ITC eligibility.

With respect to ITC disputes concerning financial years 2017-18 and 2018-19, Circular No. 183/15/2022-GST acknowledged evidentiary difficulties in legacy-period mismatches and prescribed supplier confirmation or professional certification mechanisms in specified cases, illustrating the continuing tension between an electronic matching system and the evidentiary burden placed on recipients when supplier-side data is incomplete or inaccurate.

Supplier Compliance as a Prerequisite

A principal objection to Sections 16(2)(aa) and 16(2)(c) is that they make ITC contingent on supplier conduct without giving recipients equivalent ability to compel or verify compliance.

The comparison with reverse charge is instructive. While Parliament expressly transfers tax-payment responsibility to recipients in specified cases under reverse charge, Sections 16(2)(aa) and 16(2)(c) shift the economic consequences of supplier default indirectly through denial or reversal of credit.

The departmental justification is that such conditions protect the integrity of the credit chain by addressing fake invoices, non-remittance and circular trading.

The shift from GSTR-2A to GSTR-2B as the operative reference point is not a mere technical upgrade; it reflects a considered legislative choice to convert what was once a facilitative reconciliation tool into a statutorily prescribed fixed, binary reference point for determining ITC eligibility.

2. *https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1550035&reg=48&lang=2*

The central issue is therefore not whether supplier compliance matters as it plainly does under the statutory framework but whether every supplier default should result in denial of ITC to a *bona fide* recipient.

Recipient Due Diligence Standards Emerging from Judicial Developments

Indian jurisprudence presently reflects two competing approaches.

In ***Suncraft Energy Private Limited vs. Assistant Commissioner, State Tax***[3], the Calcutta High Court held that ITC could not be denied solely because invoices were not reflected in GSTR-1/GSTR-2A without adequate action against the supplier. Drawing on ***Arise India***[4] and ***On Quest Merchandising***[5], the Court observed that recovery should ordinarily be pursued against the defaulting supplier first, except where collusion, disappearance of the supplier or similar circumstances exist.

This is essentially a fault-based model, namely that absent evidence connecting the recipient to the supplier's default, the recipient's self-assessed credit stands, and should not automatically be denied.

This rationale also aligns with the approach reflected in the GST Council's discussion at its 27th Meeting on 4 May 2018. The discussion contemplated that where a supplier uploaded an invoice but failed to remit the tax collected, primary liability would remain with the supplier, and recovery should ordinarily be pursued against that supplier first.

A contrasting approach emerges from ***State of Karnataka vs. Ecom Gill Coffee Trading Private Limited***[6]. The Supreme Court held that invoices and proof of payment alone do not establish a genuine transaction; the claimant must also establish movement of goods and surrounding commercial evidence. While *Suncraft* concerns supplier-compliance failures in otherwise genuine transactions, *Ecom Gill* addresses the genuineness of the underlying transaction itself.

While *Suncraft* concerns supplier-compliance failures in otherwise genuine transactions, *Ecom Gill* addresses the genuineness of the underlying transaction itself. The decision in *Ecom Gill* has subsequently been relied upon by High Courts in GST proceedings under Section 74 because of the near identical burden-of-proof provisions under Section 155 of the CGST Act.

Since 2023, challenges to ITC entitlement have also been argued directly on constitutional grounds, before several High Courts and recently, the Supreme Court.

The challenge to Section 16(4) concerned whether denial of ITC solely because a return was filed after the prescribed deadline

3. *Suncraft Energy Pvt. Ltd. vs. Assistant Commissioner, State Tax, Ballygunge Charge, 2023 (8) TMI 174 (Cal). The Revenue's SLP was dismissed in Assistant Commissioner of State Tax vs. Suncraft Energy Pvt. Ltd., 2023 (12) TMI 739 (SC Order).*
4. *Arise India Ltd. vs. Commissioner of Trade & Taxes, Delhi, W.P.(C) 2106 of 2015, decided on 26 October 2017; and reported in 2022 (60) G.S.T.L. 215 (S.C.). Revenue's SLP (C) No. 36750 of 2017 was dismissed on 10 January 2018 and reported as 2022 (60) GSTL 215 (SC).*
5. *On Quest Merchandising India Pvt. Ltd. vs. Government of NCT of Delhi, W.P.(C) 6093 of 2017, decided on 26 October 2017 and reported in (2018) 10 GSTL 182 (Del.).*
6. *State of Karnataka vs. Ecom Gill Coffee Trading Pvt. Ltd., Civil Appeal No. 230 of 2023, decided on 13 March 2023; 2023 SCC OnLine SC 248.*

violated Articles 14, 19(1)(g) and 300A, particularly where the purchase was genuine and tax had been paid. The High Courts of Patna[7], Andhra Pradesh[8], Chhattisgarh[9] and Calcutta[10] have upheld the validity of the time limit, and held that ITC is a statutory concession rather than a vested or constitutionally protected right, and that the legislature is entitled to impose conditions, including time limits, for claiming it. The retrospective insertion of Sections 16(5) and 16(6)[11] subsequently provided conditional relief in specified cases involving financial years 2017-18 to 2020-21.

The more significant constitutional issue concerns Section 16(2)(c), which requires that the tax charged on the supply must actually have been paid to the Government by the supplier, for the recipient to be entitled to claim ITC of the same. This has been challenged in several petitions, where petitioners have argued that provision is arbitrary and violative of Article 14 precisely because it treats unequals as equals, i.e. it makes no distinction between a bona fide recipient dealing with a supplier who later defaults, and a recipient who has actively and knowingly colluded in that default.

In ***Maruti Enterprise vs. Union of India***[12], the Gujarat High Court rejected the challenge to Section 16(2)(c) and declined to read



down the provision. The Court's reasoning included the view that Section 155 places the burden of proving ITC eligibility on the taxpayer and that availability of invoices or evidence of payment to the supplier do not, by themselves, establish compliance with every statutory condition.

The Tripura High Court adopted a different approach in ***Sahil Enterprises vs. Union of India***[13]. It read down Section 16(2)(c) so that it would apply to transactions that were not bona fide or involved collusion or fraud, and granted relief where the department had proceeded under Section 73, had not alleged fraud and had not disputed that

7. *Gobinda Construction vs. Union of India, CWJC No. 9108 of 2021 and connected matters, decided on 8 September 2023; 2023 SCC OnLine Pat 2276.*
8. *Thirumalakonda Plywoods vs. Assistant Commissioner – State Tax, W.P. No. 24235 of 2022, decided on 18 July 2023; 2023 SCC OnLine AP 345; 2023 Supreme (AP) 768.*
9. *Jain Brothers vs. Union of India (2023) 13 Centax 212 (Chhattisgarh).*
10. *BBA Infrastructure Ltd. vs. Senior Joint Commissioner of State Tax, MAT No. 1099 of 2023, decided on 13 December 2023; 2023 (12) TMI 835 (Calcutta High Court).*
11. *Enacted through the Finance (No. 2) Act, 2024 and with effect from 1 July 2017 itself.*
12. *Maruti Enterprise vs. Union of India, R/Special Civil Application No. 18080 of 2023, decided on 1 May 2026 and reported in 2026 Supreme (Guj) 831.*
13. *Sahil Enterprises vs. Union of India, W.P.(C) No. 688 of 2022, decided on 6 January 2026 (2026) 38 Centax 116 (Tripura).*

GST had been paid by the assessee to its supplier.

In ***Bhandari Scrap Traders vs. Union of India***[14], the Supreme Court dismissed the batch of Special Leave Petitions ("SLP") challenging *Maruti Enterprise*.

Although dismissal of an SLP does not carry the same precedential value as a reasoned judgment, particularly where the underlying conflict with the Tripura High Court's approach has been acknowledged by the Supreme Court; it nevertheless lends practical support to the stricter view that supplier tax payment remains a statutory condition for ITC.

The current landscape therefore reflects continuing tension between a fault-based approach protecting bona fide recipients and a formalist, condition-based approach requiring strict statutory compliance. It appears, atleast presently, that the weight of current authority (by this recent dismissal), sits with the latter.

Fake Invoicing and Non-Existent Suppliers

The fault-based protection available in cases such as *Suncraft* has limited application where the supplier is fictitious, operates from non-existent premises or has been created using borrowed KYC documents, or where the evidence indicates circular trading, accommodation entries or invoices issued without any underlying movement of goods. Here, neither the protection provided by *Suncraft* ruling nor the constitutional arguments raised in Section 16(2)(c) litigation have much purchase.

In such cases, the strongest defense is independently verifiable evidence demonstrating the economic reality of the transaction. For goods, this includes inventory records, e-way bills, transport documentation, freight evidence and delivery acknowledgements. For services, evidence should establish actual performance and business use.

The distinction between supplier default and fake invoicing remains critical: a genuine supply followed by supplier non-payment raises a different legal issue from an invoice unsupported by any supply.

Burden of Proof: Department and Taxpayer

Section 155 of the CGST Act places the burden of proving eligibility for ITC on the person claiming it. The provision is central to the department's argument that the recipient must establish compliance with all statutory conditions, including the supplier-payment requirement in Section 16(2)(c).

The burden analysis should nevertheless distinguish between several different issues. *First*, the recipient must establish the initial entitlement to credit through the prescribed documents and evidence of receipt of the goods or services. *Second*, where the department alleges that the supplier did not report or pay the tax, the supplier's compliance position becomes material to the dispute. *Third*, where fraud or collusion is alleged, the department's case must be evaluated against the evidence connecting the recipient to the alleged arrangement. *Fourth*, the department may challenge the transaction itself by alleging

14. *Bhandari Scrap Traders vs. Union of India, SLP (C) No. 23931 of 2026 and connected matters, order dated 24 July 2026 and reported in (2026) 44 Centax 356 (S.C.).*



that goods or services were never supplied or received.

It is on this question as to who bears the burden, and on what standard where a comparative lens is most instructive.

In the European Union, ***Kittel and Recolta Recycling***[15] established that the right to deduct may be denied only where the taxable person knew or should have known that the transaction was connected with VAT fraud. ***Mahagében and Dávid***[16] subsequently emphasised that deduction should not ordinarily be denied merely because of supplier-side irregularities of which the recipient had no knowledge, and that taxpayers should not be subjected to a general obligation to verify the supplier's own compliance absent specific indications of irregularity. In summary, ECJ has generally espoused a standard of *proportionate diligence* but not maximal diligence.

The Canadian approach under sub-section 169(4) of the Excise Tax Act is more formal (also refer *Systematix*[17], among others). The recipient must possess prescribed documentary information[18] before claiming the credit, and good faith does not excuse documentary deficiency.

India's position, as reflected in the recent developments described above, does not fit neatly into either model. A recipient, in principle, may satisfy both the EU's proportional-diligence standard and Canada's documentary requirements, yet still lose ITC because the supplier failed to remit GST.

15. *Joined Cases C-439/04 and C-440/04, 2006.*
16. *C-80/11 and C-142/11, 2012.*
17. *Systematix Technology Consultants Inc. vs. The Queen (2007 FCA 226).*
18. *Requirements include the supplier's legal name and registration number, a description of the supply, the amount paid etc.*

The Way Forward: Discipline over Reaction

Where does the Indian taxpayer then stand? What can it do to protect the ITC that it believes has been correctly and genuinely claimed?

In the authors' view, in the present environment, vendor due diligence has become both a preventive control and an evidentiary defence against ITC disputes. A practical framework should operate across four stages:

a. Onboarding

The recipient should verify the supplier's GST registration status, registration date, return-filing history and tax scheme. Enhanced checks should apply to new, high-value or unusual vendors, including basic corporate, ownership and address verification.

b. Contracting

Supplier agreements should include GST-compliance warranties and obligations to provide relevant filing and tax-payment evidence, as well as indemnities addressing ITC reversal and interest/penalty consequences. Where commercially feasible, payment terms may be linked to invoice reporting in GSTR-1.

c. Transaction-level controls

Businesses should retain independently verifiable evidence of the transaction's economic reality. For goods, this should include e-way bills, delivery acknowledgments, transport records, freight evidence and, for material or first-time transactions, proof of delivery or supplier-premises verification. For services, records should be able to demonstrate that the services were actually rendered and connected with the recipient's business.

d. Ongoing monitoring

GSTR-2B should be reconciled monthly and vendor follow-up for mismatches should be documented. Businesses should periodically re-check supplier registration & return filing status and consider immediate holds on transactions involving suppliers whose GSTIN has been cancelled, suspended or who are persistently non-compliant.

AI-enabled compliance tools increasingly support these controls. The control framework should be risk-tiered rather than uniform. The intensity of verification should be calibrated to transaction value, vendor novelty and sector-specific fraud risk (for eg - scrap, works contract and export-refund-linked supplies have featured disproportionately in recent enforcement activity).

Responsibility should be assigned to a named function within the organization, with periodic reporting of ITC-at-risk exposure to those responsible for tax governance, rather than being treated merely as an incidental output of the accounts payable process.

Supplier non-compliance related litigation: Future gazing

The strongest defence is assembled before a dispute arises. At the show-cause stage itself, or even earlier, taxpayers should insist on accurate characterization of the dispute and resist attempts to conflate reporting mismatches, supplier non-payment, transaction-genuineness issues and allegations of fraud.

The distinction matters because a mismatch issue, a supplier non tax-payment issue, a transaction-genuineness issue and a fraud or collusion allegation, each raise different evidentiary and legal issues, and will, therefore, largely determine which line of reasoning/authority will be applied by the GST Appellate Tribunal (**"GSTAT"**), once fully functional.

The recent interim GSTAT order in ***Assistant Commissioner of CGST & Central Excise vs. PI Industries Ltd***.[19] is significant because it required the department to disclose recovery efforts against the supplier before proceeding against the recipient automatically.

Future litigation will continue to test the relationship between supplier tax payment as an objective statutory condition and the competing principle that a *bona fide* recipient should not automatically suffer adverse consequences for another person's default. Courts may also increasingly distinguish genuine transactions affected by supplier non-compliance from transactions that were fraudulent from inception.

The legislative pattern suggests that future changes may continue to combine stricter prospective compliance requirements with targeted relief for historical or procedurally defective claims. The retrospective relief introduced through Sections 16(5) and 16(6) demonstrates that the law may respond to accumulated hardship without necessarily abandoning supplier-linked ITC conditions.

For businesses, the message is straightforward: ITC compliance now extends beyond invoice collection and payment. It requires supplier due diligence, contractual safeguards, GSTR-2B monitoring and retention of transaction-level evidence capable of satisfying both statutory requirements and judicial expectations.

GST has made ITC a function not only of the recipient's own conduct but also of the integrity of the wider supply chain. Until the balance between supplier responsibility, recipient diligence and departmental recovery is finally settled, the prudent recipient must build a record capable of satisfying both competing judicial standards: strict statutory compliance on the one hand and demonstrable commercial bona fides on the other.

■

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19. *Interim Order dated 11 August 2026 in Appeal No. APL/10/SRT/2026.*

GUARANTEEING UNCERTAINTY: THE EVOLVING GST FRAMEWORK FOR CORPORATE GUARANTEES





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Overview

The article examines the contentious issue of levy of Goods and Services Tax on corporate guarantee transactions in India – a subject that has generated significant judicial divergence and industry-wide uncertainty. The authors trace the evolution of taxability from the erstwhile service tax regime, where the Supreme Court in Edelweiss held that corporate guarantees without consideration were not taxable, to the fundamentally different GST framework, which deems related party transactions as taxable supplies even absent consideration. The article analyses the conflicting positions of the Bombay High Court (DP Jain) and the Gujarat High Court (Torrent Power Limited, August 2026), particularly in relation to the mandatory 1% valuation mechanism introduced under Rule 28(2) of the CGST Rules in October 2023. While acknowledging the Gujarat High Court's judgment as the more comprehensive pronouncement, the authors critically evaluate certain aspects in its reasoning – notably regarding retrospectivity, the characterisation of corporate guarantee as a "new levy," and the unexplored interplay with the Supreme Court's observations in the online gaming matter.

Introduction

The implementation of Goods and Services Tax (**"GST"**) laws in 2017 was meant to streamline levy of indirect taxes and weed out interpretational disputes. But as is true for any taxing statutes and in light of enhanced economic activities and corporate transactions, questions involving taxability of such transactions have time and again surfaced in some form and manner.

One such issue impacting corporate transactions is the taxability of corporate guarantee. With the insertion of a mandatory valuation mechanism in the Central Goods and Services Tax Rules, 2017 (**"CGST Rules"**) in 2023 *qua* corporate guarantee transactions, disputes surfaced with the validity of such amendment and the taxability of the transaction in itself being challenged before various High Courts.

Recently, the Gujarat High Court *vide* its judgment dated 14 August 2026 in the case

of ***Torrent Power Limited & Ors vs. Union of India & Ors***[1] and a batch of other petitions (**"TPL Judgment"**) ruled on the validity of the levy of GST on corporate guarantee and also on the validity of the mandatory valuation mechanism.

Prior to that, the Hon'ble Bombay High Court ***M/s. D.P. Jain & Co. Infrastructure Private Limited vs. Union of India***[2] **("DP Jain Judgment")** also dealt with the same issue. In case of statutory ambiguity, a litigant expects to have a judicial certainty. However, in context of GST on corporate guarantee transactions, the Gujarat and Bombay High Courts have taken different views – with certainty now expected only at the Supreme Court level. The authors in this article have attempted to dissect and examine the issue in light of the ever-evolving jurisprudence.

1. Corporate Guarantee – what it means

1.1 Simplistically put, a guarantee transaction implies involvement of three parties primarily: (a) surety who gives a guarantee/promise that he will discharge the liability of the third person in case of default, (b) principal debtor on whose behalf the guarantee is given and (c) creditor – the person to whom the guarantee is given.

1.2 The statutory basis of guarantee emerges from Sections 126 onwards of the Indian Contract Act, 1872 (**"Contract Act"**) wherein the concept of corporate guarantee is recognized and defined. In context of corporate transactions, the prevalent manner of providing a corporate guarantee encompasses a parent company (surety) giving a guarantee on behalf of its subsidiary company (principal debtor) to a bank or financial institution (creditor) – basically obliging itself to discharge the liability of the subsidiary company should it fail to honour its obligations.

In case of statutory ambiguity, a litigant expects to have a judicial certainty. However, in context of GST on corporate guarantee transactions, the Gujarat and Bombay High Courts have taken different views – with certainty now expected only at the Supreme Court level.

1.3 The intent and the underlying rationale for providing such guarantee can be manifold – from ensuring loan-worthiness of the subsidiary to safeguarding its business interests. In lieu of providing such guarantee, the holding company may or may not charge a commission from its subsidiary company. Commercially, it is primarily in the realm of two related parties to manage and arrange their affairs in a manner which suits their interests.

2. Statutory framework under the erstwhile regime and under the GST laws vis-à-vis taxability of corporate guarantee

2.1 To understand the taxability of corporate guarantee under the GST regime, it is important to trace its history of taxability under the erstwhile service tax regime. Under Section 65B(44) of the Finance Act,

1. *R/SCA No. 12175 of 2024.*
2. *WP No. 2087 of 2025.*

1994 (**"Finance Act"**), the term 'service' was defined to mean an activity carried out by one person for another person for a 'consideration'. The provision therefore required carrying out an activity and flow of consideration as a sine qua non for levy of service tax.

2.2 Unlike the GST regime, there was no specific framework governing the valuation of related party transactions under the service tax regime. Therefore, in those contexts where there was no payment of consideration for providing a guarantee, the question of levy of service tax ordinarily did not arise. However, despite the same, disputes did crop up and eventually the Supreme Court in the case of ***Commissioner of CGST & Central Excise vs. M/s Edelweiss Financial Services Ltd***[3] while affirming the ruling of the Tribunal endorsed the position that corporate guarantee cannot be taxed and subjected to levy of service tax in the absence of flow of any consideration.

2.3 In contradistinction, the GST regime is modelled in a fundamentally distinct manner. In context of related party transactions, even without flow of consideration, the framework treats the related party transactions as a 'supply' to be valued in accordance with the valuation mechanism provided under the CGST Rules. A brief overview of the statutory context in this regard is necessary which will also throw light on the Department's rationale for taxing corporate guarantee transactions:

a. Section 7(1) of the Central Goods and Services Tax Act, 2017 (**"CGST Act"**) defines the term 'supply' to mean any a varied lot of activities carried out by one person for another for a consideration in the course or furtherance of business.

b. Section 7(1)(c) provides that the activities mentioned in Schedule I of the CGST Act shall be a 'supply' irrespective of the fact that the same are made or agreed to be made without a consideration. Entry 2 of Schedule I specifies that supply of goods or services between related persons shall be construed to be a supply.

c. Section 7(1A) states that where an activity is a supply in terms of Section 7, it shall either constitute a supply of goods or services in terms of Schedule II of the CGST Act. Essentially, Schedule II is a categorization list encompassing the manner of treatment of a particular supply.

Eventually the Supreme Court in the case of Commissioner of CGST & Central Excise vs. M/s Edelweiss Financial Services Ltd. while affirming the ruling of the Tribunal endorsed the position that corporate guarantee cannot be taxed and subjected to levy of service tax in the absence of flow of any consideration.

3. *CA No. 5258 of 2023.*

d. Rule 28 provides for valuation of related party transactions. Rule 28(2) is a specific valuation provision incorporated *vide* Notification No. 52/2023–Central Tax dated 26 October 2023 (**"Notification No. 52"**) which provided for valuation of corporate guarantee transactions. It inter-alia provided that the value of the corporate guarantee shall either be 1% of amount of such guarantee on an annual basis or the actual consideration, '*whichever is higher*'.

2.4 In light with the foregoing framework, the Department's case has been that a parent company providing a corporate guarantee for its subsidiary company is rendering a service in lieu of a guarantee commission/fee and even if the actual flow of guarantee commission/fee is absent, a deeming value of 1% is superimposed on such transactions by way of the valuation framework.

Rule 28(2) is a specific valuation provision incorporated vide Notification No. 52/2023 – Central Tax dated 26 October 2023 ("Notification No. 52") which provided for valuation of corporate guarantee transactions.

2.5 Historically, since the service tax framework did not contemplate valuation framework for related party transactions, the issue of such taxability did not arise frequently. However, GST framework being on a different pedestal, the issue partook the character of an industry wide issue with writ petitions instituted before various High Courts.

3. Core arguments contesting the levy of GST on corporate guarantee

3.1 In the ongoing litigations and generally, the taxpayers have taken various arguments (which have also been dealt in the TPL Judgment) contesting the levy of GST on corporate guarantee. For the sake of brevity, the authors have hereunder discussed few key ones[4]:

In the absence of any express deeming provision (unlike Section 7(1)(aa) which was enacted to tax transactions between a person and its members), corporate guarantees cannot be treated as supplies merely by implication.

a. An act of providing a corporate guarantee is not a 'supply' in the first place. Scheme of GST laws (Section 7(1)(a) read with the Schedules) pre-supposes that there has to be a 'supply'. A corporate guarantee furnished without any fee or commission involves no 'activity' at all unless the same is invoked at a subsequent stage. Hence there is no supply of services. The fact that Section 7(1)(c) uses the term 'activity' and Entry 2 of Schedule I uses the term 'supply' implies that while every supply is an activity, every activity is not a supply. In the absence of

4. *In the writ petitions, various constitutional and legal arguments have been advanced. However, for the purposes of this present analysis, the core arguments have been examined and discussed herein.*

any express deeming provision (unlike Section 7(1)(aa) which was enacted to tax transactions between a person and its members), corporate guarantees cannot be treated as supplies merely by implication.

b. A supply has to be carried out in the course of furtherance of business as is evident from Section 7(1)(a). The holding companies are not in the business of providing corporate guarantee as a part of its business activities and hence the same has to been in light of Section 2(17) of the CGST Act.

c. An extension of the foregoing argument is that furnishing of a guarantee is a shareholder/ investment activity and is furnished to safeguard the shareholding of the parent company in the subsidiary company. When the principal activity of holding shares is itself not taxable, the ancillary activity cannot be subjected to GST.

d. Providing a mandatory valuation of 1% is arbitrary since it snatches the right of the taxpayers to value their supply in terms of the allied valuation mechanisms.

3.2 Apart from the foregoing arguments, arguments that - a corporate guarantee as such is an 'actionable claim' and hence outside the ambit of GST laws, to classify the activity of furnishing a corporate guarantee in the nature of 'agreeing to the obligation' to do an act' is erroneous, challenge to Departmental Circulars, subsidiary company being not a recipient of supply, are some of the ancillary arguments adopted by the taxpayers.

An extension of the foregoing argument is that furnishing of a guarantee is a shareholder/ investment activity and is furnished to safeguard the shareholding of the parent company in the subsidiary company.

4. Observations and key inferences that can be drawn from the judicial precedents

4.1 On merits, while the DP Jain Judgment is an assessee favourable judgment, on a closer scrutiny, it emerges that the Bombay High Court failed to consider and overlooked the fact that the GST laws under Section 7(1)(c) contemplate related party transactions to be a 'supply' even if made without consideration. The Bombay High Court by referring to the Supreme Court judgment in ***Edelweiss (supra)*** ruled that corporate guarantee is not taxable. On the contrary, the TPL Judgment is more detailed having taken into account the statutory provisions and arguments on all counts.

4.2 While eventual clarity can be achieved only before the Supreme Court given the divergent views, Gujarat High Court's decision with its nuanced observations currently serves as the most authoritative and comprehensive judicial pronouncement on the subject. Accordingly, insofar as the arguments mentioned above are concerned, it is relevant to note the observations of the Gujarat High Court *qua* the arguments raised:

a. The argument that there is no 'supply' involved at all did not find merit given the statutory framework under the GST laws and the Contract Act. The TPL Judgment held that once the framework under the Contract Act is examined (like giving of guarantee, subrogation, rights of surety, etc.), it becomes evident that there is a supply being undertaken. It further held that Section 7 is an inclusive provision and cannot be interpreted in a restricted manner.

b. The Gujarat High Court held that once the guarantor settles the debt, it steps into the shoes of the creditor bank through subrogation under Section 140 of the Contract Act establishing the connecting link for treating the arrangement as a supply of service. It further referred to Section 145 of the Contract Act that there is an implied promise by the principal debtor to the surety to indemnify him. Therefore, conjointly reading the scheme of the Contract Act, it becomes evident the same becomes the connecting to constitute the supply of service. Further, since the holding company and subsidiary are "related persons" under *Explanation* (a) to Section 15 of the CGST Act, the supply falls within Schedule I even without consideration.

c. The act of furnishing a guarantee is an extension of business interest and hence qualifies as 'business' in terms of Section 2(17). The Gujarat High Court while discussing the term 'business', referred to earlier Supreme Court precedents and dictionary meanings and has essentially held that any activity which has a remote connection and serves the purpose of the core business interest will also qualify as 'business'.

d. The Gujarat High Court held that Rule 28(2) is constitutionally valid and to that extent drew substantive guidance from the recent Supreme Court judgment in the online gaming matter[5].

e. However, the Gujarat High Court has read down the phrase '*whichever is higher*' in Rule 28(2) to essentially hold that a mandatory valuation mechanism of 1% offends and is contrary to the overall valuation framework and disentitles the taxpayer from resorting to the general valuation framework which contemplates a sequential application of the provisions. Rule 28(2) has accordingly been read down and this is one of the major reliefs that has been granted by the Gujarat High Court.

f. Additionally, the Gujarat High Court after examining the nature of the amendment has held that the valuation framework has to be

5. *Directorate General of Goods & Services Tax Intelligence & Ors vs. Gameskraft Technologies Private Limited & Ors, SLP No. 19366 of 2023 ("GTPL Judgment").*



applied in a prospective manner and cannot be made applicable to guarantees executed prior to 26 October 2023. This also is a positive outcome for the industry.

g. Another count on which relief has been given pertains to wrongful invocation of Section 74 of the CGST Act. The Gujarat High Court reiterated the settled principle for invocation of Section 74, the threshold is high and in case of interpretative issues and more so when facts are in the knowledge of the parties, extended period cannot be invoked.

4.3 As can be gleaned from the foregoing, while on the larger legal and constitutional issues, the Gujarat High Court has ruled against the industry, on some of the finer aspects, the taxpayers' interest has not been completely overlooked.

5. Does the Gujarat High Court judgment settle the dust?

5.1 While the TPL Judgment is undoubtedly a well-reasoned judgment, in the view of the authors, the following aspects are something which should have been elucidated further and instead of clearly laying down the legal position leaves room further interpretation and ambiguity.

5.2 If the act of providing a guarantee is a supply, can the mere absence of a specific deeming valuation mechanism invalidate the levy, more so when the general valuation framework was in place?

a. The TPL Judgment has categorially held that act of giving a corporate guarantee is a supply of service. The only basis for striking down the demands for periods prior to 26 October 2023 is that Rule 28(2) introduces a retrospective levy. The observations are as under:

"114… Rule 28(2) imposes a retrospective levy of a new tax for the period during which no levy existed as per law…"

b. In the view of the authors, the foregoing observation go contrary to the overall reasoning adopted in the judgment. Applying the rationale of the Gujarat High Court itself, the levy has not been introduced for the first time since providing guarantee constituted a supply of service. The mandatory valuation mechanism has been introduced in 2023, however, the very basis for reading down Rule 28(2) is premised on the fact that the mandatory deeming valuation disentitles the taxpayer to apply other valuation rules.

c. Therefore, applying the rationale of Gujarat High Court itself, it can be inferred that there existed a supply and there existed a framework for valuation. Hence, in the view of the authors, this position can give rise to further interpretational disputes. If the basis of setting aside the demand for the past periods is premised on the fact that it is a new levy being created on a new taxable event post 2023, the underlying basis that there existed a supply in case of providing corporate guarantee also becomes suspect since it goes contrary to the observations made earlier. This aspect is something which may be further elucidated before the Supreme Court.

5.3 Does the observation that insertion of Rule 28(2) is a new levy and is prospective hold good in light of the Supreme Court's observations in the GTPL Judgment?

a. The Gujarat High Court was well aware of the GTPL Judgment and has relied on the same extensively. However, insofar as the issue of retrospectivity versus retroactivity is concerned, the Gujarat High Court has not referred to the observations in the GTPL Judgment.

b. In the online gaming sector, a host of amendments were introduced including a specific valuation provision. The Supreme Court held that the amendments are retrospective because: (a) a valuation framework under Rule 31A existed and (b) the amendments further clarify the overall valuation framework. The observations in this regard are as under:

"66.2. It must be noted at the outset that the 2023 amendments neither create a fresh levy nor introduce a new taxable event for the first time. Taxability of actionable claims arising from betting and gambling already stood recognised under the pre-amendment statutory framework as discussed hereinabove. The amendments principally operate to provide greater statutory specificity and are clarificatory in nature."

c. In view of the authors, the amendments made in the case of online gaming were more detailed and fundamentally altered the structure of taxation – yet the Supreme Court viewed them as clarificatory since Rule 31A existed in the statute book. In the present case, even sans Rule 28(2), the overall valuation mechanism still existed under the general provisions pertaining to related party transactions – in such a scenario, applying the rationale of the GTPL Judgment, it remains to be seen if this favourable observation is eventually upheld at a Supreme Court level or not.

d. On the issue of whether the act of providing a corporate guarantee qualifies as a shareholder activity or not, the TPL Judgment while discussing the same has gone onto a factual analysis primarily drawing the distinction between pledge and

While the Gujarat High Court has held it to be 'business' in terms of Section 2(17), a finer aspect of whether it is in course or furtherance or not is also something which needs further evaluation.

guarantee. However, despite noting the submissions of the taxpayers vis-à-vis the OECD Guidelines, its applicability or non-applicability has not been discussed in a holistic manner and the precedents under the Income Tax laws have been distinguished without any cogent discussion. In the view of the authors, the benefit of this argument may still be available to the taxpayers to be evaluated more rigorously before the Supreme Court.

5.4 Lastly, one aspect flowing from the judgment is the expanded interpretation given to the term 'business' – it has essentially recognized that any economic benefit derived will be considered as 'business'. While this in itself seems unobjectionable, it is pertinent to highlight that for an activity to qualify as supply in terms of Section 7(1)(a), it has to be undertaken in the 'course or furtherance of business'.

5.5 The demarcating aspect therefore is to not only examine if something is 'business' but also ascertain if the act in question is in furtherance of business or not. Judicially, under the GST regime, there have been precedents wherein particular acts even though undertaken in a business set-up has been held to be not in the course or furtherance of business. For example, provision of canteen facilities, etc. provided by an employer to employee have been held to be not in the course or furtherance of business and hence not a supply[6]. Therefore, in context of corporate guarantee, while the Gujarat High Court has held it to be 'business' in terms of Section 2(17), a finer aspect of whether it is in course or furtherance or not is also something which needs further evaluation.

Concluding thoughts

The final word on the taxability of corporate guarantees under GST will most likely come from the Supreme Court and given the conflict between the Gujarat High Court and the Bombay High Court, a challenge before the Supreme Court can be expected soon.

■

6. *In RE: Brandix Apparel India Private Limited, 2023 (5) CENTAX 249 (AAR), In RE: Cadila Healthcare Ltd., 2022 (1) CENTAX 274 (AAR-Guj).*

CLUBBING OF GST NOTICES: LEGAL AND PROCEDURAL PERSPECTIVES



Jugal Doshi

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Overview

This article examines a live conflict among High Courts on whether authorities may club multiple financial years into a single show cause notice under Section 73 or 74 of the CGST Act. Eight High Courts have ruled on this issue but their views are not aligned. The Karnataka, Calcutta and Andhra Pradesh High Courts, and the Kerala High Court in Division Bench, treat each financial year as a separate unit for limitation, reading "any period" in Section 73(3) as "tax period" and relying on State of Jammu and Kashmir vs. Caltex (India) Ltd., AIR 1966 SC 1350. The Delhi High Court permits consolidation, confining its reasoning to Section 74 cases alleging a fraudulent input tax credit pattern spanning years, while the High Court of Jammu and Kashmir and Ladakh upholds clubbing subject to a safeguards test. The Madras High Court has produced conflicting decisions. In Bombay, where two Division Benches had held clubbing impermissible, a third has now doubted them and referred the question to a Larger Bench. The Supreme Court has not decided the question on merits. A departmental communication of September 2025 instructs field formations that composite notices are permissible, a position The Karnataka High Court has held contrary to the Act. The article traces the statutory text behind the split and identifies the strategic considerations for advisers.

Introduction

A show cause notice is the foundation of the entire structure of tax demand and adjudication. Where that foundation is defective, everything built on it, the order-in-original, recovery, attachment, falls with it. Taxpayers have increasingly challenged one such defect: tax authorities clubbing multiple financial years, sometimes as many as six or seven, into a single consolidated show cause notice under Section 73 or Section 74 of the Central Goods and Services Tax Act, 2017 (CGST Act). Eight High Courts have now spoken on the question, and they do not agree. The Karnataka, Calcutta and Andhra Pradesh High Courts, and the Kerala High Court in Division Bench, have struck such notices down. The Delhi High Court and the High Court of Jammu and Kashmir

A show cause notice is the foundation of the entire structure of tax demand and adjudication. Where that foundation is defective, everything built on it, the order-in-original, recovery, attachment, falls with it.



and Ladakh have upheld them, on different reasoning from each other. The Madras High Court has produced conflicting decisions within the same month. In Bombay the position has been reopened: two Division Benches having held clubbing impermissible, a third Division Bench has doubted that view and referred the question to a Larger Bench. This article maps that terrain as it stands today, and sets out what a checklist for validity looks like even where clubbing is, in principle, permitted.

Statutory Framework Governing Issuance of Notices

Sections 73 and 74 of the CGST Act deal with determination of tax not paid, short paid, erroneously refunded, or ITC wrongly availed or utilised: the former where no fraud is alleged, the latter where fraud, wilful misstatement or suppression of facts is alleged. Both share a common architecture:

- Sub-section (1) empowers the proper officer to serve notice where tax has escaped assessment.

- Sub-section (2) fixes an outer time limit for issuing that notice, three months (Section 73) or six months (Section 74) before the time limit for passing the adjudication order.

- Sub-section (3) permits, where a notice has been issued "for any period," a supplementary statement covering "such periods other than those covered under sub-section (1)"; sub-section (4) deems that statement to be a notice, provided the grounds are the same as those in the earlier notice.

- Sub-section (9) requires determination of tax, interest and penalty after considering the noticee's representation.

- Sub-section (10) fixes the outer limit for that determination: three years from the due date for filing the annual return for the relevant financial year under Section 73, five years under Section 74.

It is sub-section (10), anchoring limitation to a specific "financial year," that is difficult to reconcile with sub-sections (3) and (4), which speak of "period" or "periods" without that qualification. A single textual distinction governs much of the argument and is frequently stated inaccurately: the words "such tax periods" appear in Section 73(4) but not in Section 74(4), which refers only to "periods other than those covered under sub-section (1)." The Madras High Court built its reading on that phrase in Section 73(4), read with Section 2(106), which defines "tax period" as the period for which a return must be furnished, and with Section 2(97), which defines "return" as a return prescribed under the Act or the rules, that is, a monthly or an annual return. The Andhra Pradesh High Court, adopting the Madras reading, expressly confronted the gap in Section 74(4) and held that its absence "would not, in our opinion, make any difference to the aforesaid interpretation." Whether "any period" in sub-section (3) collapses into "tax period" (the Madras High Court's reading) or stands as a broader, undefined span (the Delhi High

Court's reading) is the interpretive fork on which most of this case law turns.

The Interpretive Fork, in Brief

The dispute may be reduced to a small number of positions taken by the Courts on the same statutory language:

Position	Reasoning	Leading case(s)
"Period" means "tax period" (restrictive)	"Any period" in Section 73(3) must be read together with "such tax periods" in Section 73(4) and the Section 2(106) definition of "tax period," which in turn depends on the Section 2(97) definition of "return." A period is therefore a tax period, monthly or annual, and a notice cannot span more than one financial year once the annual return date has passed.	• R.A. and Co. (Mad., 21-7-2025), paras 12 to 20, the originating decision on this reasoning; • S.J. Constructions (A.P., 17-9-2025), para 16, expressly following the Madras High Court and rejecting the Delhi High Court's contrary reading because "the effect of Section 73(4) and Section 73(3) had not been brought to the notice of the Hon'ble High Court of Delhi"; • State Bank of India (Cal., 30-6-2026), para 36;
"Period" is broader than "financial year" (permissive)	The legislature used "period" and "periods" in sub-sections (3) and (4) but "financial year" in sub-section (10). The permissive reading treats "period" as a deliberate and broader term, not confined to a single financial year, and particularly apt for wrongly availed ITC.	• Ambika Traders (Del., 29-7-2025), paras 45 to 47, • Evershine Polymers, • Rishi Enterprises, • Mathur Polymers, • Devansh Wire and Cables; • X.L. Interiors (Ker., single judge, 14-10-2024),
No express statutory prohibition exists	Nothing in Sections 73 or 74 expressly bars a composite notice; in the absence of a prohibition, the department may issue one, and that absence is not itself a jurisdictional defect justifying a writ against the notice.	• X.L. Interiors (Ker.); Balamore Estates (Mad., Madurai Bench); • New Gee ENN & Sons (J&K and Ladakh), para 37

Position	Reasoning	Leading case(s)
Limitation to pass an order is not a limitation on issuing a notice	Sub-section (10) confines itself to the order under sub-section (9). It contains no legislative indication that it restricts the jurisdiction conferred by sub-section (1) to issue a notice. The two are "independent statutory concepts" and are "quite compartmentalized," so a time-bar objection is to be raised at adjudication, where the proper officer may confine the determination to the years still within limitation.	• Rollmet LLP (Bom., 17-4-2026), paras 19, 20 and 28
The Excise and Customs analogy, which both camps invoke	Sections 73/74 draw on Section 11A of the Central Excise Act, Section 73 of the Finance Act, 1994 and Section 28 of the Customs Act, under which composite notices spanning an extended period were routine. The restrictive camp answers that the analogy fails: under those provisions the notice had to be adjudicated within a fixed period running from the notice itself, whereas under GST the adjudication deadline runs separately from each year's own annual return due date.	Relied on to permit clubbing: • Balamore Estates (Mad., Madurai Bench), paras 9 and 12. Relied on to distinguish GST and refuse clubbing: • Lakshmi Mobile Accessories (Ker. DB), para 7

Why Cases Involving Fraud Under Section 74 Are Argued Differently

The Delhi High Court's permissive reading is not a general licence to club years; it is pinned specifically to Section 74 cases alleging a fraudulent ITC pattern, for two distinct reasons that are worth separating from the interpretive fork above:

Position	Reasoning	Leading case(s)
A multi-year notice may be necessary to prove fraud	A fraudulent ITC pattern is often structured across years: the purchase may be booked in one financial year and the corresponding fabricated supply in the next, so a single year's transaction may not, by itself, establish the pattern. A consolidated notice is "not merely permissible but, in fact, required" to expose that modality.	• Ambika Traders; • Evershine Polymers; • Devansh Wire and Cables; • Rishi Enterprises; • Mathur Polymers
Consolidation does not excuse year-wise reasoning within the order	Even where a composite notice is permitted, the department must still independently assess each financial period on its own facts before passing a final order; sub-sections (9) and (10) concern determination, not the commencement of proceedings, so "the right of the respondent to assess each tax period independently would not be effaced merely because a consolidated notice came to be issued."	***Sree Ananta Exim vs. Union of India, W.P.(C) 14366/2024 (Del.***, 14-10-2024) which was reproduced in Rishi Enterprises, where it formed part of the assessee's argument;

This distinction matters strategically: a taxpayer facing a Section 73 notice, or a Section 74 notice that does not actually allege a genuine cross-year fraud pattern, sits outside Delhi High Courts's own stated rationale and and submissions should be framed accordingly.

The Safeguards Checklist Emerging Across Both Camps

A practically useful point, easy to miss if the case law is read only as "quash" versus "uphold," is that courts on both sides of the divide are converging on a common set of factual checkpoints that decide individual cases regardless of which High Court's threshold rule applies:

Position	Reasoning	Leading case(s)
Five circumstances in which bunching may still be faulted	A composite notice can be impugned where there is • no year-wise quantification; • where allegations are general and vague, such as "tax evaded for several years"; • where there is no specific evidence for each period; • where limitation has expired for any part of the notice; or • where clubbing has caused prejudice to the assessee in violation of natural justice.	New Gee ENN & Sons, para 40.
Split on whether prejudice must be proven or is presumed	Some courts require the taxpayer to point to specific, demonstrated prejudice on the facts before treating consolidation as invalid; others treat certain forms of prejudice, particularly compressed limitation and inflated pre-deposit, as inherent in consolidation itself and not requiring separate proof.	Demonstrated prejudice required: • X.L. Interiors (Ker., single judge), holding no prejudice arose because year-specific contentions could be raised in the reply; • New Gee ENN & Sons, paras 40 and 41. Prejudice treated as inherent: • R.A. and Co. (Mad.), paras 21 to 24

In the case of New Gee ENN & Sons, the Hon'ble Court applied its own checklist to uphold composite notices, on facts where the notices covered only two financial years, carried year-wise quantification and were within limitation. The Kerala High Court in Division Bench in Lakshmi Mobile Accessories and the Calcutta High Court in State Bank of India weighed substantially the same factors and found them wanting, though it should be noted that the two decisions did different things: State Bank of India quashed the composite notice and the consequential order outright, whereas Lakshmi Mobile Accessories dismissed the department's appeal and thereby left standing the single judge's arrangement permitting separate year-wise orders on the existing notice. A notice that fails several of these checkpoints is vulnerable even in a jurisdiction that treats clubbing as permissible in principle; a notice that satisfies all of them stands a better chance even where the local High Court leans towards stricter line. In advising whether a clubbed notice is legally sustainable, the facts should therefore be examined against the checklist and not merely against the forum, that is, the question of which High Court has jurisdiction.

Limitation Implications of Clubbed Notices

A further and more pointed question arises beyond the question of interpretation. Even assuming a composite notice is permitted, does clubbing secure a longer effective limitation period than the statute allows for the earliest year covered, and does it compress the assessee's opportunity to contest the later years?

Position	Reasoning	Leading case(s)
Each financial year is a separate unit for limitation	Section 73(10)/74(10) computes limitation from that year's own annual return due date, so each year runs its own limitation clock. Per the Constitution Bench in ***State of J&K vs. Caltex (India) Ltd.***, an assessment spanning different years can be split up, dissected, and taxed separately.	Applied by nearly every restrictive-camp decision, including • Titan Company Ltd. (para 14), • Bangalore Golf Club, • Veremax, • Lakshmi Mobile Accessories, • Tharayil Medicals (para 9), • R.A. and Co., • S.J. Constructions, • Milroc Good Earth Developers, • State Bank of India
Clubbing cannot smuggle in extended limitation for a time-barred year	Folding an already time-barred year into a notice for a still-live year achieves indirectly what the statute does not permit directly.	Titan Company Ltd. (para 14): the department is "trying to do certain things indirectly which they are not permitted to do directly"; State Bank of India (para 40), in near-identical terms; R.A. and Co.
Consolidation cannot borrow Section 74's longer limitation for what is really a Section 73 case	Where proceedings are launched under Section 74 but the facts disclose no fraud, wilful misstatement or suppression, a composite notice lets the department escape the three-year limit in Section 73(10) by falling back on the five-year limit in Section 74(10). That would be "a colourable exercise of the power conferred by the statute."	Tharayil Medicals (Ker. DB), para 12; adopted in Pramur Homes and Shelters

Position	Reasoning	Leading case(s)
The contrary view: limitation governs the order, not the notice	Sub-section (10) prescribes limitation for the order under sub-section (9) alone. A limitation on passing an order cannot be converted into a limitation on issuing a notice, and the assessee's remedy is to raise the time-bar at adjudication, where the determination may be confined to the years still within limitation.	Rollmet LLP (Bom.), paras 19, 20 and 28
Compressed adjudication window for later years is a distinct prejudice	A composite notice's own effective adjudication window is set by the earliest year's limitation deadline; forcing the assessee's opportunity to contest later years into that truncated window renders it illusory.	Lakshmi Mobile Accessories (Ker. DB) - the leading authority on this specific point
Composite demand inflates the pre-deposit payable on appeal	A composite order inflates the aggregate demand, and the pre-deposit is calculated as a percentage of that aggregate, making appeal proportionately more expensive than litigating the years separately.	Lakshmi Mobile Accessories (Ker. DB)
Litigation period is excluded from limitation on remand	Where a composite notice or order is quashed with liberty to reissue, the period spent in litigation is excluded from the limitation computation for any fresh proceeding, so the assessee is not further prejudiced for having litigated.	• Choice Trading Corporation (Ker.); • S.J. Constructions (A.P.), para 19; • Tharayil Medicals (Ker. DB), para 16, excluding the period from 8-11-2024 until judgment; • And, for a stay period, Titan Company Ltd., para 16(ii)

The Calcutta High Court's decision in State Bank of India (2026) 44 Centax 47 (Cal.) makes limitation the centrepiece rather than a subsidiary point, holding at para 39 that a conjoint reading of Section 2(106) with Section 74(1), (2), (3), (4) and (10) discloses "a specific bar under Section 74 of the Act to issue a single show-cause notice in connection with multiple financial years." This is substantially the same textual move made by Andhra Pradesh High Court in ***S.J. Constructions vs. Assistant Commissioner (ST),***

Visakhapatnam, (2025) 35 Centax 165 (A.P.) = 2025 (102) G.S.T.L. 348 (A.P.), nine months earlier, and by the Madras High Court in R.A. and Co. before that. State Bank of India declined to follow the Delhi decision in Mathur Polymers on the express ground, at para 44, that the Delhi High Court "had taken note of all the decisions referred to above under which it was held that single show-cause notice was not permitted for multiple financial years but had not dealt with those."



The Pre-Deposit Question: Two Competing Analyses

The proposition that a composite order increases the pre-deposit payable on appeal is frequently advanced and requires closer examination, because the position is not one-directional. The Kerala High Court in Division Bench observed in Lakshmi Mobile Accessories, at para 8, that on a consolidated order "the fee/pre-deposit required to be paid by an assessee for preferring a statutory appeal would also be higher." Two competing analyses of that observation may be identified, and a taxpayer's position will depend on which of them fits the facts.

On the first view, separate year-wise proceedings can save the pre-deposit altogether on the later years. If an order is passed for one year alone and the assessee carries it in appeal, and if the appellate decision is rendered before limitation for passing an order for a subsequent year expires, the department may not pass an order for that subsequent year at all. No demand for that year then arises and no pre-deposit becomes payable on it. Sequencing the years therefore creates the possibility that a single favourable appellate ruling disposes of the remaining years without their ever reaching an order. A consolidated notice removes that possibility, because every year is determined simultaneously and the entire aggregate must be carried in one appeal.

On the second view, consolidation reduces the pre-deposit. The pre-deposit under Section 107(6) is a fixed percentage of the tax in dispute arising from the order under appeal, subject to a statutory monetary ceiling. Because the levy is a flat percentage, the specified percentage of the aggregate of several years is arithmetically identical to the sum of the same percentage of each year taken separately, so consolidation does not of itself increase the aggregate. The ceiling then moves the position further in the department's

favour, since it attaches to the appeal and can only reduce the amount payable on a single composite appeal, whereas several separate appeals, each individually below the ceiling, would attract the full percentage on each. On a sufficiently large demand, consolidation therefore makes the appeal cheaper rather than dearer, and the same is true of the appeal fee.

The two analyses are not in truth inconsistent. The first is concerned with sequencing and with the chance that later years are never adjudicated at all; the second with the quantum payable once every year has in fact been adjudicated. Where the demand is modest and the ceiling does not operate, the aggregate percentage is the same either way and the first view supplies the only real advantage in separation. Where the demand is large enough for the ceiling to bite, consolidation is the cheaper route to the appellate forum, and an assessee arguing prejudice on this ground should be prepared for that answer. The safer submission is the narrower one, that a consolidated order requires the whole sum to be funded at once rather than as each year's order falls due, and that it forecloses the sequencing advantage described above. The monetary ceiling should be verified against Section 107(6) as amended before any figure is relied upon in argument.

Natural Justice Concerns

Beyond compressed limitation and inflated pre-deposit, already addressed above, natural justice surfaces in this dispute in two further, distinct ways:

Position	Reasoning	Leading case(s)
Bundling years denies clean access to waiver, amnesty or compounding relief	Where the Government notifies a scheme under Section 128 waiving penalty or fee, a taxpayer served with a composite notice "will be forced to pay the tax amount for all the financial years included in the said notice" in order to access it. The same hardship arises on an application to compound offences under Section 138 for a single year.	• R.A. and Co. (Mad.), paras 21 and 22, and its companion decision • R. Ashaarajaa (Mad.), delivered by the same judge on the same day; • adopted in S.J. Constructions (A.P.), para 17, • And Pramur Homes and Shelters
Bundling distorts the characterisation of the offence itself	Where a Section 74 notice clubs several years and the fraud allegation is in truth made out for only one of them, the department will approach every clubbed year from the perspective of an offence under Section 74, even though the conduct concerned only one financial year.	• R.A. and Co. (Mad.), para 24, • R. Ashaarajaa (Mad.)

High Court Positions at a Glance

High Court	Position	Leading decision(s)	Basis
Karnataka	Clubbing impermissible	• Bangalore Golf Club (7-8-2024); • Veremax Technologie Services (4-9-2024); • Chimney Hills Education Society; • Pramur Homes and Shelters	Section 73/74(10) fixes limitation per financial year; Pramur Homes and Shelters agreed to view that circular dated 16.09.2025 issued by the department is contrary to law and the said statutory provisions.
Kerala (Division Bench)	Clubbing impermissible	Lakshmi Mobile Accessories, W.A. 258/2025 (5-2-2025); Tharayil Medicals, W.A. 627/2025 (8-4-2025)	Composite notice would be a colourable exercise where the case is really under Section 73 Separate adjudication orders ought to be issued notwithstanding a composite show cause notice issued for multiple years.
Calcutta	Clubbing impermissible	State Bank of India, W.P.A. 433/2026 (30-6-2026)	"Any period"/"periods" read as "tax period"; a specific bar under Section 74; time-barred years cannot be smuggled in with live years
Andhra Pradesh	Clubbing impermissible	***S.J. Constructions vs. Assistant Commissioner*** (17-9-2025), Division Bench	Composite orders were prejudicial to rights including remedies under Sections 128 and 107
Madras	Split within the same month	R.A. and Co. (21-7-2025) and its companion batch decision R. Ashaarajaa, (2025) 32 Centax 453 (Mad.), also 21-7-2025, both by Krishnan Ramasamy, J., hold clubbing impermissible; Balamore Estates, Madurai Bench (28-7-2025) declines to quash composite assessment orders.	Same statutory text, opposite conclusions seven days apart

High Court	Position	Leading decision(s)	Basis
		Titan Company Ltd. (18-12-2023) is the earliest restrictive decision, disposed of on appeal by consent	
Delhi	Clubbing permissible, reasoning confined to fraud/ITC cases	• Vallabh Textiles, W.P.(C) 13855/2024 (3-10-2024); • Ambika Traders (29-7-2025) and its follow-ons • Evershine Polymers and Rishi Enterprises, both 20-8-2025; • Mathur Polymers, 26-8-2025; • Devansh Wire and Cables, 11-11-2025	Vallabh Textiles: no statutory prohibition, and no jurisdictional defect warranting a writ against the notice. Ambika Traders: "period"/ "periods" broader than "financial year", and a multi-year pattern is needed to expose ITC fraud
Bombay	Question referred to a Larger Bench	• Milroc Good Earth Developers (9-10-2025) • Rite Water Solutions (India) Ltd., W.P. No. 466/2025 • RioCare India allows clubbing (interim, prima facie observation only, not a final ruling) (Distinguished outliner) • Rollmet LLP, (2026) 41 Centax 332 (Bom.) (17-4-2026)	• Milroc quashed a composite notice as being without jurisdiction; • A second Division Bench, in Rite Water Solutions, has since followed Milroc on the same footing, • Rollmet LLP has now doubted Milroc and referred the question, so the Bombay position is presently open
Jammu & Kashmir and Ladakh	Clubbing permissible, subject to a safeguards test	• ***New Gee ENN & Sons vs. Union of India*** (27-11-2025);	No express statutory bar, provided year-wise quantification, specificity and limitation compliance are shown

The most significant recent development is the reference to a ***Larger Bench in Rollmet LLP, (2026) 41 Centax 332 (Bom.)***, decided on 17 April 2026 by a Division Bench of G.S. Kulkarni and Aarti Sathe, JJ. in a batch of some fifty petitions. Before making the reference the Bench

recorded a prima facie view squarely at odds with the restrictive camp, holding it "difficult to accept" that sub-section (1) confines the proper officer to a notice for a single return period, and observing that to read such a restriction into the provision "would amount to reading something in the provisions which the legislature has avoided to provide, and in fact would amount to re-writing of the provision." It also questioned the observations in para 8.11 of Pramur Homes and Shelters, on the year-bound character of ITC under Section 16(4), as not being in consonance with the legislative scheme.

Five questions have been referred: whether sub-section (1) read with sub-section (3) is controlled by sub-section (10) so as to create an embargo on a consolidated notice; whether sub-section (10) itself prohibits such a notice for multiple financial years or tax periods; what the effect of Section 160 is on proceedings initiated by a consolidated notice; whether Milroc Good Earth Developers lays down the correct position in law; and what the legal position is, in terms of Article 141, as brought about by the order of the Supreme Court in Mathur Polymers.

It is necessary to draw particular attention to the position before the Madras High Court. R.A. and Co. (21-7-2025) and Balamore Estates (28-7-2025) were decided seven days apart, on the same underlying question, with opposite results, and Balamore Estates was decided with R.A. and Co. squarely cited before it. The Madras High Court cannot presently be cited as standing for either position without qualification, and a case there should be argued on both lines rather than on the assumption that Titan Company Ltd. or R.A. and Co. is the last word.

Practical Challenges for Taxpayers

For a taxpayer served with a composite notice today, whether it is valid depends on which High Court's jurisdiction it falls within and, before the Madras High Court, on which line of that Court's own conflicting decisions is followed. In Bombay the answer must now await the Larger Bench. A composite notice also multiplies the practical burden of response:

- Reconciling figures across every year covered, often including years whose records are harder to retrieve, within one timeline geared to the earliest year's limitation.

In practice, this means the department may keep issuing composite notices as a matter of internal instruction even in jurisdictions where the jurisdictional High Court has already ruled against the practice.

- Where fraud is alleged in a jurisdiction following Delhi, contesting the substantive allegation without first being able to dispose of the notice on the clubbing ground alone.

- Losing the ability to compound an offence, or access an amnesty scheme, for an isolated year without also settling the years bundled with it.

- Having to fund the pre-deposit on the entire consolidated demand at once, rather than as each year's order falls due on its own limitation timetable, and losing the sequencing advantage described above.

A further complication arises at the administrative level . A departmental

communication dated 15/16-9-2025 instructed Principal Chief Commissioners and Commissioners of CGST zones that composite show cause notices covering multiple financial years are legally permissible. The Karnataka High Court, in Pramur Homes and Shelters, has since held that this internal instruction runs contrary to the CGST Act and carries no weight against the statutory scheme once a court has ruled otherwise. In practice, this means the department may keep issuing composite notices as a matter of internal instruction even in jurisdictions where the jurisdictional High Court has already ruled against the practice. A taxpayer cannot assume the problem has been settled once and for all merely because the relevant High Court has ruled once; each fresh notice may still need to be challenged on its own facts.

Even where an assessee succeeds, most orders reviewed here reserve liberty to the department to issue fresh, separate notices, so a successful challenge often buys a procedural reset rather than final closure.

Strategic Considerations During Litigation

Two procedural questions recur across this case law and should be argued explicitly rather than assumed:

Position	Reasoning	Leading case(s)
Split on whether a writ is maintainable against the notice itself	One line treats a challenge going to the root of jurisdiction as an exception to the alternate-remedy bar, so a writ is maintainable at the notice stage; the other treats the availability of a statutory appeal as a reason to decline writ jurisdiction and relegates the assessee to Section 107.	Maintainable: a. Tharayil Medicals, paras 13 and 14 b. Pramur Homes and Shelters and c. State Bank of India, **Relegated to appeal:** a. Ambika Traders and its Delhi follow-ons;
Outright quashing versus a procedural year-wise split	Most courts finding clubbing impermissible quash the notice or order outright, with liberty to the department to reissue separately for each year. A narrower approach leaves the notice in place and directs separate year-wise orders instead. The distinction matters commercially: a quashing resets the process, while a procedural split leaves the existing notice, and its date, intact.	Quashing with liberty to reissue: • Bangalore Golf Club; • Veremax; • Chimney Hills; • Albatross Builders; • Lakshmi Venkateshwara Traders; • Choice Trading Corporation; • State Bank of India; • Pramur Homes and Shelters.

Position	Reasoning	Leading case(s)
		Partial quashing: • Tharayil Medicals, which set aside the notice for FY 2018-19 to 2021-22 but sustained it for FY 2017-18. Procedural split without quashing: • Titan Company Ltd. (single judge, and the Division Bench consent order); • Lakshmi Mobile Accessories, upholding separate year-wise orders on one composite notice

Beyond these two points:

- Argue the safeguards checklist, not only the threshold rule. Even in a jurisdiction leaning permissive, New Gee ENN & Sons shows that a notice lacking year-wise quantification, specific grounds, or falling foul of limitation for even one year remains vulnerable. This gives a fallback ground worth pleading in the alternative even where the clubbing challenge as such is unlikely to succeed.

- The fraud/no-fraud distinction matters, even in Delhi High Court. That Delhi High Court's line is confined to Section 74 cases alleging a genuine fraudulent pattern spanning years; a Section 73 notice, or a Section 74 notice without a real multi-year fraud narrative, sits outside even that rationale.

- Submissions before the Madras High Court should address both lines of authority. Given the split between R.A. and Co. and Balamore Estates, decided seven days apart, a Madras matter should anticipate and distinguish whichever line the department relies upon.

- In Bombay, seek interim protection and await the reference. Rollmet LLP directs that interim orders already passed shall continue until the Larger Bench decides, so the immediate objective in a Bombay matter is protection rather than a final ruling.

- A successful challenge ordinarily produces a procedural reset rather than a discharge from liability. Since most quashing orders reserve liberty to reissue separate notices, the practical value of success may lie in narrowing the years still within limitation rather than in escaping liability altogether.

Conclusion

Clubbing of GST notices remains one of the sharper live conflicts in current GST litigation and not a settled principle awaiting mechanical application. The Karnataka, Calcutta and Andhra Pradesh High Courts and the Kerala Division Bench have

converged on treating each financial year as a distinct unit for limitation and adjudication. The Delhi High Court and the High Court of Jammu and Kashmir and Ladakh have upheld composite notices, on different reasoning from each other. The Madras High Court has produced directly conflicting outcomes seven days apart. In Bombay, what had appeared to be a settled restrictive position has been reopened by the reference in Rollmet LLP, which doubts Milroc Good Earth Developers and records a *prima facie* view that neither Section 73 nor Section 74 creates any embargo on a consolidated notice.

The Supreme Court has not decided the question on merits, and the occasions on which it has been approached repay precise description, because they are easily overstated in argument.

- The Special Leave Petition against Ambika Traders was dismissed as not pressed on 1-9-2025, counsel having stated after arguing for some time that he did not wish to press it.
- The Special Leave Petition against Mathur Polymers was dismissed on 7-11-2025 with the single observation that the Court found "no good ground and reason to interfere," a non-speaking dismissal under Article 136 which, neither results in merger nor amounts to a declaration of law under Article 141.

None of the above is authority for the proposition that composite notices are valid, and Pramur Homes and Shelters says so expressly of the Mathur Polymers dismissal.

Until a reasoned ruling settles the question, whether from the Larger Bench in Bombay or from the Supreme Court, the prudent course for the revenue and for taxpayers alike is to treat the forum, the presence or absence of a fraud allegation, and the underlying facts measured against the safeguards checklist, as jointly determinative of outcome, and for advisers to say so candidly rather than to present either line of authority as the settled law of the land.

■

" The seed is put in the ground, and earth and
air and water are placed around it.
Does the seed become the earth;
or the air, or the water? No. It becomes a plant,
it develops after the law of its own growth,
assimilates the air, the earth, and the water,
converts them into plant substance,
and grows into a plant. "

Swami Vivekananda

GST ADVANCE RULINGS – THE GOOD, THE BAD AND THE UNSETTLED





Kulraj Ashpnani *Pooja Jajwani*

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Overview

The idea of an advance ruling is simple - a taxpayer should be able to obtain an authoritative answer for committing to a transaction or tax position. The Wanchoo Committee recommended such a mechanism in 1970, principally to give non-residents certainty in tax matters. India eventually introduced advance rulings under the Income-tax Act, 1961 in 1993 and under the Customs Act, 1962 in 1999. When the Model GST Law appeared in 2016, advance rulings were therefore expected to become an important pillar of a modern, certainty-driven indirect tax system.

The expectation from the advance ruling mechanism under the GST Law has, in all modesty, been fulfilled only partly. The advance rulings have clarified difficult questions, exposed drafting gaps and, in some cases, prompted corrective circulars or legislative change. At the same time, the State-wise architecture has produced conflicting answers on identical provisions of a national tax. The composition of the authorities, their limited jurisdiction and the absence of an operational national forum, until recently, have also affected taxpayer confidence.

Nearly nine years into GST, the record is best understood in three parts: the good, where rulings have identified and ultimately helped resolve genuine interpretational problems; the bad, where fragmented rulings have multiplied uncertainty; and the unsettled, where the new National Appellate Authority mechanism must prove that it can convert a collection of State-level answers into coherent national jurisprudence.

The Architecture: National law and State-wise answers

Section 96 of the Central Goods and Services Tax Act, 2017 (CGST Act) provides for an Authority for Advance Ruling (AAR) in each State or Union Territory. The AAR comprises two tax-administration members, viz. one from the Centre and one from the relevant State or Union Territory. Under Section 97, an applicant may seek a ruling on specified questions, including classification,

Under Section 97, an applicant may seek a ruling on specified questions, including classification, applicability of a notification, time and value of supply, admissibility of input tax credit (ITC), registration, and whether an activity amounts to a supply.



applicability of a notification, time and value of supply, admissibility of input tax credit (ITC), registration, and whether an activity amounts to a supply.

An appeal lies to the Appellate Authority for Advance Ruling (AAAR) constituted under Section 99, again comprising one Central and one State tax officer. Further, under Section 103, an advance ruling ordinarily binds only the applicant and the concerned jurisdictional officers. It is not a precedent binding on other taxpayers, even though rulings are routinely relied upon in audits, assessments and commercial negotiations.

This produces an institutional complexity. GST is intended to operate through substantially harmonised Central and State legislation, yet its advance-ruling system is territorially fragmented. A business operating through several GST registrations may therefore face different interpretations of the same issue in different States. The legal answer is applicant-specific, but the commercial impact is often industry-wide.

Parliament recognised this structural weakness in 2019 by introducing sections 101A to 101C for a National Appellate Authority for Advance Ruling (NAAAR). Its jurisdiction, however, is narrow. An appeal arises where conflicting rulings have been given by the AAARs of two or more States or Union Territories in the case of 'distinct persons', broadly, registrations of the same legal entity. NAAAR is therefore not a general national appellate forum against every questionable State ruling.

The mechanism remained dormant for years. The 56th GST Council, in September 2025, recommended that the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) also serve as NAAAR. Pursuant to the enabling statutory framework, Notification No. 2/2026-Central Tax dated May 7, 2026, empowered the GSTAT Principal Bench, New Delhi, to hear

appeals under section 101B, with effect from April 1, 2026.

The Good: Conflict as a catalyst for correction

Advance rulings have played an important role in the evolution of the GST regime by highlighting emerging issues, interpretational gaps and practical challenges. In several instances, the controversies arising from such rulings have prompted policy clarifications and legislative interventions, thereby contributing to the progressive refinement of the GST framework. Some notable instances where advance rulings have led to such course correction are discussed below:

(i) Solar EPC contracts

Early rulings on solar power projects produced sharply different characterisations. ***Giriraj Renewables Pvt. Ltd., 2018 (12) GSTL 538 (AAR-Maharashtra)***, treated a turnkey EPC contract for a solar plant as works contract service because the completed structure had sufficient permanency to constitute immovable property. In another ruling of ***Giriraj Renewables, 2018 (17) GSTL 156 (AAAR-Karnataka)***, the arrangement was treated as a composite supply in which the solar power-generating system constituted the principal supply of goods. ***Fermi Solar Farms Pvt. Ltd., 2018 (17) GSTL 297 (AAAR-Maharashtra)***, viewed separate supply and installation contracts as an indivisible works contract when they formed part of one project.

To this increasing incongruity over the tax position, the Government prescribed a deemed 70:30 valuation mechanism for specified renewable-energy projects (70 percent goods and 30 percent services). This demonstrates both sides of advance-ruling jurisprudence. Conflicting rulings can force a policy response, which brings certainty over taxation policies.

(ii) Cross-charge and common employee costs

Schedule I treats supplies between distinct persons as separate GST registrations of the same legal entity, as taxable supply even without consideration. Rule 28 governs valuation, while its deeming provisos simplify valuation where the recipient is eligible for full ITC.

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In Columbia ***Asia Hospitals Pvt. Ltd., 2019 (20) GSTL 763 (AAAR-Karnataka)***, the authority held that activities performed by corporate-office employees for other registrations constituted supplies and that the related employee cost should enter the valuation base. The ruling created significant concern, particularly for banks, insurers, healthcare providers and other businesses with exempt or partly exempt outputs, where the tax was not revenue neutral.

CBIC *vide* its Circular No. 199/11/2023-GST dated July 17, 2023, brought substantial relief. It clarified, inter-alia, that where the recipient registration is eligible for full ITC, the value declared in the invoice is deemed to be the open-market value and may be nil where no invoice is issued. It further clarified that, where full ITC is unavailable, the cost of services provided by employees of one registration to another need not mandatorily



be included in the value of supply. The Circular corrected the most disruptive implication of Columbia Asia, again a policy intervention.

(iii) Developed plots

Entry 5 of Schedule III excludes sale of land from GST. A controversy nevertheless arose over whether levelling, roads, drainage and utilities convert the sale of developed plots into a taxable supply of development services.

In ***Rabia Khanum, 2023 (5) Centax 120 (AAAR-Karnataka)***, the ruling treated the transaction as sale of land outside GST. ***Dipesh Anilkumar Naik, 2022 (61) GSTL 454 (AAAR-Gujarat)***, reached the opposite conclusion for developed plots. Circular No. 177/09/2022-TRU then clarified that sale of land remains outside GST even after development such as levelling and laying drainage, water or electricity lines; independently supplied development services remain taxable.

The clarification illustrates the constructive potential of the system: advance rulings identified a widespread interpretational fault line, and a CBIC Circular supplied a workable distinction between the sale of developed land and a separately supplied development service.

(iv) Demo vehicles

The treatment of demo vehicles also moved from conflict towards administrative clarity. ***Chowgule Industries Pvt. Ltd., 2020 (33) GSTL 288 (AAR-Maharashtra)***, and ***Toplink Motorcar Pvt. Ltd., 2022 (67) GSTL 501 (AAR-West Bengal)***, allowed ITC where demo vehicles were ultimately sold. In ***Platinum Motocorp LLP, 2022 (61) GSTL 375 (AAAR-Haryana)***, and ***Khatwani Sales and Services LLP, 2021 (47) GSTL 525 (AAR-Madhya Pradesh)***, the rulings denied credit on the basis that the vehicles were used for demonstration rather than procured for onward supply.

CBIC Circular No. 231/25/2024-GST, dated September 10, 2024, has now clarified that ITC is available where an authorised dealer uses a demo vehicle to promote the further supply of similar motor vehicles; the vehicle need not itself be immediately resold for the statutory exception to apply. The Circular also distinguishes cases where the vehicle is used merely for staff transportation or where the dealer only provides marketing services on behalf of the manufacturer.

The Bad: divergence where businesses need one answer

The most visible weakness of the system is not that some rulings are adverse. An advance-ruling regime must sometimes decide against the applicant. The deeper problem is that materially similar facts and identical statutory provisions have produced opposite conclusions, leaving taxpayers unable to identify a dependable national position. Some examples of these divergent rulings are:

(i) Plant and machinery versus immovable property

Sections 17(5)(c) and (d) restrict ITC on works contract services and goods or services used for construction of immovable property, subject to specified exceptions, including the statutory treatment of "plant and machinery". The boundary between a civil structure and functional apparatus has consequently become a recurring source of dispute.

The deeper problem is that materially similar facts and identical statutory provisions have produced opposite conclusions, leaving taxpayers unable to identify a dependable national position.

In ***Tarun Realtors Pvt. Ltd., 2020 (35) GSTL 438 (AAAR-Karnataka)***, ITC was denied on equipment such as chillers, air-handling units, electrical works, CCTV and water-management systems on the footing that they became part of immovable property. In contrast, in ***Atriwal Amusement Park, 2020 (40) GSTL 80 (AAR-Madhya Pradesh)***, water slides were treated as plant and machinery, permitting ITC. In ***Coral Manufacturing Works India Pvt. Ltd., (2023) 9 CENTAX 121 (App. AAR-GST-TN)***, it was held that an overhead crane and its support structure qualify as plant and machinery.

The Supreme Court's decision in ***Safari Retreats Private Limited, 2024 (90) GSTL 3 (SC)*** has since required a more nuanced inquiry into whether a structure can qualify as 'plant' for section 17(5)(d), applying a functionality-based analysis while separately respecting the statutory explanation for "plant and machinery". That judgment has shifted the debate beyond the simplistic proposition that every immovable outcome automatically blocks credit. Yet its application remains intensely fact-sensitive, and advance rulings continue to require careful alignment with the governing judicial test.

(ii) Transfer of a business as a going concern

Services by way of transfer of a going concern, as a whole or an independent part, are exempt under Notification No. 12/2017-Central Tax (Rate), dated June 28, 2017. The notification does not prescribe a complete test for identifying a going concern, compelling authorities to examine continuity of operations, transfer of assets and liabilities, employees, licences, contracts and the transferee's ability to carry on the business.

In ***Innovative Textiles Ltd., 2019 (24) GSTL 480 (AAR-Uttarakhand)***, transfer of an operating textile-manufacturing business was accepted as a going concern. In R***ajeev Bansal and Sudershan Mittal, 2020 (35) GSTL 510 (AAR-Uttarakhand)***, transfer of an under-construction real-estate project to a person continuing the same business was also treated as a going concern. By contrast, in ***Airports Authority of India (2024) 24 Centax 183 (AAR-Kerala)***, the transfer of airport assets and liabilities under a concession arrangement was held not to qualify, with considerable emphasis placed on the contractual form.

The contrast exposes the real issue: should the inquiry turn on the title of the agreement or on the commercial substance of what remains capable of operation after transfer? In the absence of detailed statutory criteria, taxpayers undertaking slump sales, demergers, concession arrangements or transfers of business divisions still require a transaction-specific position and strategy.

(iii) Employee canteen and other recoveries

Recoveries from employees for subsidised canteen facilities, transport or similar welfare arrangements have generated a particularly uneven line of rulings. ***Caltech Polymers Pvt. Ltd., 2018 (18) GSTL 373 (AAAR-Kerala)***, and ***Kothari Sugars & Chemicals Ltd., 2023 (77) GSTL 118 (AAAR-Tamil Nadu)***, treated canteen recoveries as consideration for taxable supplies. Conversely, ***Tata Motors Ltd., 2022 (59) GSTL 107 (AAR-Gujarat)***, and ***Emcure Pharmaceuticals Ltd., 2022 (60) GSTL 231 (AAR-Maharashtra)***, concluded on their facts that proportionate recoveries did not represent an independent taxable supply by the employer.

Value or the percentage of recovery should not, by itself, determine whether a supply exists; GST can apply even without a profit element. The more principled inquiry is whether the employer is making a supply in the course or furtherance of business, merely facilitating a third-party service, or discharging a statutory employment obligation, and whether the recovery has the necessary nexus with an identifiable supply. The conflicting rulings have often blurred these distinct questions. Consequently, businesses continue to adopt positions based on employment terms, vendor contracting and the exact recovery mechanism.

(iv) Government-related exemptions

Entry 3 of Notification No. 12/2017-Central Tax (Rate) exempts specified pure services provided to the Central Government, State Government, Union Territory or local authority in relation to functions entrusted to a Panchayat or Municipality under Articles 243G and 243W of the Constitution. Its apparently simple language conceals three recurring questions: whether the recipient has the required legal status; whether the supply is a 'pure service'; and whether the service has a sufficiently direct relationship with a listed constitutional function.

In ***VPSSR Facilities, 2018 (13) GSTL 116 (AAR-Maharashtra)***, railway sanitation was denied exemption because cleaning railways was not treated as a municipal function. In ***EGIS India Consulting Engineers Pvt. Ltd., 2018 (16) GSTL 171 (AAR-Madhya Pradesh)***, the authority took a broader view for project-development and management consultancy connected with ***AMRUT and PMAY activities. Puthoor Unnikrishnan, 2019 (26) GSTL 267 (AAR-Kerala)***, similarly accepted forestry and environmental services linked to functions in the constitutional schedules.

The difficulty is not merely divergence in outcome. It is the absence of a consistently articulated nexus test. A national standard identifying when a service is "in relation to" an entrusted function would materially reduce disputes in public infrastructure, sanitation, housing and environmental contracts.

(v) Classification of automobile components

Classification disputes are especially vulnerable to fragmented rulings because a change in tariff heading affects not only rate but also pricing, ITC, contracts and customs positions. In ***Jamna Auto Industries, 2021 (47) GSTL 414 (AAR-Haryana)***, U-bolts, centre bolts and spring pins were treated as parts of general use under Chapter 73. In ***A. Raymond Fasteners India Pvt. Ltd., 2021 (46) GSTL 306 (AAAR-Maharashtra)***, threaded fasteners designed for motor vehicles were classified under heading 8708.

The correct approach requires disciplined application of the tariff text, Section and

Chapter Notes, the exclusion for "parts of general use", product characteristics and binding Supreme Court precedent. State-wise answers based on product descriptions that are not always fully comparable can nevertheless cause an industry-wide ripple. This is precisely the type of recurring national question for which a coherent appellate doctrine is needed.

The unsettled: will NAAAR deliver national certainty?

The operationalisation of NAAAR is welcome, but its design leaves four questions.

First, access is narrow. A taxpayer cannot approach NAAAR merely because two AARs have expressed conflicting views for unrelated applicants. Section 101B is triggered by conflicting AAAR rulings involving distinct persons of the same applicant. Many businesses will therefore remain dependent on writ jurisdiction or conventional assessment litigation even where a national conflict is obvious.

AARs should include a judicial member or at least adopt a mechanism for independent legal participation in complex matters. The objective is not to diminish administrative expertise; it is to balance it with adjudicatory independence.

Second, precedent remains underdeveloped. A NAAAR ruling binds the applicant, its distinct persons and the concerned officers in the prescribed manner; it does not automatically operate as a judgment in rem. Its practical value will depend on whether reasoned orders articulate general principles that State authorities consistently follow.

Third, institutional independence will remain under scrutiny. AARs and AAARs are staffed by serving tax officers. This is materially different from the earlier income-tax advance-ruling model, which had judicial leadership. Tax expertise is valuable, but an authority designed to decide questions between the taxpayer and the administration must also command confidence in decisional independence. The judicial and technical composition of the GSTAT Principal Bench may improve that perception at the national stage, but it cannot, by itself, address the structural inefficiencies arising from the first-instance mechanism.

Fourth, timeliness is critical. Section 98 contemplates an advance ruling within ninety days of receipt of the application, and section 101 provides a similar period for the appellate ruling, as far as possible. In practice, admission disputes, hearing delays, split decisions and writ proceedings can defeat the commercial purpose of seeking an answer in advance. Certainty delivered after the transaction has been priced, implemented or abandoned is certainty in name alone.

A sharper reform agenda

NAAAR should be treated as the beginning of institutional repair, not its completion. There are some suggestions to make the advance ruling mechanism both compelling and far-reaching in its role and functioning viz.:

- access to the national forum should extend to conflicting rulings on the same substantial question of law, even where the applicants are unrelated. Safeguards can prevent abstract or academic references, but national inconsistency should not have to await a multi-State

applicant generating its own conflicting AAAR orders.

- AARs should include a judicial member or at least adopt a mechanism for independent legal participation in complex matters. The objective is not to diminish administrative expertise; it is to balance it with adjudicatory independence.

- a searchable national database should group rulings by statutory provision, issue and outcome, identify contrary decisions, and flag subsequent circulars, amendments and court judgments. A ruling that has been overtaken by law should not continue to circulate without a visible warning.

- statutory timelines should be supported by procedural discipline: time-bound admission, limited adjournments, virtual hearings where appropriate and publication of disposal data. Where no ruling is issued within the prescribed period, the law should provide a practical remedy rather than leave the applicant in limbo

- NAAAR should develop clear interpretative methodologies—not merely choose between competing results. Classification cases should expressly apply tariff notes and binding precedent; exemption cases should state the nexus test; immovable-property cases should address functionality, permanency and statutory exclusions; and going-concern cases should focus on commercial continuity rather than contractual labels.

Conclusion

Despite their limitations, advance rulings remain useful when deployed with care. They can help resolve a genuine rate disagreement with a customer, test a proposed transaction before significant investment, or obtain clarity where the relevant facts can be presented cleanly, and the law is not already foreclosed. They also provide governance support for a tax position in a high-value or recurring supply chain.

It is, however, pertinent that the filing of an advance ruling should never be automatic. The applicant must assess the risk of an adverse ruling, the limited appellate route, disclosure of facts, the ruling's binding effect, implementation timelines and the possibility that a commercial arrangement may evolve before the ruling arrives. Questions should be framed narrowly, supported by complete contracts and technical material, and tested against contrary rulings and subsequent judicial developments. In many cases, conventional litigation or a policy representation may remain the more effective route.

The creation of an operational national appellate forum is an important course correction. Its success, however, will not be measured by the number of appeals disposed of. It will be measured by whether a business undertaking the same transaction in Maharashtra, Karnataka, Gujarat or Tamil Nadu can reasonably expect the same legal answer and receive it before the answer loses commercial value. Until then, the GST advance-ruling regime will remain exactly what its jurisprudence has become: useful, consequential and still unsettled.

■

NAVIGATING GST COMPLEXITIES IN CORPORATE RESTRUCTURING: EMERGING ISSUES AND JUDICIAL TRENDS



Raghavan Ramabadran *Derlene Joshna* *Prabal Karthikheyan*

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Overview

Corporate restructuring raises important points for consideration from a GST standpoint, including the scope of a "going concern", transfer of unutilised input tax credit, refund claims relating to transferred business, transitional compliance, and liability for the transferor's past tax dues. Courts have adopted different approaches to these matters, and the legal position continues to evolve. In this background, this article reviews the emerging judicial trends and identifies key areas warranting careful scrutiny, which businesses may bear in mind while planning their affairs, to ensure a smooth and GST-compliant restructuring.

Introduction

A corporate restructuring entails interesting questions under GST law that merit detailed consideration. To name a few, the scope and ambit of 'going concern', transfer of unutilised ITC from the transferor to transferee, refund in the hands of transferee, the transferor's past dues etc., have invited the attention of various courts.

This article traces the judicial trends and possible emerging issues relating to a corporate restructuring arrangement.

Deconstructing the contours of 'going concern'

Under GST Law, services by way of transfer of a going concern, as a whole or an independent part thereof is exempt from GST[1]. While itemized sale of assets would

While itemized sale of assets would attract GST as individual sale of goods, if a business is transferred lock, stock, and barrel, the same would be seen as a transfer of a going concern.

1. *Sl. No. 2, Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.*

attract GST as individual sale of goods, if a business is transferred lock, stock, and barrel, the same would be seen as a transfer of a going concern.

GST law does not define what qualifies as a 'going concern'. Courts have consistently held that 'going concern' connotes a live business that is capable of being operated by the transferee[2]. Regardless of long periods of inactivity and temporary stoppage of operations, a company may still be construed as a going concern if it continues to maintain an establishment and incur expenses in the expectation that work would come and the business would be successful[3].

Even when certain assets are kept out of the restructuring arrangement, still the transfer of the balance assets could be held to constitute a transfer of a going concern[4]. Courts have deliberated on itemized sale versus slump sale treatment based on existence of a schedule of assets[5], identified values for certain assets such as land[6], exclusion of certain liabilities and assets, etc.

Thus, an intricate understanding of the concept of 'going concern' is essential to have a fool-proof structuring of a corporate restructuring transaction.

Taxpayers who undergo a change in the constitution of business can transfer ITC lying in the transferor's credit ledger to the transferee's credit ledger vide Form GST ITC-02.

Unutilized credit at the crossroads: Transfer, reversal or refund?

Taxpayers who undergo a change in the constitution of business can transfer ITC lying in the transferor's credit ledger to the transferee's credit ledger *vide* Form GST ITC-02. Section 18(3) of the Central Goods and Services Tax Act, 2017 ("CGST Act") and Rule 41 of the Central Goods and Services Tax Rules, 2017 ("CGST Rules") govern the same. While Section 18(3) is couched in language which indicates such transfer to be optional and at the behest of the transferee, Rule 41 uses the word 'shall' which is usually indicative of a mandatory stipulation.

Recently, the Hon'ble Gujarat High Court in ***Alstom case***[7] has held transfer of credit by a transferor to a transferee vide Form GST ITC-02 to be mandatory in nature. However, it is interesting to note that CBIC's Circular No. 96/15/2019-GST dated 28.03.2019 concerning transferring of credit vide Form GST ITC-02 is worded in a manner which clarifies filing such Form for credit transfer to be optional.

In any case, it is trite law that rules cannot override the parent Act. Once Section 18(3) uses the phrase "shall be allowed to transfer" instead of "shall transfer", the filing of

2. *CIT vs. Max India Ltd., [2009] 319 ITR 68 (P&H).*
3. *L. Ve. Vairavan Chettiar vs. Commissioner of Income-Tax, [1969] 72 ITR 114 (Madras).*
4. *Rohan Software (P.) Ltd. vs. ITO, [2008] 115 ITD 302 (Mumbai).*
5. *Premier Automobiles Ltd. vs. Income-tax Officer, [2003] 129 Taxmann.com 289 (Bom.).*
6. *Commissioner of Income-tax vs. Mugneeram Bangur & Co. [1965] 57 ITR 299 (SC).*
7. *Alstom Transport India Ltd. vs. Additional Commissioner, CGST and Central Excise, [2026] 182 taxmann.com 827 (Gujarat). SLP is pending [Special Leave Petition (Civil) Nos. 16124–16130 of 2026].*

Form GST ITC-02 can be argued as optional irrespective of Rule 41's mandate. This is also further strengthened by the fact that there is settled jurisprudence that in certain situations the word 'shall' need not be read as imposing a mandatory condition. Further, it is also settled that when there is an apparent conflict between a delegated legislation and a parent statute, the former shall be read down to yield to the parent statute.

The *Alstom case* created a lot of flutter concerning refund eligibility in respect of zero-rated supplies made by the transferor prior to the appointed date. The refund was denied to the transferee citing reasons such as the transferee did not make the zero-rated supplies and that entire ITC could have been transferred by transferor to transferee *vide* Form GST ITC-02. The Court also reasoned that the transferor should have surrendered its GST registration more promptly.

In contradistinction to Alstom case, the Hon'ble Himachal Pradesh High Court in ***AMN Life (P.) Ltd.***[8] permitted manual filing of refund claim by a taxpayer (transferee) pertaining to past period transactions of the now non-existent transferor. In this case, the transferor had filed Form GST ITC-02 transferring the entire credit to the transferee and the latter pursued the refund claims on behalf of the transferor. The Court specifically rejected the revenue's findings that the transferee cannot file the refund claim for not being the 'registered person' referred in Section 54(3) at the relevant point of time.

In the past, Courts have held that exemptions, subsidies, etc., available to the transferor automatically stand transferred to the transferee pursuant to a merger/amalgamation/demerger[9]. In the light of the said decisions, it remains to be seen whether a refund application in respect of the entire unutilized ITC made by the transferor could still be pursued by the transferee after a business transfer is effected.

Another welcome trend is the Hon'ble Bombay High Court in ***Umicore case***[10] and Hon'ble Gujarat High Court in ***Emerson case***[11] holding that GST law does not restrict transfer of ITC vide Form GST ITC-02 only between two GSTINs (transferor's GSTIN and transferee's GSTIN) in the same State but also permits transfer of ITC between two different States. Interestingly, even

Another welcome trend is the Hon'ble Bombay High Court in Umicore case and Hon'ble Gujarat High Court in Emerson case holding that GST law does not restrict transfer of ITC vide Form GST ITC-02 only between two GSTINs (transferor's GSTIN and transferee's GSTIN) in the same State but also permits transfer of ITC between two different States.

8. *AMN Life (P.) Ltd. vs. UOI, [2024] 163 taxmann.com 715 (Himachal Pradesh).*
9. *IFGL Refractories Ltd. vs. Orissa State Financial Corporation & Ors., 2026 (1) TMI 349 - Supreme Court; Zydus Wellness Products Ltd. vs. UOI, 2025 (93) G.S.T.L. 331 (Sikkim) [affirmed by the SC in 2025 (102) GSTL 3 (Supreme Court)].*
10. *Umicore Autocat India (P.) Ltd. vs. UOI, [2025] 176 taxmann.com 616 (Bombay). SLP against the Bombay High Court decision is pending [2026 (1) TMI 1573 - SC Order].*
11. *Emerson Process Management (India) Pvt Ltd. vs. UOI, [2026] 185 taxmann.com 141 (Gujarat).*



the Kerala Authority of Advance Ruling has endorsed the aforesaid view[12]. Courts have also recognised that the absence of an online mechanism on the portal to facilitate such transfer cannot defeat statutory rights. Presently, the portal permits transfer of credit between GSTINs in the same State only. These decisions would ensure that CGST/ IGST credit is not forfeited during business transfers between entities located in two different states.

It is relevant to note that the petitioner in *Umicore case* gave up its claim on the right to transfer SGST credit from Goa to Maharashtra. While the Court noted that there are difficulties in transitioning SGST credit on account of revenue loss to the States, the decision is silent on eligibility to transfer SGST credit. Before the Gujarat High Court, the petitioner in Emerson case canvassed only his right to transfer CGST credit alone and the Court did not delve into eligibility to transition SGST credit as well. The fate of SGST credit in the context of inter-state credit transfer is yet to be decided by the Courts.

Businesses may also consolidate operations existing in two or three states into one state i.e., merging branch offices. In this context, the Andhra Pradesh High Court has recognised such transfer of business between distinct persons as a business transfer eligible to transfer of unutilised ITC as per Section 18(3)[13].

These High Court decisions provide much relief and hope to taxpayers who may otherwise be forced to take positions to forfeit credit considering their corporate restructuring.

As discussed earlier in this article, transfer of a business as a going concern is an exempt supply under GST. A simple doubt that arises is whether a transferor making such an exempt supply is required to reverse its credit balance as ITC attributable to the said exempt supply in terms of Section 17(2) or is such transferor permitted to transfer such ITC vide Form GST ITC-

12. *Flytxt Mobile Solutions (P.) Ltd., In re, [2025] 179 taxmann.com 545 (AAR - KERALA).*
13. *Shilpa Medicare Ltd. vs. UOI, [2026] 183 taxmann.com 152 (Andhra Pradesh). Divergent view expressed in Crystal Crop Protection Ltd., In re [2022] 139 taxmann.com 242 (AAR - MAHARASHTRA).*

02? While no High Court decision has been rendered addressing this issue yet, this apparent conflict between Section 17(2) and Section 18(3) can be resolved as the latter provision is a special provision applicable to business transfers.

Corporate restructuring in limbo: GST implications in the transfer's twilight zone

Corporate restructuring (merger/demerger/amalgamation) often entails an appointed date (mutually agreed by the parties and recorded in the National Company Law Tribunal's order) which pre-dates the effective date (date of such order approving the restructuring).

A myriad of issues arise on account of transitional issues surrounding appointed date and effective date. Some are listed below.

- Transferor may have paid GST on a transaction which should have been paid by the transferee and vice versa.
- Vendors may raise GST invoices by recording the transferor as the recipient whereas the recipient is the transferee.
- While goods forming part of the slump sale may be transferred as part of the exempt supply, certain goods in transit may be required to be transferred as an itemized sale. This may potentially risk the overall transaction's nature as a slump sale if the items attract high commercial value.
- GST registration is granted with effect from a date on which the registrar of companies issues a certificate of incorporation to the transferee. Sometimes, this is later than the appointed date and artificially requires the non-existent transferor's GST registration to be extended.
- Supplies between the transferor and the transferee between the appointed date and effective date may attract GST liability on account of Section 87.

Taxpayers who contemplate corporate restructurings must plan their business operations well in advance, notify their vendors and customers about changes in GSTINs, etc., to mitigate the risk of disputes.

Fate of GST proceedings faced by non-existent transferor entities

A recent trend witnessed in the context of tax disputes surrounding mergers and amalgamations is the practice of challenging notices/orders issued by the Tax department in the name of non-existent transferor entities before the High Courts.

In these kinds of challenges, there appears to be three kinds of approaches taken by the High Courts:

- ***Category 1:*** Cases where the challenged notice/order is quashed with liberty granted to the revenue to initiate proceedings against the transferee in accordance with law;
- ***Category 2:*** Cases where the challenged notice/order is treated as issued in the name of the transferee;
- *Category 3*: Cases wherein the High Courts do not entertain the challenge.

The first approach is highly in vogue with Bombay High Court[14], Karnataka High Court[15], Delhi High Court[16] and Allahabad High Court[17]. These High Courts have quashed notices/orders issued to non-existent transferor entities as lacking in jurisdiction and as *void ab initio* especially when the tax authorities have knowledge of the change in constitution of the business.

While quashing notices/orders issued to non-existent entities, the Courts often record in their order that the revenue is not precluded from pursuing the transferee in accordance with law.

Despite the existence of various citations to support the first approach, in few cases concerning challenge to orders issued to non-existent transferor entities, the High Court on the petitioner's request remanded proceedings with directions to treat notice/order as issued to the transferee[18]. In another case, the High Court directed that the impugned order issued to the non-existent transferor be uploaded on the GST portal of the transferee with directions that limitation would not be a problem for either the taxpayer or the revenue[19]. A doubt arises as to whether this approach is sustainable when the Supreme Court has held that the order passed in the name of non-existent entity is a jurisdictional defect and cannot be rectified[20].

Another approach witnessed is the dismissal of challenges to notices/orders issued to non-existent transferor entities for availability of alternative remedies[21] and even merely for failure to raise the 'lack of jurisdiction' ground before the revenue officers during the course of the proceedings under challenge[22].

The above discussed trends indicate that a taxpayer served with a notice concerning a non-existent transferor must promptly inform the tax authorities of the corporate restructuring and object to the lack of jurisdiction to proceed against the non-existent entity. In the Income Tax context, non-disclosure of information about the merger to the Tax department was taken into account as a crucial factor in determining the validity of challenged proceedings initiated at the non-existent transferor's end[23]. This becomes especially significant where the transferor's erstwhile

14. *IDFC First Bank Ltd vs. UOI & Ors., 2026-VIL-740-BOM; Kanakia Spaces Realty (P.) Ltd. vs. UOI, [2026] 187 taxmann.com 1055 (Bombay); Vodafone Idea Ltd. vs. UOI, [2026] 186 taxmann.com 812 (Bombay).*
15. *Trelleborg India (P.) Ltd. vs. State of Karnataka, [2024] 164 taxmann.com 383 (Karnataka); Kennametal India vs. Deputy Commissioner of Commercial Taxes, 2025-VIL-813-KAR.*
16. *HCL Infosystems Ltd. vs. Commissioner of State Tax, [2024] 169 taxmann.com 82 (Delhi).*
17. *Max Estates Ltd. vs. UOI, [2025] 172 taxmann.com 662 (Allahabad).*
18. *Ultratech Cement Limited vs. The Commissioner (Appeals), CGST & CE, Siliguri (Appeals) Commissionerate & Ors., 2025 (5) TMI 1729 - Calcutta High Court. See also Integra Garments & Textiles Ltd. vs. UOI, 2024 (2) TMI 1033 - Madras High Court.*
19. *Larsen and Toubro Ltd vs. UOI, 2026-VIL-215-RAJ.*
20. *Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki (India) Limited, (2020) 18 SCC 331.*
21. *Astrum Developments Pvt. Ltd. & Anr. vs. UOI, 2025 (11) TMI 66 - Bombay High Court.*
22. *Andromeda Sales and Distribution (P) Ltd vs. UOI, [2026] 185 taxmann.com 33 (Telangana).*
23. *Principal Commissioner of Income Tax vs. Mahagun Realtors Private Limited, (2022) 19 SCC 1 - 2022-VIL-70-SC-DT.*

promoters have entirely divested their interest and the transferee is an unrelated party. Such proceedings, if allowed to stand, create substantial inter-party complications in addition to the underlying GST issues.

At this juncture, it is important to note that as per Section 85(1) of the CGST Act, both the taxable person (non-existent transferor) and the transferee are jointly and severally liable for any tax dues concerning the period prior to the transfer. However, insofar as the transferor is non-existent in law, the revenue is required to pursue the transferee for recovering tax dues. If the non-existent transferor was a private company, the revenue may also have an option to pursue the former directors in terms of Section 89 of the CGST Act.

It is relevant to note that above issue of the transferee being saddled with the transferor's past liabilities is not applicable to slump sales made by a transferor undergoing corporate restructuring under IBC, on application of the clean slate theory[24].

It is important to note that as per Section 85(1) of the CGST Act, both the taxable person (non-existent transferor) and the transferee are jointly and severally liable for any tax dues concerning the period prior to the transfer.

Conclusion

While law must respond to the business needs, the converse holds equally true: businesses are required to adapt to the emergent positions of law.

The above identified issues, gaps and divergent positions await resolution. Until such a resolution comes forth, companies are required to bear the factors pointed out above in mind while structuring their businesses and undertaking the required GST compliances accordingly.

Additionally, while statutory mechanisms do not afford relief, Courts have adequately stepped in to set aside proceedings which lack jurisdiction and relax restrictions created by the GST portal.

(Views expressed are entirely personal)

24. *Ghanashyam Mishra & Sons Pvt Ltd vs. Edelweiss Asset Reconstruction Company Ltd., (2021) 9 SCC 657; Emco Ltd. vs. Assistant Commissioner, State Tax, 2024 (84) G.S.T.L. 243 (Telangana).*

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DECODING THE REAL ESTATE GST FRAMEWORK

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Harsh Shah *Akash Samani*

Overview

This article examines the evolving and often contentious GST landscape for India's Real Estate sector. It traces the shift from the pre-2019 regime (18%/12% rates with full ITC) to the post-April 2019 scheme, which classifies projects as Residential Real Estate Project (RREP) and Real Estate Project (REP) other than RREP and applies lower rates (5%/1%/12%) but with significant ITC restrictions.

Key contentious areas covered include: taxability of Transfer of Development Rights (TDR) and Floor Space Index (FSI) in redevelopment/joint-development/rehabilitation arrangements, where the issue remains contentious as to whether these constitute a taxable 'service' or partake the nature of land and therefore, not taxable; taxability of units handed to landowners/society members; ITC eligibility for leased commercial apartments post the Safari Retreats ruling; ITC reversals in respect of real estate projects; transitional disputes over pre-GST TDR transactions; and implications for long-term land leases.

The authors conclude that despite the framework's evolution since 2017, numerous issues remain unsettled due to conflicting judicial precedents and pending Supreme Court appeals, leaving developers and landowners exposed to interpretational risk.

Introduction

The implementation of Goods and Services Tax ('GST') in 2017 marked a path-breaking milestone in the Indian Indirect tax regime. Since its rollout, the GST law has undergone numerous changes such as those relating to taxability, exemptions, rates, Input tax credit ('ITC') and valuation mechanisms. Among the various sectors impacted by these evolving changes, the Real Estate industry stands out as one of the most significantly affected, given its unique transaction structures, time taken for constructing a building/unit, high-value dealings and the interplay between construction services, land and under-construction properties. Even prior to the introduction of GST, this sector was subject to simultaneous levies of VAT and Service tax, albeit on different aspects. This sector thus has always had a larger share of the litigation pie in the overall indirect tax litigation space. This article discusses the key aspects of GST framework for Real Estate industry.

Current scheme of taxation for sale of under-construction units including affordable units

The scheme of taxation for supply of construction services under GST was revamped in April 2019[1]. Prior to this, the services of construction of residential apartments were liable to GST at the rate of 18% whereas the affordable residential apartments under prescribed schemes, (such as Pradhan Mantri Awas Yojana) were liable to GST at the rate of 12%. Further, the construction of commercial apartments (shops and offices) was liable to GST at the rate of 18%. A 1/3rd deduction was provided from the value in all such cases where the value involved the value of land. From an ITC perspective, in all cases, ITC on inward supply of goods/services was fully available.

The scheme of taxation for supply of construction services under GST was revamped in April 2019.

As per the new scheme made applicable to this sector from 1 April 2019, the real estate projects have been classified into two buckets: (i) Residential Real Estate Project ('RREP') – the projects where carpet area of commercial apartments is not more than 15% and (ii) Real Estate Project ('REP') other than RREP – REP has the same meaning as assigned under Real Estate (Regulation and Development) Act, 2016[2] ('RERA'). In this backdrop, the currently applicable GST rates are as under:

Sr. No.	Type of apartment	Effective GST rate after considering 1/3rd deduction
1	Commercial apartment in RREP	5% (without ITC)
2	Commercial apartment in REP other than RREP	12% (with ITC)
3	Affordable residential apartment	1% (without ITC)
4	Residential apartments (other than affordable)	5% (without ITC)

An affordable residential apartment has been defined as an apartment having carpet area not more than 60 sq. meter for metro cities or 90 sq. meter for other cities and amount charged is not more than ₹ 45 lacs.

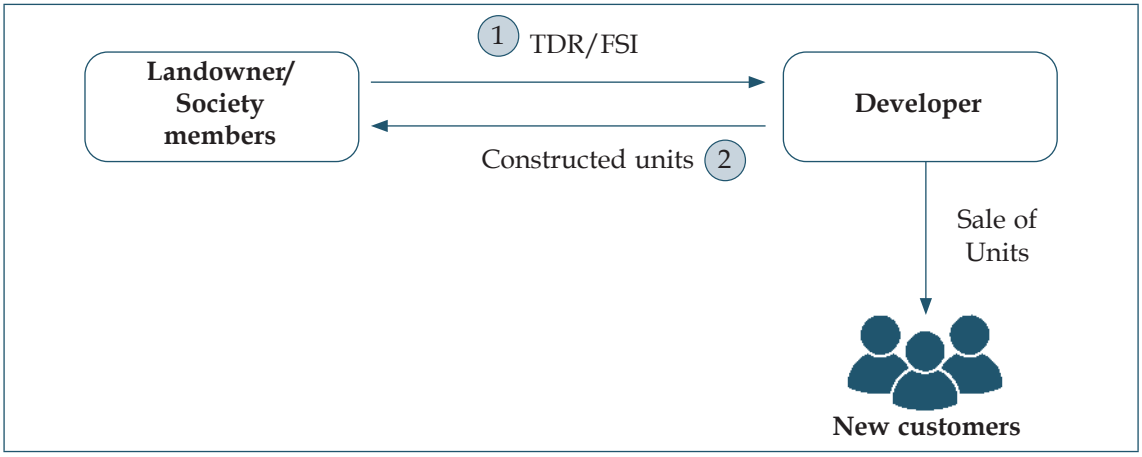
This new scheme of GST rates was made as the default scheme for all new projects after April 2019. However, one time option to continue with the old scheme (12%/18%) was provided to the Developers for ongoing projects. Thus, the sector has witnessed not only changes in the rate of taxes, but the entire ITC mechanism has become topsy-turvy in April 2019.

1. *Vide Notification No. 03/2019-Central Tax (Rate) dated 29 March 2019 which amended Notification No. 11/2019-Central Tax (Rate) dated 28 June 2017*
2. *Section 2(zn) of the RERA*

It may be worth mentioning here that the provisions as regards 1/3rd deduction for land were challenged before the Hon'ble Gujarat High Court in case of ***Munjaal Manishbhai Bhatt vs. UoI***[3] and ***Karma Buildcon Through Chetan Rameshbhai Jogi vs. UoI***[4]. The High Court has held that 1/3rd deduction is ultra-vires the provisions as well as the scheme of GST; and such deeming fiction is not mandatory and is only available at the option of the person in cases where the actual value of land is unascertainable. However, these decisions have now been challenged before the Supreme Court and final outcome is awaited.

Taxability of redevelopment projects/ rehabilitation projects/joint-development projects

The Developer typically enters into redevelopment/rehabilitation arrangement with the society members for the purpose of re-development of the existing society. Further, the Developer also enters into joint-development arrangement with the landowner for the development of land. These arrangements, as they typically take place, are diagrammatically represented as under:



The taxability of both the above legs of the transactions is discussed hereinbelow.

Taxability of Transfer of Development Rights ('TDR') and Floor Space Index ('FSI')

The TDR and FSI are typically the development rights of the land given by the landowner/society members for construction of building(s) on the said land. The TDR/FSI is generally transferred by the landowner/ society members to the Developer for the land development/society re-development in the joint development/re-development/ rehabilitation projects and the Developer provides area to the landowner/society members.

3. *[2022 (5) TMI 397 - Gujarat HC]*
4. *[SCA No. 6840 of 2021 - Gujarat HC]*



The moot question in such cases is whether such transaction w.r.t. TDR/FSI constitutes a supply of service for the purposes of GST. In this regard, it may be noted that the definition of 'services' as per Section 2(102) of the Central Goods and Services Tax Act, 2017 ('CGST Act') is wide in its ambit to cover anything other than goods. Considering this, one potential view could be that the transfer of TDR/FSI by the landowner/society members to the Developer could fall within the ambit of 'services' and therefore, the same could be exigible to GST. Further, the exemption has been provided from payment of GST on TDR/FSI transferred on/after 1 April 2019, to the extent such TDR/FSI are used for construction of residential apartments sold before issuance of completion certificate ('CC')[5]. Therefore, intent of the Government seems to be that GST is payable on transfer of TDR/FSI, to the extent used for construction of commercial apartments and unsold residential apartments (on the date of CC). Additionally, w.e.f. 1 April 2019, GST on transfer of TDR/FSI by any person to the Developer is required to be paid by the Developer under reverse charge mechanism[6].

Additionally, w.e.f. 1 April 2019, GST on transfer of TDR/FSI by any person to the Developer is required to be paid by the Developer under reverse charge mechanism.

Separately, while under the GST legislation, there are aforesaid specific provisions levying GST on TDR/FSI under the GST law, the taxability of TDR/FSI has been a contentious issue. In case of ***Chheda Housing Development Corporation vs. Bibijan Shaikh Farid***[7] and ***Sadoday Builders Private Limited vs. Joint Charity Commissioner***[8], the Hon'ble Courts have held that the rights associated with an immovable property would partake the nature of such immovable property. Basis this, a possible view that can emerge is that since the TDR/FSI is the right associated with the land, it would partake the nature of land. Considering that the sale of land is out of GST net in terms of Section 7(2) r.w. Sr. no. 5 of Schedule III of the CGST Act, TDR/FSI being in the nature of land may also be out of GST net.

Further, the Hon'ble Bombay High Court, in case of ***Shrinivasa Realcon Private Ltd. vs. DC***[9], has made a distinction between transfer of development rights vs transferrable development rights and

5. *Sr. no. 41A inserted, in Notification No. 12/2017-CT (Rate), vide Notification No. 04/2019-CT (Rate) dated 29 March 2019*
6. *Sr. no. 5B inserted, in Notification No. 13/2017-CT (Rate), vide Notification No. 05/2019-CT (Rate) dated 29 March 2019*
7. *2007 (3) MHLJ 402*
8. *WP No 4543/2010, delivered on 23 June 2011*
9. *2025 (4) TMI 931 - Bombay High Court*

held that only transferrable development rights as contemplated in the UDCPR[10] are covered with the purview of reverse charge notification under GST. Basis this, it has been held that the rights which the developer derives from the landowner, under the agreement for constructing the building for the landowner in lieu of the developer receiving certain area as consideration, would not be covered within the purview of reverse charge notification. Further, in case of ***Nirmal Lifestyle Developers Pvt. Ltd vs. UoI***[11], the Hon'ble Court granted an interim relief from demanding GST on TDR on the observation that the TDR constitutes immovable property and would not attract GST.

By contrast, in case of ***Prahitha Construction Pvt. Ltd. vs. UoI***[12], the Telangana High Court held that mere transfer of development rights under GST does not indicate automatic transfer of ownership/title of land. Thus, transfer of development rights cannot be construed as sale of land, thereby, the same is exigible to GST. This decision has however been challenged before the Supreme Court.

Several writ petitions, challenging levy of GST on TDR/FSI, have been filed before various High Courts and the same are yet to be decided. In view of this, the taxability of TDR/FSI remains an open issue although the plain language of the legislation suggests that GST is payable except where exempted.

It may be separately noted that in some cases, the Developer receives TDR/FSI from the local authorities/municipal corporations which is used as additional TDR/FSI for construction of building(s). In this regard, in addition to the arguments stated above, it may be noted that the services provided by the local authority, by way of any activity in relation to functions entrusted inter alia to a Municipality under Article 243W of the Constitution, is treated as neither treated as supply of goods nor supply of services[13] and therefore, such services are excluded from GST net. The 12th Schedule r.w. Article 243W *inter alia* lists the matters such as - 'urban/town planning' and 'construction of building(s)' and 'Slum improvement and upgradation'. Basis this, it could be considered that granting of TDR/FSI by the municipal corporations is in relation to the aforesaid matters and therefore, the said activity of municipal corporations may get covered within the aforesaid exclusion and hence not subject to tax. The issue of whether GST is payable on such transactions by municipal corporations is currently an area of ongoing litigation.

The Developer could be treated as providing the construction services to the landowner/society members against the consideration in form of TDR/FSI received from them.

Hand-over of constructed units by the Developer to landowner/society members

Against the receipt of TDR/FSI, the Developer hands over certain constructed units to the landowner/society members.

10. Clause 11.2.2 of Unified Development Control and Promotion Regulations for the State of Maharashtra
11. 2025 (98) G.S.T.L. 49 (Bom.)
12. 2024 (83) G.S.T.L. 129 (Telangana)
13. Notification No. 14/2017-CT (Rate) dated 28 June 2017

In this regard, it may be noted that the term 'supply' is widely defined under Section 7 to *inter alia* include barter transactions. Further, the definition of 'consideration' as per Section 2(31) *inter alia* covers even the non-monetary consideration within its ambit. Considering this, the Developer could be treated as providing the construction services to the landowner/society members against the consideration in form of TDR/FSI received from them. The said services could thus be liable to GST. Further, the GST law[14] also provides the mechanism for valuation of construction services in such cases.

It may however be noted that the Developer typically includes the cost of construction of apartments provided to the landowner/ society members in the price charged from the external customers. GST is collected and paid by the Developer on the said price charged from the customers. Basis this, one may argue that the payment of GST on the value of construction services provided to the landowner/society members would amount to double taxation which is impermissible as GST is already being paid on the units sold to new buyers and the consideration charged from such buyers absorbs the cost of constructing units for existing members. This view has been upheld by the Tribunals in various judicial precedents including in case of ***Vasantha Green Projects vs. Commr. of GST***[15]. However, this decision has been challenged before the Hon'ble Apex Court. Further, the aforesaid view has also been taken in case of ***CCEx. Thane vs. Ethics Infra Development Pvt. Ltd***.[16] and ***PNR Infra India Pvt Ltd vs CCCE***[17]. These decisions are currently in challenge before the High Courts.

Additionally, the levy of GST on construction services provided to the existing members is also subject matter of challenge in several writ petitions filed before various High Courts. The issue will therefore remain contentious until it is conclusively settled by the higher judiciary.

It may be separately noted that the Developer in some cases pays (i) share of revenue at pre-decided rate or (ii) only monetary consideration, to the landowner for the TDR/FSI granted by the landowner. In these arrangements, since the Developer is merely making payment consideration for receipt of TDR/FSI, no service may be said to be provided by the Developer to the landowner and the taxability of the transaction needs to be examined only from the perspective of transfer of TDR/FSI to the developer. Accordingly, no GST implications should arise in this regard.

ITC restrictions and reversals

In respect of sale of apartments

Under the new scheme of taxation, effective GST @ 5%/1% on sale of apartments in RREP is required to be paid. There is a specific restriction in availment of ITC and hence, no ITC in respect of such projects would be available.

14. *Para 2A of Notification No. 11/2017-CT (Rate) dated 28 June 2017*
15. *2019 (20) G.S.T.L. 568 (Tri.-Hyd.)*
16. *2022 (1) TMI 1015 - CESTAT Mumbai*
17. *2018 (12) TMI 1243 - CESTAT Hyderabad*

In REP other than RREP, ITC would be available in respect of commercial apartments chargeable to GST @ 12%. However, in cases where such commercial apartments remain unsold on the date of CC, no ITC in respect of such apartments would be available. Further, in case of common ITC i.e. ITC in respect of commercial units (where GST @12% is charged) and other construction where ITC is not permitted, ITC would be available to the extent such ITC pertains to commercial units chargeable to GST @ 12%.

In respect of lease of commercial apartments

The Developer sometimes constructs commercial apartments/building(s) for the purpose of leasing out to the customers and not for the purpose of sale. In such projects, the question would arise as to whether ITC on inward supplies used for construction of such commercial apartment(s)/building(s) would be available.

In this regard, the provisions of Section 17(5)(c) and (d) are relevant which restricts ITC in respect of following goods/services:

a. Section 17(5)(c) - Works contract services used for construction of immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service

b. Section 17(5)(d) - Goods/services used for construction of an immovable property (other than plant and machinery) on his own account.

It may be separately noted that prior to 1 October 2025, Section 17(5)(d) referred to 'plant or machinery' instead of 'plant and machinery'. In this regard, it would be pertinent to refer to the Supreme Court decision in case of ***CC vs. Safari Retreats Pvt. Ltd.***[18] In this case, the Supreme Court has upheld the constitutional validity of provisions of Section 17(5)(c) and (d). Further, the Supreme Court made a distinction between 'plant or machinery' and 'plant and machinery' and held that if a building qualifies as 'plant', ITC restriction as per Section 17(5)(d) would not apply. However, subsequent to this decision, Section 17(5)(d) was amended retrospectively[19] w.e.f. 1 July 2017 whereby the 'plant or machinery' was replaced by 'plant and machinery', to overturn the decision of the Supreme Court.

In view of ITC restrictions in question, if the Developer receives any civil construction services (e.g. sub-contractor constructing building(s) on turkey basis) for constriction of apartment(s)/building(s) which would be given on lease basis to the customers, ITC in respect of such works contract services may not be available.

However, the plant and machinery which are immovable in nature (i.e. fixed to earth by foundation/structural support) has been excluded from the scope of ITC restrictions. Accordingly, ITC in respect of plant and machinery for constructed building(s) may be available.

The larger question which would arise as to whether ITC in respect of the goods/ services used for construction of such

18. (2024) 131 GSTR 184 (SC)
19. Section 124 of the Finance Act, 2025

apartment(s)/buildings, e.g. bricks, cement, architect services, would be available. In this regard, it would be pertinent to interpret the meaning of 'own account'. The term 'own account' has not been defined in the GST law. While the decision in case of ***Safari Retreats (supra)*** has been overturned, it may be noted that Supreme Court in this case has made a passing remark in respect of the term 'own account'. The Supreme Court has mentioned that the construction cannot be said to be on 'own account' if it is intended to be sold or given on *lease or license*. Such an interpretation would need a careful consideration for examining ITC in such cases. It may be noted that any ITC, if at all taken, would be subject to litigation given that such a position is yet to be tested at judicial forums.

Controversies on taxability pre-GST vs post GST

One of the key transitional controversies is taxability of TDR/FSI transferred by the landowner/society to the Developers in pre-GST regime and the units handed over by the Developer to the landowner/society post GST.

In such cases, the Department is alleging that GST would be payable (i) on TDR/FSI as well as (ii) on construction services provided by the Developer to the landowner/society. It may be noted that in the writ petition filed in case of ***Sai Lakshmi Industries Pvt Ltd***.[20] before the Karnataka High Court, challenging GST demand on TDR transferred in 2013, the Karnataka High Court has granted interim stay in this matter.

It is argued in these cases that since the services by way of transfer of TDR/FSI have been completed in pre-GST regime, GST demand on TDR/FSI would not sustain. Further, as regards GST demand on construction services, it is argued that the consideration in form of TDR/FSI, against the construction services, was received by the Developer in pre-GST regime and therefore, tax, if at all leviable, would be Service tax and not GST. Accordingly, the GST demand on construction services would also be unsustainable.

The aforesaid controversy should hopefully settle down once the final verdict would be delivered by the judicial forums.

Taxability of long-term lease transactions

The term 'supply' as per Section 7 inter alia includes lease within its ambit. Further, as per sr. no. 2 of Schedule II of the CGST Act, any lease of land or building is treated as supply of services. Accordingly, the transaction of long-term lease of the land would be exigible to GST.

W.e.f. 01.04.2019, the transaction of long-term lease of land for 30 years or more, by any person to the Developer, for construction of a project by the said Developer has been covered under reverse charge mechanism[21]. Accordingly, the Developer would be required to pay GST under reverse charge on upfront amount (called as premium, salami, etc.) and periodic rent paid by the Developer in respect of long-term lease of the land.

20. Writ Petition no. 17466/2026

21. Sr. no. 5C inserted, in Notification No. 13/2017-CT (Rate), vide Notification No. 05/2019-CT (Rate) dated 29 March 2019

However, the upfront amount payable by the Developer, in respect of long-term lease of the land obtained on/after 1 April 2019, has been exempted from payment of GST to the extent the Developer constructs residential apartments on the said land and sells prior to CC[22]. Accordingly, GST on upfront amount for long-term lease should be payable only in respect of commercial apartments and unsold residential apartments.

GST on upfront amount for long-term lease should be payable only in respect of commercial apartments and unsold residential apartments.

Conclusion

It can be seen that any real estate transaction comes with its own set of complexities. On the indirect tax front, the GST framework for the Real Estate sector has evolved considerably since 2017, most notably in April 2019. Still, this evolution has not brought certainty in some areas the industry needs. Some questions remain mired in conflicting judicial pronouncements and pending litigations before Courts. Until these issues are conclusively settled, Developers, landowners and society members will continue to face interpretational risk on high-value transactions. The resolution is therefore essential to give the sector the certainty it has been denied so far. A set of clarifications by the GST Council on the various burning issues for the Real Estate sector will provide a much needed boost for the sector.

The above article does not constitute legal advice and the views expressed herein are personal views of the author.

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22. *In terms of Sr. no. 41B of Notification No. 12/2017-CT (Rate) dated 28 June 2017*

THE NEXT GENERATION OF CUSTOMS VALUATION DISPUTES





Gyanendra Tripathi *Karthik Iyer*

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Overview

The article examines the evolving landscape of customs valuation and its growing significance in international trade. It highlights how valuation disputes have moved beyond traditional invoice-based assessments to encompass complex commercial arrangements involving royalties, licence fees, software payments, engineering costs, intangibles and transfer pricing adjustments.

Anchored through the WTO Customs Valuation Agreement and Section 14 of the Customs Act, 1962, customs valuation continues to prioritize transaction value, subject to adjustments prescribed under the Customs Valuation Rules. However, customs authorities increasingly focus on economic substance over contractual form, relying on post-clearance audits, data analytics and cross-agency information sharing to scrutinize broader business arrangements.

The article analyzes key areas of dispute, including the inclusion of royalties and licence fees, software and technology-related payments, engineering and development costs, and related-party transactions. It discusses important judicial principles emerging from landmark Supreme Court decisions and explores the growing interface and tension between customs valuation and transfer pricing.

Industry-specific challenges in automotive, pharmaceuticals, electronics, luxury goods and energy sectors demonstrate the increasing importance of intangible assets in determining customs value. Looking ahead, enhanced digital audits, AI-driven enforcement and real-time compliance monitoring will intensify scrutiny, making integrated customs, tax and transfer pricing governance essential for multinational businesses.

Introduction

Customs valuation lies at the heart of international trade regulation, influencing not only the duty payable on imports but also government revenue, trade compliance and transfer pricing strategy. Although the World Trade Organization's Customs Valuation Agreement ('CVA') had established a globally recognised framework built around transaction value, the growing complexity of modern business has turned **valuation into one of the most litigated areas of customs law**.

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Multinational enterprises today *inter alia* operate through integrated supply chains involving intangibles, technology transfers, licensing arrangements and digital products. As customs authorities intensify audits and adopt data-driven risk tools, disputes increasingly focus on payments beyond the invoice price — royalties, software payments, engineering costs and transfer pricing adjustments — while businesses must reconcile customs obligations with transfer pricing and tax requirements. This article traces the key trends and emerging challenges likely to shape customs litigation and compliance strategy over the coming decade.

1. Evolution of Customs Valuation Jurisprudence

a. Historical Development

The modern customs valuation framework is anchored in the CVA, which established transaction value as the primary basis for determining the value of imported goods — generally the price actually paid or payable, subject to prescribed additions and adjustments. Prior to the introduction of CVA, customs authorities often relied on arbitrary or notional valuation methods, creating inconsistency and uncertainty for international trade.

The CVA introduced a uniform, predictable mechanism. As commerce and business structures have grown more sophisticated, authorities and courts increasingly examine whether declared values should be adjusted for intellectual property payments, licensing, related-party dealings, technology transfers and post-importation obligations. With value increasingly derived from intangibles rather than tangible goods, valuation disputes now extend well beyond invoice pricing into broader commercial and contractual arrangements.

b. Shift Toward Economic Reality

A notable trend in recent customs valuation jurisprudence is the growing emphasis on economic substance over contractual form. Customs authorities are no longer limiting their review to the express terms of agreements but are increasingly assessing the actual commercial realities underpinning import transactions.

Authorities often consider factors such as the functional relationship between the parties, the extent of commercial dependency, supply chain arrangements, intellectual property and licensing structures and the overall degree of integration between related entities.

In undertaking such assessments, authorities often consider factors such as the functional relationship between the parties, the extent of commercial dependency, supply chain arrangements, intellectual property and licensing structures and the overall degree of integration between related entities. These considerations frequently play a decisive role in determining

whether additional payments should be included in the customs value of imported goods.

Accordingly, customs valuation reviews have evolved into a broader examination of the entire commercial framework surrounding an import transaction, enabling authorities to identify payments that may bear a direct or indirect nexus with the importation of goods.

Customs valuation disputes are now more frequently arising during post-clearance audits, often several years after the relevant imports have taken place.

c. Rise of Audit-Based Valuation Challenges

In recent years, customs authorities have increasingly shifted from reviewing transactions solely at the time of import clearance to conducting extensive post-clearance and post-importation audits. Such audits typically involve a detailed review of an importer's transfer pricing policies, intercompany arrangements, financial records, customs compliance procedures and valuation methodologies. Authorities are also making greater use of data analytics and information-sharing mechanisms with other tax and regulatory bodies to identify potential valuation concerns.

Consequently, customs valuation disputes are now more frequently arising during post-clearance audits, often several years after the relevant imports have taken place. These disputes generally relate to payments, charges or financial arrangements that were not included in the declared customs value but are subsequently perceived by the authorities as requiring inclusion under the valuation framework. This development has significantly broadened the scope of customs scrutiny and heightened the importance of maintaining comprehensive documentation and effective valuation governance mechanisms.

d. Growing Influence of Intangibles

One of the most significant developments in customs valuation jurisprudence has been the increasing attention accorded to intangible assets. Historically, customs valuation primarily focused on determining the value of the physical goods being imported. In today's global economy, a substantial part of a product's commercial value is often attributable to intangible elements such as patents, trademarks, software, proprietary technology, technical know-how, design rights and other forms of intellectual property.

As technology-driven business models continue to expand and intellectual property becomes a key driver of enterprise value, customs authorities

In today's global economy, a substantial part of a product's commercial value is often attributable to intangible elements such as patents, trademarks, software, proprietary technology, technical know-how, design rights and other forms of intellectual property.

are increasingly required to determine whether payments made in connection with such intangible assets should form part of the assessable value of imported goods. The inclusion or exclusion of these payments has therefore emerged as one of the most contested issues in modern customs valuation. As a result, the treatment of intangible assets continues to play a central role in shaping contemporary customs valuation principles and influencing the future direction of customs valuation jurisprudence worldwide.

2. Valuation principles under the Customs law

a. General principles governing the valuation of imported goods

The starting point for any inquiry into customs valuation in India is Section 14 of Customs Act, 1962 ('Customs Act') which lays down the foundational principle that customs duty is ordinarily assessed with reference to the transaction value of imported goods. The provision defines the transaction value as the **price actually paid or payable for the goods when sold for export to India, for delivery at the time and place of importation** – a value that remains subject to the conditions and adjustments prescribed under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('CVR').

While transaction value remains the primary basis of assessment, Rule 10 of CVR proceeds on the basis that the invoice price do not always capture the full commercial consideration paid in respect of imported goods.

Thus, the customs valuation mechanism proceeds on the footing that the invoice value of imported goods ordinarily represents the best available indicator of their true worth but only where the following conditions are cumulatively satisfied:

- The buyer and seller are not related or where they are related, the relationship has not influenced the price;
- The price constitutes the sole consideration for the sale;
- The transaction is genuine and commercially authentic in character; and
- The adjustments prescribed under Rule 10 of CVR have been made.

Where any of these conditions are not met, the declared invoice value can no longer be treated as reliable, and the assessment must proceed on a different footing.

This principle of the primacy of transaction value for determining the assessable value of imported goods had found judicial endorsement in ***Eicher Tractors Ltd. vs. Commissioner of Customs [2000 (122) ELT 321 (SC)]***. The Supreme Court also observed that the customs authorities cannot arbitrarily reject a declared value simply because they consider it low or otherwise unusual and any such rejection must rest on valid reasons recognised under CVR.

While transaction value remains the primary basis of assessment, Rule 10

of CVR proceeds on the basis that the invoice price do not always capture the full commercial consideration paid in respect of imported goods. Rule 10 accordingly requires the addition of certain elements to the transaction value, wherever such costs are incurred by the buyer that relates to the imported goods and have not already been reflected in the invoice price. The underlying object of this provision is to ensure that customs duty is levied on the complete economic value of the imported goods rather than on an invoice value.

The principal additions contemplated under Rule 10 include commissions and brokerage, packing costs, assists, royalties and licence fees, engineering and development expenses, transportation charges, loading and handling costs and insurance costs. Of these categories, it is royalties, technology-related payments and engineering expenses that have, over time, consistently generated the greatest volume of litigation.

b. Royalties and Licence Fees under Rule 10

Rule 10 of CVR requires the inclusion of royalties and licence fees within the customs value only where two conditions are satisfied together:

- The payment relates to the imported goods; and
- The royalty is paid, whether directly or indirectly, as a condition of sale of those goods.

Both the aforesaid conditions must be met simultaneously — the mere fact that a royalty is paid to a foreign collaborator does not, by itself, lead to the conclusion that royalty is includible in the customs value.

Contemporary multinational arrangements commonly involve the payment of royalties for trademark use, technical know-how, proprietary manufacturing processes, patents, copyright licences, distribution rights, product specifications and the broader use of intellectual property. In each such case, the underlying controversy tends to reduce to a single question – whether the payment is genuinely linked to the imported goods themselves or whether it instead relates to activities that occur only after importation.

Trademark royalties form one recurring category of dispute. Customs authorities frequently take the view that payment for the use of a globally recognised brand enhances the market value of the imported product and is, for that reason, a dutiable payment. Importers generally argue that such payments relate to marketing and distribution activities carried out only after the goods have been imported. In resolving such disputes, regard is made to the extent of nexus between the imports and the trademark's use, the nature of the distribution agreement, the presence of any exclusivity arrangements and any sourcing restrictions imposed by the licensor. The stronger the connection between royalty and the act of importation, the more likely it is that

royalty will be treated as a condition of sale and included in the assessable value.

Royalties paid for technical know-how present a still greater degree of complexity, largely because such payments often bear directly on the manufacturing process itself, arising typically in connection with manufacturing technology, engineering processes, patents, product specifications and technical assistance. The key question in each case is whether the royalty is connected to the importation of goods or whether it relates solely to their subsequent manufacture within India. Royalties attributable exclusively to domestic manufacturing activity generally fall outside customs valuation unless a sufficient nexus with the imported goods can be established.

At the core of most such disputes lies the "condition of sale" test, the essential inquiry being whether the imported goods would have been supplied at all in the absence of the royalty obligation. In examining this, customs authorities typically look to the linkages between supply and licence agreements, restrictions on sourcing from alternative suppliers, mandatory purchase obligations, the structuring of intellectual property ownership and consequences of terminating the licensing arrangement. Where royalty is found to be integral to the arrangement under which the goods are supplied, its inclusion may be justified. Where no such integral connection exists, inclusion cannot be sustained merely because a licensing relationship exists between the parties.

Two Supreme Court decisions illustrate how this test has been applied. In ***Commissioner of Customs vs. Ferodo India Pvt. Ltd. [2008 (4) SCC 563]***, the Supreme Court held that including royalty and technical know-how payments in the customs value requires proof that the payment relates to the imported goods and that it constitutes a condition of their sale. The royalties linked to the manufacture and sale of finished goods in India cannot automatically be loaded onto the value of imported components absent a direct nexus with the import transaction itself. Similarly, in ***Commissioner of Customs (Port), Chennai vs. Toyota Kirloskar Motor (P) Ltd. [2007 (213) ELT 4 (SC)]***, the Supreme Court held that post-importation charges such as payments for engineering services and training relating to activities carried out in India after the goods have already been imported do not form part of the transaction value.

c. Software and Technology-related payments

The rapid growth of the digital economy has introduced a further, increasingly complex layer of issues into customs valuation. Importers today routinely make payments for software licences, ERP systems, embedded software, cloud-based solutions, artificial intelligence applications, operating systems and other technology platforms, and whether such payments are includible in the customs value depends on facts of each case based on the nature of the payment and its degree of connection with the imported goods.

A useful distinction has evolved between software embedded within imported goods in a manner that renders it inseparable from them — as with telecommunications equipment, medical devices or industrial automation systems, where the software is generally treated as forming part of the imported product — and software licensed and delivered independently of the goods, such as downloaded software, remote access licences or cloud-hosted applications, where the absence of a direct connection tends to support non-inclusion.

Composite technology transfer agreements, which combine intellectual property licences, technical assistance, training and engineering support within a single framework, require customs authorities to isolate whether any specific component of the payment bears a direct nexus to the imported goods. Where payments merely support domestic operations after importation, inclusion is not warranted but where the imported goods themselves embody the licensed technology, a stronger case for inclusion arises. The disputes are increasingly expected to involve Software-as-a-Service (SaaS) and Platform-as-a-Service (PaaS) arrangements, AI-driven solutions, digital twins, machine-learning platforms and Internet-of-Things (IoT) ecosystems, with the central challenge being whether such payments relate to the imported goods or to digital services rendered thereafter.

d. Engineering, Design and Development Costs

Rule 10 of CVR also provides for inclusion of engineering and development expenditure, commonly termed "assists" — goods and services supplied by the buyer, free of charge or at reduced cost, for use in producing the imported goods. The rationale is that where an importer contributes part of the manufacturing cost outside the declared purchase price, that expenditure should be reflected in the customs value, failing which the declared value would understate the true cost of production.

Includible costs typically comprise product design, research and development, engineering drawings, technical plans and prototype development undertaken outside India. Engineering services supplied by the importer often represent a significant source of embedded value. However, engineering and development work carried out within India is generally excluded from such additions, since customs valuation is concerned with the value of goods at the point of importation, not with value added through activities performed domestically thereafter.

The core difficulty is customs valuation and transfer pricing, though both concerned with pricing cross-border transactions, pursue fundamentally different and at times, competing objectives. Customs administrations are principally focused on ensuring goods are valued appropriately to secure duty collection, and their institutional incentive tends toward higher import values and a wider tax base.

3. Related-Party Transactions and the Transfer Pricing Interface

The relationship between customs valuation and transfer pricing has, in recent years, become one of the most strategically important dimensions of international trade compliance. A substantial share of global trade today occurs not between independent parties dealing at arm's length, but between entities forming part of the same corporate group. Given the scale of such intra-group trade, customs authorities routinely examine whether the price at which goods move between related parties has been influenced by that relationship and whether it can properly serve as the transaction value for customs purposes.

The core difficulty is customs valuation and transfer pricing, though both concerned with pricing cross-border transactions, pursue fundamentally different and at times, competing objectives. Customs administrations are principally focused on ensuring goods are valued appropriately to secure duty collection, and their institutional incentive tends toward higher import values and a wider tax base. Transfer pricing regulation, by contrast, concerns the allocation of profit across group entities, ensuring intra-group transactions reflect arm's-length outcomes so that each jurisdiction receives its fair share of taxable income. Where customs authorities view a low declared value with suspicion, income tax authorities may, in the same transaction, worry that the price is too low to reflect an arm's-length outcome, or too high and erosive of the domestic tax base. This divergence creates a real and recurring tension for multinational businesses who must satisfy two regulators over what is, in substance, a single transaction.

Even so, related-party transactions are not automatically treated with suspicion under the customs law, and may be accepted where it can be shown that the relationship has not influenced the price. Importers typically rely on transfer pricing studies, benchmarking analyses, functional evaluations, and comparable third-party transactions to demonstrate the integrity of the pricing arrangement. However, the existence of such documentation does not, by itself, ensure acceptance by customs authorities, which often approach these arrangements with a degree of caution and scrutiny for several reasons:

- Transfer pricing studies are generally based on broader profit-oriented methodologies, such as the Transactional Net Margin Method, which evaluate the overall profitability of an enterprise rather than the arm's length price of a specific imported product;
- The comparables relied upon in transfer pricing analysis are frequently broad in nature and may not satisfy the transaction-specific valuation requirements applicable under customs laws;
- The use of confidential data, assumptions and economic adjustments that cannot be independently verified by the customs authorities often creates additional challenges in establishing the reliability of the analysis;
- Retrospective transfer pricing adjustments may further complicate the determination of the correct customs value and raise concerns regarding the accuracy of the value declared at the time of importation.

These arrangements are complicated further by shared technology platforms, where a single vehicle platform or engine architecture is used across multiple markets and brands within a group, making it difficult to isolate the value attributable to any single import.

Accordingly, customs authorities frequently seek corroborative evidence and supporting documentation beyond a conventional transfer pricing report before accepting the declared customs value.

Among the most contentious issues is the treatment of post-importation transfer pricing adjustments made at year-end to align already-imported goods with arm's-length pricing. These adjustments raise the following difficult questions:

- Whether upward adjustments should increase customs value and duty already paid;
- Whether downward adjustments should trigger duty refunds; and
- What timelines and documentation standards apply.

Jurisdictions differ markedly in their approaches, leaving businesses to navigate a fragmented compliance landscape.

This complexity is compounded by growing coordination between customs, income tax, VAT and financial regulator, whose increasing information-sharing makes it more likely that a transfer pricing position will trigger a customs investigation and vice versa.

Clinical trial and regulatory approval costs, often borne centrally and later recovered through payments connected to imports, add further complexity.

Looking forward, this space is likely to be shaped by integrated customs-tax reviews, advance pricing agreements, customs valuation rulings and digital-audit technologies enabling cross-agency data comparison. Multinational businesses can no longer treat customs valuation and transfer pricing as separate disciplines. They must be managed together with coordinated documentation and consistent positions across both functions.

4. Industry-specific valuation challenges

While the general principles governing royalties, technology payments and engineering assists apply uniformly across sectors, the way these issues actually surface and the intensity with which they are contested varies considerably from one industry to another. Certain sectors, owing to their commercial structure and reliance on intellectual property, have proved particularly fertile ground for customs valuation disputes and examining them closely shows how the general principles discussed earlier play out in practice. Some of the key industry-specific valuation challenges faced under the Customs law are as under:

- ***Automotive Industry:*** The automotive sector has long been at the forefront of customs valuation litigation. Manufacturers typically operate through extensive royalty structures with local subsidiaries paying foreign parents or technology partners for the use of vehicle designs, manufacturing processes and brand names. These arrangements

are complicated further by shared technology platforms, where a single vehicle platform or engine architecture is used across multiple markets and brands within a group, making it difficult to isolate the value attributable to any single import. Layered on top are substantial engineering contributions—often involving drawings, specifications and technical assistance transferred from a foreign design center — along with Research and Development expenditure shared across group entities in ways not always traceable to specific imports. The Courts have consistently observed this analysis as being fact-sensitive exercise inter alia depending on the degree of control the foreign licensor exercises over sourcing and approval of imported parts. Compounding this, modern vehicles now combine hardware with embedded software—engine control units, infotainment systems, driver-assistance technology—adding further uncertainty as to whether such software value must be treated as part of the imported component.

- ***Pharmaceutical Industry:*** This sector presents distinct challenges shaped by patent licensing, formula transfers, clinical development costs and regulatory support expenses. Companies frequently import Active Pharmaceutical Ingredients (APIs) or bulk drugs from group entities while paying royalties for patented formulations or processes, raising the question of whether such royalties are linked to the imported ingredient or to the broader right to manufacture and sell the finished drug domestically. Clinical trial and regulatory approval costs, often borne centrally and later recovered through payments connected to imports, add further complexity. Customs authorities increasingly scrutinise whether payments labelled as regulatory support or formula licensing fees should be added to customs value rather than treated as unrelated post-importation expenditure.

- ***Electronics Sector:*** Disputes revolve on the embedded software, firmware updates, semiconductor technology and IP licensing. Since many devices are software products as physical goods, apportioning a value between the hardware and embedded software remains persistently difficult considering the broader software-versus-hardware distinction.

- ***Consumer Goods and Luxury Brands:*** Here, the disputes are driven by the weight brand value carries. Substantial trademark royalties raise questions of brand value attribution — how much of a price reflects the physical goods versus the brand alongside distribution rights, marketing support and licensing structures. As with trademark royalties generally, the strength of the connection between royalty and importation, and the licensor's control over sourcing and distribution, remains decisive.

- ***Energy Sector:*** Challenges here arise from specialised equipment, engineering services, technical know-how and long-term supply arrangements. Cross-border project structures involving multiple group entities across jurisdictions make it difficult to separate the value of imported equipment from bundled engineering and technical services.



covering financial statements, transfer pricing documentation, royalty and licensing agreements, service contracts, and ERP data which implies that a single transaction's valuation can no longer be assessed in isolation from a Company's broader financial and contractual position.

Taken together, these patterns suggest these sectors will generate some of the most significant valuation precedents ahead, as authorities apply a goods-based framework to increasingly intangible-driven commercial arrangements.

5. Emerging trends in customs audits and investigations

Beyond substantive valuation questions, enforcement itself has transformed markedly. Modern audits look considerably different from the narrow, document-driven reviews of the past. Some of these emerging trends are set out hereunder:

- ***Data-Driven Enforcement:*** Customs authorities increasingly deploy AI, machine learning, predictive analytics and anomaly detection to flag transactions deviating from expected patterns — in values, payment structures or related-party relationships with precision that makes inconsistencies harder to escape notice.

- ***Enterprise-Wide Audits:*** Investigations now extend well beyond the import declaration and invoice, routinely

- ***Cross-Border Information Sharing:*** Growing cooperation between customs administrations across jurisdictions narrows the scope for materially inconsistent valuation positions, as information shared with one authority increasingly becomes visible to another.

- ***Digital Evidence Collection:*** Investigators increasingly examine electronic communications, ERP databases, procurement systems and cloud records, recognising that the true commercial understanding behind arrangements such as whether payment of royalty is a condition of sale. The analysis often lies in surrounding correspondence rather than the formal agreement alone.

- ***Focus on Intangibles:*** Future investigations will concentrate intensely on royalties, technology payments, software licences and brand-related transactions, reflecting authorities' recognition that intangibles are a significant and growing revenue source.

- ***Real-Time Compliance Monitoring:*** Integrated platforms, blockchain-enabled systems and digital ecosystems point

toward near real-time monitoring, compressing the window for businesses to correct valuation positions before disputes escalate.

Conclusion

The trajectory traced across this article makes clear that customs valuation has decisively outgrown its origins as a mechanical exercise in verifying invoice prices. What began, under the WTO Customs Valuation Agreement and Section 14 of Customs Act, as a relatively contained inquiry into the price actually paid or payable for imported goods has evolved into one of the most intricate and consequential areas of trade law, precisely because the commercial arrangements it must now grapple with have themselves grown far more complex.

Royalties and licence fees, software and technology payments, engineering and development costs and transfer pricing adjustments arising out of related-party dealings no longer sit at the margins of customs compliance. Instead, they occupy its very center and the judicial journey highlighted above illustrates just how fact-sensitive and closely contested the "condition of sale" inquiry has become. As highlighted above, the difficulty in determining the assessable value of imported goods is compounded by the fact that customs valuation and transfer pricing, despite both concerning themselves with the pricing of cross-border transactions, pursue objectives that frequently pull in opposite directions, leaving multinational businesses to reconcile competing regulatory expectations in respect of what is, in substance, a single commercial arrangement. These tensions play out with particular force across sectors such as automotive, pharmaceuticals, electronics, luxury goods, energy, aerospace and technology, each of which has developed its own characteristic flashpoints for dispute, even as the underlying legal principles remain constant.

Compounding all of this is a rapidly changing enforcement environment, in which data analytics, enterprise-wide audits, cross-border information sharing and an intensifying focus on intangibles are steadily narrowing the space within which inconsistent or undocumented valuation positions can survive scrutiny.

Taken together, these developments signal that customs valuation can no longer be managed as an isolated, transaction-by-transaction compliance task. Instead, it demands a coordinated approach that integrates customs, transfer pricing and tax considerations from the outset, supported by robust contemporaneous documentation. Businesses that recognise this shift, and structure their intercompany arrangements will be considerably better placed to navigate the customs valuation disputes of the coming decade.

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FTA COMPLIANCE: CAROTAR AT FIVE YEARS



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Overview

India's rapidly expanding network of Free Trade Agreements (FTAs), including the UAE CEPA, Australia ECTA, EFTA TEPA, Oman CEPA , India-EU FTA and the recently implemented UK CETA, has created significant opportunities for businesses to reduce import duties and strengthen global supply chains. However, these benefits are now accompanied by enhanced compliance obligations under the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR).

The article explains how CAROTAR has transformed FTA compliance in India by shifting the focus from reliance on a Certificate of Origin (CoO) to evidence-based verification of Rules of Origin (RoO). Importers are now required to exercise due diligence, maintain detailed origin-related records, substantiate claims with supporting documentation, and be prepared for customs scrutiny and verification.

Key CAROTAR provisions relating to importer declarations, due diligence, origin documentation retention, customs information requests and origin verification have significantly increased importer accountability.

The article also highlights emerging trends such as self-certification, supplier governance, and risk-based customs verification. It concludes that successful businesses will be those that can not only qualify for FTA benefits but also effectively demonstrate and defend their origin claims through robust documentation and governance frameworks.

Introduction

Today, India has 22 agreements concluded, with a further 15 trade agreements under negotiation, meaning that nearly 41% of India's trade agreement portfolio is still in the negotiation stage. This reflects India's increasingly proactive trade strategy aimed at securing new market access opportunities, enhancing integration into global value chains, and strengthening its position in international trade. India's Free Trade Agreement ('FTA') network has expanded rapidly over the last decade and has entered a new phase with the implementation of high-impact agreements such as the India-Australia Economic Cooperation and Trade Agreement ('ECTA'), India-European Free Trade Association ('EFTA') Trade and Economic Partnership Agreement ('TEPA'), India-UAE Comprehensive Economic Partnership Agreement ('CEPA'), India Oman CEPA and the recently concluded India-UK Comprehensive Economic and Trade Agreement ('CETA').



Alongside these opportunities, Indian Customs has significantly strengthened the compliance framework governing preferential imports. The cornerstone of this transformation is the **Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 ('CAROTAR')**, introduced under Section 28DA of the Customs Act, 1962. CAROTAR fundamentally altered the approach to claiming FTA benefits by shifting the focus from merely possessing a Certificate of Origin ('CoO') to demonstrating substantive compliance with Rules of Origin ('RoO'). The framework requires importers to exercise due diligence, maintain supporting evidence, and be prepared to substantiate origin claims during customs verification.

Five years after its introduction, CAROTAR has emerged as one of the most significant trade compliance developments in India. It has reshaped the responsibilities of importers, influenced supplier engagement practices, and accelerated the adoption of technology-driven origin management solutions.

Evolution of Origin Verification in India

Historically, FTA benefit claims in India were largely document-driven. Customs authorities primarily relied upon CoO issued by designated authorities in partner countries. The prevailing assumption was that a valid certificate generally established eligibility for preferential treatment.

However, as India's FTA network expanded, concerns emerged regarding misuse of preferential tariff concessions, transshipment through third countries, and products claiming origin without satisfying the prescribed origin criteria. Global trade tensions and increasing scrutiny of supply chains also contributed to a worldwide shift toward more robust origin verification systems.

Recognising these challenges, India introduced Section 28DA through the Finance Act, 2020, followed by the CAROTAR, 2020. The objective was to ensure that preferential tariff benefits are granted only where imported products genuinely satisfy the RoO negotiated under the relevant FTA.

Further, it is pertinent to note that the Section 28DA is to reinforce importer accountability in relation to preferential/concessional tariff claims under FTAs. Under this framework, the importer remains responsible for demonstrating satisfaction of the applicable origin criteria, notwithstanding the submission of a valid CoO. Accordingly, where Customs questions the originating status of the goods and the importer is unable to substantiate the claim, while the goods may be released, the preferential benefit may be denied and the importer may become liable to pay the

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differential duty between the preferential rate claimed and the duty provisionally assessed.

The result was a paradigm shift: the CoO remained necessary, but no longer sufficient.

In order to claim FTA benefit, every importer needs to comply with the RoO criteria as prescribed in the FTA/PTAs, as the case may be.

Understanding the RoO under the FTA/PTA:

The Rules of Origin or the RoO are the criteria used to determine the economic nationality of a product and establish whether it qualifies for preferential treatment under a FTA/PTA, as the case may be. They serve as the foundation of every FTA by ensuring that tariff benefits are granted only to goods that genuinely originate from the partner countries.

Beyond determining eligibility for tariff concessions, RoO serve several important policy objectives, including:

- **Granting preferential tariff benefits** under FTAs and other trade arrangements.
- **Preventing trade deflection**, where goods from non-member countries are routed through an FTA partner solely to obtain duty concessions.
- **Safeguarding domestic industries** by reducing the risk of origin fraud and misuse of preferential tariff regimes.

Broadly, origin qualification under FTAs is determined through two principal methods:

1. ***Wholly Obtained Goods***

   These are products that are entirely produced, extracted, harvested, or obtained within a single country without the use of inputs from other countries. Examples include agricultural produce, minerals, live animals, and fish caught within the territorial waters of a country.

2. ***Substantial Transformation***

   Where a product incorporates materials sourced from multiple countries, origin is established based on whether sufficient manufacturing or processing has been carried out in the exporting FTA partner. This is typically assessed through criteria such as:

   – Achievement of the prescribed minimum local or regional value addition;

   – Change in tariff classification (CTC);

   – Specific manufacturing or processing requirements prescribed under the relevant FTA.

In essence, Rules of Origin ensure that the benefits negotiated under FTAs accrue only to products that have undergone genuine economic activity within the participating countries, thereby preserving the integrity and intended objectives of preferential trade agreements.

Recognising the growing challenges associated with administering Rules of Origin and preventing misuse of preferential trade arrangements, India introduced the CAROTAR.

The CAROTAR Rules came into effect from 21 September 2020 notified vide NN 81/2020-Cus (NT) dated 21 August 2020. These were introduced to strengthen administration of Rules of Origin under India's FTAs and to prevent misuse of preferential tariff concessions. CAROTAR applies to all imports

where an importer claims preferential duty benefits under a trade agreement.

CAROTAR fundamentally transformed FTA compliance in India by shifting the focus from mere possession of a CoO to importer accountability, documentary substantiation and customs verification. The Rules establish a comprehensive framework governing how importers claim, support and defend preferential tariff benefits under India's FTAs.

Some of the key features of the rules are discussed below.

CAROTAR fundamentally transformed FTA compliance in India by shifting the focus from mere possession of a CoO to importer accountability, documentary substantiation and customs verification.

Rule 3: Preferential Tariff Claims and Declaration Requirements

It prescribes the conditions for availing preferential tariff treatment under an FTA. Importers must:

- Declare in the Bill of Entry that the goods qualify as originating goods;
- Specify the applicable tariff notification;
- Furnish a valid Proof of Origin;
- Declare origin-related information including:
  - Origin criterion;
  - Cumulation or accumulation provisions;
  - Back-to-back certificate details;
  - Direct consignment information.

A key feature of Rule 3 is that Customs may deny preferential treatment without initiating formal verification where the CoO is incomplete, altered, expired or otherwise non-compliant with the applicable RoO. Thus, CAROTAR makes it clear that a CoO alone is not sufficient to secure FTA benefits.

Rule 4: Importer Due Diligence and Documentation Requirements

It is widely regarded as the cornerstone of CAROTAR and represents its most significant compliance requirement.

The Rule requires importers to:

- Possess origin-related information prescribed in Form I;
- Exercise reasonable care and due diligence before claiming FTA benefits;
- Retain supporting documents for a minimum period of five years from the date of import.

The information maintained should demonstrate how the product satisfies the applicable RoO and based on practical experience, would typically include the following:

- CoO or Origin Declaration;
- Product-specific origin analysis;
- Bill of Materials ('BOM');
- Regional Value Content ('RVC') calculations;
- Supplier declarations;

- Production and manufacturing records;
- Transport and non-alteration documents;
- Supporting information required under Form I.

Five years after its introduction, Rule 4 has become the foundation of India's evidence-based FTA compliance system. Importers are increasingly expected to maintain a comprehensive "origin compliance file" capable of substantiating origin claims throughout the lifecycle of a customs audit or verification.

Rule 5: Customs Power to Seek Information

It operationalizes the importer due diligence obligations under Rule 4.

Where Customs has reason to doubt an origin claim, it may seek additional information and supporting documentation from the importer. The importer is generally required to furnish the requested information within 10 working days.

In practice, Customs authorities increasingly request for value content calculations, supplier declarations other manufacturing and sourcing records among others.

If the information provided is satisfactory, the preferential claim is accepted. Where the importer fails to provide adequate support, Customs may escalate the matter for formal origin verification.

Rule 6: Verification and Risk-Based Scrutiny

It establishes the formal origin verification mechanism under CAROTAR.

Verification request may be initiated by the Customs to Verification Authority of the Country of Origin: Verification may be initiated where:

- The authenticity of the CoO is in doubt;
- Customs suspects that origin criteria have not been satisfied;
- Verification is conducted on a random or risk-based basis.

This provision has significantly strengthened Customs' ability to validate origin claims and has transformed FTA compliance from a document-centric exercise to an evidence-based review of a product's supply chain and manufacturing process.

Increasingly, Customs focuses on questions such as:

- How was value addition calculated?
- What is the origin of critical raw materials?
- Can supplier declarations be independently substantiated?
- Does the manufacturing process satisfy the applicable product-specific rules?
- Is the claimed origin supported by contemporaneous documentation?

This reflects a broader shift from document verification to origin substantiation.

Rule 7: Treatment of Identical Goods

It strengthens Customs' enforcement powers by allowing adverse findings relating to one transaction to have implications for future imports.

Where Customs determines that a particular product does not satisfy origin requirements, similar treatment may be extended to subsequent imports of identical goods from the same producer or exporter unless satisfactory evidence is provided.

As a result, successful FTA compliance today requires businesses to establish robust origin governance frameworks, maintain traceable documentation, engage proactively with suppliers, and ensure continuous audit readiness.

This heightened expectation of importer-led substantiation becomes particularly relevant as modern FTAs increasingly move towards self-certification and origin declaration models.

Traditional FTAs relied on CoO issued by designated authorities. New-generation FTAs increasingly allow:

- Exporter self-certification
- Origin declarations
- Importer knowledge-based claims

Rule 8: Miscellaneous Provisions

This rule strengthens the overall enforcement framework governing claims of preferential duty under FTAs and reinforces the importer's obligation to exercise "reasonable care" in substantiating origin claims.

Key implications include:

- If an importer fails to provide the required information/documents within the prescribed time or does not exercise reasonable care in ensuring the accuracy of the information submitted, Customs may mandatorily verify the assessment of all subsequent Bills of Entry claiming preferential duty benefits.
- The enhanced scrutiny may continue until the importer establishes robust record-based controls and demonstrates compliance with the reasonable care requirements prescribed under Section 28DA of the Customs Act.
- Where Customs establishes suppression of facts, wilful misstatement, or collusion with suppliers or other parties to obtain undue FTA benefits, preferential duty claims may be denied and penal consequences may follow under the Customs Act and other applicable laws.
- The rule also clarifies that where any inconsistency exists between CAROTAR and the applicable Rules of Origin under the relevant trade agreement, the Rules of Origin shall prevail.
- Further, the Central Government retains the power to relax the provisions of CAROTAR for specified classes of persons through notification.

Accordingly, the rule highlights that FTA compliance is not limited to obtaining a Certificate of Origin but extends to maintaining effective internal controls, supplier due diligence processes, documentary substantiation, and ongoing compliance monitoring. Non-compliance may not only result in denial of preferential duty benefits but may also expose importers to increased regulatory scrutiny and penal action.

Key FTAs such as the India-UAE CEPA, **India Oman CEPA** and India - UK CETA represents a significant step in this direction, introducing an Origin Declaration and unique reference number-based framework for proving origin. Businesses claiming benefits under the agreement will nonetheless need to evaluate compliance through the lens of CAROTAR.

Companies can no longer assume that the issuance of an origin statement by a supplier completely transfers compliance risk. Customs authorities continue to expect importers to exercise reasonable due diligence before claiming preferential treatment.

Introduction of Self-certification

Under the traditional model, a designated governmental authority or chamber of commerce certified the originating status of a product before export. In contrast, newer agreements increasingly permit exporters, producers, or approved exporters to self-certify origin through origin declarations. While this simplifies trade and reduces administrative costs, it also increases the compliance burden on businesses. Under such regimes, customs authorities place greater emphasis on documentary substantiation, supplier declarations, origin calculations and audit readiness. Consequently, frameworks such as CAROTAR become even more important, as importers must be able to demonstrate the validity of preferential origin claims beyond the mere existence of an origin declaration.

This increased reliance on importer-led validation is also reflected in recent enforcement trends, where Customs has tested whether businesses can substantiate origin claims beyond formal declarations.

Consequently, frameworks such as CAROTAR become even more important, as importers must be able to demonstrate the validity of preferential origin claims beyond the mere existence of an origin declaration.

Recent customs investigations under CAROTAR indicate a clear shift from document-based compliance to evidence-based compliance. Customs authorities are increasingly examining the substance behind origin claims and expect importers to demonstrate origin eligibility through comprehensive documentation, supplier substantiation and robust internal controls.

The implementation of the India-UAE CEPA, India-Australia ECTA, India-Oman CEPA, India EFTA TEPA and the recently implemented India-UK Comprehensive Economic and Trade Agreement ('CETA'), mark a significant evolution in India's FTA architecture. Unlike many of India's earlier FTAs, these agreements are designed around deeper tariff liberalization, modern RoO, increased reliance on self-certification mechanisms, and greater emphasis on supply chain transparency.

As preferential trade volumes under these agreements increase, the importance of CAROTAR has become even more pronounced. While these FTAs provide substantial tariff savings opportunities, they also require businesses to demonstrate a higher level of origin compliance and documentation readiness. A summary of these recently concluded FTAs is provided below for reference -

Parameter	India-UAE CEPA	India-Australia ECTA	India-Oman CEPA	India-UK CETA
FTA Coverage	Provides 97% tariff line access for Indian exports with zero duty benefit	Provides 100% tariff-line access for Indian exports, with zero duty, from January 2026.	Provides 98.08% tariff-line access for Indian exports	Provides 99% of tariff line access for Indian exports, with duty elimination immediately or in phased manner
Origin Criteria	Wholly Obtained ('WO') or Produced Product or Product Specific Rules ('PSR')	WO or Produced Product or Produced Product with PSR fulfilment	WO or Produced Product or PSR	WO or Produced Product or Produced Product with PSR fulfilment
Proof of Origin	Physical copy or e-CoO and Origin Declaration. Valid for 12 months.	Certificate of Origin issued by designated authority. Valid for 12 months.	Physical copy or e-CoO issued by Issuing Authority or Origin Declaration. Valid for 12 months.	Origin Declaration. Valid for 12 months. Considering terms of negotiation during discussion there is likely exemption from Form I compliance, however, yet to be notified in Indian notification
Verification Mechanism	Verification through importer information requests, competent authority requests, exporter questionnaires and on-site verification visits. Preference can be denied where supporting	Sequential verification through importer requests, issuing authority requests, exporter/ producer questionnaires, verification visits and agreed verification procedures.	Verification through importer information requests, competent authority assistance, exporter/ producer questionnaires, verification visits (exceptional cases), and	Multi-layered verification through importer, exporter, producer and competent authority enquiries; customs-to-customs cooperation; detailed documentary

Parameter	India-UAE CEPA	India-Australia ECTA	India-Oman CEPA	India-UK CETA
	evidence is not provided.		review of CoO authenticity and supporting documents.	verification procedures and denial of preference provisions.
Record Retention by Importer	Minimum 5 years	Minimum 5 years.	Minimum 5 years	Minimum 4 years
Record Retention by Exporter/ Issuing Authority	Minimum 5 years from issuance of CoO.	Minimum 5 years from issuance of CoO.	Minimum 5 years from issuance of CoO.	Minimum 5 years from issuance/ completion of proof of origin.

The future of FTA compliance in India is increasingly characterised by self-certification, digitalisation, supply-chain transparency and heightened importer accountability. As India's network of modern FTAs continues to expand, businesses will need to move beyond document collection towards structured origin governance, technology-enabled compliance and continuous audit preparedness. In this evolving environment, CAROTAR serves as the foundation for a more robust, evidence-driven and risk-based origin compliance framework.

Some of the key changes that importers may have to make to stay compliant with claim of preferential treatment under different FTAs are discussed below:

- Growing adoption of self-certification: New-age FTAs are moving towards exporter self-certification and origin declarations, increasing the responsibility of importers and exporters to independently substantiate origin claims.
- Technology-enabled origin management: Businesses to leverage digital tools for origin qualification, supplier compliance, record retention, document traceability and audit support. Manual spreadsheets will be replaced by centralized compliance platforms and ERP-integrated trade management systems.
- Structured supplier declaration programmes: Companies to move from ad hoc declarations to formal supplier compliance programmes involving periodic declaration renewals, supplier risk assessments, supporting documentation collection and compliance certifications.
- Data analytics and risk-based verification: Customs authorities are increasingly using transaction-level data, duty savings, sourcing patterns and import trends to identify high-risk FTA claims, resulting in more targeted origin verification exercises.

- Continuous origin monitoring: Origin qualification is no longer viewed as a one-time exercise. Businesses are periodically reassessing origin eligibility based on supplier changes, sourcing modifications, product redesigns, tariff classification changes and amendments to FTA RoO.

The evolving FTA landscape and new compliance trends necessitate a shift from conventional compliance processes to more proactive, technology-enabled, evidence-based framework and stricter origin verification mechanism wherein Importing customs administrations are provided explicit authority to check compliance through requests for additional information, documentary audits, or verification processes. Some of the key takeaways for Importers are discussed below:

As India enters a new era of trade integration through agreements such as the UAE CEPA, Australia ECTA, EFTA TEPA and the India-UK CETA, the importance of origin compliance will only increase.

- Avoid treating the CoO as the sole basis for FTA claims; maintain adequate supporting evidence to substantiate origin claims.

- Create product-level origin files containing CoO, BOM, supplier declarations, cost sheets, origin calculations and transport documents.

- Strengthen supplier due diligence by obtaining periodic origin declarations and supporting records from suppliers.

- Retain all origin-related documentation for at least five years and ensure records can be readily retrieved during customs verification.

- Review origin qualification regularly, especially when there are changes in suppliers, sourcing patterns, manufacturing processes or tariff classifications.

- Have proper records and documentation when applying Absorption or Cumulation principle

- Establish clear governance and SOPs defining responsibilities across procurement, supply chain, finance, tax and customs teams.

- Maintain verification readiness by conducting periodic internal reviews and mock audits of FTA claims.

Presently, the Bombay High Court in Covestro India Private Limited vs. Assistant Commissioner of Customs & Ors. has delivered a significant ruling in favour of importers by quashing a customs assessment order that denied preferential duty benefits under the ASEAN-India Free Trade Agreement ('AIFTA'). The denial was based primarily on a local Public Notice requiring importers to furnish confidential third-party manufacturer invoices to justify FOB values.

The Court held that local customs authorities cannot issue Public Notices that dilute FTA benefits or override the statutory framework prescribed under CAROTAR 2020 and the directions issued by the CBIC. This judgment is particularly relevant for importers operating under third-party invoicing/bill-

to-ship-to models, especially where customs authorities have sought commercially sensitive documents and rejected FTA claims at the assessment stage.

The Bombay High Court set aside the impugned assessment order and remanded the matter for fresh assessment in accordance with law. The ruling was significantly supported by CBIC Instruction No. 23/2024-Customs dated 21 October 2024, which was issued to address trade disruptions arising from such local Public Notices. The key decisions held in this judgment includes:

1. Third-Party Invoicing and Confidential Information: The Court, read with the CBIC clarification, affirmed that third-party invoicing is expressly permitted under Article 22 of the AIFTA Operational Certification Procedures. It was further recognized that CAROTAR 2020 does not oblige an importer to furnish commercially confidential information relating to the exporter or third parties. Accordingly, the assessing officer's insistence on the original exporter's invoice, and the rejection of the FTA claim solely on account of non-submission of such invoice, was held to be unsustainable.

2. Mandatory Statutory Verification Process: The Court held that where doubts exist regarding origin or value addition, Customs must invoke the prescribed verification mechanism under Section 28DA and CAROTAR, rather than reject the preferential duty claim outright.'

3 Invalidity of Local Public Notices: The Court clarified that only CBIC has the authority to issue binding instructions on FTA and customs procedures under section 151A of the Customs Act. Local customs authorities cannot issue notices that restrict FTA benefits, bypass statutory processes, or conflict with CBIC directions.

The Court also cautioned that local authorities must exercise extreme care and obtain CBIC approval before issuing procedural clarifications, as unauthorized notices may disrupt trade and prove counterproductive even from a revenue standpoint.

It is pertinent to note that , five years after its introduction, CAROTAR has fundamentally transformed India's FTA compliance landscape. The framework has successfully shifted the focus from passive reliance on Certificates of Origin to active importer responsibility, evidence-based compliance and supply-chain transparency.

As India enters a new era of trade integration through agreements such as the UAE CEPA, Australia ECTA, EFTA TEPA,India-Oman CEPA, India-UK CETA and the upcoming India EU FTA , the importance of origin compliance will only increase. Preferential tariff benefits can generate significant commercial value, but those benefits are now inseparable from robust compliance obligations.

The businesses that will succeed in this evolving environment are not merely those that qualify for FTA benefits, but those that can confidently demonstrate, document and defend their entitlement to those benefits during Customs review.

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FINALITY, FAIRNESS AND FOREIGN TRADE: THE TEMPORAL LIMITS OF DGFT ENFORCEMENT





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Overview

The Directorate General of Foreign Trade ("DGFT") exercises wide enforcement powers under the Foreign Trade (Development and Regulation) Act, 1992 ("FTDR Act"), including the suspension or cancellation of licences, scrips and export incentives. However, unlike several fiscal statutes, the FTDR Act does not prescribe a comprehensive limitation period governing the exercise of such powers. This raises an important question: does statutory silence permit the indefinite reopening of completed transactions, or must enforcement action be initiated within a reasonable time?

This article examines the limitation gap in the FTDR framework through the lens of administrative law, constitutional principles and foreign trade jurisprudence. It argues that the absence of an express limitation period does not create perpetual authority. Indian courts have consistently held that statutory powers must be exercised within a reasonable time, having regard to factors such as the nature of the power, the point at which the alleged irregularity became known, the status of the underlying authorisation or scrip, and the prejudice caused by delayed action.

The issue assumes particular significance where benefits have been fully utilised, redeemed, transferred, or integrated into completed commercial transactions. Judicial decisions concerning expired instruments, retrospective withdrawal of benefits, administrative finality and legitimate expectation demonstrate that delayed enforcement may, in appropriate cases, undermine legal certainty and commercial reliance. The consequences extend beyond the original exporter and frequently affect transferees and other third parties who have acted on the validity of State-issued instruments.

The article contends that the FTDR Act requires a clearer temporal framework for enforcement proceedings. Defined limitation periods, coupled with longer but finite outer limits for cases involving fraud or deliberate suppression, would promote both effective enforcement and regulatory certainty. Temporal certainty is not a concession to exporters; it is a fundamental feature of a credible and predictable trade-regulatory regime. The State must retain the power to look back, but it should not possess the power to look back forever.

Limitation is often cast as a mere procedural fence, a rule that tells you when you may enforce a right, not whether you have one. In public law, that account is incomplete. When the legislature prescribes a period within which the State must exercise a statutory power, it is making a considered policy choice: that after a defined point, the competing claims of enforcement, finality and certainty must tip in favour of closure. A limitation period in public law is therefore not merely a clock; it is a constitutional balance as it protects citizens from the shadow of indefinite State action, disciplines the machinery of governance, and gives legal life to the principle that even public power must come to rest.

This becomes particularly significant in the sphere of foreign trade regulation. India's foreign trade framework rests on a balance between trade facilitation and regulatory control. While, on the one hand, the State promises export incentives, duty exemptions, authorisations, and trade facilitation measures, on the other, it must retain sufficient regulatory control and authority to detect abuse, rectify wrongful availment of incentives, and safeguard public revenue. The Directorate General of Foreign Trade ("DGFT"), functioning under the Foreign Trade (Development and Regulation) Act, 1992 ("FTDR Act"), occupies a central position in this architecture. It administers the licensing regime and the granting of fiscal instruments, and exercises powers relating to investigation, adjudication, and enforcement, including the imposition of penalties, confiscation of goods, and suspension or cancellation of licences and benefits.

Yet, unlike several fiscal statutes, the FTDR Act does not prescribe a comprehensive limitation period governing every form of enforcement action or every proceeding

When the legislature prescribes a period within which the State must exercise a statutory power, it is making a considered policy choice: that after a defined point, the competing claims of enforcement, finality and certainty must tip in favour of closure.

for suspension or cancellation of a licence, certificate, scrip or other fiscal instrument.

This statutory silence raises a difficult question: does the absence of an express limitation period permit the DGFT to reopen transactions indefinitely, or does the law necessarily imply a requirement that such powers be exercised within a reasonable time?

The problem, therefore, is not simply one of limitation in the conventional sense. It is a question of how far the State can travel backwards in time while exercising regulatory power over a commercial transaction that was acted upon, completed, relied upon and, in many cases, monetised or transferred to third parties years earlier. The legal enquiry must therefore take account not only of the original eligibility for the benefit, but also of the passage of time, administrative closure, commercial reliance and the prejudice caused by reopening a completed transaction.

I. Statutory Architecture and the Limitation Gap

The DGFT's powers operate within a detailed statutory framework. Section 5 of the FTDR Act empowers the Central Government to formulate and amend the Foreign Trade Policy ('FTP'), while Section 6 entrusts its implementation to the DGFT. Section 9 governs the grant, suspension and cancellation of licences, certificates and scrips. Section 11 provides for penalties and other consequences where a person contravenes the Act, rules, orders or the FTP. Sections 13 and 14

establish the adjudicatory mechanism and procedural safeguards, including notice and an opportunity to be heard.

The FTP and the Handbook of Procedures ('HBP') provide the substantive and procedural requirements governing export promotion schemes. Authorisations and scrips are granted following eligibility assessment, documentation, verification and processing. Once issued, these benefits may be utilised, redeemed, transferred or integrated into commercial transactions. The legal and commercial life of such instruments therefore progresses through identifiable stages, including issuance, utilisation, fulfilment, redemption, expiry and, in some cases, transfer to third parties.

The FTDR Act provides only limited temporal guidance. Section 16 prescribes a two-year period for certain review proceedings, but no uniform limitation period governs cancellation, recovery or other enforcement measures involving authorisations and scrips. Consequently, an authorisation may be issued, acted upon and discharged within pre-prescribed timelines, while the temporal endpoint of the State's enforcement power may remain open and uncertain. The question of how long after the grant the State may act upon a defect is the real source of the limitation controversy. Even where an irregularity exists, the legitimacy of State action may depend upon whether the power is exercised within a legally acceptable timeframe.

The Limitation Act, 1963

Where the FTDR Act confers a power but prescribes no period for its exercise, the absence of an express statutory clock does not bring the enquiry to an end. Temporal discipline may emerge from the broader principles of administrative law and constitutional governance, with the Limitation Act, 1963 serving, at most, as an analogous point of reference.

The Limitation Act primarily governs suits, appeals and applications in civil proceedings. Its provisions do not automatically extend to enforcement, adjudication or penal proceedings under a special statute unless expressly incorporated. The Limitation Act, therefore, cannot be said to directly supply the limitation period for proceedings under Sections 9, 11 or 13 of the FTDR Act.

That, however, does not render the passage of time legally irrelevant. The periods prescribed in the Limitation Act, together with limitation periods under analogous fiscal and regulatory statutes, may provide contextual guidance in assessing what constitutes a reasonable period for the exercise of statutory power. They may inform the enquiry; they do not themselves supply the statutory clock.

The FTDR Act provides only limited temporal guidance. Section 16 prescribes a two-year period for certain review proceedings, but no uniform limitation period governs cancellation, recovery or other enforcement measures involving authorisations and scrips.

II. The Governing Doctrine of Reasonable Time

Where a special statute is silent on limitation, Indian courts have consistently held that a statutory power must be exercised within a reasonable time. In ***Government of India vs. Citedal Fine Pharmaceuticals***[1],

1. *1989 (7) TMI 100 - SC*

the Supreme Court declined to prescribe a universal limitation period but affirmed that the authority must act within a reasonable time on the facts of each case. In ***State of Punjab vs. Bhatinda District Cooperative Milk Producers Union Ltd.***[2] The Court went further, holding that a revisional power, though not expressly time-bound, could not ordinarily be exercised beyond a reasonable period. In ***Shangrila Latex Industries vs. UOI***[3], the Gujarat High Court, relying *inter alia* on ***Neeldhara Weaving Factory vs. DGFT***[4] and ***State of HP vs. Rajkumar Brijender Singh***[5], held that even where statutory powers can be exercised "at any time", such powers must be exercised within a reasonable period and not after inordinate delay. The Court emphasised that delayed action would unsettle matters that have already attained finality, and proceedings initiated after prolonged periods without justification are unsustainable. The significance of this jurisprudence lies in the shift it makes in the enquiry: the question is not simply whether an express limitation period exists, but what period is reasonable having regard to the nature of the power, the statutory scheme and the rights and liabilities it affects.

Reasonable time is not a mechanically borrowed numerical period – its content is fact specific. In DGFT matters, the relevant considerations may include the lifecycle of the authorisation or scrip, the point at which the alleged irregularity became known to the authorities, whether the instrument remained operative or had already been discharged or closed, reason for the delay in initiating proceedings, whether the alleged breach involved fraud, suppression, deliberate misrepresentation and the prejudice caused by the delayed action.

The jurisprudence rejects both extremes. Statutory silence does not create a perpetual power, but reasonable time cannot be converted into a rigid period removed from the statutory context. The enquiry remains fact-sensitive and depends upon the nature of the power, the statutory framework, the explanation for delay and the prejudice caused by reopening the matter. Fraud, suppression or deliberate misrepresentation may justify a different temporal assessment from an ordinary procedural lapse. Similarly, a continuing contravention may stand differently from a completed transaction where all obligations have been discharged, and the matter formally closed. A case involving information concealed from the licensing authority may also require a different assessment than one in which the entire material was before the authority when the instrument was issued.

Article 14's [Equality and non-arbitrariness] guarantee against arbitrary State action places a substantive restraint on the manner in which statutory powers are exercised. Where relevant, Article 21's [Fair procedure] guarantee may also inform the analysis. The passage of time is therefore not merely an administrative consideration; in an appropriate case, it may become a constitutional one.

2. *2007 (10) TMI 300 - SC*
3. *2016 (340) E.L.T. 465 (Guj.)*
4. *2007 (210) ELT 658 (PHC)*
5. *(AIR 2004 SC 3218)*

Constitutional Discipline and administrative finality

The doctrine of reasonable time is reinforced by the constitutional discipline governing the exercise of state power. Article 14's [Equality and non-arbitrariness] guarantee against arbitrary State action places a substantive restraint on the manner in which statutory powers are exercised. Where relevant, Article 21's [Fair procedure] guarantee may also inform the analysis. The passage of time is therefore not merely an administrative consideration; in an appropriate case, it may become a constitutional one. An authority that permits a transaction to attain finality and then seeks to unsettle it after an unexplained and excessive delay raises a question not merely of procedural irregularity, but of whether the exercise of power remains fair and non-arbitrary.

The limitation question becomes sharper once the administrative process has reached finality. An authorisation or scrip may have been issued, utilised through imports or exports, examined for fulfilment of export obligations and ultimately closed through redemption or discharge. Closure does not invariably extinguish every statutory power; however, this power must be exercised within a reasonable time assessed against the statutory scheme. The longer a transaction has remained undisturbed, the stronger the concern is with reopening it without a compelling legal and factual basis.

The principle of legitimate expectation reinforces this concern where the State has issued the instrument, permitted its utilisation or transfer, accepted compliance, and brought the transaction to a close. In ***Navjyoti Co-operative Group Housing Society vs. Union of India***, the Supreme Court recognised the importance of fair dealing by public authorities when an expectation arises from established administrative conduct. The doctrine does not freeze policy or create a vested right merely because a past practice existed; rather, it guards against arbitrary departure from an established position where parties have arranged their affairs on the basis of a representation or consistent conduct, subject always to the larger public interest.

III. Temporal Finality and Retrospectivity

The connection between temporal finality and retrospectivity is reflected in ***DGFT vs. Kanak Exports***[6], where the Supreme Court held that delegated or subordinate legislative power cannot ordinarily operate retrospectively unless the parent statute confers such power. The Court specifically held that Section 5 of the FTDR Act did not confer a general power to retrospectively amend the Foreign Trade Policy. The principle was subsequently applied by the Delhi High Court in ***Jindal Exports and Imports Pvt. Ltd. vs. DGFT***[7], where a subsequent notification could not be applied retrospectively to an Advance Authorisation obtained under the earlier legal regime.

Although these cases concern retrospectivity rather than limitation in the strict sense, the connection is significant. A business that has acted upon the legal regime applicable at the time of the transaction cannot ordinarily be confronted years later with a regulatory

6. *2015 (11) TMI 80 - Supreme Court*
7. *2023 (2) TMI 680 – Delhi High Court*

The distinction between an instrument that remains operative and one whose legal life has already come to an end is significant.

standard that did not govern that transaction when it occurred. Temporal finality and substantive retrospectivity are therefore closely connected. This does not immunise fraudulent or patently illegal grants from scrutiny. It does, however, require that any reopening be grounded in a lawful source of power, exercised within a reasonable time and sensitive to the commercial and legal finality that the State itself facilitated through issuance, utilisation, discharge and closure. The enquiry, ultimately, is not whether the State should have the power to correct an unlawful grant. It must. The harder question is when that power must come to rest.

Once an authorisation or scrip has been issued, acted upon, discharged or transferred, time does more than pass. It changes the legal and commercial landscape around the transaction. Records disappear, businesses restructure their affairs, third-party rights intervene, and transactions move beyond the control of the original beneficiary. The problem becomes still more pronounced where the benefit is represented by a transferable scrip. Under schemes such as SEIS, a scrip may move beyond the original exporter and enter the hands of a third party who acquires it for value and utilises it to pay customs duty. The original administrative act therefore creates a chain of commercial consequences that may survive long after the underlying export transaction has been completed.

If the DGFT seeks to cancel such a scrip years after its issuance, expiry or utilisation, the matter is no longer confined to the relationship between the DGFT and the original exporter. It implicates the position of the transferee, who may have had no involvement in the alleged irregularity and may have acted entirely on the strength of a scrip issued by the State.

The distinction between an instrument that remains operative and one whose legal life has already come to an end is significant. In ***Supreme Castings Ltd. vs. Joint DGFT***[8] , the Punjab and Haryana High Court held that an expired DEPB could not be cancelled ab initio, observing that an instrument which had ceased to exist could not meaningfully be suspended or cancelled, and that the statutory framework did not confer a power of retrospective cancellation. Further, the Bombay High Court in the case of ***Essar Shipping Limited vs. Union of India***[9] which relies on it's own decision in the case of ***Essar Shipping Limited vs. Union of India***[10] has held that a duty benefit or incentive which has been duly granted and the claim stands finalized, attains finality and cannot be retrospectively withdrawn or reopened by administrative action. The Court further observed that an official grant carries a presumption of legality and, if any benefit has been erroneously extended, the same can be recovered only in accordance with law and not otherwise. In the absence of any allegation or finding of fraud, wilful misstatement, or suppression of material facts, retrospective denial or recovery of duty benefits is impermissible and unsustainable in law.

8. *2016 (9) TMI 776 - PHC*
9. *2025 (2) TMI 386 (Bom HC)*
10. *2022 (2) TMI 471 (Bom HC)*

The principle assumes greater significance where the scrip has already been transferred and utilised. At that stage, cancellation is no longer simply a question of correcting the original grant. It potentially seeks to unwind a chain of transactions that the State's own regulatory framework permitted to occur. The authority must therefore confront questions of timing and reliance: when did the alleged irregularity become discoverable; why was action not initiated earlier; was the scrip valid when transferred and utilised; did the transferee have knowledge of the alleged defect; does the statutory framework permit retrospective cancellation; and what prejudice would follow from unsettling the transaction years later?

Thus, the limitation question in DGFT enforcement is not merely procedural. It is a substantive check on the State's ability to unsettle completed transactions. Where an exporter has complied with the FTP and HBP as they stood at the time of application and issuance, fulfilled export obligations, obtained discharge or redemption certificates, and integrated the benefit into completed commercial transactions, a belated attempt to revisit the grant on the basis of a subsequent policy shift or a new interpretation risks offending both the doctrine of legitimate expectation and the constitutional bar on arbitrary State action. This does not immunise fraudulent or patently illegal grants from scrutiny.

IV. DRI Referrals for the DGFT Action

The involvement of the Directorate of Revenue Intelligence (DRI) adds a distinct dimension to the limitation problem because DGFT proceedings frequently originate in DRI intelligence, investigation reports or referrals. Such material may legitimately trigger scrutiny, but it cannot substitute for the DGFT's independent statutory judgment.

The DGFT must independently determine for itself the source of power, the nature of the alleged contravention, the evidentiary value of the DRI material, the noticee's explanation, the time elapsed and whether the proposed action remains legally available. In ***Nautilus Metal Crafts Pvt. Ltd. vs. Joint Director General of Foreign Trade***[11], the Delhi High Court set aside the impugned action initiated by the DGFT authorities as the order failed to disclose any independent consideration of the petitioner's submissions, including the DRI material. Equally significant is the decision of the Supreme Court in ***S.B. International vs. Assistant DGFT***[12], which recognised that the grant of a licence under the foreign trade regime is not a mechanical exercise but follows an examination by the licensing authority of the applicant's eligibility and compliance with the governing scheme. Consequently, where the DGFT seeks to revisit a licence, authorisation or benefit years after its grant, utilisation or redemption, such re-examination must ordinarily be founded on material that is demonstrably new, previously unavailable, or otherwise capable of showing that the original decision was procured through error, misrepresentation, suppression or illegality. A subsequent referral from another agency cannot, by itself, justify reopening a matter without the DGFT independently establishing why the original determination requires reconsideration notwithstanding the passage of time.

11. 2020 (11) TMI 637 - DHC
12. 1996 (82) E.L.T. 164 (S.C.)

Delay must likewise be assessed independently. A later intelligence report cannot, by itself, neutralise an otherwise unreasonable lapse of time, particularly where the delay is attributable to the department or its investigative agencies. In ***Famina Knit Fabs***[13], a show-cause notice issued more than five years after the exports and DRI investigation was quashed; drawing guidance from Section 28 of the Customs Act, the Court treated five years as the outer limit in a case involving alleged fraud. ***Eastern Agencies Aromatics***[14] similarly criticised the adjudication, which had been kept pending for almost nine years after a DRI investigation. A DRI referral is therefore an investigative input, not a device for making DGFT enforcement indefinite.

V. Application to EPCG and Advance Authorisation Disputes

Disputes under the Export Promotion Capital Goods scheme and the Advance Authorisation scheme provide the clearest practical illustration of the limitation problem. Both schemes follow defined regulatory lifecycles, but proceedings may be initiated or kept pending long after the relevant imports, exports, export-obligation periods and closure processes have concluded. The key issue is therefore not merely whether a substantive condition was breached, but whether enforcement was initiated and completed within a period consistent with the statutory scheme, administrative finality and the prejudice caused by delay.

Under the EPCG scheme, capital goods are imported subject to an export obligation to be fulfilled within the prescribed period. Disputes may concern shortfall in export obligation, extension or regularisation, utilisation of the capital goods, or their transfer or disposal before fulfilment of the applicable conditions. In many cases, the export obligation period itself extends over several years. By the time proceedings are initiated, the capital goods may have been fully deployed, depreciated, transferred or otherwise integrated into the business.

Advance Authorisation presents a similar difficulty. The scheme permits duty-free import of inputs against specified export obligations and value-addition requirements. Disputes may arise from export-obligation shortfall, value-addition requirements, realisation of export proceeds, job-work arrangements or, during the relevant period, compliance with the pre-import condition. The pre-import condition is particularly instructive. A substantial body of litigation arose from transactions undertaken when the condition was in force, with exporters subsequently facing proceedings concerning imports and exports completed years earlier. By then, the goods had been exported, export proceeds realised and, in appropriate cases, the authorisation had been redeemed or otherwise closed.

This is where the doctrine of reasonable time assumes practical significance. The lifecycle of an EPCG or Advance Authorisation transaction provides an important factual framework against which delay must be assessed. The authority must consider when the alleged irregularity became known, whether the relevant material was available at the time of issuance or redemption, why proceedings were not initiated earlier, and what prejudice follows from reopening a transaction that has since been acted upon.

13. 2019 (9) TMI 970 - PHC
14. 2022 (12) TMI 323 – BHC

Recent decisions also illustrate why DGFT enforcement cannot be examined in isolation from the regulatory framework as a whole. In ***Alamelu Balaji Spinning Mills Pvt. Ltd. vs. Tuticorin***[15], the CESTAT considered the interplay between the FTDR framework, the FTP, the HBP, the applicable customs exemption notification and the administrative record in examining export-obligation compliance. The validity of enforcement action must therefore be assessed within the complete statutory and policy framework governing the transaction.

These questions reveal the common thread running through disputes involving EPCG, Advance Authorisation, and transferable scrip. The longer a regulatory benefit travels through its statutory and commercial lifecycle, the more consequential the decision to reopen it becomes.

That is where limitation moves from being a procedural defence to becoming a question of commercial certainty.

VI. Consequences for importers and exporters

The delayed enforcement has consequences beyond the immediate demand. It operates at four distinct but interconnected levels: monetary, operational, commercial and systemic.

(a) Monetary exposure

The most immediate consequence is financial. Where the conditions of an EPCG or Advance Authorisation are alleged to have been breached, the resulting proceedings may expose the importer or exporter to customs duty, interest and penalty, and, in appropriate cases, confiscation and redemption consequences.

What was originally a reduced-duty or duty-free import may therefore be followed, years later, by a demand seeking to reverse the fiscal benefit, together with interest accruing over the intervening period. Section 11 of the FTDR Act may also expose the noticee to substantial penalties, depending on the nature and value of the contravention [ranging from a minimum of ten thousand rupees to up to five times the value of the goods, services, **or technology** involved in the contravention].

The passage of time can therefore transform the economic character of the original transaction. A dispute that began with an alleged procedural or compliance lapse may, years later, translate into a liability substantially exceeding the benefit originally availed.

(b) Operational disruption

The consequences are not confined to the balance sheet.

Pending enforcement proceedings may affect the ability of an exporter or importer to access the wider foreign trade framework, including the grant or utilisation of authorisations and other export promotion benefits. In appropriate cases, proceedings may also extend to suspension or cancellation of the IEC or placement of the entity on the Denied Entity List.

For an export-oriented business, these consequences can be commercially

15. *2026 (6) TMI 19 – CESTAT Chennai*

disruptive. The inability to access authorisations or other trade benefits can affect procurement, pricing, fulfilment of export orders and the continuity of international operations.



The regulatory consequence of a delayed proceeding may therefore continue to operate long after the underlying transaction has ceased to be commercially active.

(c) Commercial uncertainty

Where proceedings remain pending for years, the business operates under a continuing cloud of uncertainty.

The potential exposure to duty, interest and penalty may affect pricing decisions, export commitments and investment in capacity. Pending disputes may also become relevant in financing, due diligence, restructuring or merger and acquisition exercises.

This uncertainty has a significance beyond the individual business. A foreign trade regime depends upon businesses being able to understand the consequences of a transaction when they enter into it. If the regulatory consequences of a completed transaction remain uncertain for years thereafter, the cost is borne not merely by the individual exporter but by the predictability of the regulatory framework itself.

(d) Cascade effects

The consequences may extend still further where the transaction forms part of a larger commercial chain.

Export promotion transactions may involve transferable scrips, intermediate authorisations, job-work arrangements, deemed exports and

Export promotion transactions may involve transferable scrips, intermediate authorisations, job-work arrangements, deemed exports and multiple entities performing different stages of the transaction. An action against the original holder may therefore affect transferees, suppliers, job-workers, buyers or financing institutions that had acted on the validity of the underlying instrument.

The FTDR Act therefore needs a clear temporal architecture. Proceedings for cancellation, recovery or penalty should be subject to a defined period, with a longer but finite outer limit for fraud or deliberate suppression. The law should also expressly address expired or redeemed instruments and transactions involving innocent third parties, particularly where retrospective cancellation is sought.

multiple entities performing different stages of the transaction. An action against the original holder may therefore affect transferees, suppliers, job-workers, buyers or financing institutions that had acted on the validity of the underlying instrument.

The problem is particularly acute in the case of transferable scrips. Once a scrip has been issued and transferred for consideration, the regulatory act has acquired a commercial life beyond the original beneficiary. A subsequent attempt to unsettle that instrument may therefore create disputes with parties who had no involvement in the alleged original irregularity.

These cascade effects reveal why delay in foreign trade enforcement cannot be viewed as a dispute confined to the original noticee. Time changes the number and nature of interests attached to a transaction. The longer a regulatory benefit remains undisturbed and the further it travels through the commercial chain, the greater the consequences of reopening it.

The practical consequences of delayed enforcement therefore reinforce the central limitation question. The issue is not merely how long the State may wait before initiating proceedings; it is what happens to the legal and commercial landscape while the State waits.

VII. Need for legislative reforms and certainty

The limitation gap in DGFT enforcement is not a mere technical omission in the FTDR Act; it is a structural weakness in India's export promotion framework. Statutory silence on time does not make State power infinite; it makes it uncertain. In foreign trade, that uncertainty has a price. This uncertainty may complicate investments and commercial planning decisions, and turn today's export incentive into a benefit overshadowed by the possibility of tomorrow's reopening.

The courts have partly filled this gap through the doctrines of reasonable time, administrative finality and legitimate expectation. But judicial doctrine can discipline uncertainty; it cannot permanently substitute for legislative clarity.

The FTDR Act therefore needs a clear temporal architecture. Proceedings for cancellation, recovery or penalty should be subject to a defined period, with a longer but finite outer limit for fraud or deliberate suppression. The law should also expressly address expired or redeemed instruments and transactions involving innocent third parties, particularly where retrospective cancellation is sought.

This is not a plea for impunity. Fraud must be met with enforcement; but enforcement must know when to stop. For a country seeking to become a reliable global manufacturing and export hub, temporal certainty is not a concession to exporters. It is part of the promise of a credible regulatory regime. ***The State must have the power to look back. It must not have the power to look back forever.***

■

SUPREME COURT



Keshav B. Bhujle
Advocate

1 L.K. TRUST VS. CIT (2026) 489 ITR 10 (SC): 2026 SCC ONLINE SC 839 DATED 7-5-2026

Business expenditure — Interest on borrowed capital:— (A) General principals — Section deals with capital borrowed and not other debt or liability — Capital means money and not any other asset purchased on credit; (B) Whether interest allowable to where borrowed funds invested by assessee in its sister concern — Factors to be considered — Transfer of borrowed funds to be considered from point of view of commercial expediency and not whether amount advanced for earning profits; (C) Assessee taking loan to invest in shares — Transferring sum to sister concern — Sister concern purchasing shares out of funds but transferring only part of shares to assessee — Assessee paying interest on entire borrowings — Assessing Officer denied deduction u/s. 36(1)(iii) holding that the assessee has not used the loan money for its business — Tribunal allowed the deduction — High Court upheld the assessment order taking view that business of subsidiary is not business of assessee, that finding of Tribunal based on commercial expediency not correct, and that amount borrowed ultimately not utilized for business of assessee — Supreme Court held that the view of the High Court is Erroneous and that assessee is entitled to deduction of interest paid in respect of capital borrowed for purpose of business: S. 36(1)(iii) and 148 of ITA, 1961: A. Y. 1989-90

The assessee borrowed a sum of ₹ 3,80,00,000 (rupees three crores and eighty lakhs only) from the Corporation Bank to purchase shares of Shaw Wallace and Company Limited in pursuance of an agreement dated November 19, 1987. Under the said agreement, the company had committed to sell 7.80 lakhs shares for a total consideration of ₹ 3,80,00,000.

For A. Y. 1989-90, the assessee filed its return of income declaring a total income of ₹ 7,55,67,530/-. The assessee had claimed deduction of interest of ₹ 21,74,234/- paid on the loan u/s 36(1)(iii) of the Income-tax Act, 1961. In the assessment proceedings, the Assessing Officer noted that the assessee had availed of a loan of rupees ₹ 3,80,00,000 from the Corporation Bank and had paid interest of ₹ 21,74,234. However, the Assessing Officer further noted that the amount had been transferred to M/s. Gayatri Holdings Private Limited, a group company, through purchase of its shares, who in turn transferred the amount to one Shri G. Venkateshwaran for the purchase of shares of M/s. Shaw Wallace and Company Limited. In such circumstances, the Assessing Officer took

the view that the assessee was not entitled to claim deduction under section 36(1)(iii) of the Act and accordingly the interest paid on the loan was disallowed.

The Commissioner of Income-tax (Appeals) upheld the disallowance. The Tribunal allowed the appeal preferred by the assessee.

In the appeal preferred by the Revenue, the Karnataka High Court admitted the following two substantial questions of law for consideration:

"1. Whether the assessee who is carrying on film business is entitled to claim deduction under section 36(1)(iii) of the Act in respect of interest of ₹ 21,74,234 on amount borrowed from Corporation Bank to purchase shares of Shaw Wallace and Company Limited on behalf of itself and other firm?

2. Whether the assessee and its beneficiaries who borrowed a sum of ₹ 3,80,00,000 and transferred the same to M/s. Gayathri Holding Private Limited, who in turn advanced this amount to G. Venkateswaran to purchase shares on his behalf and on behalf of M/s. Sujatha Films Limited., Sujatha Productions Private Limited., Aruna International Private Limited and Sujatha Estate (Private) Limited, from Shaw Wallace and Company Limited is nothing but a colourable device adopted to seek benefit of interest allowance under section 36(1)(iii) of the Income-tax Act?"

The High Court answered the two questions of law, in favour of the Revenue, holding as under:

> "That the appellant-trust has borrowed a loan from the bank in order to invest the same in its share business. It is also not in dispute that a sum of ₹ 3,80,00,000 has been transferred to M/s. Gayathri Holdings Private Limited by the assessee. It is also not in dispute that the assessee has paid the interest payable to the bank on the entire borrowings. It is also not in dispute that out of ₹ 3,80,00,000 transferred to M/s. Gayathri Holdings Private Limited, certain amounts of shares of Shaw Wallace and Company are also transferred to the name of the assessee. Therefore, we are of the view that the Assessing Officer was justified in granting the relief to the assessee in respect of the value of the shares purchased by it through M/s. Gayathri Holdings Private Limited in respect of shares of Shaw Wallace and Company Limited. We are also of the view that the Assessing Officer is justified in disallowing the interest paid by the assessee to the bank in respect of the amount which was lying with M/s. Gayathri Holdings Private Limited in the account of the assessee."

The Supreme Court allowed the appeal filed by the assessee and held as under:

"i) The only question that falls for our consideration is whether the High Court committed any error in passing the impugned order?

ii) The short point that falls for our consideration is whether the appellant-assessee is entitled to a deduction of ₹ 21,74,234/- being the interest paid by it in respect of the loan availed of from the Corporation Bank u/s. 36(1)(iii) of the Income-tax Act, 1961?

iii) It appears on a plain reading of the impugned order that according to the High Court, the business of the subsidiary company cannot be considered in law as the business of the assessee. The High Court took the view that the finding of the Tribunal based on

commercial expediency is not correct. The High Court went on to observe that the amount borrowed was ultimately utilised for the benefit of the subsidiary company of the assessee and not for the business of the assessee as such.

iv) In ***Sharp Business System vs. CIT [(2026) 484 ITR 509 (SC); 2025 SCC OnLine SC 2892]***, one of the questions considered by this court was whether interest on borrowed funds invested by the assessee in its sister concern and its directors is an allowable business expenditure. In the aforesaid context, this court made an analysis of section 36 of the Income-tax Act, 1961, more particularly, section 36(1)(iii) thereof. After referring to its earlier decision in ***S.A. Builders Ltd. vs. CIT (Appeals) [(2007) 288 ITR 1 (SC); (2007) 1 SCC 781; 2006 SCC OnLine SC 1411]***, it has been opined that the Court should examine the transfer of borrowed funds from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits. In the facts of that case, it was held that the assessee was entitled to claim allowance of interest on the borrowed funds invested in a sister concern for acquiring controlling interest.

v) We are in complete agreement with the line of reasoning assigned by the Tribunal in so far as the interpretation of section 36(1)(iii) of the Act, 1961 is concerned. It is declared that the assessee is entitled to seek deduction of the amount of the interest paid in respect of the capital borrowed to the tune of ₹ 3,80,00,000 for the purposes of the business.

vi) The sub-section has three important words or phrases, i.e., (i) interest, (ii) borrowed and (iii) for the purpose of business or profession. The definition of "interest" in section 2(28A) means "interest payable in any manner in respect of any moneys borrowed or debt incurred". But for section 36(1)(iii), "interest" is restricted to that on money borrowed and not on debt incurred. In other words, the essence of interest is that it is a payment which becomes due because the creditor has not had his money at his disposal. It may be regarded either as representing the profit he might have made if he had had the use of his money, or conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation.

vii) The provisions of section 36(1)(iii) concern capital borrowed and not other debts or liability. A loan of money undoubtedly results in a debt, but every debt does not involve a loan. Liability to pay a debt may arise from diverse sources and a loan is one of such sources. The Legislature has, under this clause, permitted as an allowance interest paid on capital borrowed for the purposes of the business; and the capital, in this context, means money and not any other asset purchased on credit [***Bombay Steam Navigation Co. (1953) Pvt. Ltd. vs. CIT (1965) 56 ITR 52 (SC); 1964 SCC OnLine SC 163]***.

viii) The expression "for the purpose of business" occurs in section 36(1)(iii) and also in section 37(1). A similar expression with different wording also occurs in section 57(iii), which reads as "for the purpose of making or earning income". This issue came up for consideration before this Court in the case of ***Madhav Prasad Jatia vs. CIT [(1979) 118 ITR 200 (SC); (1979) 3 SCC 634; 1979 SCC (Tax) 279; 1979 SCC OnLine SC 218]***. The Court held that the expression occurring in section 36(1)(iii) is wider in scope than the expression occurring in section 57(iii).

Thus, meaning thereby that the scope for allowing a deduction under section 36(1)(iii) would be much wider than the one available under section 57(iii).

ix) In the result, this appeal succeeds and is hereby allowed."

2 CIT VS. SHRI SHIVAJI EDUCATION SOCIETY (2026) 489 ITR 1 (SC): 2026 SCC ONLINE SC 1164: DATED 19/02/2026

Charitable trust/purpose — Registration u/s. 12A/12AA — Registration granted to assessee (Established in the year 1932), valid for more than a decade — Application of assessee for Continuation/grant of registration u/s. 12AA denied — Tribunal directed the grant of registration from 29/09/2009 to A. Y. 2026-27 — High Court affirmed the order of the Tribunal — Supreme Court declined to go into the merits of controversy and held that the Department is at liberty to take appropriate steps if assessee found violation terms for grant of registration: S. 12AA of ITA, 1961

The assessee-society was established in the year 1932 and is running a number of educational institutions. The assessee-society was granted registration as an educational charitable institution u/s 12AA of the Income-tax Act, 1961. An application for registration u/s 12AA of the Act was filed on March 5, 2009. The Commissioner of Income-tax (Exemption) rejected the same vide order dated September 29, 2009.

On appeal, the Tribunal directed the grant of registration u/s 12AA from September 29, 2009 onwards and valid up to A. Y. 2026-27.

The appeal filed by the Revenue before the High Court was dismissed.

On appeal by the Revenue, the Supreme Court held as under:

"i) The fact at present is that the respondent assessee has the registration certificate valid up to the A. Y. 2026-27.

ii) It is also not a matter of dispute that in case any assessee who is registered u/s 12AA of the Act violates any of the conditions, the same can always be withdrawn after following due process of law.

iii) As in the case in hand, the registration granted to the respondent is in existence for the last more than a decade, instead of going into the merits of the controversy, we dispose of the present appeal leaving it open to the Revenue to take appropriate steps in case it is found that the respondent-society is violating any of the terms for grant of registration."

3 CIT VS. SHRI SHIVAJI EDUCATION SOCIETY (2026) 489 ITR 3 (SC): 2026 SCC ONLINE SC 1165: DATED 19/02/2026

Charitable trust/purpose — Donation to charitable institutions — Special deduction u/s. 80(G) — Approval of institution u/s. 80(G)(5) for exemption u/s. 80(G) is not automatic upon registration u/s. 12AA as a charitable institution — Assessee enjoying approval in terms of orders passed by the Tribunal and affirmed by the High Court

– Supreme Court held that the Department is at liberty to take action following due process of law against the assessee if found in violation of the terms on which approval is admissible: Ss. 12AA and 80G(5) of ITA, 1961

The assessee-society was established in the year 1932 and is running a number of educational institutions. The assessee-society was granted registration as an educational charitable institution u/s 12AA of the Income-tax Act, 1961. The issue is regarding the grant of approval u/s 80G(5) of the Act, for exemption u/s. 80G of the Act to the respondent assessee.

The Bombay High Court affirmed the order of the Tribunal directing grant of approval u/s. 80G(5) of the Act, to the assessee.

In appeal before the Supreme Court, the Department objected to the observations made by the High Court while dismissing the appeal of the Department to the effect that the grant of exemption could not be the subject matter of dispute, as the assessee has been granted registration u/s. 12AA of the Act.

The Supreme Court held as under:

"i) The primary grievance raised by the appellant is that the observations made by the High Court while dismissing the appeal of the Revenue run contrary to the law laid down by this Court in the case of ***CIT (Exemptions) vs. Sant Girdhar Anand Parmhans Sant Ashram [(2023) 452 ITR 52 (SC); 2023 SCC OnLine SC 363]***.

ii) The High Court has observed that grant of exemption to the respondent vide the order impugned before the High Court cannot be the subject matter of dispute, as the respondent had been granted registration u/s. 12AA of the Act. Whereas this Court in the aforesaid judgment had opined that the benefit u/s. 80G is not automatic on getting the registration u/s. 12AA of the Act, rather the requirements of section 80G of the Act have to be satisfied independently in each assessment year.

iii) On the other hand, learned counsel for the respondent submitted that the respondent-society is enjoying the exemption ever since it came into existence u/s. 80G of the Act from 1961 onwards. Now, it is too late to interfere in the present appeal, considering the fact that even after passing of the orders in favour of the respondent, the exemption is being enjoyed and no violation of any of the conditions laid down in section 80G of the Act has been pointed out.

iv) After hearing learned counsel for the parties, in our opinion, the present appeal can be disposed of while holding that the grant of exemption u/s. 80G of the Act is not automatic to registration u/s. 12AA of the Act as is laid down by this Court in the case of ***CIT (Exemptions) vs. Sant Girdhar Anand Parmhans Sant Ashram [(2023) 452 ITR 52 (SC); 2023 SCC OnLine SC 363]***.

v) As far as the case in hand is concerned, as the respondent-assessee is enjoying the benefit u/s 80G of the Act in terms of the orders passed by the Tribunal and as upheld by the High Court, we dispose of the present appeal, leaving it open to the Revenue to take action against the respondent in case it finds violation of any of the terms on which the benefit u/s. 80G of the Act is admissible. Needless to add that the due process of law needs to be followed."

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HIGH COURT



Jitendra Singh
Advocate



Radha Halbe
Advocate



Harsh Shah
Advocate

1 AIRPORTS AUTHORITY OF INDIA VS. DEPUTY COMMISSIONER OF INCOME-TAX [2026] 189 TAXMANN.COM 421 (DELHI HC)

Appeals to the Appellate Tribunal - Section 253 of the Income Tax Act 1961 - Appellate Tribunal disposed of appeal ex-parte without ascertaining the issuance and service of notice of hearing - order passed by Appellate Tribunal is bad in law fresh adjudication. [Rule 20 of the Income Tax (Appellate Tribunal) Rules, 1963]

Facts

The Assessee, Airports Authority of India, had preferred an appeal before the Income Tax Appellate Tribunal, Delhi Bench, against the order passed by the Revenue authorities. As reflected from the order sheets of the Tribunal, the matter was originally listed on 08.09.2025, 30.10.2025 and 24.12.2025. However, on each of these occasions, the Bench did not function and the matter stood adjourned by the Registry of the Tribunal. Ultimately, the appeal was adjourned to 02.02.2026. On the said date, the Tribunal proceeded to hear and dispose of the appeal ex-parte on merits. The Assessee contended that no notice intimating the date of hearing fixed for 02.02.2026 had ever been issued or served upon it and, therefore, it was denied an opportunity of being heard. Aggrieved by the ex-parte order passed by the Tribunal, the Assessee preferred an appeal before the Hon'ble Delhi High Court under section 260A of the Income-tax Act, 1961. Before the High Court, the Revenue was unable to dispute the Assessee's contention that no notice of hearing had been served upon it.

Ruling of the High Court

The Hon'ble Delhi High Court was pleased to allow the appeal filed by the Assessee and held that the Tribunal had committed a serious procedural irregularity by proceeding to decide the appeal ex-parte without first ascertaining whether notice of hearing had been issued and served upon the Assessee. Hon'ble Court observed that Rule 20 of the Income Tax (Appellate Tribunal) Rules, 1963 mandatorily requires the Tribunal to intimate the parties regarding the date and place of hearing sufficiently in advance so as to enable them to appear and present their case. In the present case, after the matter had been repeatedly adjourned on account of the Tribunal not functioning, there is nothing on record to demonstrate that any notice fixing

the hearing on 02.02.2026 has been served upon the Assessee. Thus, in the absence of service of notice, there was complete non-compliance with Rule 20 of Appellate Tribunal Rules, resulting in a manifest failure of justice and violation of the principles of natural justice. Consequently, the ex-parte order passed by the Appellate Tribunal is bad in law.

2 OIL AND NATURAL GAS CORPORATION LTD. VS. ITO (GUJARAT HC, ORDER DATED 19.08.2026 – SCA 6494 OF 2026)

Refund - Section 244A of the Income Tax Act 1961 - Refund pursuant to settlement of dispute under Direct Tax Vivad se Vishwas Act, 2020 - delay in issuance of refund pursuant to delay in issuing consequential order giving effect to Form 5 - Assessee entitled to interest on delayed refund from the issuance of Form 5 till actual date of refund.

Facts

The Assessee, ONGC, had opted for settlement of its disputes under the Direct Tax Vivad Se Vishwas Act, 2020 ('VsV Act'). Pursuant thereto, Form 5 under section 5(2) of the VsV Act was issued on 24.05.2021, certifying full and final settlement of the tax arrears. Pursuant to settlement the assessee entitled for refund. However, despite issuance of Form 5, the Revenue did not process the refund immediately. Instead, an order purportedly giving effect to Form-5 was passed only on 17.06.2022 and the refund order was ultimately issued on 07.02.2024. The refund amount was thereafter credited to the Assessee's account on 02.03.2024. Revenue also granted interest on the refund amount at the rate of 6% per annum from 01.07.2022, being the month following the consequential order dated 17.06.2022. Aggrieved by the denial of interest for the intervening period, i.e., from issuance of Form 5 upto order giving effect to Form 5 passed by designated authority, the Assessee approached the Hon'ble Gujarat High Court.

Ruling of the High Court

Hon'ble Gujarat High Court was pleased to allow the writ petitions filed by assessee by observing that the Assessee was entitled to interest on the delayed refund from 01.08.2021 till the date of actual credit of the refund amount. Section 5 of the VsV Act and Rule 7 of the Direct Tax Vivad Se Vishwas Rules, 2020 culminate in the issuance of Form-5 and do not contemplate any further consequential order after issuance of such certificate. Although CBDT Circular No. 03 of 2021 clarified that the Assessing Officer may pass consequential orders under the Income-tax Act, it did not prescribe any specific timeline for doing so. On the other hand, Clause 9 of Chapter VI of the CBDT Central Action Plan 2021-22 specifically required jurisdictional Assessing Officers to pass consequential orders and issue refunds by 31.07.2021 in all cases where Form-5 had been issued up to 30.06.2021. Since Form-5 in the present case had been issued on 24.05.2021, the Revenue was obligated to grant the refund by the said date and could not justify the delay by relying upon the consequential order passed much later on 17.06.2022.

3 PCIT VS. SYAMA PRASAD MOOKHERJEE PORT KOLKATA [2026] 189 TAXMANN.COM 917 (CALCUTTA)

Business Expenditure - Section 37 of Income Tax Act, 1961 - contribution to approved Superannuation Fund and Gratuity Fund made to bridge actuarial deficit is not subject to ceilings prescribed under Rules 87 and 103 - AO cannot disregard approval granted to gratuity fund by Commissioner - PF regulations do not prescribe any due date for deposit of employees' contribution - Hence, disallowance of such contribution under section 36(1)(va) cannot be made merely on basis of due date mentioned in tax audit report.

Facts

The Assessee, Syama Prasad Mookherjee Port Kolkata (formerly known as Kolkata Port Trust), filed its return of income for AY 2018-19, which was subsequently selected for scrutiny. The assessment order was passed under section 143(3) read with section 144B, by making, *inter alia*, three major disallowances i.e., firstly, contribution of ₹ 710.68 crore made to an approved Superannuation Fund was disallowed to the extent it exceeded the ceiling prescribed under Rule 87 of the Income-tax Rules, 1962, secondly, contribution of ₹ 33.11 crore to an approved Gratuity Fund was disallowed as being in excess of the limit prescribed under Rule 103 and thirdly, employees' contribution towards PF/ESI amounting to ₹ 8.38 crore was disallowed under section 36(1)(va) on the ground that the deposits were allegedly made beyond the due date. On appeal, the CIT(A) deleted all the disallowances. The Revenue's appeal before the Tribunal was also dismissed. Aggrieved thereby, the Revenue preferred an appeal before the Hon'ble Calcutta High Court under section 260A of the Act.

Ruling of the High Court

The Hon'ble Calcutta High Court dismissed the appeal filed by the Revenue and upheld the order of the Tribunal by observing that the assessee made contributions to an approved Superannuation Fund to bridge severe actuarial deficits and therefore such payments, being neither ordinary annual contributions under Rule 87 nor initial contributions under Rule 88, were not subject to 27% ceiling for ordinary contributions. Thus, disallowance was rightly deleted as actuarial deficit funding is distinguished by its remedial purpose, not by regularity.

As regards the contribution made to the approved Gratuity Fund, the Court observed that the contribution was specifically made to bridge the shortfall between the actuarial liability and the assets available in the fund maintained with LIC. Such contributions could not be treated as ordinary annual contributions subject to the ceiling prescribed under Rule 103. The Court further observed that section 36(1)(v) permits deduction of contributions made to an approved gratuity fund and does not itself prescribe any quantitative ceiling.

In relation to the disallowance under section 36(1)(va), the Court noted that the Assessee was governed by the Kolkata Port Trust (Non-Contributory Provident Fund) Regulations, 1988. The said regulations did not prescribe any due date for deposit of

employees' contributions. Therefore, the due date of the 15th day of the succeeding month reflected in Form 3CD was merely an artificial date entered by the tax auditor owing to limitations of the e-filing utility and could not be regarded as the due date prescribed under law. The Court held that section 36(1)(va) can be invoked only where there exists a legally prescribed due date under the applicable statute, rules, notification, contract or other governing instrument. In the absence of such a due date, there could be no delay capable of triggering a disallowance under section 36(1)(va) of the Act.

4 MANOHAR RAMABTAR JHUNJHUNWALA & ORS. VS. PCIT (BOMBAY HC, ORDER DATED 05.08.2026 – WP 2063 OF 2025)

Tax Deducted at Source (TDS) - Sections 199 and 205 of the Income-tax Act, 1961 - TDS deducted by deductor but not deposited with Government - deductee cannot be denied TDS credit merely on account of deductor's default - once deduction of tax is established, Revenue must grant corresponding TDS credit and cannot enforce consequential demand against deductee - absence of Form 16/Form 16A is not fatal where deduction can be established through other cogent evidence

Facts

The batch of writ petitions before the Hon'ble Bombay High Court raised a common issue concerning denial of TDS credit in cases where tax had admittedly been deducted from payments made to the Assessees but had not been deposited by the deductors with the Central Government. The petitioners comprised salaried employees and other taxpayers whose returns of income were processed under section 143(1) without granting credit for such TDS on the ground that the corresponding amounts were not reflected in Form 26AS. Consequently, demands were raised against the petitioners and, in certain cases, refunds of subsequent years were liable to be adjusted against such demands. The petitioners contended that once tax had been deducted from their income, they could not be asked to suffer adverse consequences on account of the deductor's failure to deposit the tax or file appropriate TDS statements. Reliance was placed upon section 205 of the Act as well as various judicial precedents holding that tax cannot be recovered from the deductee where it has already been deducted at source. The Revenue, on the other hand, contended that under section 199 read with Rule 37BA, credit of TDS could be granted only where such tax had been paid to the Central Government and duly reflected in the prescribed records.

Ruling of the High Court

The Hon'ble Bombay High Court was pleased to allow the writ petitions and held that sections 199 and 205 of the Act must be read harmoniously. The Court observed that section 205 is a substantive protection available to a deductee and becomes operative once it is established that tax has in fact been deducted from the income of the Assessee. Once tax is deducted, deductee has no control over the subsequent statutory obligations of the deductor, namely deposit of tax, filing of TDS statements and generation of Form 16/ Form 16A. Therefore, the deductee cannot

be penalised for the default of the deductor. Thus, once deduction of tax is established, the Revenue must proceed against the deductor and cannot seek to recover the tax again from the deductee. The Court therefore held that where deduction of tax is established, the Department is obliged to grant appropriate TDS credit and all consequential reliefs, including refund, if any. Any demand raised solely on account of non-payment of TDS by the deductor cannot be enforced.

The High Court further addressed the evidentiary burden in such cases and held that Form 16 or Form 16A cannot be treated as the sole mode of proving deduction of tax. The Court observed that under the present electronic compliance system, Form 16/Form 16A can ordinarily be generated only when the deductor has deposited the tax and filed the prescribed statements. Consequently, insistence upon such certificates would deprive relief in precisely those cases where deductors have defaulted. The Assessees may establish deduction of tax through other cogent material such as salary slips, bank statements, payroll records, payment advices, invoices, ledger accounts, correspondence with deductors, insolvency claims and other surrounding evidence. Once prima facie material is produced, the Department is required to verify the claim and, if deduction is established, grant TDS credit and take action against the defaulting deductor in accordance with law.

5 NIKHIL NAGINDAS MODI VS. DCIT (BOMBAY HC, ORDER DATED 05.08.2026 – WP 9105 OF 2022)

Reassessment – Notice - Sections 148 of the Income-tax Act, 1961 – unsigned approval obtained for issuance of notice under section 148 is invalid - presence of DIN or electronic generation of approval cannot substitute signature - absence of valid sanction renders assumption of jurisdiction under section 148 invalid - reassessment proceedings liable to be quashed. [Section 151 & 282A of the Act]

Facts

The Assessee, Nikhil Nagindas Modi, an individual engaged in the business of publishing magazines and books and also deriving salary income, filed his return of income for AY 2017-18 declaring total income of ₹ 67.13 lakh. The return was processed under section 143(1) and the returned income was accepted. Subsequently, a notice dated 30.03.2021 under section 148 seeking to reopen the assessment after obtaining approval from the Joint Commissioner under section 151 of the Act. Upon receipt of the reasons recorded for reopening and the copy of the approval, the Assessee objected to the reassessment proceedings. One of the principal objections raised by the Assessee was that the approval accorded under section 151 was unsigned and therefore did not constitute a valid sanction in law. It was further contended that the reasons recorded were vague and that the approval reflected complete non-application of mind. The Revenue, while not disputing that the approval did not bear any manual or digital signature, contended that the approval had been generated through the electronic system and carried a valid Document Identification Number (DIN), which according to the

Revenue was sufficient compliance with the statutory requirements. Aggrieved by the continuation of reassessment proceedings, the Assessee approached the Hon'ble Bombay High Court.

Ruling of the High Court

The Hon'ble Bombay High Court was pleased to allow the writ petition and quash the notice issued under section 148 of the Act by observing that sanction under section 151 is a jurisdictional pre-condition for assumption of authority under section 148 and is an important statutory safeguard against arbitrary reopening of completed assessments. The grant of a valid sanction by the specified authority is mandatory before jurisdiction can be assumed under section 148. The Court further observed that section 282A(1) expressly mandates that every notice or other document issued under the Act shall be "signed and issued" by the concerned income-tax authority. An approval granted under section 151 falls within the expression "other document" and therefore must necessarily bear the signature of the approving authority, whether manual or digital. In the absence of such signature, there is no means of establishing that the approving authority had applied its mind to the reasons recorded and was satisfied that the case warranted reopening. Accordingly, an unsigned approval cannot constitute a valid sanction contemplated under section 151 of the Act.

The Court further rejected the Revenue's contention that the existence of a DIN or communication through the electronic system dispensed with the requirement of signature. It held that the requirement of possessing a valid DIN and the requirement of a valid signature operate in different fields and compliance with one cannot substitute compliance with the other. The Court also declined to accept the argument based on section 282A(2), observing that authentication of a document by mentioning the officer's name and designation is distinct from the statutory requirement under section 282A(1) that the document must be signed. Thus, absence of signature is not a curable procedural defect but a jurisdictional infirmity which strikes at the very root of the reassessment proceedings. Since the approval under section 151 was admittedly unsigned on the date of issuance of notice under section 148, the AO lacked jurisdiction to reopen the assessment. Consequently, the notice under section 148, the order disposing of objections and all consequential proceedings is invalid and bad in law. ■

" Don't take rest after your first victory because if you fail in second, more lips are waiting to say that your first victory was just luck. "

A.P.J. Abdul Kalam

TRIBUNAL





CA Nikhil Mutha *CA Viraj Mehta* *CA Kinjal Bhuta*
Advocate

1 CYBERSTAR INFOCOM LLP (FORMERLY M/S CYBERSTAR INFOCOM PVT. LTD.) VS. ITO [ITA NO. 1926/BANG/2025 (BANGALORE TRIB)] (AY: 2014-15)

Section 40(a)(i) – Disallowance not sustainable where payee has furnished return of income – conditions of first proviso to Section 201(1) are satisfied – second proviso to section 40(a)(i) is applicable retrospectively from 01.04.2015

Facts

For the relevant year, the assessee has made payments towards purchases to a branch office of a foreign entity, which constitutes its Permanent Establishment in India, and the profits of the Permanent Establishment are liable to tax in India. The assessee failed to deduct TDS u/s. 195 of the Act. Accordingly, the AO made disallowance u/s. 40(a)(i) of the Act. Aggrieved, the assessee filed an appeal before CIT(A), who upheld the disallowance. Aggrieved, the assessee filed an appeal before the Hon'ble Tribunal.

Held

Before the Hon'ble Tribunal, the AR argued that the second proviso to section 40(a)(i) of the Act applies as the recipient has duly furnished in its return of income after taking into account the amount received from the assessee. The assessee cannot be considered as an assessee in default. The AR also furnished Annexure A to Form 26A certifying the compliance of conditions of the first proviso to section 201(1) of the Act. On the contrary, the DR argued that the assessee has only placed on record the Annexure to Form 26A, and the complete Form has not been placed on record. It was further argued that the payee has filed a NIL return and therefore did not pay the tax on the sum received from the assessee. All the conditions of the first proviso to section 201 of the Act are not satisfied.

The Hon'ble Tribunal, after analysing section 40(a)(i)/(ia) of the Act and referring to the judgements in the case of ***Pr. CIT vs. Perfect Circle India (P.) Ltd. [IT Appeal No. 707 of 2016 (Bom HC)]*** and ***CIT vs. Ansal Land Mark Township (P.) Ltd. [(2015) 61 taxmann.com 45 (Del HC)]*** and ***Celltick Mobile Media (India) (P) Ltd. vs. DCIT [(2021) 127 taxmann.com 598 (Mumbai-Trib.)]*** held that amendment by the Finance (No. 2) Act, 2019 whereby the second proviso was inserted, is applicable

retrospectively from 01.04.2015 The Hon'ble Tribunal further held that Form 26A is merely a declaration by the payer that it was responsible for paying the amount to the payee. The certificate from the accountant is, in fact, in Annexure A to Form 26A, which has been duly furnished by the assessee. In any case, various details required in Form 26A are already available with the Revenue and absence of Form 26A is a mere technical aspect. It was further held that clause (iii) of the first proviso to section 201(1) of the Act specifies "paid the tax due". The Act nowhere require the payee to compulsorily pay tax on the return filed. It was held that contentions of the DR would be contrary to Article 265 of the Constitution of India, which specifically requires that no tax can be levied or collected without authority of law. The Hon'ble Tribunal further noted that an order was passed u/s. 201(1A) of the Act and only interest was levied on the assessee. The appeal of the assessee was allowed and the disallowance u/s. 40(a)(i) of the Act was deleted.

2 PAWAN ONKARDAS CHANDAK VS. ACIT [ITA NO. 4183/MUM/2026 (MUMBAI TRIB.)] (AY 2022-23)

Section 69A – Addition on account of unexplained cash not sustainable where source is explained based on household savings, gifts and past cash balance – human probabilities and surrounding circumstances to be considered in assessing availability of cash in case of senior citizen and minor children

Facts

A search and seizure operation was conducted on the residential and business premises of the assessee, cash amounting to ₹ 16,64,500 was seized. The assessee explained the source of the cash pertaining to six family members, namely, himself, his wife, father, mother, son and daughter. The AO brushed aside the explanations of the assessee as he had filed return u/s. 44ADA of the Act and did not maintain regular books of account. The AO alleged that the cash books prepared subsequently were an afterthought. The AO further held that in the absence of absolute mathematical proof regarding the gifts received by the minors, the agricultural income of the father, and the savings of the mother, the entire cash balance of ₹ 16,64,500/- was liable to be taxed as unexplained money. Aggrieved, the assessee filed an appeal before CIT(A). The CIT(A) accepted the explanation for cash in the hands of the assessee, his wife and father, amounting to ₹ 7,77,100, taking into consideration their past tax returns, filing history and cash book. However, an addition of ₹ 8,87,400 relating to the mother and minor children was sustained. Aggrieved, the assessee appealed before the Hon'ble Tribunal.

Held

Before the Hon'ble Tribunal, the AR argued that the CIT(A) erred in applying standard corporate accounting metrics to a traditional Indian household. It was submitted that assessee's mother, being a senior citizen and the matriarch of the family, had accumulated her lifetime savings out of household allowances, pinned money, and family gifts.

She was saving money out of the household expenses and which was kept in the form of stridhan, and therefore, there was no reason to doubt the availability of a sum of ₹ 4,80,600/- in the hands of a senior citizen. With regard to availability of the cash of ₹ 2,25,300/- and ₹ 1,81,500/- in the hands of minor daughter and minor son respectively, the source was out of the money received from gifts on various occasions. The AR submitted that in view of the customary tradition, it is not impossible that two children might have possessed such a small amount in their hands. The CIT(A) has merely sustained the addition only for the reason that they did not file return of income. The AR submitted that the assessee has declared return of income in his hands, which is sufficient to even explain the money against the minor children. Alternatively, it was submitted that in AY 2019- 20, addition for cash amounting to ₹ 20,60,970 was made for sale proceeds of the agriculture income. However, CIT(A) deleted the said addition. Therefore, the said amount of ₹ 20,60,970/- is now available in the hands of the assessee as opening cash in hand for the year under consideration and sufficient to explain the cash found from the premises of the assessee. On the contrary, the DR relied on the order of lower authorities.

The Hon'ble Tribunal observed that tax authorities cannot function in a vacuum, completely detached from the socio-cultural realities and human behaviour native to Indian society. Reliance was placed on the judgement of ***CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC)*** and subsequently in ***Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC)*** wherein it was held that test of human probabilities and the surrounding circumstances are deeply relevant in evaluating the reality of a transaction. The Hon'ble Tribunal held that CIT(A) has sustained addition on hyper-technical ground that these three individuals do not file regular returns of income and lack independent commercial income streams, which is inherently flawed. Non filing of return by a non-earning senior citizen mother or minor children is a compliance reality, not an incriminating fact. The accumulation of cash by a senior citizen mother out of decades of household savings, pin money, and traditional 'stridhan' or gifts is a foundational aspect of Indian social practice. To demand that a senior citizen mother maintain regular commercial books of account to justify a saving of ₹ 4,80,600/- over her lifetime is to expect the impossible. The Hon'ble Tribunal further held that minor children receiving cash gifts from close relatives on celebratory occasions like Diwali, birthdays, and family milestones is completely customary. Such small cash presents do not demand mathematical precision or formal reporting in accounts. The Hon'ble Tribunal also accepted the alternative plea of the assessee of CIT(A) itself recognising cash in hand of ₹ 20,60,970 in the preceding assessment year. The same has not been shown by the Revenue to have been invested or expended elsewhere. The appeal of the assessee was allowed, and the addition was directed to be deleted.

3 THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-26, NEW DELHI VS. KCJ BUILDTECH PVT. LTD (ITA NOS. 9643 TO 9645/ DEL/2019 DATED 5/08/2026) (AY 2012-13 TO 2014-15) (DELHI ITAT)

Section 68/69C – Company merely used as a conduit for routing accommodation entries cannot be assessed in respect of such transactions

Facts of the case

KCJ Buildtech Pvt. Ltd had originally declared income of ₹ 5,883 for AY 2012-13. A search under Section 132 was conducted in the cases of Anand Kumar Jain and Naresh Kumar Jain (Jain Group) on 17 December 2015. During the search, documents were found indicating that the Jain Brothers were providing accommodation entries through various dummy/paper companies. KCJ Buildtech was one such alleged company managed and controlled by them.

The Ld AO consequently treated ₹ 2,22,96,490 credited in the assessee's bank accounts as unexplained cash credits under Section 68 of the Act on protective basis, while making substantive addition in the hands of the Jain Brothers, who used the assessee as a conduit to provide accommodation entries. The Ld. AO also added ₹ 55,741 as unaccounted commission at 0.25% for providing accommodation entries on substantive basis.

The CIT(A) deleted both additions on the premise that the assessee was merely used as a conduit and that the commission was actually received by Jain Brothers. Aggrieved by the Order of the Ld. CIT(A), the Revenue has filed an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT observed that it is an admitted fact that the assessee company was managed and controlled by Jain Brothers and was used as a conduit for routing accommodation entries. The Hon'ble ITAT further noted that the Hon'ble Co-ordinate Bench in the case of Shri Anand Kumar Jain (ITA No.1318 to 1324/Del/2019 dated 28/04/2023) already held that all such transactions are managed and controlled by Shri Anand Kumar Jain who has obtained the benefit of commission and the assessee company was managed and controlled by him. Accordingly, the Hon'ble ITAT concluded that addition in respect of both the amount, assessed under section 68 as well as under section 69C of the Act, is not sustainable.

4 RAMESHWAR FAKIRCHAND TOTALA VS. ITO, WARD 1(1), AURANGABAD (ITA NO. 1303/PUN/2026 DATED 21/08/2026) (AY 2020–21) (PUNE ITAT)

Section 69 – Whats app chat found on mobile phone of a third party cannot be relied upon – addition in respect of unexplained investment made is deleted

Facts of the case

The assessee, Rameshwar Fakirchand Totala, an individual and practising advocate, filed his return of income for Assessment Year 2020–21 declaring a total income of ₹ 36,62,110. Subsequently, a search and seizure operation under Section 132 of the Act was conducted in the cases of the Manjeet Pride Group and Gadiya Group. During the course of the search, WhatsApp chats were found on the mobile phone of Shri Prakash Motwani. The Department alleged that these chats related to Bhisi transactions. In his statement recorded under Section 132(4), Shri Motwani stated that the chats largely related to Bhisi transactions and that the figures recorded therein had been entered after suppressing two zeros. Based on the information contained in these chats, the Investigation Wing identified the assessee's mobile number as being connected with certain alleged Bhisi transactions and forwarded the information to the Ld. AO.

On the basis of this information, the assessee's assessment was reopened. The Ld. AO alleged that the assessee had made payments or investments aggregating to ₹ 10,52,450 in connection with the alleged Bhisi transactions during the relevant financial year. The assessee denied having undertaken these transactions and disputed the reliance placed upon the WhatsApp chats. He contended that the chats had been recovered from the mobile phone of Shri Prakash Motwani, a third party, and that there was no independent evidence establishing that he had actually made the alleged payments. Nevertheless, the Ld. AO treated ₹ 10,52,450 as an unexplained investment under Section 69 of the Act. The addition was subsequently upheld by the Ld. CIT(A). Aggrieved by the Order of the Ld. CIT(A), the assessee preferred an appeal before the ITAT.

Held

The Hon'ble ITAT, on facts, observed that the entire basis of the addition was the WhatsApp chats retrieved from the mobile phone of Shri Prakash Motwani, a third party, and that the Revenue had not brought any independent or corroborative evidence on record to establish the assessee's actual involvement in the alleged transactions. The Hon'ble ITAT held that the presumption relating to material found during a search could not automatically be applied against a third party. The Hon'ble ITAT also observed and held that the electronic material relied upon by the Revenue had not been sufficiently authenticated in the manner considered necessary under section 65B of the Indian Evidence Act, 1872. Accordingly, the Hon'ble ITAT held that, in the absence of independent corroborative evidence linking the assessee to the alleged unexplained investment, the WhatsApp chats recovered from the mobile phone of a third party were insufficient to sustain the addition under Section 69 of the Act. The Hon'ble ITAT therefore set aside the order of the CIT(A) and directed deletion of the addition of ₹ 10,52,450.

5 M/S DESIGN WORKSHOP (INDIA) PVT. LTD. VS. DCIT, CENTRAL CIRCLE-20, NEW DELHI (ITA NOS. 6237 TO 6241/DEL/2025 DATED 05/08/2026) (AY 2018-19 TO 2022-23) (DELHI ITAT)

Section 132 – Search & Seizure - Seized material in itself is not sufficient to establish income – Onus lies on the revenue to corroborate – Absent corroborative evidence, addition is deleted.

Facts of the case

A search and seizure operation was conducted on 9 February 2022 at the assessee's business premises, along with searches at various furniture dealers in Delhi. The assessee was engaged in the purchase and sale of premium furniture. During the search, the Department found certain loose papers and digital documents, including Excel sheets and communications involving the assessee's employees and directors. Relying principally on these materials, the learned AO concluded that the assessee had made sales outside its regular books of account and estimated undisclosed income by applying a gross-profit rate to the alleged unaccounted turnover. The Ld. CIT(A) granted partial relief by directing the AO to apply a net-profit rate instead of a gross-profit rate, but otherwise sustained the additions. Aggrieved by the Order of the Ld. CIT(A), the assessee filed an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT observed that the preliminary issue raised before us is not whether gross profit or net profit should be applied but whether the seized documents, in the absence of any corroborative evidence, establish any alleged sale outside books of accounts.

The Hon'ble ITAT observed that there is lack of corroboration of alleged transactions. The Ld. AO has relied upon the loose paper and construed the same depict the sales with corresponding receipt of money. However, same has been a matter of inferences. The onus to establish undisclosed income continues to remain upon the Revenue, notwithstanding the fact that the assessment arises pursuant to a search. The Ld. AO should demonstrate, to some extent ownership of the document, how under ordinary course of business the said documents were maintained and the content was consciously recorded by reference to identifiable parties, their status and obligations under law.

Basis the above ratio, the Hon'ble ITAT on facts of the case observed that seized material relied upon by the Revenue consists merely of loose sheets/digital documents which are not books of account maintained in the ordinary course of business. Loose papers may contain estimates, projections, quotations, proposed transactions, cancelled transactions, planning documents, incomplete business proposals, etc. Basis the same merely by interpolation of figures, inferences and suspicion, income cannot be determined absent unccorroborated independent verification or evidence.

The Hon'ble ITAT thus concluded that the seized documents and WhatsApp messages, by themselves, could not establish unaccounted cash sales since the documents did not record receipt of cash and were claimed to be mere estimates. Despite having complete details of the concerned parties, the Ld. AO made no enquiry

and also did not examine the authors of the documents. The Hon'ble ITAT further noted that the employees/directors had retracted their statements, which retractions were neither rebutted nor investigated, and that if undisclosed sales of the alleged magnitude had actually taken place, some corroborative evidence such as excess or shortage of stock, unaccounted purchases, parallel invoices, transport records, e-way bills, delivery challans, confirmations from customers or transporters, unexplained cash or bank deposits would ordinarily have been found. In the complete absence of such evidence, the addition was held to be based merely on suspicion and surmises, and the presumption under section 132(4A) was held insufficient, by itself, to justify the addition without supporting corroborative material. Accordingly, the appeal of the Assessee was allowed.

6 HITESHA SACHIN TAKUR VS. ITO, WARD 22(1)(6), MUMBAI [ITA NO.452/MUM/2026] (AY:2015-16)

Section 271(1)(c) – Penalty not sustainable where TDS paid exceeds tax liability and no tax was sought to be evaded - the concealment provision does not apply if there is no addition/disallowance/variation by AO.

Facts

The assessee did not file its return of income u/s 139(1) of the Act. Return was filed only in response to notice u/s. 148 of the Act, declaring total income of ₹ 18,05,950/-. Tax liability was determined at Rs. 3,75,650/-, and after claiming TDS credit of Rs. 4,30,896/-, a refund of ₹ 55,240/- was claimed. No addition, disallowances or variation of any nature was made to the returned income. However, the AO levied the penalty u/s. 271(1)(c) of the Act alleging that the assessee had failed to file the return of income u/s. 139(1) of the Act and that the income came to be disclosed only pursuant to reopening of assessment. Aggrieved, the assessee filed an appeal before CIT(A) wherein it was submitted that requirements for levy of penalty u/s. 271(1)(c) of the Act do not stand satisfied. The CIT(A) held that the penalty has been levied on the premise that the assessee had not filed return of income u/s. 139(1) of the Act and that the income came to light only pursuant to reopening of assessment. The explanation 1 to section 271(1)(c) places onus on the assessee to establish that the failure to disclose income at the initial stage was supported by a bonafide explanation and that all material facts were subsequently disclosed. It was held that income chargeable to tax came to be disclosed only pursuant to notice u/s. 148 of the Act. Accordingly, the penalty levied was confirmed by CIT(A). Aggrieved, the assessee appealed before the Hon'ble Tribunal.

Held

Before the Hon'ble Tribunal, the AR argued that all the income stood fully disclosed in the return filed in response to notice u/s 148 of the Act and that the AO accepted such disclosure without any modification. Reliance was placed on the decision of

coordinate bench in the case of Dwarka Cement Works Limited vs. ITO [ITA no. 6706/Mum/2025] wherein it was held that Explanation 1 to section 271(1)(c) would apply where there is an addition or disallowance sustained in reassessment order. If the AO has not made any addition over and above the returned income u/s. 148 of the Act, the foundational requirement for invocation of Explanation 1 itself is absent. Explanation 3 of section 271(1) specifies a situation where the assessee fails to furnish return of income within period specified u/s. 153(1) of the Act, without any reasonable cause, and until the expiry of the period aforesaid, no notice has been issued to him u/s. 148 and the AO is satisfied that the assessee has taxable income, then such person shall be deemed to have concealed the particulars of his income, notwithstanding that such person furnishes a return of his income, at any time, after the expiry of period aforesaid in pursuance of the notice u/s. 148 of the Act. It was submitted that said explanation has to be read along with clause (c) to Explanation 4 which specifies that where in any case to which Explanation 3 applies, the amount to tax sought to be evaded shall be taxed on total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issuance of notice u/s. 148 of the Act. In the present case, TDS was deducted on salary and interest income and deposited well before filing return of income u/s. 148 of the Act. There is no question of any tax sought to be evaded by the assessee. On the other hand, the DR relied on the order passed by the lower authorities.

The Hon'ble Tribunal noted that the returned income so filed by the assessee has been accepted and there has been no adjustment or variation. Tax has already been deposited on behalf of the assessee by way of TDS well before the issuance of notice u/s 148 of the Act. It was held that, being a case of deemed concealment in terms of Explanation 3, one has to read the same along with clause (c) of Explanation 4 for determining the tax sought to be evaded. There is no tax sought to be evaded as the tax already deducted and deposited prior to issuance of notice u/s 148 exceeds the final tax liability so determined by the AO. Accordingly, the penalty levied u/s. 271(1)(c) of the Act was deleted. ■

" Our duty is to encourage every one in
his struggle to live up to his own highest ideal,
and strive at the same time to make
the ideal as near as possible to the truth. "

Swami Vivekananda

CASE LAW UPDATE



Dr. CA Sunil Moti Lala
Advocate

I. PLACE OF EFFECTIVE MANAGEMENT (POEM)

CBDT CIRCULAR NO. 08/2017- TURNOVER EXCLUSION OVERRIDES VOLUNTARY POEM FILING - REFUND ALLOWED

1 KERN ENTERPRISE LTD. VS. DY CIT, IT [2026] 188 TAXMANN. COM 378 (MADRAS) [25-06-2026] - W.P. NO. 19206 OF 2023 – [AY 2017-18 TO 2020-21]

Where assessee, a New Zealand-incorporated company and subsidiary of an Indian logistics company, filed returns in India as a resident based on POEM but was later found resident only in New Zealand and below threshold under CBDT Circular No. 08/2017, it was not liable to tax in India for the relevant years and tax paid ought to have been refunded along with interest, with section 155(14A) operating substantively and procedures not barring substantive relief [India – New Zealand DTAA]

Assessee-company, incorporated in New Zealand as a subsidiary of an Indian logistics company, had filed returns in India for relevant assessment years treating itself as a foreign company resident in India on basis of POEM. It had paid aggregate taxes of about ₹ 56.66 lakhs. Subsequently, by communication dated 17.11.2021, Inland Revenue Department, New Zealand stated assessee was resident in New Zealand and liable there on worldwide income. Assessee paid NZD 64,867 (about ₹ 32.43 lakhs) in New Zealand on 07.12.2021. It then applied on 24.03.2022 to Indian department seeking refund of about ₹ 56.66 lakhs under section 155(14A) read with Rule 128; in alternative, it restricted claim to about ₹ 32.43 lakhs corresponding to tax paid abroad. In a written submission dated 20.04.2023, it asserted that POEM was inapplicable in view of CBDT Circular No. 08/2017 and that claim was within six months of settlement of its residency/tax in New Zealand. Revenue passed an order dated 12.05.2023 under section 155(14A) read with Rule 128 rejecting refund claim, recording

that returns were voluntarily filed based on POEM, that concluded assessments could not be reversed, that section 155(14A) was not applicable, and that any relief should be sought from New Zealand authorities under DTAA mechanism High Court ruled that since in Circular No. 08/2017 dated 23.02.2017, CBDT clarified that provision of clause (ii) of sub-section (3) of Section 6 will not apply to a company having a turnover or gross receipts of ₹ 50 crores or less in a financial year, and it shall come into effect from 1 April 2017 and accordingly applies to assessment year 2017-18 and subsequent years, thus, assessee was not liable to tax in terms of above clarifications of Board and therefore, tax paid by assessee ought to have been actually refunded back to petitioner. Further it was ruled that section 155(14A) is both substantive and procedural and therefore, benefit should ensure to assessee, notwithstanding procedural impediments, if any. Thus, impugned order was quashed, and case was remitted back to respondent to refund tax paid by assessee for assessment years in question together with interest in accordance with law. [***Commissioner of Sales Tax vs. Auriaya Chamber of Commerce 1986 taxmann.com 531 (SC)/1986 (3) SCC 50 followed***]

II. PERMANENT ESTABLISHMENT

I. DAPE/FIXED PLACE PE

1 ACIT VS. GE POWER SOLUTIONS (MALAYSIA) [2026] 188 TAXMANN.COM 1004 (SC) [17-07-2026] - SLP (CIVIL) DIARY NO. 21549 OF 2026 – [AY 2013-14 TO 2017-18]

SLP dismissed against order of High Court that where AO issued reopening notice against assessee, a foreign company, on ground that assessee had a PE in India in form of a Dependent Agent PE and Fixed Place PE, since a plain reading of reasons as recorded by AO clearly indicated that there was no tangible material for forming a belief that assessee had a dependent PE or a Fixed Place PE in India during relevant assessment years, HC set aside reopening notice issued against assessee

Assessee, a non-resident company, was engaged in business of manufacturing, sales, marketing of power generation equipment and technical support services. A survey under section 133A was conducted upon assessee's sister concern in India, namely, 'GPIL'. On basis of same, AO noted that assessee had a PE in India in form of a DAPE and Fixed Place PE and, thus, part of its business income attributable to its PEs was chargeable to tax in India. He also noted that post survey operations, it was found that assessee had made certain supplies to Indian entities, however, no tax was deducted on payments made by Indian entity for said supplies. On basis of same, he issued reopening notice against assessee. High Court noted that a plain reading of reasons as recorded by AO clearly indicated that there was no tangible material for forming a belief that assessee had a dependent PE or a Fixed Place PE in India during relevant assessment years. High Court held that, on facts, reopening notice issued against assessee was unjustified and same was set aside.

Since no case for interference was made with impugned order of High Court, the Hon'ble Supreme Court dismissed the SLP. ***[SLP dismissed against Ge Steam Power Systems vs. Assistant Commissioner of Income-tax [2026] 185 taxmann.com 914 (Delhi)]***

2 PCIT VS. CHOLAMANDALAM [2026] 189 TAXMANN.COM 259 (SC) [27-07-2026] - SLP (CIVIL) DIARY NO(S). 38047 OF 2026 – [AY 2005-06 TO 2010-11, 2013-14 AND 2014-15]

SLP dismissed against order of High Court that where assessee, an insurance company, made payments towards reinsurance premium to non-resident reinsurers (NRRs) without deducting tax at source, since brokers were acting as independent entities merely playing role of facilitators, no tax at source was to be deducted on these payments, thus, payments made by assessee to NRRs could not be disallowed under section 40(a)(i)

Assessee was an insurance company carrying on reinsurance business. It made payments towards reinsurance premium to non-resident reinsurers (NRRs) without deducting tax at source. AO disallowed such payments under section 40(a)(i) for non-deduction of TDS under section 195. High court noted that discussion in order of Tribunal set out relevant facts making it clear that brokers were acting as independent entities merely playing role of facilitators and they did not engage in negotiation of the terms and neither did they finalize the percentages of commission in regard to the reinsurance contracts. Tribunal thus concluded that brokers did not either constitute a business connection in terms of Explanation (2) to section 9(1)(i) or a PE in terms of article 5 of relevant DTAAs. High Court held that no material was produced by Department before court to dislodge factual findings rendered by Tribunal. Therefore, payments made by assessee to NRRs could not be disallowed under section 40(a)(i). Supreme court ruled that since no case for interference was made with impugned order of High Court, SLP was dismissed. ***[SLP dismissed against Principal Commissioner of Income-tax-4 vs. Cholamandalam MS General Insurance Company Ltd. [2025] 175 taxmann.com 452 (Madras)]***

III. BUSINESS PROFITS

COMMISSION TO NON-RESIDENT AGENTS NOT LIABLE TO TDS

1 CIT (IT AND TP) VS. NIDRA HOSPITALITY GUJARAT (P.) LTD. [2026] 188 TAXMANN.COM 215 (GUJARAT) [23-06-2026] - R/TAX APPEAL NO. 438 OF 2026 – [AY 2017-18]

Where assessee paid commission to travel agents on hotel bookings made through websites or subsidiaries, such commission was not covered under other sums liable for TDS under section 195 and, having filed TDS return and Form 15CB, assessee could

not be considered as assessee in default under section 201

AO noted that assessee had paid commission to certain non-resident travel agents, booking websites and credit card companies without deducting tax at source under section 195. He thus treated assessee as an assessee-in-default under sections 201(1) and 201(1A). Tribunal noted that assessee had submitted Form 15CB related to each transaction involving payment to non-resident, deducted tax wherever required in accordance with Income-tax Act and applicable DTAAs, and duly deposited such tax. Tribunal held that assessee could not be treated as an assessee in default. High Court ruled that commission paid to travel agents on hotel bookings on websites as well as subsidiaries of travel agents would not be covered under provision of other sums liable for TDS as per provisions of section 195. Once assessee had discharged its obligation by filing TDS return and Form 15CB i.e. certificate from a Chartered Accountant for liability of deduction of tax under Chapter-XVIIB as per Rule 37BB of Income Tax Rules, 1962, assessee could not be considered as assessee in default under section 201. ***[Order of the Income Tax Appellate Tribunal in ITAT/882/AHD/2025, affirmed]***

IV. SHIPPING & AIR TRANSPORT

INCOME FROM OPERATING CRUISES

1 DIT (IT) VS. STAR CRUISES (INDIA) (P.) LTD. [2026] 188 TAXMANN.COM 1068 (SC) [30-07-2026] - TS-1155-SC-2026 - CIVIL APPEAL NO(S). 3334 & 3336 OF 2012 – [AY 2006-07 TO 2008-09]

Where non-resident operated cruises originating and terminating at same port in India and earned income from cruise packages, mere provision of hospitality and entertainment services on board did not exclude cruises from scope of 'carriage' under section 44B, thus, income was taxable on a presumptive basis under section 44B at 7.5% of the gross cruise fare receipts

Assessee, Indian agent of non-resident ship operator (SLL), operated cruises in India and collected revenue from sale of cruise packages and shore excursions. Assessee claimed that income accruing to SLL was taxable on a presumptive basis under Section 44B, with estimated income at 7.5 per cent of gross cruise fare receipts. AO observed that cruises originated and terminated at Mumbai as round trips with hospitality/entertainment on board and did not merely transport passengers from one port to another. He, thus, treated activity as primarily hospitality/entertainment and estimated deemed income at 25 per cent of cruise fare receipts. It was noted that possibility of passengers de-boarding at intermediate ports was not taken into account by AO. Supreme court ruled that providing ancillary services on a voyage did not take away from meaning of 'carriage' as per Section 44B. Thus, AO's restrictive interpretation of 'carriage' as requiring movement from one port to another was erroneous and income accruing to SLL from operating cruises in India was assessed at presumptive rate of 7.5 per cent of gross cruise fare receipts for purposes of deduction under section 195. ***[Order of the Bombay High Court in Income Tax Appeal Nos. 485, 486 and 683 of 2010, dated 01-07-2011 affirmed]***

V. INTEREST

TAX REFUND INTEREST NOT EFFECTIVELY CONNECTED WITH PE TAXABLE AT TREATY RATE AS PER ARTICLE 11(2)

1 UPS ASIA GROUP PTE. LTD. VS. ACIT (IT) [2026] 187 TAXMANN.COM 990 (MUMBAI - TRIB.) [24-06-2026] - IT APPEAL NO. 1363 (MUM) OF 2025 - [AY 2022-23]

Interest income from income-tax refund received by Singapore resident was not effectively connected with any PE in India either on basis of asset or activity test, such interest was to be taxed in India as per article 11(2) of India-Singapore DTAA. [India-Singapore DTAA]

Assessee, a Singapore based company, was engaged in business of supply chain management, freight forwarding and logistics services. Assessee received interest on income tax refund which was offered to tax @ 15% of India-Singapore Tax Treaty - AO held that interest received on Income-tax refund was taxable at normal rates i.e. taxable @ 40% along with applicable surcharge and cess. Tribunal ruled that such interest being not effectively connected with PE either on basis of asset test or activities test, interest on income-tax refund was taxable at treaty rate of 15% under the DTAA and not under normal provisions of Act. ***[UPS Asia Group Pte. Ltd. vs. Asst. CIT (International Taxation) IT Appeal No. 4797 (Mum) of 2023, dated 28-10-2024 followed]***

VI. FEES FOR TECHNICAL SERVICES (FTS/FIS)

EXPLANATION INSERTED IN SECTION 9(2) BY THE FINANCE ACT, 2010 WITH RETROSPECTIVE EFFECT FROM 1-6-1976 TO BE READ DOWN AS PROSPECTIVE

1 JINDAL THERMAL POWER COMPANY LTD. VS. DY CIT [2026] 189 TAXMANN.COM 218 (KARNATAKA) [06-08-2026] - TS-1208-HC-2026 (KAR) - WRIT PETITION NO. 192 OF 2011 (T-IT) AND OTHERS – [AY 1996-97 TO 1998-99]

FTS paid to a non-resident were chargeable to tax under section 9(1)(vii) only if the services were both rendered and utilised in India, a requirement unaffected by the Finance Act, 2007, and even if the amendment altered the interpretation of section 9, the more beneficial article 12(4) of the DTAA would prevail under section 90(2); the Explanation inserted in section 9(2) by the Finance Act, 2010 with retrospective effect from 1-6-1976, though styled as removing doubts, in substance widened the charging provision and created a fresh charge of tax, and was therefore to be read down as prospective, not retrospective from 1-6-1976; and CBDT Circular No. 7/2009,

withdrawing the beneficial Circulars No. 23 and 786, being oppressive to the assessee, likewise operated only prospectively and could not take away the benefit already conferred [India-USA DTAA]

The assessee entered into contracts with Raytheon Ebasco Overseas Ltd. (REOL), Badger Energy Inc. (BEI), and Energy Overseas International Inc. (EOI) for offshore equipment supply and related services, engineering, transportation and erection services, and construction materials and erection-related services respectively and deducted tax under section 195 on part payments to REOL as a safeguard measure by relying on beneficial CBDT Circular Nos. 23/1969 dated 23-7-1969 and 786/2000 dated 7-2-2000, which exempted from tax net profits of a non-resident not attributable to operations carried out in India even where a business connection existed, and claimed a refund of the tax so deducted. AO treated the Appellant as an assessee-in-default under section 201(1), holding that the amount credited to REOL represented FTS chargeable under section 9(1)(vii) read with Article 12(4) of the DTAA, Commissioner (Appeals) and Tribunal upheld taxability thereof. Assessee filed the present appeals to the High Court for AY 96-97, 97-98, 98-99. During pendency of the appeals, the Hon'ble Supreme Court in Ishikawajima-Harima, the Court held that section 9(1)(vii) required technical services to be both rendered and utilised in India, and a Coordinate Bench of the High Court (*vide* order dated 16-3-2009) granted (partial) relief on this basis to the assessee holding that Finance Act, 2007, while removing the requirement of residence, place of business or business connection in India, did not disturb this twin requirement. Department, aggrieved, filed SLP before the Supreme Court. Meanwhile, CBDT withdrew Circular Nos. 23 and 786 *vide* Circular No. 7/2009 dated 22-10-2009, and the Finance Act, 2010 further amended section 9(2) with retrospective effect from 1-6-1976, this time going a step further by removing even the requirement that services be rendered in India, so that mere utilisation of services in India would suffice to attract tax. Hon'ble Supreme Court disposed of the Department's SLP, granting liberty to move the High Court by way of review petition in light of the Finance Act, 2010 amendment. Department filed Review Petitions before the Karnataka HC, with the assessee also challenging the amendment through writ petition. High court ruled that Finance Act, 2010, though stated to be clarificatory and retrospective from 1-6-1976, removed the requirement of rendition of services in India and thereby widened the scope of the charging provision. Such an amendment, which effectively created a fresh tax liability, could not operate retrospectively merely because it was described as being "for the removal of doubts", and was therefore to be read as prospective. The Court further held that withdrawal of beneficial CBDT Circular Nos. 23/1969 and 786/2000 by Circular No. 7/2009 was oppressive, as it withdrew an existing benefit and enlarged the scope of taxability, and therefore could operate only prospectively. In the alternative, even assuming the Finance Act, 2010 amendment altered the domestic-law position, the more beneficial Article 12(4) of the India-USA DTAA prevailed under section 90(2). Accordingly, the appeals and writ petition were allowed, and the amendment was read down as prospective. ***[Whirlpool Corporation vs. Registrar of Trademarks (1998) 8 SCC 1, Harbanslal Sahnia vs. Indian Oil Corpn. Ltd. (2003) 2 SCC 107, Ishikawajima-Harima Heavy Industries Ltd. vs. Director of Income Tax, Mumbai [2007] 158 Taxman 259/288 ITR 408 (SC)/(2007) 3 SCC 481, and SEDCO Forex International Drill Inc. vs. CIT ((2005) taxman 352 (SC) followed, Order of ITAT, Bangalore Order of ITAT, Bangalore dated 18-5-2005 in ITA No. 245/BANG/1999 reversed]***

VII. ROYALTY

CLOUD COMPUTING SERVICES

1 CIT VS. AMAZON WEB SERVICES INC [2026] 189 TAXMANN.COM 257 (SC) [04-08-2026] - SLP APPEAL (C) NO(S). 17045 OF 2026 – [AY 2014-15 AND 2016-17]

SLP dismissed against order of High Court that where assessee, US company, provided cloud computing services to its customers, since assessee's customers did not acquire any right of using infrastructure and software of assessee for purposes of commercial exploitation and charges paid by assessee's customers were for availing services, which assessee provided by using its proprietary equipment and other assets, payments received could not be considered as royalties within meaning of article 12(3) of the DTAA [India- US DTAA]

Assessee, a US based company, was engaged in providing cloud computing services to its customers around globe. Assessee had received certain sums of money from Indian entities for rendering cloud computing services. AO held that income received by assessee from Indian entities for providing cloud computing services was chargeable to tax in India as royalty and FTS. It was noted that assessee operated a cloud computing platform, which essentially comprised of hardware as well as software. Assessee's customers did not acquire any right to commercially exploit any of assessee's intellectual property rights (IPRs). Provision of cloud computing services did not entail placing any hardware at exclusive disposal of customer. Assessee granted access to standard and automated services, which were available online - Customers could select from services offered according to their needs - High Court held that since assessee's customers did not acquire any right of using infrastructure and software of assessee for purposes of commercial exploitation and charges paid by assessee's customers were for availing services, which assessee provided by using its proprietary equipment and other assets, payments received could not be considered as royalties within meaning of article 12(3) of the DTAA. Supreme court ruled that since no case for interference was made with impugned order of High Court, SLP was dismissed. ***[SLP dismissed against Commissioner of Income-tax, International Taxation-1 vs. Amazon Web Services, Inc [2025] 174 taxmann.com 1188 (Delhi)/[2025] 478 ITR 44 (Delhi)]***

LIVE TELECAST

1 CIT VS. SRI LANKA CRICKET [2026] 189 TAXMANN.COM 657 (SC) [14-08-2026] - TS-1241-SC-2026 - SLP (CIVIL) DIARY NO(S). 42869 OF 2026

SLP dismissed against order of High Court that where consideration received by a non-resident for enabling live telecast of cricket matches did not extend beyond live feed and involved no transfer of copyright or derivative exploitation rights, it did not constitute royalty under section 9(1)(vi) or Article 12 of the DTAA between India and Sri Lanka

High Court held that consideration received by a non-resident for enabling live telecast of cricket matches does not constitute royalty under section 9(1)(vi) or Article 12, where rights granted do not extend beyond live feed and no copyright or derivative exploitation rights are transferred. Further, revenue having failed to show that rights of exhibition exceeded beyond 'live feed', no interference was warranted with Tribunal's order holding that such income was not taxable as royalty. ***Hon'ble Supreme court by following Dy. DIT, International Taxation v. Shine Satellite Public Company Ltd. [C.A. Nos. 586-593 of 2012, dated 13-1-2026], dismissed the SLP.***

VIII. CAPITAL GAINS

ESOPS

1 RAJESH R HEMRAJANI VS. ITO INT. TAX [2026] 189 TAXMANN.COM 183 (MUMBAI - TRIB.) [31-07-2026] - TS-1195-ITAT-2026(MUM) - IT APPEAL NO. 1284 (MUM) OF 2025 - [AY 2019-20]

Where assessee, a non-resident tax resident of UK, exercised ESOPs granted by Indian listed company and perquisite component was taxed as salary income in UK, assessee was entitled to adopt fair market value determined as per section 17(2)(vi) read with Rule 3 as cost of acquisition under section 49(2AA) when computing capital gains on subsequent share transfer, irrespective of whether perquisite was taxed in India. [India–UK DTAA]

Assessee, a non-resident and tax resident of UK, was employed with L&T Infotech Ltd., UK Branch, and had been granted 7,700 ESOPs in respect of equity shares of L&T Infotech Ltd., an Indian listed company, at an exercise price of Re. 1 per share. In relevant previous year, he exercised 1,540 options by paying Re. 1 per share, shares were credited to his demat account, and he sold all 1,540 shares through a recognised stock exchange for an aggregate sale consideration of about ₹ 25.99 lakhs.

For perquisite valuation under section 17(2)(vi) read with Rule 3, fair market value was about ₹ 1,753.58 per share. While computing capital gains, assessee adopted said fair market value as cost of acquisition under section 49(2AA) and reported a short-term capital loss of about ₹ 1.00 lakh. He stated that perquisite component (FMV minus exercise price) had been subjected to tax in UK as part of his salary income. AO held that perquisite did not accrue or arise in India under sections 5 and 9 and under the DTAA and therefore section 49(2AA) could not apply; cost of acquisition was restricted to actual exercise price of Re. 1 per share. Tribunal ruled that section 49(2AA) does not stipulate that perquisite should have actually been subjected to tax in India or included in total income of assessee and it merely refers to fair market value determined in accordance with statutory mechanism prescribed under section 17(2)(vi) read with Rule 3 of Income-tax Rules. Therefore, assessee was entitled to adopt fair market value of shares as on date of exercise, determined in accordance with section 17(2)(vi) read with Rule 3(8)(ii), as cost of acquisition under section 49(2AA) while computing capital gains arising on subsequent transfer of shares. ***[Ramamurthy Sridharan vs. ACIT [IT Appeal No. 1238 (Hyd) of 2008] distinguished]***

IX. DEPENDENT PERSONAL SERVICES

SALARY OF DEPUTED EMPLOYEE FOR SERVICES RENDERED OUTSIDE INDIA NOT TAXABLE IN INDIA

1 KACHANA RAGHUNATHA REDDY VS. DCIT/ACIT [2026] 189 TAXMANN.COM 512 (BANGALORE - TRIB.) [12-08-2026] - TS-1270-ITAT-2026(BANG) - IT APPEAL NO. 2405 (BANG) OF 2026 - [AY 2019-20]

Where assessee, a non-resident employee deputed to South Korea, rendered services outside India and salary for such services was paid by an Indian employer with TDS, such salary cannot be regarded as income earned in India merely due to payment or tax deduction in India, as only income received or accruing for services rendered in India is taxable in India under section 5(2) and 9(1)(ii). [India-Korea DTAA]

Assessee, an individual employee of Samsung R&D Institute India, Bangalore, was deputed to Samsung Electronics, South Korea, from 14-04-2018 to 13-04-2019. Salary of about ₹ 41.03 lakhs was paid by Indian employer with TDS of about ₹ 10.27 lakhs. In return, assessee offered about ₹ 0.93 lakhs attributable to 25 days' stay in India and claimed refund. Assessee claimed to be a non-resident and asserted that salary for services rendered in Korea was not taxable in India and, alternatively, was exempt under Article 15(1) of the DTAA. Scrutiny was initiated by notice under section 143(2). Assessee furnished some documents but did not produce Korea tax return as required by AO. AO, without disputing assessee's non-resident status, completed

assessment under section 143(3) and added about ₹ 38.22 lakhs being salary claimed as attributable to Korea to total income on account of non-furnishing of Korea tax return. Before Tribunal, assessee produced Korean Tax Residency Certificates, Korea tax return, and proof of taxes paid in Korea in support of DTAA relief under article 15(1), and Revenue sought verification of these documents. Tribunal ruled that once assessee was accepted as a non-resident, scope of his total income was governed by Section 5(2). Section 5(2) provides that, in case of a non-resident, only such income is chargeable to tax in India as is received or deemed to be received in India, or accrues or arises, or is deemed to accrue or arise, in India. Further, section 9(1)(ii) of Act provides that salary is deemed to accrue or arise in India only if it is earned for services rendered in India. Explanation to section 9(1)(ii) makes it clear that salary is regarded as earned in India where services are rendered in India. Therefore, where a non-resident renders services outside India, salary relatable to such services ordinarily cannot be regarded as income earned in India merely because salary is paid by an Indian employer or tax has been deducted at source in India. Since assessee had now placed these documents before Tribunal, matter was remanded to AO for verification of these documents the Tribunal directed that if, upon such verification, the AO finds that the assessee was entitled to the benefit of Article 15(1) of the DTAA and that the salary relates to services rendered in Korea during the period in which the assessee was a non-resident, the exemption claimed shall be allowed in accordance with law.

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A. DECISIONS BY SUPREME COURT

1 TATA STEEL LIMITED VS. UNION OF INDIA [2026-TIOL-43-SC-GST] – SUPREME COURT OF INDIA

Facts and issues involved

The present appeal was filed to assail the validity of Show Cause Notice (SCN) issued to cover the three financial years, viz: 2018-2019 to 2020-2021 u/s 74 of CGST Act. The said SCN was triggered by an objection raised on audit by the officer of the Comptroller and Auditor General of India.

The proceedings which led to the SCN commenced with Annexure P1 dated 27.05.2024; issued with respect to audit observations regarding mismatch of input tax credit (ITC) for the three financial years and for the short payment of tax for the financial year 2019-2020. The replies were submitted and on 27.06.2024 by Annexure P5, documents were sought in support of the explanations offered.

The communications were exchanged between the assessee and the respondent and eventually the SCN was issued on 13.06.2025. Subsequently, the Additional Commissioner intimated, by Annexure P12 dated 27.06.2025, that the SCN has been transferred to 'call book' meaning thereby 'kept in abeyance'. It was also intimated that the Department has contested the issue raised as an audit objection, before the Public Accounts Committee.

Later, a fresh notice was issued on 01.07.2025, reviving the earlier notice and proposing a protective demand since the proceedings are time bound under the GST law, there being no such measure of protective assessment statutorily permitted under the GST Act.

Petitioner's submissions

The Appellant contended that there was no fraud, wilful misstatement or suppression of facts, the establishment of which was essential to invoke the provisions of Section 74 of the Act, more so when there is an extended limitation period of five years.

The Appellant further canvassed that the AO was not convinced about the audit objection and that the same was placed under 'call book' which in Departmental parlance entails keeping in abeyance. The Appellant, thereby, alleged that the SCN in question had been issued owing to the limitation period coming to a close, purportedly as a protective measure, which concept is alien to the GST regime.

Discussion by and observations of the Supreme Court

The question arises as to whether the SCN can be sustained based on the extended period of five years as available under Section 74 which can be availed by the Department only if there is an allegation of fraud/willful misrepresentation/facts/suppression.

At the outset, the proceedings u/s 73/74 of CGST Act can be initiated only on the satisfaction of the Assessing Officer. Insofar as a notice u/s 74, the satisfaction should be not only of mismatch of ITC and short payment of tax having occurred, as is alleged in this case, the Officer should be satisfied that either fraud/willful misrepresentation/suppression had led to such mismatch or short payment of tax.

The fact that the Department had taken up the objections on audit with the Public Accounts Committee itself indicates that there was no satisfaction at the end of the Department, meaning the Assessing Officer; as to the mismatch or the short fall of payment of tax having occurred, not to say anything about the suppression alleged. Further, but for a bland statement of availing of ITC for the three years 'without documentary evidence and suppress the facts' (sic), the SCN did not contain any foundational facts to validate such allegation of suppression.

It is not mere lip service to the provisions that is intended when an extended limitation period is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud, willful misrepresentation, suppression. The foundational facts which led to the inference arrived at of fraud, willful misrepresentation, suppression should be evident from the notice itself.

The mere employment of such words will not indicate an application of mind, upon which alone the satisfaction can be arrived at. The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute.

In the facts of the above case, there is no such factual facts having been stated to make out a case of a deliberate device employed to evade tax or avail excess ITC, as coming out from the SCN. The bland statement made at some places of suppression of facts, merely to avail the extended period of limitation would barely suffice and puts to peril the notice under Section 74.

Decision of the Supreme Court

The SCN on the above reasoning, cannot be sustained and the consequential Order-in-Original dated 26.12.2025 too is put in peril and both are set aside.

2 GOODLUCK INDIA LTD. VS. UNION OF INDIA [2026] 189 TAXMANN.COM 330 – SUPREME COURT OF INDIA

Facts and issues involved

By Notification No. 20/2024-Central Tax, dated 8-10-2024, Rule 96(10) of the Central Goods and Services Tax (CGST) Rules, 2017 was omitted with effect from 8th October, 2024. Prior to this omission, the GST Council had recommended the omission of Rule 96(10) with prospective effect.

The Union of India and the Department filed appeals challenging the High Court's impugned judgment, which had held the omission of Rule 96(10) of the CGST Rules, 2017 to be applicable to every pending proceeding as on the date of its omission.

The central issue before the Supreme Court was whether sub-rule (10) of Rule 96 as omitted by Notification No.20/2024 with effect from 08.10.2024 would inure to the benefit of the assessee in the pending proceedings, wherein there was a claim of refund of integrated tax paid on goods and services exported out of India, to be considered without the restriction under sub-rule (10) being applied.

Petitioner's submissions

The petitioner contended that the sub-rule having been omitted without a saving clause it applies squarely to all the proceedings pending In support of this contention, they relied upon the decision of the Constitution Bench in Kolhapur ***Canesugar Works Ltd. vs. Union of India***, which highlighted the trite principle in common law that the effect of repealing a statute or deleting a provision, is to obliterate it from the statute book, as completely as if it had never existed.

They further submitted that Section 6 of the General Clauses Act does not apply to the omission of a "rule". Therefore, an exemption, as engrafted by the provisions of Section 6 of the General Clauses Act; though Section 6 was held to be not applicable in the given circumstances of omission of a rule, should have been incorporated as a saving clause to facilitate continuance of pending proceedings despite the omission, failing which all actions would come to a stop when the omission is given effect.

Respondent's submissions

The Law Committee observed that operation of rule 96(10) is leading to unnecessary complications without any intended benefit being served and therefore recommended that rule 96(10), rule 89(4A) & rule 89(4B) of the CGST Rules, 2017 may be omitted with prospective effect and that consequential amendments may be made.

Respondent argued that the emphasis on the recommendation is to apply it prospectively only, as the Council visualised it, in so far as its application is concerned.

Discussion by and observations of the Supreme Court

The trite principle in common law that the effect of repealing a statute or deleting a provision, is to obliterate it from the statute book, as completely as if it had never existed.

Section 6 is applicable where any Central Act or regulation made after commencement of the General Clauses Act repeals any enactment. It is not applicable in the case of omission of a 'rule'. Thus, if on omission of a rule, there was a provision for continuance of the proceedings already initiated or if by incorporation of a provision in the statute there was a legal device adopted, creating a fiction by virtue of which proceedings under the omitted rule could be continued; only then proceedings initiated under the omitted rule could be continued. Absent such saving clauses, all actions initiated under the omitted rule must come to an end. The Constitution Bench decision in Kolhapur Canesugar Works Ltd. applies squarely in the above case.

The Court observed that even going by the recommendations as extracted hereinabove, sub-rule (10) of Rule 96 was omitted because it was leading to unnecessary complications without any intended benefit being served. Crucially, the legislature has not brought in any saving clause or a sunset clause, when sub-rule (10) of Rule 96 was omitted. The Court further held that the recommendation that the omission should be prospective is also advisory in nature and does not bind the rule making authority.

The Court concluded that the intention to omit the rule without any saving clause was to bring to an end, the unnecessary complications once and for all and the intention cannot be to keep alive the unnecessary complications insofar as the pending proceedings are concerned.

Decision of the Supreme Court

The Supreme Court dismissed the appeals filed by the Union of India and the Department, affirming the High Court's decision that the omission of Rule 96(10) applies to all pending proceedings.

3 G. R. INFRA PROJECTS LTD VS. STATE OF MADHYA PRADESH [2026] 189 TAXMANN.COM 764 – SUPREME COURT OF INDIA

Facts and issues involved

The appellant was subjected to GST proceedings for the assessment year 2018-19. The proceedings were initiated by summons dated 03.03.2022 relating to the business for the years 2017-18 to 2020-21. During the investigation, the State conducted an inspection at the appellant's premises and recorded statements from the Accountant, Authorized Signatory, and Director on various dates. Although multiple hearings were scheduled between 01.09.2022 and 07.02.2025, the appellant did not appear on 20 occasions.

The State prepared a draft notice-cum-investigation report dated 03.03.2025 and issued an intimation under Section 142(1A) of the CGST/MPGST Act dated 29.04.2025. The appellant raised preliminary objections on 14.05.2025, pointing out that the draft notice had not been served. Following the service of the draft notice on 27.05.2025 and the submission of an additional response, the respondent issued a Show Cause Notice (SCN) dated 13.06.2025 u/s 74 of the CGST Act and the MPGST Act.

Under Section 44(1) of the CGST Act and Rule 80 of the CGST Rules, the original due date of

31.12.2019 for filing the annual return for the assessment year 2018-19 had been statutory extended through successive notifications to 31.12.2020.

Under Section 73, the limitation period to issue a notice ordinarily expired three years from the annual return due date, which fell on 31.12.2023. However, following the Supreme Court's orders in the suo motu Writ Petition (C) No. 3/2020, registered as Cognizance for Extension of Limitation, in re, an exclusion period of 1 year and 2 months was carved out for COVID-19, extending the outer date of limitation under Section 73 to 28.02.2025. The High Court of Madhya Pradesh upheld the SCN, after which the appellant preferred a Civil Appeal before the Supreme Court of India.

Appellant's submissions

The Show Cause Notice dated 13.06.2025 was issued beyond the limitation period. Specifically, the petitioner argued that the SCN is beyond the time of three years provided under Section 73 for determination of tax inter alia short paid, for any reason other than fraud, willful misstatement or suppression of facts.

The petitioner further contended that the invocation of Section 74 was improper, submitting that a notice issued under Section 74 can only be issued when there is a fraud/ willful misstatement/suppression of facts alleged which has to come out from the notice itself. Consequently, the SCN was invalid because the statutory ingredients authorizing the extended period of limitation were absent in the SCN itself.

Respondent's submissions

The respondent relied on the background events detailed in the counter affidavit, pointing out that the appellant sought time initially but failed to produce the required documents before the assessing officer. The respondent further highlighted that the appellant failed to appear on 20 occasions during the scheduled hearings, showing a non-cooperative attitude that justified the invocation of Section 74 on grounds of fraud or concealment of facts. On these bases, the respondent contended that the High Court had correctly upheld the SCN and that the proceedings should be allowed to continue.

Discussion by and observations of the Supreme Court

The Court ex-officio examined the timeline of limitation and noted that for the assessment year 2018-19, Rule 80 of the CGST Rules originally mandated filing the annual return on or before 31.12.2019. However, through notifications issued under Section 44(1), the final extended date for filing stood at 31.12.2020.

Under Section 73, the limitation period to issue an order is three years from the annual return due date, and Section 73(2) requires the SCN to be issued at least three months prior to that date, meaning the ordinary limitation period expired on 31.12.2023. To account for the disruptions of the pandemic, the Court recalled its suo motu order in Cognizance for extension of limitation which excluded the period from 15.03.2020 to 28.02.2022, amounting to an exclusion of 1 year and 2 months within the three-year window. Adding this excluded period to the original limitation timeline extended the outer date under Section 73 to 28.02.2025. Since the

SCN was issued on 13.06.2025, the Court observed it was definitely hit by limitation under Section 73.

Regarding the invocation of Section 74, the Court refused to look at the State's counter affidavit to supply the missing grounds, emphasizing the trite principle that when an authority has issued a notice or an order, the requirements to make the notice or order valid should be contained in such notice or order and cannot be supplanted by a counter affidavit in Court, where the notice or order is alleged to be invalid for reason to non-application of mind. The Court observed that a bare reading of the notice would indicate that but for a bland statement of 'fraud or concealment of facts' nothing is stated as to how fraud was inferred or concealment of facts were detected. The Court remarked that the 'or' employed indicates that even the assessing officer was not sure that the assessment was proceeded by reason of fraud or on the ground of concealment of facts.

The Court held that the requirements to apply the extended period of limitation must emanate from the notice itself, and it cannot be a mechanical use of the words 'fraud, willful misstatement or suppression of facts' without listing out the aspects which persuades the assessing officer to conclude that there has been employed either of these surreptitious devices by the assessee.

Decision of the Supreme Court

The Court allowed the Civil Appeal and set aside the impugned order of the High Court of Madhya Pradesh as well as the challenged Show Cause Notice dated 13.06.2025.

B. DECISIONS BY HIGH COURT

1 TORRENT POWER LTD. VS. UNION OF INDIA [2026] 189 TAXMANN.COM 490 (GUJARAT) – GUJARAT HIGH COURT

Facts and issues involved

The petitioners, acting as holding companies, executed corporate guarantees in favour of banking companies or financial institutions on behalf of their subsidiaries without receiving any consideration. The Department sought to levy GST on these corporate guarantees at a deemed rate of 1% per annum of the guaranteed amount under Rule 28(2) of the CGST Rules. In certain cases, the Revenue issued show cause notices and demand orders under Section 74 of the CGST Act, alleging suppression of facts in monthly GSTR-1/3B filings and evasion of tax liability.

In certain petitions, the petitioners had furnished both a corporate guarantee and a contemporaneous agreement for the pledging of shares to secure the subsidiary's credit requirements. In another petition, the show cause notice covered corporate guarantees executed for foreign subsidiaries pre-GST (in FY 2010–11 and FY 2011–12) where tax was demanded retrospectively for the period from July 2017 to March 2020.

The petitioners, as holding companies, filed a group of writ petitions challenging the vires of Rule 28(2) of the CGST Rules and the CGST Act. The petitioners sought a declaration that

the provisions of Rule 28(2) of the CGST Rules and Section 15(4) of the CGST Act are ultra vires to Articles 14, 19(1)(g), and 265 of the Constitution of India. They also challenged the validity of CBIC Circulars dated 27.10.2023 and 11.07.2024 as overstepping the statutory framework.

The central controversies before the High Court involved:

- Whether a corporate guarantee executed by a holding company for its subsidiary without consideration constitutes a "supply of services" under Section 7 of the CGST Act read with Schedule I.
- Whether such an activity constitutes "business" under Section 2(17) of the CGST Act.
- Whether corporate guarantees are "actionable claims" excluded from the scope of GST under Schedule III.
- Whether a corporate guarantee secured by a share pledge constitutes a taxable supply.
- Whether the flat 1% valuation under Rule 28(2) or actual consideration, "whichever is higher", is arbitrary and unconstitutional under Article 14 and Article 19(1)(g).
- Whether GST under Rule 28(2) can be applied retrospectively for periods prior to its insertion on 26.10.2023.

Petitioner's submissions

The petitioners presented extensive legal and commercial submissions to show that a corporate guarantee does not attract tax liability:

The petitioners argued that to constitute a taxable supply of service, there must be a supply of services to a related party in the course or furtherance of business. None of these conditions were satisfied, as a gratuitous corporate guarantee involves no activity carried out for another with consideration, no cost is incurred by the guarantor, and nothing is actually "provided" unless and until the guarantee is invoked. It was contended that a guarantee is a contingent contract and not a service in the course or furtherance of business.

The petitioners argued that the guarantee is given by the holding company to the lender bank, and services, if at all, are being rendered to the bank. Under Section 2(93) of the CGST Act, the lender is the recipient of services and not the subsidiary companies.

The petitioners claimed that a corporate guarantee constitutes an actionable claim and is therefore non-taxable. They argued that Article 366(8) of the Constitution defines "debt" to include "any liability under any guarantee", meaning that liabilities assumed under guarantees partake the character of debt. Since "actionable claims" are excluded from the purview of supply under Schedule III read with Section 7(2)(a), corporate guarantees must remain outside the reach of GST.

The petitioners also contended that furnishing a gratuitous guarantee for a wholly owned subsidiary is a shareholder or investment activity designed to protect corporate investments and safeguard shareholding and does not constitute "business" under Section 2(17) of the CGST Act.

The petitioners argued that the actual pledging of shares is a transaction in "securities" under Section 2(101), which is excluded from the definition of both goods and services, precluding any GST levy.

The petitioners urged that Rule 28(2) impermissibly creates a levy under the guise of valuation. They argued that the GST Council did not conduct an independent exercise but merely borrowed the 1% benchmark from the Safe Harbour Rules under the Income Tax Rules and commercial bank commissions (which range from 0.5% to 3%). In contrast, in the petitioners' cases, the actual commission paid on corporate guarantees ranged only from 0.25% to 0.3%, making a flat 1% valuation arbitrary and confiscatory.

Lastly, the petitioners submitted that the dispute involved a bona fide interpretational difference regarding the taxability of corporate guarantees, and because all facts were known to both parties, the invocation of the extended period of limitation and penalty under Section 74 was arbitrary and lacked application of mind.

Respondent's submissions

The Revenue contended that a transaction between a holding company and its subsidiary is deemed to be a supply between related persons under Explanation (a) to Section 15. By invoking Section 7(1)(c) and Item 2 of Schedule I, the statute treats these arrangements as taxable supplies even when made without consideration.

The Revenue argued that a corporate guarantee is an agreement to pay the defaulted amount if the subsidiary fails to repay the loan, which falls under "agreeing to do an act" and is classified as a supply of service under Section 7(1)(c) read with Item 2 of Schedule I and Section 7(1A) read with Entry 5(e) of Schedule II. They urged that the definition of "business" under Section 2(17) is activity-centric and covers incidental or ancillary activities and even single, isolated transactions.

The Revenue urged that since the ultimate beneficiary of the contract of guarantee is the subsidiary, and because there is an implied promise by the principal debtor to indemnify the surety under Section 145 of the Indian Contract Act, 1872, the subsidiary qualifies as a recipient under Section 2(93) of the CGST Act.

The Revenue also argued that Rule 28(2) was validly introduced pursuant to the recommendations of the GST Council to resolve valuation disputes, utilizing safe harbour transfer pricing principles and bank commissions to set a standard 1% rate.

The Revenue contended that under Section 13(2)(c) of the CGST Act, the time of supply triggers every year when the recipient subsidiary shows the receipt of services in its books of accounts, as mandated year-on-year by Clause 18(b)(ii) of IND AS 24.

Discussion by and observations of the High Court

The Court held that the GST regime taxes supplies and not merely traditional transfers of title. Consequently, the expression "supply" under Section 7 must receive a purposive and expansive interpretation.

Examining the Indian Contract Act, 1872 (Sections 126, 127, 140, and 145), the Court observed that holding companies and their subsidiaries are "related persons". Once the guarantor, holding company, settles the debt of the defaulting subsidiary, it is invested with all the rights of the creditor bank under the right of subrogation (Section 140) and has an implied promise of indemnification (Section 145). This statutory nexus constitutes the connecting link to treat the arrangement as a "supply of service" by the holding company to its subsidiary under Section 7(1)(c) read with Schedule I, Article 2.

The Court held that a corporate guarantee falls within the expression "agreeing to do an obligation to do an act". The holding company is bound by a legal tie (vinculum juris) to do something for its subsidiary, creating an enforceable relationship and corresponding right to demand fulfilment.

The Court held that because the subsidiary company is the ultimate beneficiary and recipient of the service, and because the service is triggered by the subsidiary's requirement for financial assistance, the subsidiary qualifies as a "recipient" under Section 2(93).

The Court observed that extending a guarantee is "business" under Section 2(17). Although lending money is not the holding company's core activity, safeguarding the financial interest of its subsidiary is an extension of its business interest. Volume, continuity, or profit motive are irrelevant, and even single, isolated transactions count as business.

The Court further observed that an actionable claim represents a direct, primary right to claim a payment or debt, whereas a corporate guarantee stems from a secondary, contingent liability under a tripartite agreement. Being a specific, non-transferable financial assurance provided to a lender, a corporate guarantee cannot be casually traded and remains outside Schedule III read with Section 7(2)(a).

Further, a share pledge merely secures the performance of the guarantee. Since GST law is unconcerned with how a promise is secured, tax liability arises immediately upon extending the guarantee, and the execution of the pledge together with the guarantee is a supply of services attracting the 1% valuation under Rule 28(2).

The Court observed that the time of supply must be determined under Section 13(2)(c) as the date on which the recipient shows the receipt of services in its books. This is a continuing, recurring accounting obligation, and the outstanding debt reflected by the subsidiary each year triggers the valuation mechanism. However, because the periodic payment obligations are absent, a corporate guarantee does not constitute a "continuous supply of services" under Section 2(33).

The Court upheld the validity of Section 15(4) and Rule 28(2) in general, noting that the legislature holds wide fiscal latitude to prescribe specialized valuation methodologies. However, the Court observed that the fixation of benchmark of value of corporate guarantee at 1 per cent, even if 'actual consideration' may be lower than 1 per cent appears to be unreasonable and arbitrary.

Relying on the Supreme Court's ruling in Wipro Limited, the Court held that while a uniform fictionalized cost can be applied where actual values are not ascertainable, it was established in these cases that actual bank commissions ranged between 0.25% and 0.3%. Forcing taxpayers to pay GST at 1% when actual consideration is lower is unconstitutional and violates Articles 14 and 19(1)(g). To make the provision workable and salvage its constitutionality, the Court applied the rule of reading down to set aside the expression "whichever is higher".

The Court held that Rule 28(2) cannot be applied retrospectively to periods before its insertion on 26.10.2023. A retrospective levy of a new tax where no levy previously existed is harsh, unfair, and hit by the doctrine of unjust enrichment. However, the levy is permissible for periods after 26.10.2023.

For corporate guarantees extended to foreign subsidiaries outside India, the Court held that the deemed 1% valuation under Rule 28(2) does not apply, as such transactions are governed by Circular No. 225/19/2024-GST.

Lastly, the Court held that Section 74 requires a strict showing of malafide intent, fraud, or willful suppression. Where there is a disputed interpretation of law and the facts are known to both parties, mere failure to declare does not amount to willful suppression.

Decision of Court

The High Court partly allowed the writ petitions in favour of the assessee, issuing the following directions:

1. The provision of Rule 28(2) of the CGST Rules, 2017 is held to be intra vires the CGST Act and the Constitution, except to the extent that the expression "whichever is higher" is read down as arbitrary and unconstitutional.

2. The levy of GST on corporate guarantees furnished prior to 26th October, 2023 under Rule 28(2) is declared violative of Articles 14 and 19(1)(g) of the Constitution; however, the levy is attracted prospectively from 26.10.2023 if the guarantees continue.

3. The provisions of Section 15(4) of the CGST Act are held to be intra vires.

4. The impugned actions, show cause notices, and demand orders taken by the Revenue under Section 74 are quashed and set aside.

5. Any excess GST deposited by the petitioners is ordered to be refunded within three months.

6. CBIC Circular No. 204/16/2023 and Circular No. 225/19/2024-GST are set aside to the extent they run contrary to this decision, with liberty granted to the Revenue to issue fresh circulars consistent with the ruling.

2 KLM POWER AND INFRASTRUCTURE CO. VS. STATE OF RAJASTHAN [2026] 189 TAXMANN.COM 615 – RAJASTHAN HIGH COURT

Facts and issues involved

In the present case, there was a delay of 450 days in filing the appeal against the Order-in-Original dated 18.03.2024, whereby GST demand of ₹ 16,11,302/- for Financial Year 2018-19 was raised on the account of wrongful availment of Input Tax Credit and excess outward tax in Form- GSTR-1 as compared to Form-GSTR-3B. The appeal against the said order was filed on 09.10.2025.

The Appellate Authority, *vide* impugned order dated 19.06.2026, dismissed the appeal on the ground of limitation as it does not have the power to condone the delay in filing the appeal. Aggrieved by the same petitioner filed this instant writ petition on 04.08.2026.

Petitioner's submissions

The delay in filing the appeal occurred due to bona fide circumstances. The delay is thus occasioned by genuine and sufficient cause, and not due to any negligence or lack of diligence on the part of the petitioner.

The petitioner remained unaware of the Order-in-Original dated 18.03.2024 because it was uploaded on the GST portal under the Additional Notices and Orders section rather than Notices and Orders and was never served manually. Unbeknownst to the petitioner, the department initiated recovery on 19.04.2024 by issuing Form GST DRC-13 under Section 79(1)(c) to the petitioner's bank, which placed a hold/lien on the account. The petitioner only discovered the proceedings on 07.10.2025 via a telephone call from a department officer, leading them to file a statutory appeal on 09.10.2025 citing 07.10.2025 as the first date of communication/ knowledge.

The Order-in-Original has been passed in complete violation of the mandatory provisions of Section 75(4) of the CGST Act, 2017 and the principles of natural justice, as no opportunity of personal hearing was ever granted to the petitioner. Petitioner, relying on the various Division Bench judgments of this very Court in ***M R Traders vs. UOI 2026 SCC OnLine RAJ 2115, Molana Construction Company vs. Central GST Department, Rajasthan, Man Singh Tanwar vs. Commissioner, Central GST Department, Rajasthan,*** and ***RPC PSIPL JV vs. State of Rajasthan*** argued that sufficient cause of delay in filing the appeal due to circumstances beyond control has been shown and thus appeal be directed to be considered on merits after condoning the delay by this Court.

Discussion by and observations of the High Court

Appellate Authority remained bound by statutory limitation, yet reasons beyond assessee' s control made refusal to hear on merits cause grave prejudice. Considering the reasons owing to which the petitioner could not submit its appeal within the stipulated time, being beyond its control, non-adjudication of appeal on merits would cause grave injury and prejudice to the petitioner.

In the judgments cited above, this Court, while allowing the writ petitions, have issued directions to entertain the appeal on merits. Aside above, attention has been gone to a Division Bench Judgment rendered by Punjab and Haryana High Court in case titled as ***Luxmi Traders vs. Union Territory of Chandigarh 188 taxmann.com 812*** wherein based on elaborate discussion and deliberations thereof, following view has been taken:

(i) Service of SCN upon the petitioner/ assessee concerned cannot be deemed sufficient merely on account of its uploading on the Common Portal, unless its receipt is acknowledged or a reply is filed.

(ii) Where SCN is served only by way of uploading it on the Common Portal and in the absence of reply filed by the petitioner/assessee concerned, ex-parte order is passed in original, the proceedings would stand restored to the stage of issuance of SCN.

(iii) In cases where the order-in-original is passed after contest, and is served only by uploading it on the Common Portal, the period of limitation for filing of appeal would not be triggered, and the assessee aggrieved will have the right to file an appeal within a period of four weeks.

(iv) Where appeals filed against the order-in-original, which was served only by

uploading it on the Common Portal are dismissed on the ground of limitation, the order of the Appellate Court shall be set aside and the appeal would stand restored to its original number and would be heard and decided on merits.

(v) In cases where SCNs were served only on portal and ex-parte adjudication order was passed for want of reply of assessee and appeal against the said order was dismissed on the ground of delay, both adjudication order and order-in-appeal shall be set aside....

Court agreed with the aforesaid view expressed by the Punjab and Haryana High Court and accordingly, saw no reason as to why the benefit be not accorded to the petitioner.

Decision of the High Court

The present writ petition was allowed to the extent of condoning the delay of 450 days in filing of the appeal by the petitioner.

3 KANWAL CHAUDHARY VS. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA [2026] 189 TAXMANN.COM 463 – DELHI HIGH COURT

Facts and issues involved

The Petitioner is an Advocate enrolled with the Bar Council of Delhi who has been practising law since 1995. Following the enactment of the Insolvency and Bankruptcy Code, 2016 (the IBC), the Petitioner qualified the Limited Insolvency Examination and was registered as an Insolvency Professional on July 27, 2017.

On December 13, 2018, the National Company Law Tribunal (NCLT), Delhi Bench, while admitting an application under Section 9 of the IBC in CP(IB) No. 408/2018, appointed the Petitioner as an Interim Resolution Professional (IRP) for the Corporate Debtor, M/s. Ireo Fiveriver Pvt. Ltd. The Petitioner raised two professional invoices dated August 13, 2019, and October 31, 2019, on the Corporate Debtor. On September 17, 2019, Mr. K.V. Jain was appointed as the Resolution Professional (RP) for the Corporate Debtor and took over the assignment.

Due to non-payment of his professional fees, the Petitioner filed applications (CA 430/ND/2019 and CA 1268/ND/2020) before the NCLT seeking directions for the release of his outstanding payments. The RP subsequently called upon the Petitioner to issue GST-compliant invoices in place of his original invoices. The Petitioner refused, stating that he was neither registered with the GST Department nor required to be, claiming exemption under Sections 9(3) and 9(4) of the CGST Act, 2017 read with Notification No. 12/2017-Central Tax (Rate) and Notification No. 13/2017-Central Tax (Rate) dated June 28, 2017. After the RP filed an affidavit before the NCLT admitting that a balance of ₹ 49,04,988/- was payable to the Petitioner out of a total claim of ₹ 77,07,907/-, the NCLT, vide order dated October 7, 2020, directed the disbursement of the balance of ₹ 49,04,988/- but referred the issue of GST applicability to the Insolvency and Bankruptcy Board of India (IBBI) for clarification. On March 9, 2021, the IBBI issued its clarification holding

that Insolvency and Receivership services are not covered under the reverse charge mechanism, thereby directing the Petitioner to submit GST-compliant invoices. The Petitioner filed a writ petition under Article 226 of the Constitution of India challenging the IBBI's order.

Petitioner's submissions

The learned counsel for the Petitioner contended that the impugned order of the IBBI was passed without jurisdiction as the IBBI is not the competent authority to determine the applicability of the forward charge mechanism to Advocates acting as Insolvency Professionals. It was argued that while other Insolvency Professionals may be liable under the forward charge mechanism, the position is distinct for an Advocate enrolled with the Bar Council, who would continue to be governed by the 'reverse charge mechanism', even for the services rendered as an Insolvency Professional. The Petitioner heavily relied on Notification No. 12/2017-Central Tax (Rate) and Notification No. 13/2017-Central Tax (Rate) to establish that legal services provided by an Advocate are subject to reverse charge. He also cited the Division Bench orders of the Delhi High Court in ***J.K. Mittal & Company vs. Union of India,*** which directed that all legal services provided by advocates, law firms of advocates, or LLPs of advocates will be continued to be governed by the reverse charge mechanism unless they voluntarily register. The Petitioner asserted that the term legal service is defined broadly to include any service provided in relation to advice, consultancy or assistance in any branch of law and therefore covers services rendered as an Insolvency Professional, especially since the qualifying examination syllabus is predominantly legal. He further argued that under the Bar Council of India Rules, an Advocate can only render legal services, and if insolvency services are not to be considered as legal services, the enrolment of the Advocate would have to be suspended.

Respondent's submissions

The respondents, including the GST Department, the IBBI, the Bar Council of India (BCI), and the Resolution Professional, argued that there is a fundamental distinction in the nature of services rendered by an Insolvency Professional compared to conventional legal services. The GST Department contended that taxability is determined by the nature of the services rendered and not by the identity or professional status of the person rendering such service. It was emphasized that the duties of an Insolvency Professional such as managing the affairs of the Corporate Debtor, inviting claims, and convening meetings of the Committee of Creditors are predominantly managerial and administrative in nature and do not amount to practising of law. The respondents highlighted that under the GST Scheme of Classification of Services, legal services under entry 99821 are distinct and mutually exclusive from insolvency and receivership services under specific entry 998241, and that the most specific description shall be preferred over a more general description. This was supported by the Supreme Court rulings in ***CCT vs. A. R. Thermosets (P.) Ltd. and Moorco (India) Ltd. vs. Collector of Customs***. The IBBI provided statistical data showing that out of 4,558 registered Insolvency Professionals as of June 30, 2025, only 283 (less than 6%) were Advocates, highlighting that Insolvency Professionals constitute a distinct statutory class. The BCI filed an affidavit dated September 6, 2025, explicitly taking the stand that advocates acting as Insolvency Resolution Professionals are liable to pay GST under the

forward charge and are not covered under the reverse charge applicable to traditional legal services.

Discussion by and observations of the Court

The Court observed that under Section 9(1) of the CGST Act, 2017, the default rule is the forward charge mechanism, where the supplier of services is liable to pay tax. The reverse charge mechanism under Section 9(3) is an exception restricted only to notified categories of supply. Under Notification No. 13/2017-Central Tax (Rate), as clarified by the corrigendum dated September 25, 2017, the reverse charge mechanism is applicable to services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. However, the Scheme of Classification of Services treats legal services under entry 99821 and insolvency and receivership services under entry 998241 as distinct, independent, and coordinate sub-heads. The Court invoked the well-settled principle that a specific entry prevails over a general entry, citing the Supreme Court decisions in Moorco (India) Ltd. and A.R. Thermosets (Pvt.) Ltd., and noted that insolvency and receivership services do not fall within the residuary legal services entry or anywhere within the legal services sub-head.

The Court held that the role in which the individual acts is determinative of the tax classification. When an Advocate renders services as an Insolvency Professional, the role in which he acts is that of an Insolvency Professional, and not that of an Advocate. Rejecting the Petitioner's argument regarding the suspension of an Advocate's enrolment, the Court pointed out that Regulation 5(c)(iv)(d) of the IBBI Regulations expressly recognizes advocate enrolled with the Bar Council as an eligible category for registration. Far from restricting them, the regulations enable and facilitate Advocates to undertake this specialised role, which represents another stream or opportunity for Advocates to render more specialised and niche services. The Court emphasized that when an Advocate is appointed under the IBC, they are governed by the statutory framework of the IBC and the IBBI Regulations rather than the Bar Council of India Rules. Consequently, the tax regime applicable to services rendered as an Insolvency Professional would be that which applies to Insolvency Professionals, and not that which applies to Advocates.

Decision of the High Court

Advocates enrolled with the Bar Council, who act as Insolvency Professionals under the IBC, shall be governed by the 'forward charge mechanism' and are liable to obtain GST registration, and comply with all consequential requirements under the CGST Act, 2017 and the rules and notifications. This does not alter the reverse charge mechanism otherwise applicable to traditional legal services rendered by them in their capacity as Advocates.

C. RULINGS BY GST APPELLATE TRIBUNAL

1 SRI PARAMESHWARA BRICKS VS. STATE TAX OFFICER [2026] 189 TAXMANN.COM 766 – GSTAT, HYDERABAD

Facts

Appellant was engaged in the manufacture and supply of red clay bricks and is registered u/s 10(1) of CGST Act, 2017. The appellant opted for and availed of the benefit of the composition scheme, under which they were liable to discharge tax at the prescribed composition rate of 1% and filed quarterly FORM GST CMP-08 statements. The aggregate turnover threshold under the composition scheme was ₹ 1.50 crore.

During the relevant tax periods, the jurisdictional audit officers subjected the appellant to an audit and compared the turnover reflected in its generated e-way bills with the turnover declared in their CMP-08 statements. The audit authorities noticed that during the FY 2020-21, the appellant's e-way bill turnover was ₹ 1,95,53,800/- whereas the declared turnover in CMP-08 statements was only ₹ 1,44,86,100/-. Based on these figures, the authorities concluded that the appellants had exceeded the statutory ₹ 1.50 crore threshold and that a differential turnover of ₹ 50,67,700/- had escaped assessment at the regular rate.

Show-cause notices were issued proposing the recovery of differential tax for both the 2020-21 and 2021-22 financial years. Initially, the rate of tax was proposed at 28% (14% CGST and 14% SGST), but upon adjudication, the proper officer restricted the tax demand to the applicable regular rate of 5% under Section 73 of the TSGST Act, after excluding accepted typographical errors in the e-way bills. The proper officer confirmed an additional demand of ₹ 1,27,250/- (₹ 63,625/- each as CGST and TSGST) for the financial year 2020-21 and ₹ 6,43,856/- (₹ 3,21,928/- each as CGST and TSGST) for the financial year 2021-22, along with interest under Section 50(1) and a penalty of 10% under Section 73. The First Appellate Authority dismissed the appeals, prompting the appellants to prefer appeals before the GSTAT Bench.

Appellant's submissions

The learned counsel for the appellants submitted that the excess over the prescribed threshold turnover occurred inadvertently and without any deliberate or conscious intent on the part of the appellants. It was argued that during the period in question, the appellant's business operations were adversely affected by the COVID-19 pandemic, on account of which they were unable to properly monitor and administer their business affairs, including their turnover and consequential tax compliances. The counsel asserted that the appellants were acting under a bona fide and reasonable belief that they continued to be eligible to avail the benefit of the composition scheme and that they neither suppressed any material particulars nor acted with any mala fide intention to wrongly avail or retain the benefit of the scheme. The appellants consequently sought the setting aside of the impugned order, the restoration and

continuation of the benefit of the composition scheme, the annulment of the tax, interest, and penalty demands, and the refund of pre-deposits.

Discussion by and observations of the GSTAT

It is an admitted position that the appellant's aggregate turnover exceeds the Rs. 1.50 crore threshold limit in both financial years. A plain reading of Section 10(3) of the Act makes it clear that the option exercised under the composition scheme shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1). Under Rule 6(2) of the CGST/TSGST Rules, 2017, once a person ceases to satisfy the composition conditions, they are liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 and shall issue tax invoice for every taxable supply made thereafter.

The Tribunal observed that this cessation is automatic and operates by force of statute. Therefore, the appellants became liable to pay tax at the regular rate on all supplies made on and after the date of such lapse, subject to the credit and adjustment of any composition tax already paid on that post-lapse turnover.

While the Tribunal agreed there was no ground to interfere with the turnover figures determined after excluding typographical errors, its ex-officio examined the computation methodology under Section 10(4) of the Act, which mandates that a composition taxpayer shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax. Since the appellants were legally prohibited from collecting separate GST during the composition period, the Tribunal observed that the invoices issued by them reflect the total consideration received from the recipients, without any separately identifiable tax component and must be treated as inclusive of tax under Rule 35 of the Rules. Therefore, the tax component must be extracted from the invoice value on a cum-tax basis using the formula: Tax amount = (Value inclusive of taxes × tax rate)/(100 + sum of tax rates).

Regarding input-tax credit, the Court noted that a composition taxpayer cannot avail of it during the composition period, and upon cessation, the entitlement to ITC is neither automatic nor unconditional. Since no submissions were advanced on this issue, the Court left the question of the appellants' entitlement to ITC open.

Decision of GSTAT

The Tribunal disposed of the appeals by upholding the order of the First Appellate Authority, subject to the limited modification that the appellants shall be entitled to the benefit of cum-tax valuation in terms of Rule 35 of the TSGST Rules, 2017.

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SERVICE TAX





CA Rajiv Luthia

Keval Shah
Advocate

1 M/S VPL PROJECTS PVT LTD VS. COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, VISAKHAPATNAM-II 2026 (8) TMI 1609 - CESTAT HYDERABAD

Backgrounds and facts of the case

- Two appeals were filed by the appellant, engaged in construction of residential units, against confirmation of Service Tax demand under "Construction of Complex Service" for the periods FY 2010-11 and FY 2011-12.
- Appeal No. ST/20569/2014 arose out of Order-in-Original dated 29th October, 2013, confirming a Service Tax demand of ₹ 53,21,555/- along with interest and penalties for the period 2011-12.
- Appeal No. ST/20189/2015 arose out of Order-in-Appeal dated 30.10.2014, upholding Order-in-Original dated 2nd November, 2012 confirming Service Tax of ₹ 8,32,635/- for FY 2010-11 along with interest and penalty.

Arguments by Appellant Assessee

- The appellant's case was that the houses were constructed on independent plots for individual purchasers for their personal use, and that the essential ingredients of a "Residential Complex" within the meaning of Section 65(91a) of the Finance Act, 1994 were not satisfied.
- The roads and open spaces in the layout were ultimately handed over/gifted to the Greater Visakhapatnam Municipal Corporation (GVMC), and there was no evidence establishing that the appellant had constructed a residential complex consisting of common areas and common facilities as contemplated under Section 65(91a) of the Finance Act, 1994.
- Further, for an earlier period from October 2008 to September 2009, refund of Service Tax of ₹ 11,93,276/- on the very same activity had already been allowed by the Commissioner (Appeals) and sanctioned by the Original Authority, demonstrating that the issue admitted of differing interpretation.
- The contracts involved construction together with supply/transfer of material and were, to that extent, composite works contracts; their classification and taxability required examination under the statutory

framework governing Works Contract Service, and a demand raised simpliciter under Construction of Complex Service could not be sustained.

Arguments by Department

- The case of the Department was that the appellant undertook construction of residential units forming part of a "residential complex" and was therefore liable to Service Tax under the taxable category of Construction of Complex Service; the Ld. Authorized Representative for the Revenue reiterated the findings of the lower authorities before the Tribunal.

Decision of the Hon'ble CESTAT Hyderabad

- The Hon'ble Tribunal held that Section 65(91a) of the Finance Act, 1994, as it stood during the relevant period, a "RESIDENTIAL COMPLEX" is comprising more than 12 residential units, a Common Area, and 1 or more specified common facilities situated within premises approved by the Competent Authority. Mere construction of number of Residential houses would not, by itself be sufficient unless these statutory requirements are established.

- The Hon'ble Tribunal noted that, the construction undertaken was of individual houses on independent plots for the respective purchasers, and the roads and open spaces were handed over to the Municipal Authority; the Department had not brought sufficient evidence on record to establish the existence of common areas and common facilities belonging to a residential complex as contemplated under Section 65(91a).

- The Hon'ble Tribunal relied on ***Macro Marvel Project Ltd. vs. CST Chennai, 2018 (12) STR 2003 (Tri-Chennai)***, and a long line of subsequent decisions including Alliance Infrastructure Projects Pvt Ltd., CSK Realtors Ltd., Priyadarshini Constructions, Jay Pee Enterprises, and Pragati Edifice Pvt Ltd., holding that construction of individual residential houses does not fall within the taxable category merely because a number of such houses are constructed in a common layout, and that the Department must establish every statutory ingredient of a residential complex before fastening liability under Construction of Complex Service.

- On the composite nature of the contracts, the Tribunal held that where contracts involve construction together with supply/transfer of material, classification and demand have to be examined under the statutory provisions governing Works Contract Service, and a demand raised simpliciter under Construction of Complex Service, without addressing the true nature of the composite contract, cannot be sustained.

- On limitation and penalty, the Hon'ble Tribunal noted that the Department had issued periodical show cause notices to the appellant on the same activity over successive periods (2006-07 to 2009-10, 2010-11 and 2011-12), demonstrating **departmental knowledge of the activity**, and that the Commissioner (Appeals) had himself granted refund to the appellant for an earlier period on the same activity, showing that

the issue was capable of differing interpretation; these circumstances negated suppression, wilful mis-statement or deliberate evasion, and the extended period of limitation and penalties were accordingly not invocable.

- Consequently, the Service Tax demands in both appeals, together with interest and penalties, were held to be unsustainable and were set aside; both appeals were allowed with consequential relief, if any, in accordance with law.

2 M/S VODAFONE IDEA LIMITED VS. COMMISSIONER OF CGST COMMISSIONERATE, DELHI SOUTH 2026 (8) TMI 1519 - CESTAT NEW DELHI

Backgrounds and facts of the case

- The appellant had appealed before the Hon'ble CESTAT DELHI against a demand of Service Tax confirmed by the Commissioner vide Order dated 30th May, 2014, and made a pre-deposit under Section 35F of the Central Excise Act, 1944 (as made applicable to service tax by Section 83 of the Finance Act, 1994) on 12th November, 2014.

- The appellant lost its appeal before this Tribunal but succeeded before the HON'BLE DELHI HIGH COURT in CEAC 4/2018, wherein judgment and order dated 31st October, 2018 was passed in its favour.

- Five years after the High Court's judgment, the appellant, by letter dated 1st April, 2024, sought refund of the pre-deposit along with interest under Section 35FF of the Central Excise Act, 1944.

- Vide order dated 31st May, 2024, the pre-deposit was refunded along with interest for a period of 1449 days, i.e. only from the date of pre-deposit till the date of the High Court judgment; no interest was paid for the period of over five years thereafter, which the appellant took to send the letter seeking refund.

Arguments by Appellant Assessee

- The appellant contended that it was entitled to interest under Section 35FF for the entire period of 3498 days, i.e. from the date of pre-deposit up to the date of actual payment of refund, since Section 35FF mandates payment of interest from the date of payment of the pre-deposit till the date of its refund, without any qualification based on the reason for delay.

Arguments by the Department

- The Department contended that the appellant was not entitled to interest for its own delay of over five years in sending the letter along with a copy of the High Court judgment, relying on Board Circular No. 984/08/2014-CX dated 16th September, 2014 which clarifies that in case of refund of pre-deposit a simple letter along with the copy of the Judgement would suffice and that no refund application is required.

- It was submitted that since the appellant had not furnished the letter

with the judgment promptly, the delay of over five years was attributable solely to the appellant, and the appellant could not be permitted to profit from its own lapse by claiming interest for that period.

Decision of the Hon'ble CESTAT Delhi

- The Hon'ble Tribunal reproduced Section 35FF of the Central Excise Act, 1944, which provides for interest "**on such amount from the date of payment of the amount till the date of refund of such amount**", and held that the provision does not qualify the entitlement to interest by reference to the cause of any delay in obtaining the refund.

- The Tribunal observed that though there was an unexplained and inordinate delay of over five years on the part of the appellant in sending a simple letter with a copy of the High Court judgment, the statutory language of Section 35FF governs regardless of hardship, fairness, neglect, or the party responsible for the intervening delay, and equity has no place in taxation.

- The Hon'ble Tribunal drawn a comparison with the differential treatment of interest under Sections 11AA and 11BB of the Central Excise Act (where an assessee must pay interest on delayed duty for the entire period of dispute, but the Department is liable to pay interest on refunds only after three months from the date of application), the Tribunal reiterated that such inequities must nevertheless be applied as the law stands.

- Accordingly, the Tribunal held that the appellant was entitled to interest under Section 35FF for the entire period from the date of pre-deposit till the date of actual refund, including the period of delay of over five years attributable to the appellant itself, and the appeal was allowed with the impugned order modified to grant consequential relief.

3 MAHARASHTRA MEDICAL FOUNDATION VS. COMMISSIONER OF CENTRAL TAX AND SERVICE TAX, PUNE-II 2026 (8) TMI 1600 - CESTAT MUMBAI

Backgrounds and facts of the case

- The appellant was engaged in providing healthcare services through its hospital at Pune, and in the course of rendering medical services, engaged specialized doctors by providing infrastructural support necessary for the medical services. Fees collected from patients were shared on a percentage basis with the doctors, with a certain percentage being retained by the appellant hospital; the appellant did not pay Service Tax on the amount so retained.

- A Show Cause Notice dated 19th April, 2017 alleged that the services provided by the appellant were classifiable as Business Support Service ("BSS") up to 30th June, 2012, and thereafter as 'service' defined under Section 65B(44) of the Finance Act, 1994.

- The proposals in the Show Cause Notice were confirmed *vide* Order-

in-Original dated 16th August, 2017, and the Commissioner (Appeals), vide order dated 10th January, 2018, upheld the confirmation and rejected the appellant's appeal, leading to the present appeal before the Tribunal.

Arguments by Appellant

- The appellant relied on the decisions of the Co-ordinate Bench of the Tribunal in ***Sir Ganga Ram Hospital vs. Commissioner of Service Tax [2020-TIOL-1603-CESTAT-DEL]*** and the earlier order in the same matter [2018-TIOL-352-CESTAT-DEL], holding that no Service Tax liability arises on the usage of infrastructural facilities by doctors under similar revenue-sharing arrangements.

Arguments by the Department

- The case of the Department was that the amount retained by the appellant hospital out of the total fees collected from patients represented consideration for providing infrastructural support to the doctors, and was therefore taxable as Business Support Service up to 30th June, 2012, and as a taxable service from 1st July, 2012 onwards.

Decision of the Hon'ble CESTAT Mumbai

- The Hon'ble Tribunal relied on the order passed in the case of ***Sir Ganga Ram Hospital vs. Commissioner of Service Tax***. The Hon'ble Tribunal held that the issue stood settled by Co-ordinate Bench decisions, and following the ratio in Sir Ganga Ram Hospital, held that revenue-sharing arrangements between a hospital and consultant doctors are for the joint benefit of both parties with shared obligations, responsibilities and benefits, and that the agreements did not specify any consideration attributable to infrastructural support.

- It was held that the retained share was not, on the terms of the arrangement, consideration separately attributable to infrastructure or support supplied to the doctors; rather, the hospital manages the patient from entry to discharge, maintains records, provides supporting assistance, and manages follow-up care, and the retained amount was necessarily also referable to the healthcare service rendered to the patient.

- The Tribunal further held that under the negative list regime, healthcare services rendered by clinical establishments are exempt from Service Tax under Notification No. 25/2012-ST, and taxing the hospital's retained share as Business Support Service or as another taxable service **would defeat the exemption granted to healthcare services** rendered by clinical establishments.

- It was noted by this Hon'ble Tribunal that the earlier order of the Co-ordinate Bench in Sir Ganga Ram Hospital had been accepted by the Department and no appeal had been preferred thereagainst before any higher appellate forum, further strengthening the settled position on the issue.

- Accordingly, the impugned order confirming the demand was set aside, and the appeal was allowed in favour of the appellant.

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CASE LAW UPDATE



CS Makarand Joshi

IBC

PRIYANKA BANSAL - APPELLANT VS. HEMASHU JETLEY - RESPONDENT AND ORS.

In the matter of *Priyanka Bansal - Appellant vs. Hemashu Jetley - Respondent and Ors.*, in the order passed by the National Company Law Tribunal (NCLT) dated 23 July 2026

Facts of The Case

- M/s Garib Nawaz Hotels Private Limited - the Corporate Debtor (CD), a company undergoing Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (Code).
- Ms. Priyanka Bansal (alias Kajal Bansal), the Appellant/Applicant, was a Suspended Director of the CD and an unsuccessful Resolution Applicant whose resolution plan was evaluated and rejected by the Committee of Creditors (CoC).
- Mr. Hemanshu Jetley, the Respondent No. 1/RP, was the Resolution Professional appointed to manage the operations and conduct the CIRP of the CD.
- Committee of Creditors, the Respondent No. 2/CoC, comprises solely of Punjab National Bank (PNB) holding 100% voting share.
- Mr. Karan Grover and Mr. Akshay Grover (in Consortium), the Respondent No. 3/SRA, was the Successful Resolution Applicant whose Resolution Plan was approved by the CoC with 100% voting share.
- The sole asset of the CD was a leasehold property measuring 1,950 sq. yards located at Industrial Plot No. 29/7, Industrial Area, Phase-II, Chandigarh, originally allotted on lease in 1984 and permitted for commercial conversion in 2008.
- Owing to non-payment of conversion charges and statutory dues by the management/Suspended Directors of the CD (including the Appellant), the Estate Officer cancelled the lease of the sole asset vide order dated 5 Sept, 2018.

- Following default in financial obligations and loan repayments to PNB, an application was admitted against the CD, formally initiating the CIRP under the Code on 9 February 2024.

- To protect the CD's sole asset from cancellation, the RP pursued legal remedies leading to an order dated 26 December 2024, which conditionally set aside the lease cancellation subject to the RP depositing all outstanding dues within 45 days. The RP submitted the compliance affidavit on 3 January 2025.

- On 9 January 2025, the Estate Office issued a demand notice for ₹ 10,23,95,694/- (Rupees Ten Crores approximately) which included conversion charges with 18% compound interest amounting to ₹ 6,42,84,170/- (Rupees Six crores approximately), GST, ground rent, and an anticipated unearned increase demand of ₹ 3,44,88,470/-. (Rupees Three crores approximately)

- In the 14th CoC meeting held on 8 January 2025, the CoC unanimously (100% vote share) authorized the RP to raise interim finance up to ₹ 10 crores from the SRA (Respondent No. 3) at 12% simple interest (chargeable only if the Resolution Plan is rejected by the NCLT) to settle the Estate Office demand under protest.

- The Appellant—having failed to attend any CoC meetings and having had her own Resolution Plan rejected by the CoC on commercial merits—under Section 60(5) of the Code.

- The Appellant sought to set aside the 14th CoC resolutions approving interim finance and the proposed handover of CD operations to the SRA (Respondent No. 3), alleging non-disclosure of CoC proceedings and unauthorized concessions by the RP.

Arguments of the Appellant

- The RP had wrongfully conceded to the 18% interest rate instead of the lower 8.25% rate he was told to push for. This mistake bloated the debt to his mistake instead of just instead of . The RP had hid key facts about meeting outcomes to trick the creditors into approving extra emergency loans.

- The RP and CoC are attempting to hand over operational control and management of the CD to the SRA (Respondent No. 3) prior to the approval of the Resolution Plan by the NCLT.

Arguments of the Respondents

- Submitted that the Appellant has no locus standi, suppressed her non-participation in all CoC meetings, and is acting as a proxy for co-director Mr. Sunil Bansal. Maintained that paying under protest was necessary to prevent daily compounding interest and permanent forfeiture of the CD's sole asset.

- Confirmed that Civil Writ Petition was actively filed to dispute the 18% interest rate, interim finance was approved with 100% CoC votes, and operational handover was explicitly deferred by the CoC.

- Asserted that the commercial wisdom of the CoC with 100% voting share is non-justiciable. Stated that interim finance

and the two-pronged strategy (paying under protest while litigating in High Court) were thoroughly deliberated to protect the asset value. Noted that the Appellant's plan was rejected on commercial merits and the present application is an abusive attempt to delay CIRP.

- Clarified that interim finance was provided to prevent immediate cancellation of the CD's lease. Confirmed that 12% simple interest applies only if the plan is ultimately rejected, a Performance Bank Guarantee of ₹ 5.62 crores has already been furnished, and no operational control of the CD has been taken over.

Held

- The NCLT held that the Appellant lacks standing under Section 60(5) of the Code. A Suspended Director who deliberately chooses not to attend CoC meetings cannot later challenge the decisions taken in those meetings. Furthermore, an unsuccessful Resolution Applicant cannot use Section 60(5) as an appellate route to challenge commercial decisions made by a 100% voting CoC.

- The NCLT ruled that the RP and CoC acted strictly within their statutory powers under Sections 25(2)(c) and 28(1)(a) of the Code. Raising interim finance from the SRA (Respondent No. 3) to pay the Estate Office under protest was a legally sound and commercially prudent action to preserve the sole asset of the CD. The allegation regarding the transfer of operational control was rejected as baseless and premature, as the CoC had explicitly deferred that item.

- The NCLT dismissed the Interim Application with costs of ₹ 50,000/- on the Appellant, to be deposited into the Prime Minister's National Relief Fund, and directed the RP to proceed with the CIRP unimpeded.

Companies Act

SCHAEFFLER INDIA LTD. VS. CHIEF CONTROLLING REVENUE AUTHORITY & ORS.

Writ petition in the matter of *Schaeffler India Ltd. vs. Chief Controlling Revenue Authority & Ors.* Bombay High Court judgment dated 18 February 2026

Facts of the Case

- Schaeffler India Limited, formerly FAG Bearings India Limited, proposed a **composite scheme of amalgamation** under Sections 230 to 232 of the Companies Act, 2013.

- The scheme involved the merger of INA Bearings India Private Limited and LuK India Private Limited into Schaeffler India Limited, with the entire businesses of both transferor companies being transferred to Schaeffler as going concerns against consideration in the form of equity shares of Schaeffler.

- Since LuK India was situated in Tamil Nadu, the scheme required sanction

from the **NCLT, Chennai Bench**, which approved the scheme on **13 June 2018**.

- Whereas, Schaeffler and INA Bearings were situated in Maharashtra. Accordingly, the same composite scheme was placed before the **NCLT, Mumbai Bench**, which sanctioned it on **8 October 2018**.

- The NCLT Mumbai directed the certified copy of its order, together with the scheme, to be lodged for adjudication of stamp duty.

- When the NCLT Mumbai order was lodged for adjudication, the Maharashtra stamp authorities treated the two amalgamations as separate transactions and applied Section 5 of the Maharashtra Stamp Act, requiring aggregate stamp duty on each distinct transaction.

- Stamp duty was consequently assessed at **₹ 50 crore**, effectively applying the maximum cap of ₹ 25 crore separately to each amalgamation.

- The assessment was upheld in appeal, following which Schaeffler approached the Bombay High Court.

- The principal issue before the Court was whether, for stamp duty purposes, the authorities could look beyond the NCLT Mumbai order and split the composite amalgamation into two distinct transactions chargeable separately under Section 5 of the Maharashtra Stamp Act.

Petitioner's Arguments

- The petitioner contended that Section 3 of the Maharashtra Stamp Act levies stamp duty on an "instrument" and not on the underlying transaction.

- In the present case, the relevant instrument was the NCLT Mumbai order dated 8 October 2018 sanctioning the composite scheme; and the individual mergers forming part of the scheme could not independently be treated as the instruments chargeable to duty.

- Once the NCLT Mumbai sanctioned a single composite scheme, the stamp authorities could not split the underlying arrangement into separate transactions merely because two transferor companies were involved.

- The petitioner relied on the Full Bench decision of the Bombay High Court in *Chief Controlling Revenue Authority, Pune v. Reliance Industries Limited* AIR 2016 Bom 108 wherein it was held that, the Maharashtra Stamp Act is based on chargeability of instruments and not transactions; and it is therefore immaterial whether an instrument pertains to one or more transactions.

- Reliance was also placed on the Gujarat High Court decision in ***Ambuja Cements Limited v. Chief Controlling Revenue Authority*** **R/Stamp Reference No. 1 of 2020, decided on February 10, 2023, wherein the** Gujarat High Court held that treating components of a composite amalgamation as distinct transactions and demanding separate stamp duty would conflict with the true import of Section 5 of the Stamp Act.

- It was further argued that Section 232 of the Companies Act, 2013 expressly

permits amalgamation involving **two or more companies.**

- It was also argued that the Maharashtra stamp authorities did not have jurisdiction to assess stamp duty on the NCLT Chennai order.

Respondents' Arguments

- The State principally relied upon Section 5 of the Maharashtra Stamp Act, 1958.
- Section 5 applies where one instrument covers several distinct matters and requires that, aggregate stamp duty should be charged as if each matter were covered by a separate instrument.
- According to the respondents, although the NCLT Mumbai had passed one order, the scheme involved amalgamation of two separate transferor companies i.e. INA Bearings and LuK India with Schaeffler; and these constituted two different transactions attracting separate stamp duty.
- The respondents further contended that, no stamp duty had been paid on the NCLT Chennai order; and since the NCLT Mumbai order referred to the amalgamation of LuK India and the consideration payable to its shareholders, the Chennai order had effectively been brought into Maharashtra.
- Reliance was also placed upon Section 2(g)(iv) of the Maharashtra Stamp Act to contend that the NCLT Mumbai order proceeded on the basis of the Chennai order; and the Maharashtra authorities were therefore entitled to levy duty in relation to the amalgamation of LuK India as well.
- The state also argued that, since Schaeffler's registered office was in Maharashtra and the scheme was to be implemented in Maharashtra, the State had jurisdiction to levy the duty.

Held

The Bombay High Court rejected the approach adopted by the stamp authorities and held as follows:

- "The impugned order is also legally unsustainable as it assesses the stamp duty payable on the underlying transaction and not the order of NCLT, Mumbai which is the instrument to be assessed for the purpose of stamp duty."
- On the nature of the document chargeable to stamp duty, the Court observed, "What is lodged for adjudication is the NCLT, Mumbai order and it is the order of sanction of NCLT, Mumbai which constitutes the instrument for purpose of assessment of stamp duty. It is the NCLT, Mumbai order which originated in Mumbai and was lodged for adjudication.
- Following the Full Bench decision in *Reliance Industries*, the Court held that, "The impugned order by applying Section 5 of Stamp Act, 1958 seeks to assess the underlying transaction which is impermissible as it is the order of NCLT, Mumbai which constitutes the instrument. Applying the enunciation of law by Hon'ble Full Bench, it is immaterial whether the scheme of amalgamation pertains to amalgamation of one company or of two companies in one company. It is the order of sanction of scheme which constitutes conveyance."

- On the applicability of Section 5, the Court stated: "*The provisions of Section 5 of the Stamp Act, 1958 applies, where one instrument relates to several distinct matters of transactions which cannot be blended into one or cannot be conceived as merely parts of one aggregate. It applies where the instrument comprises of several distinct matters, though may be of the same category and where Section 5 applies, each of the instruments dealing with each of the matter would be chargeable under the Stamp Act, 1958 by the aggregate amount of stamp duty in respect of all such instruments. The application of Section 5 requires going into the underlying transaction which cannot be done in respect of the order of sanction of scheme.*"

- The Court further held that "The observations of NCLT, Mumbai as regards the consideration in respect of amalgamation of LuK India does not constitute a distinct transaction within the meaning of Section 5 of the Stamp Act, 1958 or amounts to bringing the order of NCLT, Chennai in this State."

- On the Maharashtra authorities' jurisdiction over the Chennai order, the Court held that Even if it is excepted that the order of sanction of scheme of NCLT Chennai bench has not been lodged for adjudication in Chennai and there is no payment of stamp duty, the stamp authorities in Mumbai would not have the jurisdiction to assess the stamp duty on the NCLT, Chennai order as it is not an order which is originating in Maharashtra.

- It further clarified that the duty has been paid on the NCLT Chennai order is an issue to be considered by the concerned authorities in Chennai and the same is immaterial for the purpose of assessing the stamp duty on the order of NCLT, Mumbai bench.

- Finally, while setting aside the assessment, the Court held that the impugned order assessing the stamp duty on the transactions of merger with INA Bearings and LuK India by considering the two transactions as separate and distinct transactions is clearly erroneous in view of the settled legal position.

SEBI

SECURITIES EXCHANGE BOARD OF INDIA VS. RAJEEV VASANT SHETH AND ORS.

In the Supreme Court of India, *Securities Exchange Board of India vs. Rajeev Vasant Sheth and Ors.* dated 11 August 2026

Facts of the Case

- Tara Jewels Limited (**TJL**) was engaged in buying and selling jewellery and was listed on both the Bombay Stock Exchange and the National Stock Exchange. Mr. Rajeev Vasant Sheth (Respondent No. 1) was the Chairman and Managing Director, while his daughters, Ms. Aarti Sheth (Respondent No. 2) and Ms. Divya Sheth (Respondent No. 3),

were Promoters and Vice Presidents of **TJL**.

- **TJL** suffered a net loss of ₹ 166.80 Crores during the quarter ending September 2017 compared to a net loss of ₹ 6.62 Crores in the preceding quarter ending June 2017. Net sales fell by approximately 69% during the same period, and the company eventually entered liquidation on 30.07.2019 via an order of the National Company Law Tribunal.

- Between 02.10.2017 to 29.11.2017 (the Unpublished Price Sensitive Information- **UPSI** period), Respondent No. 1 sold 30,93,948 shares (12.56% of total shareholding) and another 29,75,000 shares subsequently. Respondent Nos. 2 and 3 sold their entire shareholding of 1,14,440 shares each. These sales allowed the respondents to cumulatively avoid losses of approximately ₹ 1.38 Crores.

- Securities and Exchange Board of India (**SEBI**) issued an Impounding Order-cum-Show Cause Notice (**SCN**) on 04.09.2020 seeking explanations and proposing penalties.

- On 24.05.2021, the **WTM** found all three respondents guilty of insider trading under the **SEBI Act** and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (**PIT Regulations 2015**). The **WTM** restrained them from accessing the securities market (1 year for Respondent No. 1; 6 months for Respondent Nos. 2 & 3), directed disgorgement of avoided losses along with 12% interest per annum, and imposed monetary penalties under Sections 15G and 15HB of the **SEBI Act**.

- Aggrieved by the **WTM** order, the respondents filed Appeal No. 536 of 2021 before the **SAT**, Mumbai.

- On 19.04.2022, **SAT** allowed the appeal, setting aside the **WTM** order. **SAT** accepted the respondents' defense that **TJL** was at risk of becoming a non-performing asset and held that selling shares to meet corporate requirements fell within the exonerating proviso to Regulation 4(1) of P**IT Regulations 2015**. It also noted minimal price movement post-**UPSI** disclosure.

- **SEBI** challenged **SAT's** order before the **SC** under Section 15Z of the **SEBI Act** (Civil Appeal No. 4905 of 2022

Contentions of SEBI

- **Presumption of Insider Trading & Irrelevance of Trade Purpose:** Under Regulation 4(1) read with its official Note under the **PIT Regulations, 2015**, once contemporaneous possession of UPSI and trading are established, a legal presumption arises that trades were motivated by knowledge of such information. The reasons for trading or the purpose to which proceeds are applied are legally irrelevant.

- **Scope of Statutory Defences under the Proviso to Regulation 4(1):** The statutory defences provided under the proviso to Regulation 4(1) are exhaustive or restricted only to circumstances of a similar nature under the rule of ejusdem generis. Subjective commercial necessity

or infusion of capital into the company is not a recognized defense.

- **Applicability of Judicial Precedents (*SEBI vs. Abhijit Rajan & Rakesh Agrawal*):** The precedent in ***SEBI vs. Abhijit Rajan (and Rakesh Agrawal)*** was rendered under the legacy **1992 PIT Regulations**. The **2015 PIT Regulations** introduced a stricter regulatory scheme with an explicit statutory "Note" appended to Regulation 4(1) that expressly bars considering the end-use or purpose of trade proceeds.

- **Impact on Market Price and Quantified Loss Avoidance:** The failure of stock prices to crash immediately after public disclosure does not erase insider trading liability. The pre-disclosure sales enabled the Respondents to avoid an estimated cumulative loss of **₹ 1.38 Crore**, making disgorgement mandatory under Section 11B of the **SEBI Act**, 1992.

Contentions of The Respondents

- **Presumption of Insider Trading & Irrelevance of Trade Purpose:** The statutory presumption under Regulation 4(1) stands rebutted because the trades were executed out of genuine commercial necessity to fund corporate obligations and prevent **TJL's** bank accounts from becoming Non-Performing Assets (**NPAs**). The funds were rerouted into the company rather than used for personal enrichment.

- **Scope of Statutory Defences under the Proviso to Regulation 4(1):** The proviso to Regulation 4(1) is preceded by the word "*including*", indicating that the listed exceptions are illustrative and non-exhaustive. Therefore, insiders remain legally entitled to demonstrate equivalent bona fide circumstances to establish innocence.

  Applicability of ***Judicial Precedents (SEBI vs. Abhijit Rajan & Rakesh Agrawal):*** Relying on ***SEBI vs. Abhijit Rajan***, when trades are compelled by an emergency requirement to infuse funds or support corporate debt restructuring to keep the entity afloat, the presumption of trading "on the basis of **UPSI**" is rebutted

- Impact on Market Price and Quantified Loss Avoidance- Stock price movement on the BSE and NSE between 29.11.2017 and 30.11.2017 showed negligible variation post-disclosure. This proves that the sales caused no market distortion and were not executed with the intention of avoiding losses.

The **Supreme Court of India** allowed **SEBI's** appeal, set aside the **SAT** judgment, and held as follows:

- **UPSI Possession Plus Trading Triggers the Presumption:** The Supreme Court (SC) examined Regulation 4(1) of the PIT Regulations, 2015, which prohibits trading in securities when a person is in possession of UPSI. The Regulation incorporates a rebuttable presumption that trades executed by a person possessing UPSI are motivated by such information. Critically, SC highlighted the Note appended to Regulation 4(1), which specifically embeds a presumption that trades made by a person in possession of UPSI are motivated by the knowledge and information in that person's possession. The SC held that once UPSI possession

and contemporaneous trading are established, the purpose of the trade and the utilisation of sale proceeds become irrelevant considerations.

- **Profit or Loss Is Irrelevant Under the 2015 Framework:** The SC drew a critical distinction between the 1992 PIT Regulations and the 2015 PIT Regulations. Under the earlier 1992 framework, which lacked a comparable note to Regulation 4(1), there was scope available for the Tribunal and the SC to consider why a particular person undertook the transactions in question, including the purpose for which the proceeds were used. However, the 2015 Regulations, through the Note in Regulation 4(1), eliminated this consideration entirely. The SC stated: the fact that the respondents had indulged in the trades at the relevant point in time is sufficient to conclude that they had conducted insider trading, and less or no profit is of no consequence.

- **Distinction from *SEBI vs. Abhijit Rajan (2024)*:** The SC carefully distinguished its earlier ruling in ***SEBI vs. Abhijit Rajan (2024)***, where the accused had sold shares while in possession of UPSI to fund a Corporate Debt Restructuring (CDR) package for the parent company. In that case, decided under the 1992 PIT Regulations, the Court had held that the motive of the insider, the direction of the trade, and the reason for which such trade was carried out were all relevant factors. The present bench clarified that such considerations simply cannot apply under the 2015 PIT Regulations because the Note in Regulation 4(1) expressly makes the purpose of utilising proceeds irrelevant. The SC observed that had the transactions in the Abhijit Rajan case been governed by the 2015 PIT Regulations, the defence of compelling necessity for the CDR contribution could not have been considered.

- **Defences Under PIT Regulations 2015 Must Be Similar in Nature:** The SC acknowledged that the defences available under Regulation 4(1) of the 2015 PIT Regulations are not exhaustive. However, it held that any defence raised by a person accused of insider trading must be of a similar nature to those specifically enumerated in the Regulation. These enumerated defences include, among others, off-market inter-se transfers between insiders, transactions through the block deal window mechanism, transactions pursuant to statutory or regulatory obligations, and trades executed under approved trading plans. The respondents' claim that the sale proceeds were used for company purposes did not qualify as a defence of a similar nature and was therefore rejected.

- **Penalty Reduction:** While restoring the insider trading findings and the disgorgement order of approximately ₹ 1.38 crores, the Court found the monetary penalty of ₹ 25 lakh imposed on Rajeev Vasant Sheth (the Chairman and Managing Director) to be excessive. It reduced this penalty to ₹ 10 lakh, bringing it in line with the ₹ 10 lakh penalty that had been imposed on each of the other two promoters, Aarti Sheth and Divya Sheth.

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FEMA – UPDATES AND ANALYSIS





CA Hardik Mehta *CA Tanvi Vora*

In this article, we have discussed recent amendments made in FEMA through Notifications, Circulars, Master Directions, Press Notes & Press Releases.

A. Update through Rules, Circulars, Notifications and Master Directions

1. RBI dispenses two reporting requirements relating to Rupee accounts of non-resident banks

The Reserve Bank of India ("RBI") has discontinued, with immediate effect, two reporting requirements applicable to Authorised Dealer ("AD") Category-I banks in relation to Rupee accounts of non-resident banks.

The discontinued requirements, originally prescribed *vide* A.P. (DIR Series) Circular No. 92 dated 4 April 2003, were as follows:

1. **Annual reporting of branches maintaining Rupee accounts:** AD banks were required to furnish to the RBI, by 15 January every year, a list of their offices/ branches maintaining Rupee accounts of non-resident banks as at 31 December of the preceding year.

2. **Reporting of temporary overdrafts:** AD banks were required to report to the RBI where temporary overdrafts permitted to their overseas branches/correspondents exceeded the prescribed aggregate limit and the excess remained unadjusted beyond the stipulated period.

It does not, by itself:

- change the eligibility for opening/ maintaining Rupee accounts of non-resident banks;
- change the underlying FEMA permissions;
- change the permitted transactions through such accounts; or
- remove other applicable regulatory reporting requirements.

Consequential change to Master Direction on Master Direction - Deposits and Account has also been carried out.

(Comments: The circular represents a procedural and reporting-related rationalisation and should not be construed as a substantive liberalisation of the FEMA framework governing Rupee accounts of non-resident banks. The underlying permissions, conditions and restrictions applicable to such accounts continue to be governed by the extant FEMA/ RBI framework.)

RBI/2026-27/251 A.P. (DIR Series) Circular No. 20 dated 2 September 2026.

RBI/FED/2015-16/9 FED Master Direction No. 14/2015-16 updated on 2 September 2026.)

2. FDI in Inventory-Based E-Commerce for Exports: FEMA Framework Now Operationalised

The Government has updated the regulatory framework for permitting foreign investment in inventory-based e-commerce exclusively for exports of goods manufactured or produced in India. The change represents a targeted relaxation of the long-standing restriction on foreign investment in inventory-based e-commerce, while retaining the existing restrictions for domestic B2C e-commerce.

Background

Under the existing FDI framework, 100% FDI under the automatic route is permitted in the marketplace model of e-commerce, whereas FDI is not permitted in the inventory-based model. The inventory-based model broadly involves the e-commerce entity owning the inventory and selling the goods directly to consumers. On 23 July 2026, the Department for Promotion of Industry and Internal Trade (DPIIT), through Press Note No. 3 (2026 Series), announced a specific relaxation. The restrictions on inventory-based e-commerce were made inapplicable where the model is used exclusively for export of goods/products manufactured or produced in India. This was covered in the FEMA updates CTC Journal's August issue.

FEMA implementation

The policy change has now been given effect through the Foreign Exchange Management (Non-debt Instruments) (Fourth Amendment) Rules, 2026, notified by the Ministry of Finance, Department of Economic Affairs, *vide* S.O. 4870(E) dated 2 September 2026.

A new Serial No. 15.2.5 has been inserted in Schedule I to the NDI Rules, 2019. It permits an e-commerce entity to undertake the inventory-based model exclusively for export of goods or products manufactured or produced in India, subject to the Foreign Trade Policy 2023, Handbook of Procedures and FEMA (Export of Goods & Services) Regulations, 2015.

The amendment further provides that the restrictions relating to B2C transactions and inventory-based e-commerce under Serial Nos. 15.2.1 to 15.2.4 will not apply to exports undertaken under the new provision. The amendment comes into force upon publication in the *Official Gazette*.

DGFT framework

The FEMA amendment follows the operational framework introduced by the Directorate General of Foreign Trade (DGFT) on 5 August 2026 through Notification No. 27/2026-27 and Public Notice No. 25/2026-27.

The framework, titled the Inventory-based Cross-border E-Commerce Facilitation Framework, provides the operational mechanism for export-oriented inventory-based e-commerce.

(Comments: The combined framework therefore enables a foreign-invested e-commerce entity to own/procure inventory in India for export, subject to the prescribed EOR/SOR and export-control framework. This is a significant structural change for global e-commerce platforms seeking to source and fulfil Indian products for overseas consumers.

The relaxation is not a general liberalisation of inventory-based e-commerce in India. It is specifically confined to exports of goods/products manufactured or produced in India.

Accordingly, foreign investment in an inventory-based model for domestic B2C sales continues to remain restricted. The amendment should therefore be viewed as an export-focused carve-out, rather than an opening of India's domestic inventory-based e-commerce sector to foreign investment.)

S.O. 4870(E) dated 2 September 2026.

■

BEST OF THE REST





Rahul Hakani
Advocate

Niyati Mankad
Advocate

1 KOTAK MAHINDRA BANK LIMITED VS. TRUPTI SANJAY MEHTA AND OTHERS – JUDGMENT DATED SEPTEMBER 02, 2026 PASSED IN CIVIL APPEAL NO. 8531 OF 2015 [SUPREME COURT] [2026 INSC 943]

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Ss. 2(1)(c), 2(1)(m), 13 and 14 — Acquisition of non-performing debt by a "bank" from an entity not covered under the Act — Maintainability of SARFAESI proceedings — Acquisition of a non-performing secured loan account by an institution already governed by the SARFAESI Act from an entity not within its ambit clothes the loan account with attributes of a "secured debt". When a claim is "live and owing", the acquisition of such debt by a bank empowers it to invoke recovery measures under the SARFAESI Act, irrespective of whether the original lender was a notified financial institution at the time of debt creation

Facts

Non-banking financial company (NBFC) City Financial Consumer Finance Limited (CFCFL) extended loans to borrowers. At the time of creation of these debts, CFCFL was not notified as a "financial institution" under Section 2(1)(m) of the SARFAESI Act. Upon default by the borrowers, CFCFL initiated arbitration proceedings. Later, Kotak Mahindra Bank Limited (KMBL), a "bank" under Section 2(1)(c) of the Act, acquired these loan accounts under deeds of assignment. KMBL subsequently initiated recovery measures under Section 13 and Section 14 of the SARFAESI Act. The borrowers challenged KMBL's invocation of the SARFAESI Act on the ground that debts originating from an un-notified NBFC could not be converted into "secured debts" under the Act. The Bombay High Court in one instance ruled against KMBL, while a co-ordinate Bench later ruled in favor of KMBL relying on Supreme Court precedents.

Issues Involved

1. Whether a bank defined under Section 2(1)(c) of the SARFAESI Act can invoke its provisions to recover a debt assigned to or taken over by it from an entity not governed by the Act at the time of debt creation?

2. Whether a loan/debt secured by a mortgage in favor of an unnotified NBFC assumes the status of a "secured debt" upon assignment to a bank covered under the SARFAESI Act?

Held

The Supreme Court allowed Civil Appeal No. 8531 of 2015 and dismissed the connected appeals, establishing that KMBL was fully entitled to invoke recovery measures under Section 13 and Section 14 of the SARFAESI Act. Synthesizing its ruling in ***M.D. Frozen Foods Exports Pvt. Ltd. vs. Hero Fincorp Ltd. [(2017) 16 SCC 741]*** and ***Indiabulls Housing Finance Ltd. vs. Deccan Chronicle Holdings Ltd. [(2018) 14 SCC 783]***, the Court held that as long as a debt is "live and owing", its transfer to an entity governed by Section 2(1)(c) clothes it with the attributes of a "secured debt" under Section 2(1)(zf), making the assignee a "secured creditor" under Section 2(1)(zd). The Court reinforced ***ICICI Bank Ltd. vs. Official Liquidator of APS Star Industries Ltd. [(2010) 10 SCC 1]*** to confirm that debt assignment is a valid banking activity governed by RBI guidelines under Sections 21 and 35A of the Reserve Bank of India Act, 1934. E***choing Mardia Chemicals Ltd. vs. Union of India [(2004) 4 SCC 311]***, the Court observed that a purposive interpretation of Section 2(1) definitions is required to facilitate quick NPA resolution in the larger economic interest, thereby rejecting the borrowers' attempt to escape SARFAESI recovery.

2 THE STATE OF ANDHRA PRADESH VS. SUDA SURESH VEERA VENKATA NAGA RAJU – JUDGMENT DATED JULY 27, 2026 PASSED IN SLP (CRL.) NO(S). 12344 OF 2026 [2026 INSC 744] [SUPREME COURT]

Criminal Procedure — Police custody — Conditions — Conditions imposed during police custody should not render custodial investigation ineffective or unworkable. Section 187(2) and (3) BNSS permits police custody, in aggregate not exceeding 15 days, in parts within the statutorily prescribed period. Section 38 BNSS does not confer a right to continuous presence of an advocate throughout interrogation. Audio-visual recording of actual interrogation/discovery proceedings is a salutary safeguard, but continuous recording of transit cannot be insisted upon

Facts

Respondent-accused, a Police Inspector, was arrested in a case concerning alleged custodial death and disappearance of the deceased. SIT sought police custody for tracing the body, recovery of evidence, identification of co-accused and reconstruction of the crime. Magistrate granted police custody subject to several conditions, including advocate presence, CCTV/audio-visual recording and a non-extendable outer limit. High Court substantially retained the conditions while modifying the order.

Issues Involved

Whether the conditions imposed while granting police custody, particularly confinement of interrogation to the prison, continuous videography of transit, presence of an advocate throughout interrogation and

an absolute outer limit on custody, were legally sustainable and compatible with effective investigation?

Held

Appeal allowed. Confining interrogation to the Central Prison was held unjustified where discovery under Section 23 BSA, 2023 required access to the actual place of discovery. Section 187(2) and (3) BNSS enlarges the window for police custody and, therefore, an absolute non-extendable limit could not be imposed. Under Section 38 of BNSS, an accused has a right to meet an advocate during interrogation, but not to continuous presence throughout. CCTV/audio-visual recording of actual interrogation and discovery/recovery was retained as a safeguard, but continuous videography of transit was held unworkable. The Court accordingly permitted interrogation at the SIT's designated centre/equivalent facility, subject to safeguards against coercion and protection of the accused's safety and dignity.

3 HIGH POINT SUPPLY COMPANY LLC VS. AGATI HEALTHCARE PRIVATE LIMITED – JUDGMENT DATED AUGUST 5, 2026 PASSED IN COMMERCIAL FIRST APPEAL NO. 15 OF 2026 [2026:BHC-AS:32157-DB] [BOMBAY HIGH COURT]

Commercial Courts Act, 2015 — S. 12-A(1) — Pre-institution mediation — Exemption — Suit contemplating urgent interim relief — Held, Section 12-A(1) is mandatory, but where a suit genuinely contemplates urgent interim relief, pre-institution mediation is not required. The threshold inquiry under S. 12-A(1) is jurisdictional and must be evaluated from the plaintiff's standpoint upon a holistic reading of the plaint and documents, rather than an adjudication on the merits or adequacy of damages

Facts

The Appellant (Plaintiff), a US-based company, entered into an Exclusive Distribution Agreement (EDA) with the Respondent (Defendant), an Indian manufacturer, appointing the Appellant as exclusive distributor of Colostrum powder in North America until June 2026. The EDA contained an exclusivity clause with a specific exception for an existing customer, Pantheryx, but provided that any successor upon a change of control at Pantheryx must purchase through the Appellant. Alleging that the Respondent breached the exclusivity clause by directly supplying to Glanbia (which acquired Pantheryx) and wrongfully terminated the EDA on 23-10-2024, the Appellant filed a suit on 13-04-2025 seeking specific performance, quashing of termination, permanent injunction, disclosure of sales, and damages, alongside an application for urgent interim relief. The Respondent filed an application under Order VII Rule 11(d) CPC for rejection of the plaint for non-compliance with Section 12-A(1) of the Commercial Courts Act, 2015. The Trial Court allowed the application on 09-12-2025, holding that no genuine urgency was established, urgency pleadings were vague, loss was compensable in money, and prayers were a camouflage. Aggrieved, the Appellant filed the Commercial First Appeal.

Issues

Whether the Trial Court was justified in rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, on the ground of non-compliance with Section 12-A(1) of the Commercial Courts Act, 2015, or whether the suit genuinely contemplated urgent interim relief so as to attract the statutory exemption.

Held

The High Court allowed the appeal, set aside the order dated 09-12-2025, and restored Commercial Suit No. 2 of 2025. The Court held that Section 12-A(1) of the Commercial Courts Act, 2015, imposes a mandatory pre-condition unless the suit contemplates urgent interim relief. The threshold inquiry under Section 12-A(1) read with Order VII Rule 11(d) CPC is limited and jurisdictional, to objectively test whether the plaint discloses a bona fide case for immediate protective relief from the plaintiff's standpoint, and not an adjudicatory assessment on merits, balance of convenience, or adequacy of monetary compensation. Merely because monetary damages are claimed alongside equitable/ injunctive reliefs for continuing breach of an exclusivity clause, it does not negate genuine urgency or justify holding that the prayers are a camouflage. The delay caused by obtaining expert foreign law opinion and international notarization was sufficiently explained and did not render the urgency illusory. The Court relied upon Supreme Court rulings in ***Patil Automation (P) Ltd. vs. Rakheja Engineers (P) Ltd. [(2022) 10 SCC 1], Yamini Manohar vs. T.K.D. Keerthi [(2024) 5 SCC 815], Dhanbad Fuels (P) Ltd. vs. Union of India [(2025) 9 SCC 424]***, and ***Novenco Building and Industry A/S vs. Xero Energy Engineering Solutions Pvt. Ltd. [(2026) 4 SCC 815]***, as well as Bombay High Court's decision in ***Buildcon Sethia Construction vs. Dipti Coop. Housing Society Ltd. [2025 SCC OnLine Bom 4958]***.

4 AMIT RANJAN AND OTHERS VS. UNION OF INDIA AND OTHERS - DECIDED ON JULY 2, 2026 IN LPA NO. 393 OF 2026 AND CM APPL. NO. 34470 OF 2026 [DELHI HIGH COURT]

Constitution of India — Art. 226 — Maintainability of writ petition — Private entities and commercial disputes — Cryptocurrency exchange: Disputes regarding withdrawal restrictions, cyber incidents, and fund mismanagement by a private exchange (BitBNS) are private commercial matters not involving public law rights — BitBNS is not "State" under Art. 12 — Absent a statutory regulatory framework, claims involving disputed facts, fund release, or damages are not amenable to writ jurisdiction and belong before civil courts or consumer fora

Facts

The Appellants were users of "BitBNS," a private cryptocurrency exchange operated by Respondent 11 and co-founded by Respondents 12 and 13. Following a reported cyber incident, BitBNS issued a public statement on February 1, 2022, restricting daily user wallet withdrawals to ₹ 5,000,

leading users to file a collective criminal complaint on the National Cyber Crime Portal. Subsequently, the Appellants filed a writ petition under Article 226 seeking directions for a regulatory framework, a CBI/ SIT investigation into alleged financial fraud and fund mismanagement, immediate release of their frozen funds, and compensation for losses. The Single Judge disposed of the writ petition, holding that the dispute was a private commercial matter against private entities not constituting "State" under Article 12, while granting liberty to seek alternative remedies. The Appellants then filed this Letters Patent Appeal challenging the Single Judge's order.

Issues Involved

Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private cryptocurrency exchange and its founders for alleged fund mismanagement, withdrawal restrictions, and cyber incidents.

Held

The High Court dismissed the appeal, affirming that the dispute is purely private and commercial in nature between individual users and a private exchange, and the involvement of numerous investors does not transform it into a public law issue. The Court emphasized that Respondents 11 to 13 are private entities neither created, financed, nor controlled by the State, and the taxation regime for Virtual Digital Assets under the Finance Act, 2022 does not convert them into "State" under Article 12 of the Constitution or subject them to public law scrutiny. Adjudication of claims for release of funds, determination of individual wallet balances, culpability for fraud, and quantification of compensation require appreciation of evidence and trial, which cannot be undertaken in summary writ proceedings under Article 226. Reaffirming the principles in ***Rana Handa vs. BitBNS Internet Pvt. Ltd. (2026: DHC: 1446)*** and noting prior Supreme Court jurisprudence in Internet and ***Mobile Association of India vs. Reserve Bank of India (2020 INSC 264)***, the Court held that the Appellants are not remediless and must pursue their grievances before competent civil courts, consumer fora, or through the pending criminal complaint.

5 SRI SAI WINES, REPRESENTED BY ITS PROPRIETOR, PALLA AKHIL REDDY VS. UNION OF INDIA, REPRESENTED BY MINISTRY OF FINANCE AND OTHERS - DECIDED ON JUNE 22, 2026 IN WRIT PETITION NO. 969/2026 [ADHRA PRADESH HIGH COURT AT AMRAVATI]

Where a bank account of a petty vendor was frozen merely because a customer, who had paid for goods through UPI, was subsequently found involved in a cheating case, such freezing, without verifying the vendor's involvement and without following due process of law, is unsustainable and contrary to law - The authorities cannot expect petty vendors to verify the credentials of customers making UPI payments.

Facts

The petitioner, a licensed wine trader, was running a retail liquor outlet and maintained a current account with State Bank of India. On 19-8-2025, the account was abruptly frozen at the instance of the Cyber Cell, Patna District, pursuant to a complaint lodged against a customer. The customer had purchased liquor worth ₹ 1,000 from the petitioner and made payment through UPI. As the customer was subsequently found involved in a cheating case, the petitioner's account, containing ₹ 8,26,633, was frozen. The petitioner challenged the action under Article 226 of the Constitution of India on the ground that it was without notice, disclosure of reasons or due process and prevented him from carrying on his business and therefore, violative of Articles 14, 19(1)(g) and 21 and 300-A of the Constitution of India and contrary to the Principles of Natural Justice.

Issues

(i) Whether the respondents could freeze the petitioner's bank account merely because a customer, who had made a payment of ₹ 1,000 through UPI for purchase of liquor, was subsequently implicated in a cheating case.

(ii) Whether such freezing of the bank account, without notice to the petitioner and without verifying his involvement or following due process of law, was sustainable.

Held

The High Court held that the freezing of the petitioner's account was illegal, unsustainable and contrary to law. In transactions involving petty businesses through UPI, such as PhonePe and Google Pay, a vendor cannot be expected to verify the credentials of every individual making payment. The authorities, without verifying the petitioner's credentials and without noticing his involvement in any criminal case, cannot freeze his account merely because the customer was allegedly involved in a cheating case. The Court accordingly directed the respondent-Bank to defreeze Account No. 43461149232. The writ petition was dismissed against Respondent No. 5 as not pressed, with no order as to costs.

■

" It Is Very Easy To Defeat Someone,
But It Is Very Hard To Win Someone. "

A.P.J. Abdul Kalam

THE CHAMBER NEWS



CA Vitang Shah
Hon. Jt. Secretary



CA Viraj Mehta
Hon. Jt. Secretary

Important events and happenings that took place online/ physical between **August 1, 2026 to August 31, 2026** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on August 1, 2026 are as under:

Type of Membership

Life Members	Ordinary Members	Student Members	Associate Member	Total Members
12	35	13	1	61

PAST PROGRAMMES

STUDY CIRCLE & STUDY GROUP

4.8.2026
Topic: Study Group - Recent Judgements under Income Tax Act
Speaker: ***CA Anish Thacker***

18.8.2026
Topic: Study Circle - Tax Audit 2026 : Analysing Emerging issues and Amendments
Speaker: ***CA Yogesh Amal***

INDIRECT TAXES

6.8.2026
Topic: Study Circle - Issues in Reverse Charge Mechanism - Part 2
Group Leader : CA Ashwin Kumaar
Chairman : CA Rashmin Vaza

26.8.2026
Topic: Study Circle - GST Issues related to Detention, Seizure and Confiscation of Goods in Transit
Group Leader : CA Annapurna Kabra
Chairman : Adv Jatin Harjai

DIGITAL CONNECT

7.8.2026
Topic: **Prompt to Productivity : AI-Powered Coding for Accountants**
Speaker *: CA Karan Shah*

PUNE CHAPTER

8.8.2026
Topic: **Buy-back - History of taxation & recent judgments**
Speaker *: CA Parag Kiri & CA Neha Marshiya*

DIRECT TAXES

8.8.2026
Topic: **Webinar on Retrospective Amendments: From Legislative Intent to Courtroom Battles**
Speaker: *Mr. V. Sridharan, Senior Advocate*

21.8.2026
Topic: **ISG - Recent Important Decisions Under Direct Tax**
Speaker: *CA Ganesh Rajgopalan*

COMMERCIAL & ALLIED LAWS

8.8.2026
Topic: **Maharashtra Co-operative Housing Societies Act, 1960 and Rules, 1961 - Recent Updates – Jointly with The Bombay Chartered Accountants' Society**
Speaker *: CA Ramesh Prabhu*

COMMERCIAL & ALLIED LAWS

12.8.2026
Topic: **Discussion on Financial Statement requirements for Non Corporate Entities**
Speaker: *CA G. Ganesh*

Topic: **Panel Discussion on Section 16(2)(c) vs Bonafide Recipient- The Saga Sparkled by Supreme Court**
Panelist: *Advocate Shri S. Thirumalai, Advocate Shri Karan Talwar, CA Shri Mandar Telang*
Moderator: *CA V. S. Sudhir*

STUDENT

Topic: Webinar on Mastering Tax Audit: Law, Logic & Technology

12.8.2026

a Form 3CD Unlocked – Clause-wise Practical Analysis (Part I)
Speaker: ***CA Bandish Hemani***

13.8.2026

b Form 3CD Unlocked – Clause-wise Practical Analysis (Part II)
Speaker: ***CA Jigar Mehta***

14.8.2026

c Smart Tax Audit – Leveraging AI, Automation & Digital Tools Responsibly
Speaker: ***CA Charmi G Shah***

INTERNATIONAL TAXATION

19.8.2026
Topic: Study Circle - Navigating FEMA NDI Framework including Key Proposed changes
Speaker *:* ***CA Niki Shah***

MEMBERS' DEVELOPMENT & OUTREACH

20.8.2026
Topic: Demystifying ICAI Code of Ethics 2026
Speaker: ***CA Priti Savla***

26.8.2026
Topic: SME Governance Summit 2026 - Where Governance Meets Growth Capital – Collaboration with MentorMyBoard (MMB)

ACCOUNTING & AUDITING

21.8.2026
Topic: Webinar on FCRA, Financial Reporting & Audit of Non-Corporate Entities
Speaker *:* ***CA Paresh Shah & CA Padmashree Crasto***

BENGALURU CHAPTER

29.8.2026
Topic: Recent International Tax rulings
Speaker *:* ***Adv. Bharath Lakshminarayan***

Glimpses of 2 Days Workshop on Power Query held on 2nd & 3rd September 2026, Saturday, at the CTC Learning centre, 3 Reva Chamber, New Marine Lines, Mumbai 400020



***CA Neha Gada (President) giving her opening remarks**, Sitting (L-R) CA Jay Kalra (Vice Chairman), CA Kunjesh Shah (Speaker), CA Ayush Doshi (Convenor) & CA Bhavik Shah (Chairman- Virtual)*



CA Bhavik Shah (Chairman- Virtually) giving brief about the session



View of the audience getting the live hands-on session



CA Kunjesh Shah giving his presentation



Group Photo

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