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100 YEARS OF EXCELLENCE

THE CHAMBER OF TAX CONSULTANTS
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THE CHAMBER'S JOURNAL

CENTENARY SPECIAL ISSUE

Evolution of Indirect Tax Laws in India



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शताब्दी SUMMIT

Centenary Conference
Hotel Sahara Star, Mumbai
January 30-31, 2026

Programme Highlights:

Day 1 – Friday, 30th January, 2026

Time	Topic	Speakers
9.00 am – 10.00 am	Registration & Breakfast	
10.00 am – 10.20 am	Inaugural session	
10.20 am – 11.00 am	India – Path to 5 Trillion Economy	Eminent Personality
11.00 am – 12.30 pm	The Triple Lens: Accounting, Tax & FEMA in the Capital Market Maze (Including Investments in Companies outside India)	***Panelist*** : CA Jayesh Gandhi, CA Vishal Gada ***Moderator*** : CA Anil Sathe
12.30 pm – 1.00 pm	Networking & Tea-Break	
1.00 pm – 2.00 pm	Start-ups Unplugged: Beyond Valuations & Ventures	***Panelist*** : CA Sujal Shah, CA Anand Bathiya, Mr. Runal Dahiwade ***Moderator*** : CA Ninad Karpe
2.00 pm – 3.15 pm	Networking and Lunch-Break	
3.15 pm – 4.00 pm	AI: Friend, Foe and Future?	Eminent Faculties
4.00 pm – 5.30 pm	Succession Planning – Trust, Transparency & Tax	***Panelist*** : Dr. (CA) Anup Shah, Adv. Bijal Ajinkya ***Moderator*** : Mr. Girish Venkatraman
5.30 pm – 6.00 pm	Networking & Tea-Break	
6.00 pm – 7.00 pm	Bulls, Bears & Beyond: The Capital Markets Dialogue	Eminent Personality
7.00 pm	Dinner	

Day 2 – Saturday, 31st January, 2026

9.00 am – 10.00 am	Breakfast	
10.00 am – 11.00 am	Institutionalizing the Tax Practice	***Panelist*** : Sr. Adv. Nishith Desai, CA Dinesh Kanabar ***Moderator*** : CA Vaibhav Manek
11.00 am – 11.45 am	GST @8: Learning Curves & Leapfrogs	Eminent Faculties
11.45 am – 12.15 pm	Networking & Tea-Break	
12.15 pm -1.45 pm	From Private to Public: Professional's Critical Role in IPOs	Mrs. Deena Mehta *Director, Asit C Mehta Financial Services Ltd.* Mr. Bhavesh Shah *Managing Director, Head - Investment Banking, Equirus*
1.45 pm – 2.45 pm	Networking and Lunch-Break	
2.45 pm – 4.00 pm	Related Party Transactions - Nuances (Covering Domestic, International, Indirect Tax, Corporate Law & SEBI Reporting)	***Panelist*** : CS Savitri Parekh, CA Yogesh Thar ***Moderator*** : CA Apurva Shah
4.00 pm – 5.00 pm	In Conversation with a Legend	Eminent Faculties
5.00 pm – 5.15 pm	Closing Ceremony	
5.15 pm – 6.00 pm	Networking and Hi-tea	

Note : The above schedule/topic is subject to changes, if circumstances so warrant.
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From the President

Dear Members,

December is traditionally a month of reflection—an opportunity to look back at what we have achieved during 2025 and to set aspirational goals for the year ahead. It is also a period that allows us to focus on personal and professional development, since apart from GST filing deadlines, there are not too many professional pressures to cope with. It is therefore fitting that this month's Centenary Special Issue is dedicated to the evolving landscape of Indirect Taxes.

The Chamber, which began its journey as a body of income tax professionals, has over the years adapted to the changing tax environment. The significant rise in indirect tax revenues—and the corresponding increase in disputes, interpretations, and litigation—has drawn many of our members toward Indirect Tax as a core area of practice. This Centenary Special Issue traces the evolution of India's indirect tax framework and highlights emerging trends in a domain that today forms a critical pillar of the nation's economic strength. I am confident that members will find the articles insightful and useful. My special thanks are due to my dear friend, CA A.R. Krishnan, who has conceptualised and curated the issue and each of the authors, who are all experts of exceptional caliber.

Robust indirect tax collections are witnessed even after significant rate cuts were announced in September 2025 to boost consumption and successfully deal with the turbulence of tariffs and a falling Rupee. Despite the hostile global trade environment, India's GDP growth rate has persistently exceeded its quarterly growth targets. The Reserve Bank of India's (RBI) decision to reduce interest rates by 25 basis points in December reflects confidence in the underlying strength of the Indian economy—an economy increasingly supported by improved tax compliance and surging Indirect Tax collections.

Our members can take pride in being partners in this progress. The Chamber's constructive suggestions have long contributed to tax reforms, better revenue administration, and enhanced compliance. This collaborative approach of the profession towards policymakers is one of our greatest strengths.

Some critics have expressed a view that professional bodies like ours are quick to highlight drafting deficiencies or instances of administrative overreach. While we do not shy away from pointing out areas that require improvement, it is important to recognise that this is done solely with the objective of public good and never with a negative mindset. At the same time, we do really acknowledge and appreciate the positive steps and reforms undertaken by our regulators. A shining example is the monumental exercise recently completed by the RBI. On 28 November 2025, the RBI issued 244 Master Directions, replacing more than 9,400 circulars. In an unprecedented clean-up, the RBI reviewed circulars dating back to 1940, scrapped over 5,600 obsolete ones, and consolidated the remainder into a streamlined, accessible framework.

Equally commendable is the RBI's decision that all future circulars will be issued only after inviting public comments. This is precisely how a modern regulator should function—transparent, consultative, and responsive. With this shift, the onus now lies on regulated entities

and professionals like us to carefully study draft circulars and provide timely, informed feedback. This development is nothing short of a watershed moment. I sincerely hope it inspires the CBDT and CBIC to adopt similar consultative processes, ushering in a new era of participatory tax legislation. As President of a responsible professional body, I wholeheartedly applaud the RBI for this path-breaking initiative.

On a joyous note, I am delighted to share that the Chamber's team emerged victorious in the Triangular Inter-Association Cricket Tournament. My congratulations to the coordinators and players who brought home this win—another proud achievement in our Centenary year.

As a family of professionals, it is natural that we share both our joys and our concerns. It is in this spirit that I must express my disappointment at the lukewarm response so far to the upcoming Shatabdi Summit. When we launched the Centenary celebrations on 4th July, more than 500 members came together in a memorable show of unity and pride. The Shatabdi Summit, scheduled for the end of January 2026, is a continuation of that celebration—a once-in-a-century event that deserves the same enthusiasm. I appeal to each of you to actively participate in this Shatabdi Summit and to support it in every other way possible to make it a grand success.

I understand that this period is crowded with professional and social engagements. Yet I firmly believe that the loyalty and commitment of our core members—who number in the hundreds—can make this event a resounding success. This Summit is an opportunity to express our collective gratitude for the Chamber's immense contribution to our professional growth. Even if personal commitments prevent you personally from attending, deputing your partners or colleagues would not only ensure your representation but also help them experience the warmth of the Chamber community and to become a part of the Chamber's Parivar of Professionals.

The organising team has made special arrangements (including accommodation for outstation members) and for fundraising to support the Summit. Details will continue to be updated on the website. While I may sound disappointed at this moment, I remain optimistic that our members across the country will rise to the occasion and make the Shatabdi Summit an event that will be remembered for the next hundred years.

I look forward to your wholehearted participation and support. Together, let us make this celebration truly unforgettable.

Regards,

CA Jayant Gokhale
President



From the Editor's Desk

My Brothers and Sisters,

India's indirect tax landscape has undergone a profound transformation over the past seven decades. Colonial-era taxation established the earliest framework for customs and excise duties, but these levies were designed for revenue extraction, not economic efficiency, for obvious reasons. After Independence, the Constitution, in the Seventh Schedule, allocated taxing powers between the Union and the States, giving rise to a multi-layered structure: central excise on manufactured goods, customs duties on imports and exports, and state sales tax on the sale of goods. Though logically distributed, these taxes created practical fragmentation. Cascading was widespread, compliance demands were substantial, and inter-state trade faced numerous administrative hurdles.

From the 1950s through the 1980s, indirect taxation became increasingly complex. Central excise expanded its coverage, and state sales tax systems began to diverge. Municipal levies such as octroi and entry tax added further layers. A manufacturer or trader often encounters multiple tax points with little or no facility for credit. This complexity worked against India's efforts to industrialise and integrate with global markets.

A shift arrived in 1986 with the introduction of the Modified Value Added Tax (MODVAT) scheme. For the first time, manufacturers could claim credit for duties paid on inputs. Though initially limited, MODVAT represented an ideological shift toward value-added taxation. It signalled policy recognition that tax ought to apply only to value addition rather than gross transaction values. Over time, MODVAT evolved into the CENVAT system, broadening the credit mechanism and laying the foundation for nationwide VAT principles.

In parallel, customs duties were gradually rationalised, especially during the post-1991 liberalisation era. Lower tariffs improved trade competitiveness and aligned India with international economic norms.

Meanwhile, the rise of the service economy led to the introduction of the service tax in 1994 with just three taxable services. Its coverage expanded rapidly to cover virtually all services. The shift from a selective list to a negative list happened in 2012 and was aimed at aligning indirect taxation with the realities of a modern, service-driven economy. However, the litigation over composite transactions, classification, and valuation continued, both for goods and for services.

The early 2000s saw the conversion of state sales tax into Value Added Tax (VAT). This introduced some transparency and generated revenue buoyancy for most States. Unfortunately, VAT and CENVAT remained silos. Credits could not be seamlessly transferred between goods and services or across state boundaries.

These developments clearly indicated that piecemeal reforms could no longer address the systemic fragmentation of India's indirect tax regime. The Goods and Services Tax (GST), introduced on 1 July 2017, sought to achieve a unified structure that could eliminate the split between goods and services, harmonise central and state levies, support seamless credit, and create a national market.

GST subsumed a wide array of taxes—central excise (except on a few products), service tax, state VAT, entry tax, luxury tax, entertainment tax, and others—into a dual levy of CGST and SGST, complemented by IGST for inter-state supplies. It adopted a destination-based principle and a comprehensive input tax credit framework. One of its most transformative elements was the creation of the GST Network (GSTN), a digital infrastructure enabling registration, return filing, and tax payment on a unified platform.

A distinctive feature of GST is the GST Council, a constitutional body demonstrating cooperative fiscal federalism. With equal voting weight for the Union and States, the Council has played a vital role in harmonising tax policy, setting rates, and addressing administrative challenges. Although disagreements have surfaced—particularly during periods of economic strain—the Council remains a key pillar for GST's long-term success.

While GST has delivered significant benefits, it has also faced challenges. Early implementation was

hindered by frequent rule changes, technical issues, and compliance complexities. Over time, reforms such as e-invoicing, simpler return schemes, and rate rationalisation have tried to address these issues. Collections have shown continuous improvement.

Judicial interpretation has always shaped the contours of India's tax law, and GST is no exception. Disputes concerning classification, place of supply, transitional credit, procedural validity, and anti-profiteering have already reached various courts. As the GST Appellate Tribunal is being operationalised, a more structured dispute resolution system should help reduce uncertainty and litigation backlogs.

Looking forward, several areas demand attention. While substantial rate rationalization has been initiated recently (September 2025), moving forward to a simpler rate structure with fewer slabs will reduce classification disputes and ease compliance. Similarly, while enhancing digital infrastructure and analytics-driven enforcement will help shift the system from procedural checks to intelligent, risk-based administration, a technology-based administration must be subservient to the rule of law. Additionally, a stable revenue-sharing framework between the Union and States is essential for sustaining cooperative federalism.

In summary, if one were to look at arguably the most landmark tax reform of India, the jury is still out on whether GST has turned out to be a 'Good and Simple Tax' as coined by our Hon. Prime Minister or it has become a 'Gabbar Singh Tax' as was possibly uncharitably touted but it is certainly a tax for the way forward.

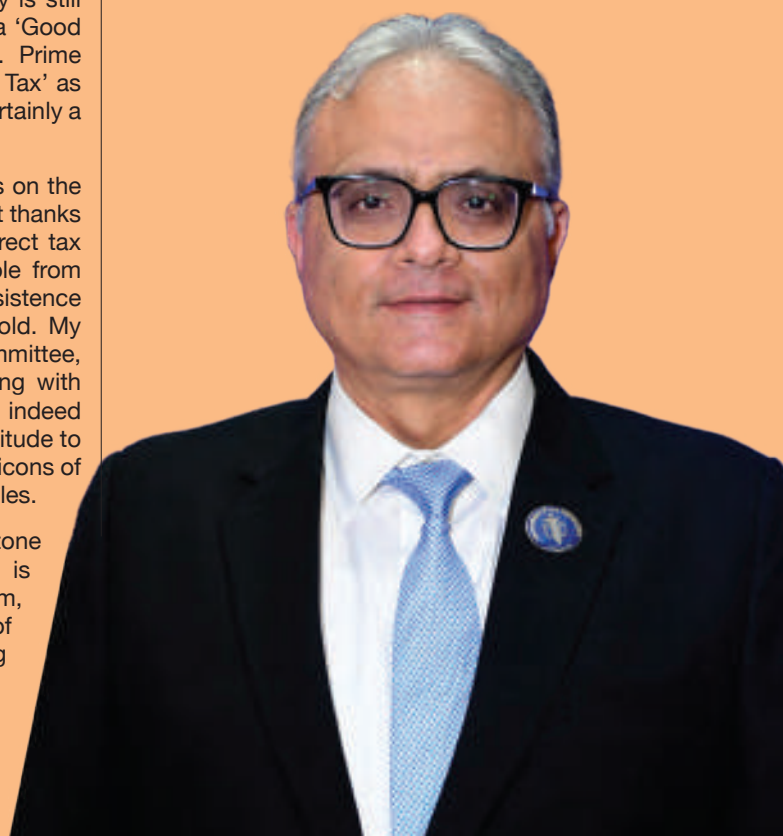
This special issue of our beloved Journal is on the 'Evolution of Indirect Tax Laws'. My heartfelt thanks to my dear friend and a doyen of the indirect tax world, CA A.R. Krishnan, for his stellar role from thought to finish of this issue and his insistence on quality that was most pleasing to behold. My gratitude to the Chairman of the Journal Committee, CA Ameya Kunte, and his team for helping with getting this issue to you. This issue is indeed special, and I also express my deepest gratitude to the learned and erudite authors, all of them icons of the Indirect Tax space, for their superb articles.

Our Chamber is into its 100th year, a milestone that no institution of its kind, I daresay, is likely to achieve in the near future. I am, unfortunately, yet to feel a visible buzz of excitement and anticipation reverberating from the members. I have read with a feeling of concern the refrain from Jayant, our President, in his communication regarding the muted support for the centenary conference. I would urge all of the members of the Chamber who read this communication to please come forward and vigorously support the Chamber's Centenary Year Initiatives. Completing a century for an institution like our Chamber, is a matter of great pride and joy and a moment that none of us will ever see again in our lives. Our President, the Managing Council, and the Centenary Year Committee have worked really hard to bring a special experience to you at the Shatabdi Summit, the Centenary Conference. Please do encourage and support our beloved Chamber by coming to this summit and participating in the celebrations, in large numbers.

I am drafting this editorial communication differently and not commencing or ending with quotes. By the time I write to you next, the year 2025 will have passed, and we will have entered a new year, 2026, with renewed vigour. I wish you the Very Best for a Merry Christmas and a Happy New Year 2026. Please channelize some of this vigour into active engagement in our Chamber's centenary year activities. Thank You!

Jai Hind!

Anish M Thacker
Editor



Prologue



A R Krishnan

This edition of the CTC Journal traces the history of the "Evolution of Indirect Tax Laws in India". Tracing the history of mankind has been a significant process of learning the human race in the evolution of the man and his country. Similarly tracing the history of tax legislation such as indirect tax not only educates us about the legacy we have and the precedents that may be relied on but gives a perspective for the future both in terms of future legislations and its application to indirect taxes and related business transactions. This in effect is the philosophy behind this edition of "Evolution of Indirect Tax Laws in India" in which articles have traced the legislative history of major indirect taxes from their origin to the present (GST) including a peep into the future. This compilation is thanks to the great efforts of the various eminent authors. Hope all of you find it a good read.

Historical Development of the Customs Law in India

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Vipin Kumar Jain
Advocate



Sunil Nawandhar
Advocate



Aditya Jain
Advocate



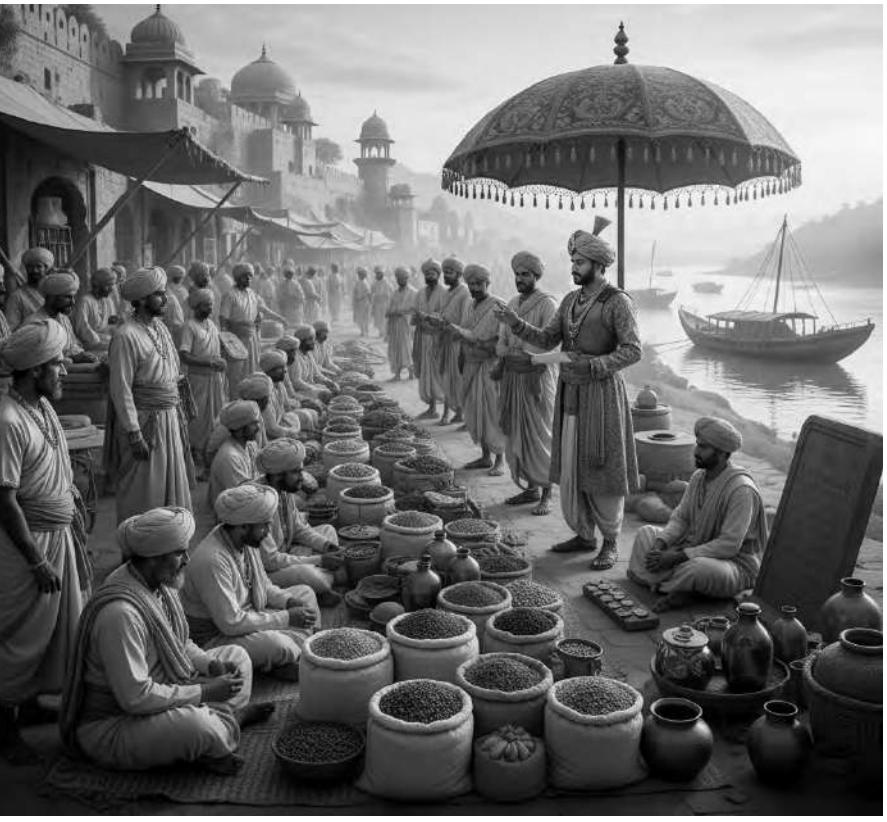
Darshna Jain
Advocate

Overview

This article chronicles the evolution of Indian Customs Law right from the Arthashastra (undisputedly the world's first comprehensive written code on customs law), through the Sea Customs Act, 1878, under the British Raj, to the modern Customs Act, 1962, as we know it. The article follows how organised trade taxation has matured over centuries and how it was systematised by the British. It seeks to explain the genesis of the Customs Act, 1962 – one of the finest pieces of Indian legislation that has steadfastly stood the test of time, expertly regulating decades of changing trade practices. It discusses how tariffs in independent India swung from astronomical peaks (100% in the 1970s) to WTO-driven lows (7–15% by 2020); and touches upon the recent upward trend as an increasingly protectionist India takes a stand against dumping. The article highlights some key reforms in the modern-day customs regime, including HSN adoption, self-assessment, unjust enrichment, and more. Ultimately, the article seeks to demonstrate how customs duty has outgrown its original role as a mere revenue source to become one of the most potent, and frequently used non-military weapons in modern geopolitics. Hopefully, it helps in fostering a more nuanced understanding of India's customs law today as a dynamic fusion of fiscal strategy, economic defence, and sovereign assertion.

Introduction

'What may cross and at what price' is an age-old question that has shaped the customs duty framework since the time cross-border movement of goods first began. This article delves into the historical development of customs duties in India, with a focus on major watershed moments that have shaped the concepts that underpin our customs legislation today. It seeks to explain the evolution of the role of the customs duty from a mere source of revenue to a key instrument in



geo-political strategy. As we trace this arc, we uncover a legacy where a simple toll on spices and silks evolved into modern fiscal frameworks guarding territory, protecting domestic industries, and defining global policy for trade facilitation and regulation. An understanding of this rich history is necessary, not only to appreciate the scheme of Indian legislation as it stands today, but also to shed light on the likely path that lies ahead.

The origin of codified customs law

Around the World: The earliest known written customs law comes from Hammurabi's code, around 1700 BC in Babylon during the ancient Mesopotamian period. Later, the Romans, during Caesar's time, also levied standard customs duties, especially in key trade hubs like Rome. Egypt charged heavily for grain and papyrus from Rome. In ancient China, the Han Dynasty had a highly organized system for border control, trade regulation, and the levy of *Guanshi*. It is, therefore, clear that various civilisations around the world had developed a commendably sophisticated form of customs levy as early as 1700 BC.

Vedic Era in India: The customary practice of offering gifts to kings by merchants entering a kingdom to trade goods took on a compulsory nature during the later Vedic period. This simple practice of paying tribute for passage evolved into the levy of '*shulka*' at ports, similar to the modern customs duty. Exports of prized commodities such as silk and black pepper (considered 'black gold') fetched handsome revenues for the state. These practices, although scattered and varied, are the first clear traces of organised trade taxation in India.

The earliest known written customs law comes from Hammurabi's code, around 1700 BC in Babylon during the ancient Mesopotamian period.

Mauryan Empire: The roots of Indian customs law as we know it today can be traced back to the '*Arthashastra*'. This magnum opus, penned by Kautilya during the reign of Chandragupta Maurya around 320 BC, was the first comprehensive, written customs code in the world. Although the Babylonians are credited with the earliest

known written law on customs, their code was rudimentary at best. The Arthashastra, on the other hand, was systematic and comprehensive, firmly embedding customs law at the heart of governance structures. It served as a blueprint for diplomacy, warfare, and trade regulation. The code provided power to the king to confiscate smuggled goods, provided for spies (*Gudhapurusha*) to guard ports and borders, and for punishment in the form of penalties and exile for smuggling of high-value horses, weapons, or gold. Book 2 prescribed detailed procedures for the logging of ships arriving and departing from ports, the weighing of cargo, the sealing of jars, and even the differentiation of cargo in transit.

A series of customs acts were enacted across the Presidencies of Bombay, Madras, and Calcutta, providing for the levy of various kinds of duty.

First pan-India customs statute – The Sea Customs Act, 1878

The Sea Customs Act, 1878: As time passed, customs law evolved over various empires and dynasties. The British East India Company inherited the Mughal *shulka* in the presidency towns. A series of customs acts were enacted across the Presidencies of Bombay, Madras, and Calcutta, providing for the levy of various kinds of duty. In order to consolidate the disparate pieces of customs law, pan-India customs legislation was enacted for the first time in 1878 – The Sea Customs Act. It systematically codified the law relating to customs on sea-borne trade, covering the levy and collection of customs duties, warehousing, transhipment, prohibition on imports, as well as provisions on search, seizure, confiscation, penalties, etc. The Act provided a robust legal framework for the import and export of goods by sea, marking a paradigm shift from variable tariffs across regions to centrally-controlled, scheduled rates. In doing so, the Sea Customs Act bridged ancient *shulka* traditions with modern governance, turning customs from a medieval toll into a strategic economic policy. The Inland Bonded Warehouse Act followed in 1896, introducing the concept of warehousing imported goods, with deferment



of payment of duty at the stage of clearance of goods. Later, separate legislation dealing with land customs (Land Customs Act, 1924) and air customs (vide rules under the Indian Aircraft Act, 1911) was enacted, borrowing the applicability in like manner from the Sea Customs Act to fill the vacuum for growing trade through land and air. These enactments would, 85 years later, become consolidated into one single legislation in the year of 1962.



Evolution of the levy during India's freedom struggle

Over time, and morphed by political drivers, the structure and role of the levy started changing from the single substantive 'duty of customs on goods imported and exported' (precursor to the Basic Customs Duty (BCD) in the shulka era to a multi-tier tariff structure.

The Indian Tariff Act, 1894 introduced the first form of countervailing duty in India on 'bounty-fed' goods, with the purpose of neutralising the unfair effects of foreign subsidies. All subsequent tariff acts (1896, 1899, 1934, and the modern act of 1975) trace their lineage back to this act.

Swadeshi Movement: The textile industry, in particular, has extensively influenced the evolution of customs policy in India. During the late 1800s and early 1900s, British cotton mills received significant rebates and subsidies on the export of goods to India. Price undercutting on account of imports of cheap British cotton severely damaged Indian cotton textile mills at Bombay and Ahmedabad. As per the British economic historian Angus Maddison, India's share of the world economy during the British Raj dropped from 23% (equivalent to the entirety of Europe put together) to just over 3% by the time the British departed India. The reason was very simple: India was governed to benefit Britain for over 200 years. As Lord William Bentinck wrote, '*the bones of the cotton weavers were bleaching the plains of India'*. The birth of the Swadeshi movement in 1905 was a direct response to these discriminatory trade laws. The domestic industry was on the rise again in a world becoming more globalised and competitive, and in 1923, the Indian Tariff Board was created to recommend the levy of protective duties on events posing a risk of serious injury to the domestic market. For example, an anti-dumping duty was imposed by the board in response to cotton textile dumping by Japan in 1931-1933.

The Constitution vested exclusive authority with the Union Government to enact customs legislation in India and ensure uniformity in international trade and fiscal policy.

Independence and constitutional provisions of customs law

After India attained independence in 1947, colonial laws were replaced with sovereign

statutes. The Constitution of India, 1950 provided a clear framework for the levy, collection, and regulation of customs duties, predicated on the prevention of arbitrary taxation policies, whilst empowering Parliament to enact laws aligned with economic state objectives. The Constitution vested exclusive authority with the Union Government to enact customs legislation in India and ensure uniformity in international trade and fiscal policy.

The Act is concise, but its few provisions have managed to contemplate and effectively regulate a multitude of ever-changing trade practices across its history.

Article 265 and Entry 83 of the Union List provided for all duties to be levied and collected by the Central Government, such revenue to then be divided amongst states as per the recommendations of the Finance Commission. The Central Government continued such collection under the Sea Customs Act, which continued in application even post-independence by virtue of Article 372 of the Constitution (until it was repealed and replaced in 1962).

The Customs Act, 1962

The Customs Act, 1962, enacted in pursuance of the Central Government's constitutional powers and replacing the Sea Customs Act, is one of the finest pieces of Indian legislation there exists. It has succeeded in marshalling a fiendishly complicated subject with steady precision for multiple decades. The Act is concise, but its few provisions have managed to contemplate and effectively regulate a multitude of ever-changing trade practices across its history. It is no accident that the Act has stood the test of time so triumphantly, given its own long history discussed above.

When it was enacted, the Customs Act, 1962 consolidated all incumbent customs legislation into one pan-India enactment. In doing so, the Act brought about significant changes from the former regime, which was limited and



fragmented in scope. Some key developments are highlighted below.

- The duty under the Sea Customs was attracted by reference to other tariff statutes or any law for the time being in force. The taxable event was essentially 'import into' and 'export from' British India by sea. The modern-day Customs Act, by contrast, contains a clear, self-contained charging section crystallising the levy in the Act itself. Section 12 of the Customs Act, 1962 provides levy of duty on the value of goods at the rate specified in the Tariff Act, 1975.
- The levy, which was earlier focused on the physical movement of goods onto land from sea, was broadened under the Customs Act to include Indian territorial waters, continental shelf, exclusive economic zones, including bays, gulf harbour creeks, and tidal rivers also.
- The levy was also expanded to cover goods belonging to the Government, which were outside the scope during the British regime.

Changing tariff rates over the years since independence: a rollercoaster

In a world order that was becoming increasingly globalised following the introduction of the Customs Act 1962, tariff rates in India have seen many drastic changes to allow the regime to keep pace with continually shifting sands.

- **1960-1980**: Newly independent India was in dire need of building its domestic capabilities, which necessitated tariff rates from 50-70% to 80-120% in the 1960-1980 period. Duties on certain luxury goods even soared to 150-300%. These rates served as barriers against international competition, allowing the incubation of the domestic industry and forging India's path to self-reliance. It is precisely under that protection that giants like BHEL and TISCO grew. Hindustan Motors also owed its dominance at the time in large part to the 300-350% duty on imported cars.
- **1980-2000**: High tariffs eventually became a poisoned chalice in India's growth story. Coupled with the licence raj, high tariffs meant the rise of lazy and complacent monopolies. Tariff barriers blocked Indian manufacturers from reaping the benefits of new technologies, whilst the world surged ahead. Disillusionment with irrationally high rates grew, and smuggling and under-valuation became rampant. The unreasonable tariff rates resulted in evasion and fostered a culture of collectors turning a blind eye to 'minor' transgressions like under-valuation. The license raj, and all that came with it, collapsed under its own weight, and liberalisation in 1991 heralded a new dawn of India ready to compete on a global stage. Reforms reduced the cost of inputs and promoted efficiency, technology upgradation, and encouraged export competitiveness. Tariff rates were phased down post-liberalisation from a high of 130% in 1986 to 35% in 2000.

> The share of customs duties in total taxes grew steeply from 14% to almost 24% between 1974 and 1990, whilst that of central excise declined from 35% to about 30% during the same period.

- **2000-2020**: India transitioned in the late 90's from a protectionist, import-controlled economy to a committed global trader, prepared for deeper engagement with the world trading system. Standing good on its promises in the Uruguay round of WTO agreements, India slashed duty rates to 12-18% during 2000-2010 and to 7-15% by 2020. India went from a high-tariff developing country to low-tariff emerging giant. But had the pendulum swung too far? Reduced tariffs

made India fertile ground for predation by foreign exporters dumping goods into the country.

- **Post-2020**: Years of damage to Indian industry through dumping and the dangers of fragile global supply chains (as exposed by the COVID-19 pandemic) have meant Indian trade policy is once again acquiring a protectionist hue. Under the Atmanirbhar Bharat initiative, focus has shifted to selective rate hikes in specific sectors requiring domestic protection or a reduction in import dependence. It is also no surprise that India is one of the most profuse users worldwide of the WTO anti-dumping duty framework.



Evolution of the role of the levy– from a mere revenue source to a weapon of war

Customs tariffs have always been a major source of revenue generation. The share of customs duties in total taxes grew steeply from 14% to almost 24% between 1974 and 1990, whilst that of central excise declined from 35% to about 30% during the same period[1]. In absolute numbers, revenue generated from all customs duties put together grew tenfold from Rs. 1,236 crores in 1974-75 to Rs. 18,000/- crores in 1989-90. The importance of customs duties as a source of revenue is clear from the fact that collected revenue touched a high of Rs. 2,35,000 crores[2] in the year 2024-25, which is almost 200 times when compared to the 1974-75 data.

The role of tariffs has, however, evolved over time - it expanded from simply raising revenue in pre-modern times to protecting domestic industries during the era of globalisation. Today, it is key to geopolitical strategies, serving both as 'carrot' and 'stick' depending on the need of the hour. Whereas Free Trade Agreements may be used to foster friendly relations between states, duties are also widely used to punish hostile states. For example, in the wake of the Pulwama terror attack, customs duty on goods from Pakistan was raised to 200%. Customs policy has often been the catalyst that triggered wars, resistance movements, and independence struggles – agitation against cruelly punitive customs laws was a key driver of India's own freedom struggle. Even globally, China's decision to impose duties on imports of opium from British traders

1 *Structure of Nominal Tariff Rates in India, December 1990: Study by Ministry of Industrial Development, GOI.*

2 *Department of Revenue website – Details of Revenue collection (indirect taxes).*

triggered the second opium war between China and Britain in 1856, demonstrating how a simple trade levy could snowball into a situation whose murmurs are heard even in the 21st Century. A more modern example of an equally bitter conflict is the US-China trade war, which began in 2018 when the United States invoked unilateral customs statutes, bypassing WTO processes, to impose tariffs on Chinese imports. A similar struggle is currently plaguing Indian exporters exposed to the US markets. US President Donald Trump was reported to have stated that the US's trade measures are not "duties" but "tariffs". As they are becoming creatures of their own ilk, tariffs are no longer only about revenue – they are morphing into weapons for trade wars.

Significant changes under the Customs Act, 1962

The Customs Act, 1962, like any statute that is to remain relevant in changing times, is an evolving beast. It has undergone significant changes, primarily in the recent past, driven by the legal, technological, and trade advancements at all levels. Some of the major watershed moments in the evolution of our Customs law over time are chronicled below.

Year	Legislative Change
1988	The Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 were notified based on the principles of the GATT Customs Valuation Code (1979), which later became part of the WTO Agreement on Customs Valuation in 1995.
1991	Liberalisation of the Indian Economy – Large categories of goods that previously required CCI&E licences, import permits, and end-use restrictions were liberalised by customs notifications allowing free importability unless featuring in the negative list of imports/ exports (Prohibited/ Restricted/ Canalised).
1991	The concept of unjust enrichment was embodied in the Act.[3]
1995	Interest on delayed payment of duty was introduced[4] along with interest on delayed refund.
1999	Introduction of Advance Rulings & Authority for Advance Rulings
2002	The Act has been extended to the whole of the exclusive economic zones and continental shelf of India for the limited purpose of mineral oil extraction/production.
2005	Special provisions relating to SEZs were replaced with a separate enactment, viz. Special Economic Zones Act, 2005.
2007	The dawn of the concept of 'transaction value' put an end to the valuation disputes to a good extent[5]. The 2007 Valuation Rules replaced the earlier 1988 Rules to fully align with the WTO agreement on Customs Valuation.
2011	The age-old phenomenon of assessment by a proper officer was replaced with 'self-assessment' by an importer/exporter[6].

3 Section 27 substituted vide S.10 of the Central Excise and Customs Laws (Amendment) Act, 1991.
4 Section 28AA of the Customs Act.
5 Section 14 of the Customs Act, 1962.
6 Section 17 of the Customs Act, 1962.

2012	Provisions were introduced for the demand and recovery of duties from persons who had obtained transferable instruments (licences/authorisations such as AA/DFIA/MEIS, etc.) under the FTDRA, 1992 (under FTP) by fraudulent means; for which hitherto recovery was initiated only against the importers[7].
2017	The definition of importer was expanded to include a 'beneficial owner' also[8].
2018	The Act has been extended to offences and contraventions committed outside India by any person bringing to book the offenders, primarily non-residents, which were hitherto beyond the territorial reach of the enactment[9].
2020	Inclusion of an exclusive Chapter to administer exemptions arising from the origin of goods under the Free Trade Agreements[10].

The Customs Act has evolved not just in itself, but has also provided the architecture for the evolution of a number of other foreign policies – for example, MEIS, Advance Authorisation and EPCG; and the regulation of deemed imports/ exports to and from SEZs.

Roots of the Customs Tariff Act, 1975, and various types of customs duties

Although the Customs Act, 1962, consolidated the machinery of levy, collection, and procedures, the Tariff Act of 1934 remained outdated and needed replacement. In 1964, the government, on recommendations of the tariff revision committee, restructured the customs tariff by adopting the Brussels Tariff Nomenclature (BTN)[11], which later came to be known as the Customs Co-operation Council Nomenclature (CCCN). Thereafter, a comprehensive statute was enacted – The Customs Tariff Act, 1975. But with progression of time several products manufactured and traded indigenously found no place in the BTN. Accordingly, in the year of 1986, the first schedule to the CTA 1975 was replaced by a new schedule based on the Harmonised System of Nomenclature (HSN), an international standard adopted by WCO, a 98-chapter structure, which persists steadfastly as the backbone of the current Indian tariff. India adopted HSN at 6 digit levels w.e.f. 28.02.1986. Each member country follows a similar structure up to the 6 digits and beyond such, the countries are free to introduce their own sub-divisions for tariffs.

In 1964, the government, on recommendations of the tariff revision committee, restructured the customs tariff by adopting the Brussels Tariff Nomenclature (BTN), which later came to be known as the Customs Co-operation Council Nomenclature (CCCN).

With further trade advancement, the Indian customs tariff adopted 8-digit classification w.e.f. 01.02.2003 to cater to its domestic needs.

The Tariff Act, 1975 provided for various types of

7 Section 28AAA of the Customs Act, 1962.
8 Section 2(26) of the Customs Act, 1962.
9 Section 1 of the Customs Act, 1962.
10 Chapter V-AA - Section 28DA of the Customs Act, 1962.
11 1984 (11) TMI 75 - HIGH COURT AT CALCUTTA.

custom duties to be collected as duties of customs: -

Types of duties	Statutory Provision	Object and intent
Basic Custom Duty (BCD)	Section 12 of Customs Act, 1962	BCD is first duty of customs levied on the assessed value of imported / exported goods at the rates specified in the tariff schedule, to generate primary revenue.
Additional Duty of Customs	Sections 3(3) & 3(5) of the Customs Tariff Act, 1975	The Additional duties of Customs were levied in addition to BCD to offset domestic taxes like VAT, sales tax, excise etc. ensuring a level competitive playing field between domestically manufactured goods and imported goods.
Integrated Goods and Service Tax (IGST)	Section 3(7) of the Customs Tariff Act, 1975	The additional duties of customs are subsumed into IGST with the advent of Goods and Service Tax Act, 2017. However, whether IGST is a levy under Section 5 of IGST Act, 2017 or a levy under Section 3(7) of the Customs Tariff Act, 1975 is still unclear.
Countervailing Duty (CVD)	Section 9 of the Customs Tariff Act, 1975	CVD is an additional duty levied on subsidized imports (e.g., those benefiting from foreign government grants or subsidies). It is levied to counteract anti-competitive effects of subsidies provided by exporting countries, protecting domestic producers from low-cost imports that distort fair market competition in India.
Safeguard Duty	Section 8B of the Customs Tariff Act, 1975	Safeguard duty is enacted as a trade remedy measure to neutralize the damaging impact of imports of certain products in large volumes in cases where no subsidy is provided. The intent is grounded in the GATT provisions.
Anti-dumping Duty (ADD)	Section 9A of the Customs Tariff Act, 1975	ADD is levied in order to protect domestic industry against the impact of dumping of products in India by foreign exporters. The duty prevents predatory pricing by foreign exporters and shields local industries from economic harm, thereby maintaining fair trade practices under WTO anti-dumping agreements.

Various cesses that may be familiar to readers such as Education Cess and Secondary Higher Education Cess were also levied and collected as customs duty.

Conclusion

The historical development of customs law from the colonial impositions of the Sea Customs Act to the harmonised and codified Customs Act, 1962 read with Customs Tariff Act, 1975 reveals a continuous evolution of Custom Law in India shaped by economic necessity, political resistance, and keeping pace with global change. At the international level, customs law has continued to influence global trade alignments. The trade tariffs once chiefly a source of government revenue, have re-emerged as instrument of geopolitical strategy. Together, these trajectories demonstrate that customs law is not merely a fiscal mechanism but a strategic instrument to shape economic policy of a nation.

Customs Valuation - Historical Development, Commonalities & Differences Vis-À-Vis GST Law

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Overview

This Article outlines the evolution of Customs Valuation in India—from an administrative-discretion based regime to one centered on the price actually paid or payable. It highlights how the earlier regime, where the assessable value was the normal market value of goods in international trade, transitioned to a framework in which the assessable value is the Transaction Value, i.e., the price actually paid or payable for the goods.

The evolution of Customs Valuation is set out in light of the landmark judgements of the Hon'ble Supreme Court of India, which shaped the principles governing Transaction Value, Related-Party assessments, and the limits of administrative discretion. The Article examines the Special Mechanisms under Customs Valuation, viz., the Special Valuation Branch, Provisional Assessments, and Transfer Pricing Adjustments.

A comparison is also drawn between valuation under the Customs Laws vis-à-vis the GST Laws, highlighting their shared reliance on Transaction Value and sequential fallback rules, while noting that each operates with distinct objectives, scope, and purpose.

As technological advances open new paradigms for commerce and consumption, there is likely to be a sea change in the statutory and regulatory regime for valuation. There is a likelihood that one central legislation may eventually operate as a common basis for valuation for goods, services, and virtual commerce.

Introduction

Certainty and clarity are hallmarks of a robust indirect tax system, which fundamentally rests upon four core elements: the taxable event, the value to be taxed, the applicable rate of tax, and the person liable to pay the tax. Any vagueness in even one of these components renders the levy legally vulnerable[1]. Valuation, amongst these, is one of the most complex and highly contested components.

1 *Govind Saran Ganga Saran v. Commissioner of Sales Tax [1985 (3) SCR 985]; Mineral Area Development Authority v. Steel Authority of India [2024 INSC 554].*

Customs Valuation is a key component of international trade regulation, determining the basis for customs duties, taxes, and related charges on imports. Since customs duties provide vital revenue and serve as trade policy tools, accurate, transparent, and consistent valuation is essential to protect national interests and facilitate global trade. Arbitrary or inaccurate valuations distort trade, revenue, and market access, undermining fairness and predictability in the multilateral trading system.

Customs Valuation is a key component of international trade regulation, determining the basis for customs duties, taxes, and related charges on imports.

To address these issues, the World Trade Organization (WTO) member nations signed the General Agreement on Tariffs and Trade, 1947 (GATT), promoting a valuation system based on actual Transaction Value. India, as a WTO member, has aligned its Customs Act, 1962 (Customs Act)- including Section 14 and related rules- which historically relied on notional or administered values, has now progressively evolved to Transaction Value principles.

This article delves into the legal, conceptual, and procedural dimensions of customs valuation, tracing its historical evolution, analysing its statutory framework and judicial interpretations, and juxtaposing it with the comparatively recent Goods and Services Tax ('GST') regime.

In the Indian context, valuation under the Customs Act has undergone a significant transformation over the last several decades. Its central focus today is on the determination of the Transaction Value of the imported 'goods' at the 'point of entry into the country'. Goods imported into India attract the levy of Integrated Goods and Services Tax ('IGST'), which is levied in the nature of a duty of customs.

Valuation under the GST Laws operates within a domestic destination-based consumption tax framework, designed to cover supplies between related persons, non-monetary consideration, and for taxing mixed and/ or composite supplies. Conceptually, certain principles of Customs Valuation are embedded in the GST Laws; however, the subject matter of tax and under GST, and the complexity of levy are distinct, purpose-built, and designed for a self-assessment environment.

Historical Development of Customs Valuation

Pre-GATT Era (1878 to 1947)

Customs Valuation in India and globally operated without a harmonised framework and was characterised by wide administrative discretion, protectionist objectives, and the pervasive use of notional or officially prescribed values. Under India's Sea Customs Act, 1878, the value of imported goods was often determined through tariff values, departmental assessments, and local wholesale prices rather than the price actually paid by an importer. Similar approaches existed across jurisdictions, where countries relied on constructed values, arbitrary uplift percentages, or "normal values" unrelated to the commercial reality. The absence of a

The absence of a standardised, transaction-based method resulted in unpredictability for importers, significant inter-port variation, and scope for subjective officer interventions.



standardised, transaction-based method resulted in unpredictability for importers, significant inter-port variation, and scope for subjective officer interventions.

This fragmented system was prevalent worldwide until the signing of the GATT in 1947, which highlighted the need for a transparent, objective, and neutral valuation regime that would eventually lead to the development of the modern Transaction Value-based framework.

Early Move Toward Harmonised Valuation (1947–1979)

With the signing of the GATT, the WTO member nations sought to adopt the Transaction Value approach for Customs Valuation, recognising the importance and need of trade-critical discipline requiring predictability, neutrality, and transparency under the local Customs Laws. Article VII of the GATT was initially drafted at a high level of generality and did not prescribe a detailed methodology, leading to varied interpretations among member nations through the 1950s and 1960s.

Customs Valuation in India was administered on the prescribed tariff value in those days, and GATT planted the seeds for much-needed reform and shift towards the Transaction Value approach, and consequently, rules for Customs Valuation were first introduced in 1988.

GATT Valuation Code, WTO Agreement on Customs Valuation, and India's Alignment (1979–2007)

When the WTO Agreement on Customs Valuation('ACV') came into force in 1995, it outlined the methodology of valuation, mandated objectivity, neutrality and reliance on verifiable commercial documentation. India formally aligned with the GATT/WTO valuation architecture much earlier, through the introduction of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, which replaced discretion-based valuation with the six-method hierarchy now familiar to global trade.

Section 14 of the Customs Act, 1962, as it was originally enacted, created a deeming legal fiction to ascertain the assessable value for the purpose of levy of customs duty.

Upon joining the WTO in 1995, India reaffirmed its commitment to the ACV, and enacted the Customs Valuation Rules, 2007, which refined procedural aspects, clarified related-party valuation principles, and strengthened the primacy of Transaction Value consistent with WTO jurisprudence. This 1979–2007 period thus represents the complete shift in India from administered values to a transparent, rule-based, internationally harmonised valuation system central to contemporary customs administration.

Statutory Evolution of Section 14 of the Customs Act, 1962, and the Valuation Rules - 1988 Rules to the 2007 Rules

Section 14 of the Customs Act, 1962, as it was originally enacted, created a deeming legal fiction to ascertain the assessable value for the purpose of levy of customs duty. The assessable value was the normal market value of goods in international trade. To operationalise Section 14, various Customs Valuation Rules were introduced over time:

- Customs Valuation (Determination of Price of Imported Goods) Rules, 1963 focused on notional or constructed value, not necessarily linked to the actual Transaction Value.
- Customs Valuation Rules, 1988 were introduced to align domestic law with the GATT, which sought to introduce the concept of "Transaction Value" as the primary valuation method, but subject to the overriding language of Section 14, which still emphasized the ordinary international price, thereby maintaining duality between statutory deeming fiction and rule-based Transaction Value.

Despite the introduction of these rules, Section 14 remained unamended and continued to embody a deemed value system, giving primacy to the ordinary international price. Hon'ble Supreme Court, in the case of Rajkumar Knitting Mills[2] and Ispat Industries[3], has interpreted Section 14 as it existed prior to the 2007 amendment and held that in view of the deeming fiction under Section

The expression "ordinarily sold" was held to indicate the price of goods in international trade; therefore, the transaction price/ declared price referred to in the Valuation Rules was rendered irrelevant.

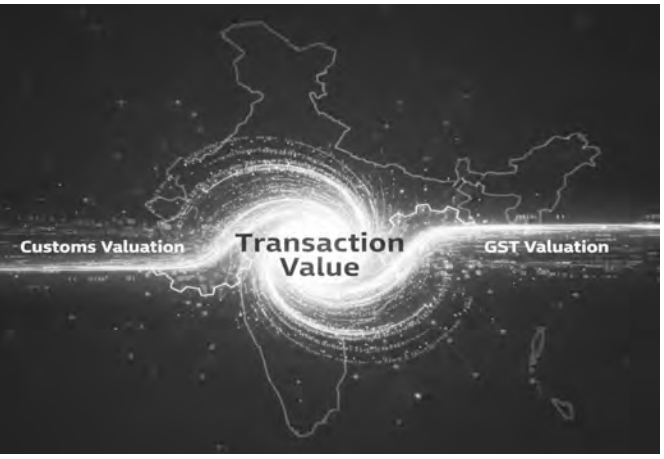
2 *Rajkumar Knitting Mills (P) Ltd. v. Collector of Customs [1998 (3) SCC 163].*

3 *Ispat Industries v. Commissioner of Customs [(2006) 12 SCC 583].*

14, Customs Valuation cannot be confined to the importer's declared or contractual price. Instead, the assessable value ought to reflect the prevailing market price at the time of import, rather than the price agreed upon between parties in any specific contract. The expression "ordinarily sold" was held to indicate the price of goods in international trade; therefore, the transaction price/ declared price referred to in the Valuation Rules was rendered irrelevant.

In response to these judicial interpretations and to align with international Customs Valuation standards, the Finance Act, 2007, replaced the deemed value regime with a new provision adopting Transaction Value—defined as the price actually paid or payable for the goods in, subject to specified conditions. It further included any expense incurred in relation to the imported goods till the point of importation. The Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 ('2007 Rules') were introduced to further align with the ACV and to simplify valuation procedures and form the operative subordinate legislation under Section 14 of the Customs Act. A brief overview of the 2007 Rules is outlined hereunder:

Sr. No.	Method	Rule	Concept	Key Features
1.	Transaction Value	3	Price actually paid or payable for the goods when sold for export to India	Primary method: Subject to conditions (no restrictive conditions, no non-quantifiable considerations, relationship not influencing price). Adjusted under Rule 10.
2.	Identical Goods	4	Transaction Value of identical goods imported at or about the same time	Used when Rule 3 cannot be applied, it requires identical goods in all respects, including physical characteristics, quality, and reputation.
3.	Similar Goods	5	Transaction Value of similar goods imported at or about the same time	"Similar" requires characteristics and component materials that enable them to perform the same functions and be commercially interchangeable.
4.	Fallback method	6	Optional fallback method for ascertaining the Transaction Value	Rule 7 and Rule 8 can only be applied in cases where the Transaction Value is unascertainable using Rules 3, 4, and 5
5.	Deductive Value	7	Based on the unit price at which imported or identical/similar goods are sold in India	Starts from the domestic resale price, deducts profit, general expenses, transport, and duties to arrive at an "import-stage" value.
6.	Computed Value	8	Cost of production plus profit and general expenses in the country of export	Requires cooperation from the exporter; rarely used in practice.
7.	Residual Method	9	Reasonable means consistent with principles and general provisions	Used as a last resort; must remain consistent with ACV principles and cannot be arbitrary.



Rule 10 enlists the permissible additions to the Transaction Value, if not already included:

- Commissions and brokerage (except buying commissions)
- Cost of containers and packing
- The value of "assists"- materials, components, parts, tools, dies, moulds, engineering, development, artwork, design work, and plans supplied by the buyer free or at reduced cost for use in connection with the production of the imported goods
- Engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in India are included where supplied free or at reduced cost
- Royalties and license fees related to the goods that the buyer must pay for as the sale
- The value of any part of the proceeds of subsequent resale that accrues directly or indirectly to the seller.

Rule 11 requires the importer or his agent to furnish a declaration as to the correctness of the value declared, and Rule 12 is central to adjudication in undervaluation and fraud cases, and its interface with judicial precedent is crucial to understanding the balance between Transaction Value primacy and anti-avoidance.

Post introduction of the 2007 Rules, any expense incurred in relation to the imported goods till the time and place of importation formed part of the Transaction Value. The term 'point of importation' extends from the time the goods enter the territorial waters till the same are cleared for home consumption upon filing the bill of entry. Such expenses include landing, loading/ unloading, and port charges under a CIF contract[4].

Hon'ble Supreme Court's ruling in the *Sanjivani Non-Ferrous Trading case*[5] represents a pivotal interpretation of the post-amendment statutory framework governing customs valuation, being perhaps an authoritative judicial precedent that directly engages with the legislative intent underlying the transition to a Transaction Value–based regime. This ruling settles the legal position that under the amended Section 14, the Transaction Value is final and binding except in clearly delineated circumstances, and the burden of rebutting the declared Transaction Value is on the Customs authorities. The said ruling further affirms that unless the Department produces cogent evidence to demonstrate that the declared value does not reflect the real value

Post introduction of the 2007 Rules, any expense incurred in relation to the imported goods till the time and place of importation formed part of the Transaction Value.

of the imported goods, the Appellate Tribunal would be justified in accepting the Transaction Value as conclusive. Thus, the Department's task is narrowly defined, and it must establish specific grounds for rejection, failing which the declared value must prevail.

Interlocking with other statutes

The customs value determined under Section 14

4 *Garden Silk Mills [1999 (113) E.L.T. 358 (S.C.)].*
5 *CCE &ST v. Sanjivani Non- Ferrous Trading Pvt. Ltd. [(2019) 2 SCC 378].*

and the 2007 Rules now also acts as a base for downstream levies:

i Section 3(8) of the Customs Tariff Act, 1975, as amended by the Taxation Laws (Amendment) Act, 2017, provides that the value for IGST on imports is the aggregate of the value determined under Section 14 plus basic customs duty and other customs-equivalent charges.

ii Compensation cess on imports is computed on an analogous basis.

iii Customs Valuation outcomes are directly consequential for GST/cess incidence on imports.

Judicial Evolution of Customs Valuation

The Constitutional Courts of the country have played a critical role in concretizing Customs Valuation principles, particularly around the primacy of Transaction Value, related party scrutiny, bogus documentation, and the limits of administrative discretion.

Some key judgments of the Hon'ble Supreme Court, which lay down the seminal principles governing the valuation under the Customs Act which are summarized hereunder:

i Transaction Value under Rule 4 of the 1988 Rules (now Rule 4 of 2007 Rules) is the primary basis of valuation and may be rejected only on grounds explicitly mentioned therein, and the burden of proof lies on the Department[6].

ii The department cannot discard Transaction Value merely because it considers the price low, unless objective material brings the case within the grounds for rejection, and the fallback methods must be sequentially followed[7].

iii Emphasis on the mandatory sequential application of Valuation Rules and to uphold commercial discounts where they are bona fide and uniformly available[8].

iv Transaction Value cannot be outrightly rejected even in the case of related party transactions, and it must be established by the Department that the relationship between the parties has influenced the price. Transaction Value is supported by objective data (comparable uncontrolled prices, cost plus margins, transfer pricing reports, etc.), same cannot be rejected[9].

Special Mechanisms: Special Valuation Branch ('SVB'), Provisional Assessment and Transfer Pricing Adjustments

SVB handles investigations into related partly imports, *inter alia*, involving issues such as inclusion/ exclusion of royalties, license fees,



and other contractual obligations in relation to intellectual property rights. It examines agreements, TP documentation, functional/ economic analyses, and issue valuation Orders that often govern a series of import transactions.

Provisional assessment in terms of Section 18 of the Customs Act permits provisional assessment

6 *Century Metal Recycling (P) Ltd. v. UOI [(2019) 8 SCC 640]; CC (Imports), Mumbai v. Ganpati Overseas [(2023) 13 S.C.R. 172].*

7 *Anil Kumar Anand v. Commissioner of Customs (Preventive) [(2019) 6 SCC 592].*

8 *Eicher Tractors Ltd. v. Commissioner of Customs, [(2001) 1 SCC 315].*

9 *Varsha Plastic Pvt. Ltd. v. Union of India [(2009) 3 SCC 365]; CCE&ST.*

when the valuation is under investigation by SVB. Duty is paid provisionally, with bonds and security, and finalized later, possibly resulting in a refund or duty demand.

Transfer pricing adjustments for Income-tax purposes do not mechanically translate into Customs Valuation but possess a persuasive impact for non-arm's-length pricing. Conversely, Customs Valuation outcomes also influence transfer pricing benchmarking; however, the Central Board of Indirect Taxes and Customs ('CBIC') and Central Board of Direct Taxes ('CBDT') have not adopted a unified mechanism, and the two regimes remain conceptually distinct.

Interplay with CBIC Circulars and WCO Guidance

CBIC Circulars and Instructions on software valuation, related party criteria, and post-import price adjustments operate as administrative guidance binding on the Customs Department but cannot override Section 14 or the 2007 Rules. Additionally, the WCO ACV Technical Committee Commentary and Explanatory Notes provide an interpretative authority and are regularly relied upon in departmental practice.



GST Valuation Framework

Section 15 of the Central Goods and Services Tax Act, 2017 ('CGST Act') outlines the "value of taxable supply" as the Transaction Value, i.e., the price actually paid or payable for the said supply of goods or services where the supplier and recipient are not related, and the price is the sole consideration. Specific inclusions to the said Transaction Value are:

Transfer pricing adjustments for Income-tax purposes do not mechanically translate into Customs Valuation but possess a persuasive impact for non-arm's-length pricing.

- Any taxes, duties, cesses, fees, and charges other than GST itself if charged separately by the supplier
- Any amount that the supplier is liable to pay in relation to such supply, but which has been incurred by the recipient and is not included in the price;
- Incidental expenses, including commission and packing, charged by the supplier;
- Interest or late fee or penalty for delayed payment;
- Subsidies directly linked to the price (excluding Government subsidies).

Any pre-supply discounts are excluded if reflected on the invoice, and post-supply discounts are also excluded if established in terms of an agreement and passed on by way of issuing a credit note.

In a case where the consideration is not wholly in money, parties are related, and price is not the sole consideration or any other special circumstances exist, valuation is governed by

the rules provided under the Central Goods and Services Tax Rules, 2017 ('CGST Rules') made in exercise of powers under Section 15(4) of the CGST Act.

IGST on Imports – Customs Value as Base (Section 3(7) of the Customs Tariff Act, 1975)

Section 3(7) and Section 3(8) of the Customs Tariff Act, 1975, as amended by the Taxation Laws (Amendment) Act, 2017, provide that any article imported into India shall, in addition to basic duty and other customs-equivalent charges, be liable to IGST at the rate applicable to a like article on its supply in India. The value for IGST is the aggregate of:

i the value determined under Section 14of the Customs Act; and

ii any duty of customs chargeable under Section 12 of the Customs Act and any sum chargeable as an addition to, and in the same manner as, a duty of customs (excluding IGST and compensation cess itself).

Thus, the Customs Valuation regime directly determines the GST base for imports. Hon'ble Supreme Court has examined the interplay between valuation under the Customs Act and GST Law on imported goods and has ruled against double taxation of the same aspect[10].

Any pre-supply discounts are excluded if reflected on the invoice, and post-supply discounts are also excluded if established in terms of an agreement and passed on by way of issuing a credit note.

10 UOI v. Mohit Minerals P Ltd. [(2022) 9 SCR 300]; UOI v. Bharat Forge Ltd. [(2022) 17 SCR 1012].



Commonalities Between Customs and GST Valuation

Transaction Value as a conceptual foundation-price actually paid or payable for the goods or services as the primary valuation base. Both legislations introduce specific adjustments and conditions to ensure that the Transaction Value reflects the full economic consideration. The arm's length principle prevails under both frameworks, and the underlying idea is that valuation should approximate the price that would have been agreed between independent parties, so that tax is levied on a neutral economic base.

Comparable Value, Cost-Plus, and Residual Methods are common under both legislative frameworks and are deployed in a hierarchical/ fallback methodology. This structural symmetry reflects a shared philosophy, beginning with the actual transaction price, then approximating it using objective comparables, and resorting to cost-based or residual formulas only as a last resort.

Strong parallels can be drawn with regard to compulsory inclusions viz. commissions and brokerage, packing charges, assists such as engineering, design, tools, etc, royalties and licence fees payable as a condition of supply/ sale. Under both statutory frameworks, the intent of legislation is to levy GST/ duty on the full economic consideration for the import or supply.

Key Differences Between Customs and GST Valuation

Particulars	GST	Customs
Objective and Structural Location of the Levy	Taxable event: Supply of goods or services or both in the course or furtherance of business Value: Value of supply, which may span multiple stages and parties Purpose: Broad-based consumption tax; revenue neutrally and chain-credit mechanism; minimal cascading	Taxable event: Import of goods into India Value: Value of goods at the time and place of importation Purpose: Border control, fiscal revenue, and, historically, trade regulation/protection.
Breadth of Tax Base	All supply of goods and/ or services or both	Only import of goods and on certain export of goods
Inclusions	Section 15(2) of the CGST Act enlists broader but structured list of inclusions.	Rule 10 of 2007 Rules contains closed-list, specific additions mandated by the ACV viz. assists, royalties, licence fees, and specified commissions. The Department cannot add other elements except as permitted under ACV.
Methodology	GST Valuation Rules allow the Supplier to opt for cost-based or residual methods	Customs Valuation must adhere rigidly to the sequential hierarchy of Rule 4 to 9 of the 2007 Valuation Rules once Transaction Value is rejected.

Conclusion

Customs and GST valuation regimes share a common philosophical core, i.e., commitment to Transaction Value and a structured hierarchy of fallback methods. As India's Trade and Tax systems mature, further harmonisation in the treatment of related party transactions, tax on royalties, and post-transaction adjustment will hopefully be achieved.

As technological advances open new paradigms for commerce and consumption, there is likely to be a sea change in the statutory and regulatory regime for valuation. There is a likelihood that there will be one central legislation operating universally as a common basis for valuation for goods, services, and virtual commerce.

As India's Trade and Tax systems mature, further harmonisation in the treatment of related party transactions, tax on royalties, and post-transaction adjustment will hopefully be achieved.

Excise Duty – Historical Development, Constitutional Provisions, Charge, Valuation, and its culmination in GST

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CA S S Gupta

Overview

The administration of any tax is always full of complexity and litigation. The temptation to save tax is very high on any assessee, more particularly when the credit is not available to the recipient of goods or services. The excise duty is no exception. It will be seen from the discussion in the Article that the interpretation of the word 'manufacture', although made several times by the Supreme Court, yet the litigation on the interpretation did not stop till its merger with GST. Similarly, when the rate of tax on various goods/services is different, the zeal to classify the goods/services in the category attracting higher tax is always seen in the department. The determination of value has always been the bone of huge contentions, as will be evident from the various judgments of the Supreme Court enumerated in the Article in para 5. One only hopes that such litigation will not continue in the new regime of Goods and Services Tax.

Introduction

The scope of levy of excise duty on the manufacture of goods has substantially expanded by the addition of new items and the expansion of the scope of the word 'manufacture' prior to its merger with GST. The historical background of levy, expansion in the definition of 'manufacture', 'classification', 'valuation', and the reasons for dispute and litigation are briefly discussed in this article.

Constitutional Provisions

The Central Excise Act (CEA) was enacted in the year 1944, prior to the freedom obtained by our country and the adoption of the Constitution of India. The Seventh Schedule of the Constitution of India is divided into three lists, namely, List I, List II, and List III. The Parliament and state legislature have exclusive powers to enact legislation on the subjects specified in List I and

List II, respectively. Both the Parliament and the State legislature have powers to enact any provisions on subjects specified in List-III.



The excise duty is levied as per Entry No. 84 of List-I, which reads as follows:

84. *"Duties of excise on tobacco and other goods manufactured or produced in India except----*

a) Alcoholic liquors for human consumption.

b) Opium, Indian hemp and other narcotic drugs and narcotics.

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

The Parliament has enacted the CEA and Medicinal and Toilet preparations (Excise Duty) Act for the levy of duty on the manufacture of goods. Since the levy arises on the process which amounts to manufacture, one must understand the meaning and scope of the word '*manufacture*'.

Manufacture

The word '*manufacture*' was initially defined in Section 2(f) of the CEA, 1944 in an inclusive manner to include any process of incidental or ancillary to completion of a manufactured product.

The goods on which excise duty was levied were specified in tariff items from the year 1944 till 28/02/1986. The different products were specified in different tariff items. For example, Caustic Soda was specified in Tariff Item No. 14B. The description of the tariff item read as follows:

14B. Caustic Soda and Caustic Potash, whether in solid form or in Dye.

Similarly, Patent or Proprietary Medicines were specified in tariff Item No. 14E with the description as follows:

14E. *"Patent or proprietary medicines not containing alcoholic, opium, Indian hemp or other narcotic drugs or other narcotics other than those medicines which are exclusively Ayurvedic, Unani, Sidha or Homeopathic.*

The definition of Patent or proprietary medicines was given in Explanation 1 and Explanation 2 given below this tariff entry.

The inclusive part of the definition of manufacture in respect of various tariff items expanded the scope by specifying certain processes that are deemed to be processes of manufacture. For example, in the case of medicines defined in Tariff Item No. 14E, the clause (iii) of clause 2(f), which reads as follows, expanded the meaning of the word '*manufacture*'.

The Parliament has enacted the CEA and Medicinal and Toilet preparations (Excise Duty) Act for the levy of duty on the manufacture of goods.

(iii) "in relation to patent or proprietary medicines as defined in Item No. 14E of the First Schedule and in relation to cosmetics and toilet preparations defined in Item No. 14F of that Schedule, includes the conversion of powder into tablets or capsules, the labelling

or re-labelling of containers intended for consumers and re-packing from bulk packs or retail packs or the adoption of any other treatment to render the product marketable to the consumers."

Thus, the person carrying out the activity for products specified in different tariff items was also required to understand these provisions to determine whether the process carried out by him amounts to manufacture. For example, in the case of medicines, labelling or re-labelling of containers intended for consumers and re-packing from bulk packs or retail packs amounts to the manufacture of goods. The similar process carried out for other products did not amount to manufacture.

The Central Excise Tariff Act, 1985 (Tariff Act), effective from 01/03/1986, replaced the entire tariff items and specified the goods in different chapters of the First Schedule of the Tariff Act. The definition of the word 'manufacture' defined in Section 2(f), was also amended as follows:

(f) "manufacture" includes any process---

i. Incidental or ancillary to the completion of a manufactured product.

ii. Which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture.

and the word manufacture shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

Thus, after 01/03/1986, every person was required to classify the products under the Chapter specified in the Tariff Act and study the Chapter Notes to understand the meaning of 'manufacture'. The various processes with respect to any product that were deemed to be the manufacture of goods were specified in the Chapter Notes.

In the year 1997, the valuation provisions were amended by incorporating Section 4A in the CEA, 1944. This section provides for the determination of value based on the retail sale price declared on the packages of such goods, less abatement from such retail sale price as notified. Initially, such goods on which tax was payable on value based on MRP were specified in a notification. Subsequently, these goods were specified in the Third Schedule of CEA, 1944.

The definition of the word '*manufacture*' was also amended by incorporating clause (iii) in Section 2(f), which reads as follows:

(iii) "which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable in the consumer."

It will thus be observed from the above that the department has constantly amended the definition of the word 'manufacture' to expand the scope of levy of duty.



Judicial Interpretation of Manufacture

The word 'manufacture' was defined in an inclusive manner u/s. 2(f) of the CEA, 1944. The Supreme Court in the case of M/s. South Bihar Sugar Mills Ltd. v. UIO[1] observed in para 14 as follows:



> ***14.*** *"The Act charges duty on manufacture of goods. The word 'manufacture' implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use……"*

Further the Court in the case of M/s. Empire Industries Limited & Others v/s UIO reported in 1985-(20)-ELT-179 (SC) observed in para 30, para 31, and para 37 as follows:

> ***30.*** *"……The taxable event under the Excise Law is 'manufacture'. The moment there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes 'manufacture' takes place and liability to duty is attracted……."*
>
> ***31.*** *"……Whatever may be the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation continues such a process which will be part of 'manufacture'. Any process or processes creating something else having distinctive name, character and use would be manufacture."*

There was always a dispute between the department and the assessee in interpreting the word '*manufacture*'. The department has always alleged that any process by which the value is enhanced amounts to the process of manufacture. As an example, cutting coils of steel plates was alleged to be the manufacture of goods. This issue was finally settled by a Circular from the department clarifying that cutting coil into plates doesn't amount to manufacture. Thus, there was substantial litigation on the determination of any process amounting to the process of manufacture.

If the process amounts to the manufacture of goods, the next step is to classify the products

The department has always alleged that any process by which the value is enhanced amounts to the process of manufacture.

to determine the rate of tax and the value of the product for computing the quantum of excise duty payable.

Classification of Products

As mentioned above, from the period 1994 to 28/02/1986, the excise duty was levied on the goods which were specified in different tariff items. The Government in order to increase the scope of levy of duty in every budget, specified

1 *1978-ELT-(J336).*

new products under a new tariff item. In the year 1975, the Government brought Tariff Item No. 68 with the description "*All other goods not elsewhere specified but excluding specified items.*" Thus, all the goods which were not specified under Tariff Item Nos. 1 to 67 got specified in Tariff Item No. 68. However, the rate of duty on various tariff items was different. Therefore, there was always an attempt on the part of the manufacturer to classify the products in the entry in which the rate of tax was less, and on the part of the department to classify those where the rate of tax was high.

For example, the rate of tax on patent proprietary medicines was 12.5% and the rate of tax on cosmetics and toilet preparation was 100%. There was a dispute over whether any item is classifiable as medicine or cosmetics, or toilet preparation. The classification of products like Selsun shampoo used in the treatment of dandruff remained an area of dispute. The shampoo is a medium for the treatment of dandruff. The department, considering the word 'shampoo', has served notice to classify the products as Cosmetics and Toilet preparation, whereas the company has classified the products as medicaments, as the products contained active ingredients of selenium sulphide used in the treatment of dandruff. This led to a substantial amount of litigation in the classification of various products.

The Government w.e.f. 01/03/1986 introduced the Central Excise Tariff Act, 1985, which classified all goods into 97 Chapters. The Tariff Act was mainly based on the Customs Tariff Act, 1975, which was also based on the Harmonized System of Nomenclature (HSN) published by the Customs Cooperation Council, a division of the World Trade Organization. It was felt that the alignment of the Tariff Act, 1985 with the Customs Tariff Act would reduce the litigation in the classification of products.

The Supreme Court in the case of *M/s. Wood Craft Products Ltd*[2] and *Collector of Customs v. M/s. Business Forms Limited*[3] has held that the description in HSN is a good guideline for the classification of products in any chapter heading. This principle did help in properly classifying the products. But the applicability of the principle to the facts of the case remains highly disputed.

The efforts were made after the year 1994, when the rate of tax for most of the products was the same to avoid disputes on classification. The alignment of rates certainly helped in reducing the dispute on classification. The area of dispute was shifted to the determination of the value of goods.

Valuation

Section 4 of the CEA, 1944, makes provision for the determination of value when duty is chargeable with reference to value. This section



was amended from time to time to bring in more clarity on the determination of assessable value. First time it was comprehensively amended by the Finance Act, 1973 w.e.f. 01/10/1975. The section was further amended in the year 2000 to provide for the determination of value based

2 *1995-(77)-ELT-23 (SC).*

3 *2002-(142)-ELT-18 (SC).*

on transaction value. It provided that in cases where goods are sold by the assessee for delivery at the time and place of removal, and the assessee and buyer are not related persons, and the price is the sole consideration for sale, the assessable value shall be a transaction value. The explanation was added w.e.f. 14/05/2003 to clarify the manner of determining the transaction value, which reads as follows:

> ***"Explanation**---- For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods."*

Section 4 of the CEA, 1944, makes provision for the determination of value when duty is chargeable with reference to value.

Judicial interpretation of Section 4 of the CEA, 1944

The provision of Section 4 was interpreted in various cases. They are briefly summarised below:

a) Judicial interpretation:

The judicial interpretation was made for the first time by the Hon'ble Supreme Court in the case of *M/s. A.K. Roy & Others v. M/s. Voltas Limited*[4]. The court in para 19 and para 20 held that the price shall be the cash price free from augmentation of credit. It further held that excise is a tax on the production and manufacture of goods (see *Union of India v. Delhi Cloth and General Mills* (AIR 1963 SC 791)) Section 4 of the Act therefore provides that the real value should be found after deducting the selling cost and selling profits, and that the real can include only the manufacturing cost and the manufacturing profit.

This observation of the Court created tremendous uncertainty in the determination of value as all the assesses started payment of tax on the cost of manufacture plus manufacturing profit.

b) Bombay Tyre International Limited*[5]*:

The decision of the Court and important observations on various issues are described below:

A. The measure of tax and levy should not be confused.

B. New Section effective from 01/10/1975

C. Related person

D. Value at time and place of removal

E. Trade Discount and other deductions

A. The measure of tax and levy should not be confused:

The measure implied is for computing the tax amount, and the levy implies taxability. Both are different. Therefore, the value shall not be based on the cost of manufacture plus manufacturing profit, as held by the Supreme Court in the case of *M/s. Voltas Limited*[6]. The Court, as per para 12 of the Order, held that the value shall be the wholesale cash price for goods sold to the purchaser.

B. New Section effective from 01/10/1975:

W.E.F. 01/10/1975, the concept of normal price in wholesale trade was the basis for

4 *1877-ELT (J177).*

5 *1983-(14)-ELT-1896 (SC).*

6 *1977-(1)-ELT-J177 (SC).*

the determination of value. The Supreme Court in para 31 held that the basic scheme for the determination of price in the new Section 4 incorporates the same principle as it is observed in the old Section 4. The new Section 4 is more comprehensive, and the language implied is more precise and definite. The new section also incorporated the concept of related person and place of removal.

C. Related person:

The constitutional validity of the definition of 'related person' was upheld by reading down the meaning. The court observed in para 44 as follows:

44. *".....But it seems to us unnecessary to enter into that question because we are satisfied that the provision in the definition of "**related person**" relating to a distributor can be legitimately read down and its validity thus upheld. In our opinion, the definition of related person should be so read that the words "**a relative and a distributor of the assessee**" should be understood to mean a distributor who is a relative of the assessee....."*

D. Value at time and place of removal:

The court has also held that the value contemplated in Section 4 of the CEA, 1944 is the value at the time and place of removal. Subsequent addition in the value cannot be included in the assessable value determined u/s. 4 of the CEA, 1944. The place of removal at that time was defined to mean the factory gate.

E. Trade discount and other deductions

This section also provides for the exclusion of the cost of packing, which is durable in nature and returnable, by the buyer to the assessee, trade discount, and freight. The Valuation Rules, 1975 also made provision for the determination of the value of goods which are captively consumed. The trade discount was allowed to be deducted from the sale price to determine assessable value. The court clarified regarding the deduction of the discount as follows:

"Trade Discounts---- Discounts allowed in the Trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of the discount being known at or prior to the removal of the goods. Such Trade Discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price."



F. Reasons for dispute:

This judgment also led to a substantial amount of litigation on the ground that the value at the time and place of removal is required to be determined. Therefore, the expenses incurred subsequent to the removal of goods shall not be included in the assessable value u/s. 4 of the CEA, 1944. All the assesses started deducting the various expenses incurred at the depot to determine the assessable

value. Thereafter, the definition of 'place of removal' was also amended to specify depot premises of a consignment agent or any other place from where excisable goods are sold after the clearance as a place of removal.

c. Madras Rubber Factory Limited reported in 1995-(77)-ELT-433:

The various issues that were decided in Madras Rubber Factory (Supra) can be summarized as follows:

i. The discount may not be uniformly allowed to all the distributors/dealers. It may vary from customer to customer. However, if it is known prior to the removal of goods, the discount can be reduced from the sale price to arrive at the assessable value.

ii. When goods are sold from a depot, the expenses incurred in maintaining and running the said depot are not deductible, except the cost of transportation, including insurance and freight. The equivalised freight is deductible.

iii. Cost of packing is not deductible, except cost of packing that is dutiable and returnable.

iv. Interest element in built into the price is required to be excluded as the value is required to be determined at the time and place of removal.

Although this judgment laid down the principle for the determination of value, its applicability in individual cases still remained an area of dispute.

Determination of value based on MRP printed on packages

The department, thereafter, in 1997, incorporated Section 4A of the CEA, 1944, which provided for the determination of value on the basis of MRP printed on the packages, less a specified amount of abatement as per the notification. This provision was applicable only to the goods which were notified u/s. 4A of the CEA, 1944. Subsequently, these goods were specified in Schedule III of the CEA, 1944.

Conclusion

It will be observed from above that the determination of the value of any product was not very simple. The Court had to intervene and interpret the matter of determination of value in three landmark judgments, i.e., *M/s. Voltas Limited, M/s. Bombay Tyres International Limited and M/s. MRF Limited.* This uncertainty in the determination of value, to a certain extent, was removed by introducing the determination of value based on MRP less abatement. But for all other products, the dispute still remains the same. The basic reasons for the dispute were

The department, thereafter, in 1997, incorporated Section 4A of the CEA, 1944, which provided for the determination of value on the basis of MRP printed on the packages, less a specified amount of abatement as per the notification.

that the stockists, wholesalers, or retailers who were reimbursing the excise duty element to the manufacturer directly or indirectly were not entitled to any credit of excise duty paid.

Similarly, the interpretation of the word 'manufacture' always remained a matter of dispute. Due to variation in rates of duty between various goods, the classification of goods in any chapter heading also remained a matter of heavy dispute. Thereafter, GST was introduced w.e.f. 01/07/2017. One hopes that there will be no dispute on supply, classification, and valuation.

Input Tax Credit in Excise – From Proforma Credit to MODVAT to CENVAT Credit to Input Tax Credit in GST – A Journey

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Overview

Central Excise duty is a tax on the manufacture of goods. When central excise duty paid inputs are used in the production of other excisable goods, central excise duty is levied on an amount that already includes duty paid on inputs. This levying of excise duty on excise duty is called as cascading effect, which produces distortion in the economy for a variety of reasons. To overcome the cascading effect and achieve some other objectives, the policy framework provided for the setting off of duty paid on anterior stages against the duty payable by the manufacturer. This article broadly narrates law as it evolved over a period of time from Proforma credit to MODVAT credit to CENVAT credit, and finally, ITC under GST. The article would not only familiarise a professional who has just joined but also reminisce an old professional.

Introduction

By Resorting to the Exemption under Rule 8 of CER'44.

Rule 8 of CER'44 empowers the Central Government to exempt any excisable goods from the whole or part of the duty, subject to conditions. (like Section 5A of the Central Excise Act, 1944 or Section 11 of the CGST Act, 2017).

Notifications were issued, under Rule 8, on a very limited & selective basis, providing for exemption of central excise duty on finished goods from so much of the central excise duty paid on specified inputs. Such Notifications were popularly, in central excise parlance, called set-off notifications. Of course, the expression "set off" has entirely different connotations for a civil lawyer.

For illustration, Notification No. ("NN") 75/62-CE dated 25.4.1962 exempted steel ingots falling under TI 26 from so much of the duty of excise leviable thereon as is in excess of the duty specified on Inputs described as "scrap obtained from duty paid pig iron" and "old iron or steel scrap obtained from duty paid steel ingots or products".

Notifications were issued, under Rule 8, on a very limited & selective basis, providing for exemption of central excise duty on finished goods from so much of the central excise duty paid on specified inputs.

In above illustration, say, excise duty paid on scrap of pig iron is Rs.100 and excise duty payable on steel ingots is Rs.300, then in terms of Notification, duty payable on steel ingots would be Rs.200. A manufacturer who manufactures steel plates who uses such steel ingots, would get set-off of Rs.200 if similar Notification exists for steel plates.

If an exporter exports steel ingots and claims a refund of excise duty paid on them, he would get a refund of excise duty paid on steel ingots, which would be Rs. 200 (whereas, economically, steel ingots suffered excise duty of Rs. 300). The illustration highlights some of the distortions/ problems in this mechanism.

NN 95/79-CE dated 1.3.1979 exempted final products falling under specified Tariff Item from so much of BED, SED, and CVD already paid on the inputs falling under corresponding TI mentioned in the Notification. Such an exemption required the manufacturer to follow the procedure set out in Rule 56A (explained infra).

The Supreme Court in the *Tata Iron*[1] *case* held that where a manufacturer has used duty-paid materials and some non-duty paid materials while manufacturing excisable goods, it would be wrong to deny set-off of excise duty paid on inputs on the ground that the manufacturer has used non-duty paid materials, since the set-off notification did not require the use of "only" duty paid inputs.

Proforma Credit under Rule 56A

Before moving forward, the meaning of the word "credit" is often missed, and its significance cannot be overemphasized. When excise duty on inputs is paid by a manufacturer in the Government treasury, why "credit" of that amount given to the purchaser of the inputs? Actually, the ledger in which is amount is "credited" is the ledger of the purchaser in the books of the Government.

Rule 56A of CER'44, introduced w.e.f. 8.12.1962 was a precursor to MODVAT, CENVAT, and VAT under GST. It provided for the Collector to permit a manufacturer of specified excisable goods to receive duty-paid materials or component parts in his factory for the manufacture of the excisable goods and allow credit of the duty already paid on them. A number of conditions were prescribed, like prior notice to the proper officer; receiving in original packing under the cover of ARI / Bill of Entry; producing materials or component parts for verification whenever called for; maintaining RG-23; maintaining a current account with the Collector with sufficient balance; etc. Initially, only 26 commodities were specified.

Rule 56A of CER'44, introduced w.e.f. 8.12.1962 was a precursor to ModVAT, CENVAT, and VAT under GST.

1 *1977 (1) ELT J 61 (SC).*

A major change, introduced w.e.f. 1.1.1969 in Rule 56A stated that no credit shall be allowed unless excise duty was paid on materials and component parts under the same TI as finished excisable goods.

Suppose 100 units of inputs are used in the manufacturing process, which results in the manufacture of 98 units of excisable goods and 2 units of waste/by-product. Department sought to deny proforma credit on 2 units of inputs on the ground that these 2 units were not used in the manufacture of excisable goods. The Supreme Court in Swadeshi Polytex v. CCE[2] held that the denial of proforma credit on 2 units of inputs is not correct since it is not possible to use a lesser quantum of inputs for producing a certain quantity of finished excisable goods. The Supreme Court also held that it does not make any difference that 2 units of inputs are contained in waste/by-product and that the waste/by-product is not excisable/exempted. The Supreme Court affirmed the ratio in Indian Aluminium[3] wherein the Bombay High Court was concerned with proviso to Section 56A(2) which provided that proforma credit is not admissible if the material is used in the manufacture of finished excisable goods which are exempt from duty or chargeable to nil rate of duty and the Court held that dross and skimmings are mere 'ashes', they cannot be said to be finished excisable goods, nor they were exempt from the whole of duty of excise on or chargeable to "nil rate of duty" and therefore, proviso to Rule 56A(2) will have no application.



MODVAT

The mechanism adopted to lower the cascading effect was found ineffective and riddled with procedures like intimation within a certain time of receipt of inputs, total stock not to exceed certain limits, physical checks, approvals, etc. The Government formed the Taxation Enquiry Committee in 1976 under the chairmanship of Shri LK Jha to suggest long-term reforms in the indirect tax structure, which suggested implementing the VAT system at the manufacturing level.

The Long-Term Fiscal Policy, formed as per Budget Proposals for 1985-86, proposed to introduce MODVAT with a view to extending

2 1989 (44) ELT 749 (SC).
3 1980 (6) ELT 146 (Bom.)

proforma credit to all excisable commodities with the exception of a few like petroleum, tobacco, and textile products. This proposal was given shape in Finance Bill, 1986 and while moving Finance Bill, 1986, the Finance Minister, inter alia, noted that "MODVAT scheme will result in considerable reduction in the cost of the final product" & "This would imply that as long as the input and the final product are covered by the specified 37 chapters and the final product bears some duty of excise, credit of duty on the inputs covered by these chapters will be available".

A wide range of items was grouped together, and provided that so long as the inputs and final products fell within the range, the benefit of the scheme would be admissible.

Our country allowed credit under VAT at the Central level, relying on the invoice. This is



called a credit-invoice or "invoice" VAT. This is transactional VAT. In contrast, an accounts-based VAT, followed by some countries, is imposed on the results of operations for a tax period, not on each transaction, and the accounts can be adjusted to reflect a tax-inclusive base or tax-exclusive base.

Under peculiar situations and based on representations from industry, specifically metal items, Orders were issued allowing credit on a "deemed" basis on market purchases.

Modified VAT (MODVAT), w.e.f. 1.3.1986, contained in Rules 57A to 57J of CER'44, was a refined version of proforma credit, solved many issues and procedures reduced. Salient features of MODVAT:

(a) "Inputs" formally defined as "goods used in

Our country allowed credit under VAT at the Central level, relying on the invoice. This is called a credit-invoice or "invoice" VAT.

or in relation to the manufacture of the final products" and included paints and packaging materials but did not include machines, machinery, plant, equipment, etc used for producing or processing goods or for bringing any change in any substance; packaging materials on which exemption was availed; and certain other items. The expression "used in or in relation to" has been judicially held to widen and expand the scope, meaning, and content of "inputs".

(b) Under Rule 57A, the range of chapters clubbed and covered as "Inputs" and "final products" was extensive and gradually increased.

(c) Credit was allowed for specified duties, being BED, SED levied under the Finance Acts and CVD under Section 3 of the Customs Tariff Act.

(d) Credit restricted in case inputs are produced or manufactured in FTZ or EOU.

(e) "Inputs", as such or after partially processed, could be cleared outside the factory for the purposes of test, repairs, etc, or for the

purpose of manufacturing intermediate products necessary for the manufacture of final products.



(f) Exemption to "Inputs" when manufactured in a factory and used within the factory of production, in the manufacture of finished goods.

(g) Exemption to "Inputs" manufactured in a factory as job work and used in the manufacture of finished goods.

(h) Rule 57C provided that no credit is allowed if the final product does not suffer duty (with some exceptions).

(i) Credit not to be denied or varied where inputs contained in waste, by-product, whether or not such waste, by-product is exempt.

(j) Procedure to be followed: like filing a declaration about inputs to be used, final products to be manufactured, records to be maintained, documents in support of credit of inputs, defacing of original duty-paying documents, etc. The manufacturer has to take all reasonable steps to ensure that the duty as mentioned in the duty paying documents has been paid.

(k) MODVAT scheme addressed the situation for allowing credit on inputs when used to manufacture an intermediate product outside the factory, if certain conditions were met, such as the intermediate products being manufactured on a job-work basis under a specific notification. It was later held by the Supreme Court in the Jaypee Rewa[4] case that MODVAT credit was eligible on inputs like explosives used in mines for extracting intermediate products (like limestone), which in turn was used in the manufacture of the final product, i.e., cement, in the factory.

(l) Gate pass was considered a document evidencing duty payment. Later on, documents such as 'endorsed' gate pass, 'endorsed' Bill of Entry, 'subsidiary gate pass/ certificate' in situations like inputs moving to another consignee or destination, and thereafter part of the consignment is supplied to the manufacturer, etc, also became eligible documents.

Further major amendments in MODVAT.

W.e.f. 1.3.1994, the MODVAT scheme was extended to "Capital Goods used by the manufacturer in his factory". "Capital Goods" was defined to mean machines and machinery "used for producing or processing of any goods or bringing any change in any substance", components and spare parts & moulds and dies.

Capital Goods" was defined to mean machines and machinery "used for producing or processing of any goods or bringing any change in any substance", components and spare parts & moulds and dies.

4 *2001 (133) ELT 3 (SC).*

Final products falling within certain chapters were excluded from the benefit. Effective 1.3.1997, the scope of "capital goods" was liberalised by correlating it with the chapters of goods falling within the Schedule to the Central Excise Tariff Act, 1985.

W.e.f. 1.4.1994, gate pass was replaced by invoices. The category of persons who could issue modvatable invoices was added to include:

- manufacturer from his factory or depot
- wholesale distributor/dealer of a manufacturer
- Importer from his godown.

W.e.f. 4.7.1994, dealers were brought into excise registration. Their invoice was made Modvatable. W.e.f. 23.7.1996, the concept of "first stage dealer" and "second stage dealer" was introduced.

CENVAT scheme was contained in Cenvat Credit Rules, 2001 (CCR'01) w.e.f. 1.7.2001 and Cenvat Credit Rules, 2002 (CCR'02) introduced w.e.f. 1.3.2002.

Credit of AED (GSI) was allowed w.e.f. 16.3.1995, and it was also stipulated that such credit can be utilised only for payment of AED (GSI) leviable on final products.

W.e.f. 1.9.1996, Rule 57CC read with Rule 57C dealt with a situation where common inputs are used in both dutiable and exempted goods, to provide broadly, as under:

(i) Credit need not be reversed where final products are cleared to certain units.

(ii) Manufacturer had the option to maintain separate inventory for inputs used in exempt final products and must not avail credit on such inputs.

(iii) Where no such inventory is maintained:

  (a) reverse credit availed on inputs used in specified final products;

  (b) in respect of the rest of the final products, pay 8% of the price of the exempt final products.

MODVAT scheme was further liberalised w.e.f. March 1997. MODVAT credit could be utilised to pay excise duty on any other final product, whether or not such inputs have been actually used in the manufacture of such other final product. For e.g., credit earned on engines used only in motor vehicles could be utilised for payment of excise duty on tractors.

Credit earned on final products exported under bond could be utilised for payment of excise duty on goods cleared domestically or exported on payment of excise duty, or if not possible, then claim a refund subject to conditions & safeguards.

CENVAT

Salient features of CENVAT w.e.f. 1.4.2000:

(i) Definition of "capital goods" was widened. Installation as a precondition for availing credit, deleted.

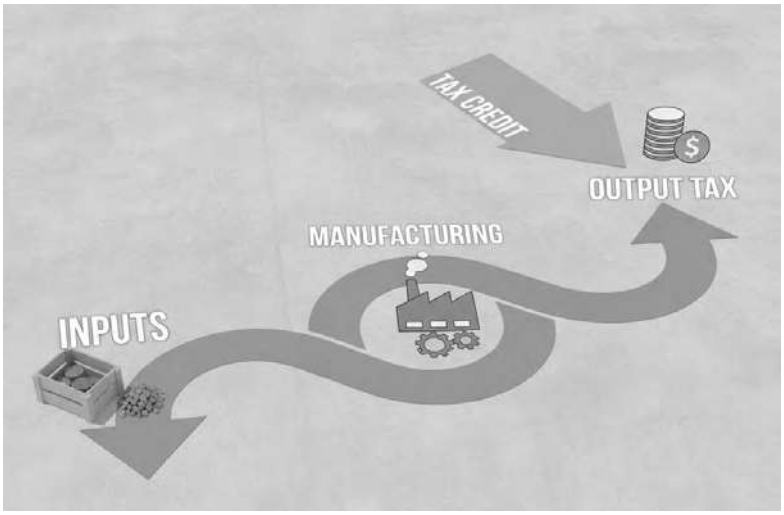
(ii) Scope of "inputs" enhanced.

(iii) Credit on capital goods up to 50% in the same financial year; balance in any subsequent financial year.

(v) Can remove final products from job workers' premises.

(vi) Rule 57C and Rule 57CC reincarnated as Rule 57AD.

CENVAT scheme was contained in Cenvat Credit Rules, 2001 (CCR'01) w.e.f. 1.7.2001 and Cenvat Credit Rules, 2002 (CCR'02) introduced w.e.f. 1.3.2002.



Input Service

Finance Act, 1994 levied Service Tax. No credit was admissible to a service provider paying service tax from 1994 till 2002. W.e.f. 16.8.2002, credit of Service Tax paid on input services was allowed where input and output services fell under the same category, subject to conditions. W.e.f. 14.5.2003, the scope was enhanced to allow credit on all input services to a taxable output service provider on the condition that credit would be available on or after making payment of value and tax thereon to the provider. Provisions stated that maintain separate accounts and take credit on that portion of input service intended for use in relation to rendering taxable output services, and in case separate accounts are not maintained, utilize service tax credit only to the extent of an amount not exceeding 35% of the amount of service tax payable on output service.

2004 was a watershed moment in the history of this country when, w.e.f. 10.9.2004, the CENVAT Rules introduced the concept of cross-utilization of credit across goods and services. Broadly, provisions (i) granted CENVAT credit of excise duty paid on inputs and service tax paid on any input service received by manufacturer or output service provider; (ii) allowed utilization of CENVAT credit for payment of any duty of excise on any final product, inputs/capital goods cleared as such and service tax on output service; (iii) One-to-one utilization of credit in case of AED's, NCCD and Education cesses; (iv) amount payable under Rule 6(3)(b) was fixed at 10% and where output service provider opts not to maintain separate accounts, he could utilize only to the extent of an amount not exceeding 20% of the amount of service tax payable on taxable output service.

W.e.f. 1.4.2008, Rule 6 was amended to provide the following options to a provider of output services, using common inputs or input services for providing taxable as well as exempted services and opting not to maintain separate accounts, namely:-

(i) either reverse proportionate credit attributable (to be worked out in a manner prescribed in the rule) to the inputs and input services used for providing the exempted service, or

(ii) pay 8% amount of the value of the exempted service.

Finance Act, 2010 – Retrospective Amendment

Finance Act, 2010 retrospectively amended erstwhile MODVAT/CENVAT provisions, existing during 1.9.1996 to 31.3.2008, to provide a third option to manufacturers to proportionately reverse credit of duty paid on common inputs used in the manufacture of exempted goods.

Several amendments were made to the definitions of 'Inputs' and 'Input service' in 2011.

Several amendments were made to the definitions of 'Inputs' and 'Input service' in 2011. In the amended definition, the words "activities relating to business, such as" were removed, narrowing the scope of Input Service.

W.e.f. 1.4.2016, Rule 6 of the CCR'04 was revamped to rationalize and simplify for reversal of CENVAT credit related to exempted goods and services. Key changes were:

(a) Definition of "exempted services" was broadened to include activities not considered "services" under Section 65B(44) of the Finance Act, 1994, to prevent credit on such activities.

(b) Maintaining separate accounts for inputs and input services related to exempted and non-exempted supplies was no longer an option.

(c) For those dealing with both exempted and non-exempted outputs, manufacturers/ service providers were required to choose one of two methods for common credit reversal:

(i) Pay a fixed amount of 6% of the value of exempted goods and 7% of the value of exempted services; or

(ii) Reverse common CENVAT credit proportionally using a formula based on the ratio of exempted turnover to total turnover. This method is specifically applied to common credit.

(d) CENVAT credit on capital goods used exclusively for exempted goods or services was disallowed for two years.

(e) It was allowed to permit assessees who missed the initial option, to reverse proportionate credit using a formula.

(f) The old Rule 6 remained active until 30.6.2016 for clearing obligations from the previous financial year.

(g) Specific exclusions were made to the definition of exempted services, such as the transport of goods by vessel from an Indian customs station to a place outside India, allowing full CENVAT credit for shipping lines.

(h) Banking and financial institutions could use either of the two main options for credit reversal, in addition to the existing 50% reversal rule.

GST

Till June 2017, taxation was based on value addition, but there was an absence of a seamless flow of credit, particularly between Central and State levies.

A manufacturer would pay excise duty on production. When excise duty paid goods were sold by a manufacturer to a dealer, further transactions would entail the levy of state VAT or CST, and the credit of excise duty would be lost. Similarly, a service provider paying service tax on its output side could not avail a credit of state VAT paid on its purchase of goods.

When excise duty paid goods were sold by a manufacturer to a dealer, further transactions would entail the levy of state VAT or CST, and the credit of excise duty would be lost.

GST, with its dual structure, tax on "supply" instead of manufacture/service/sale; credit on inputs, input services, and capital goods; and fungibility of credit, seeks to reduce the cascading effect.

"Input tax" is defined to mean the Central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both and includes:- (a) CVD on import of goods, equal to IGST; (b) CGST; (c) IGST; (d) SGST; & (e) UTGST, but does not include the tax paid under the composition levy. ITC now means credit of "Input tax".

Businesses can use ITC towards payment of tax on the output side in the following order:

ITC	Utilize first for	Remaining credit (if any), utilize for	Cannot be utilized for
IGST	IGST	CGST or SGST/UTGST liability (in any order and proportion)	N.A.
CGST	CGST	IGST	SGST/UTGST
SGST/UTGST	SGST/UTGST	IGST	CGST

ITC of IGST must be fully exhausted before utilizing any CGST or SGST credit. ITC cannot be used for paying interest, penalties, fees, or for liabilities under reverse charge.

ITC is granted on input tax charged on supply of goods or services or both which are "used or intended to be used in the course or furtherance of his business" subject to conditions that registered person: (i) is in possession of a tax invoice or a debit note issued by a registered supplier or any other prescribed tax paying document; (ii) has received the goods or services or both; (iii) tax charged on supply has been actually paid to the Government; & (iv) has furnished the return.

ITC cannot be taken beyond a certain time limit, and this time limit has been extended for certain financial years. Registered persons can reclaim previously denied ITC if deadlines or registration issues are resolved retrospectively.

Section 17 deals with the apportionment of credit and blocked credit. Where inputs and input services are used partly for business and partly for other purposes, ITC is limited to that used for business. Rule 42 provides a detailed procedure and formula for the determination of ITC in respect of inputs and input services and reversal thereof. Rule 43 provides a detailed procedure and formula for the determination of ITC in respect of capital goods and reversal thereof. Rules 36 to 45 of the CGST Rules deal with various aspects of ITC credit.

Where goods or services relate to both taxable/ zero-rated and exempt supplies, ITC is restricted to the portion attributable to taxable/zero-rated supplies. Section 17(3) defines the "value of exempt supply" for the purpose of apportioning ITC. This definition is crucial for determining how much common ITC a business can claim when it makes both taxable and exempt supplies. Banks and Financial Institutions have the option to claim 50% of the eligible ITC. ITC is not available for certain goods/services, such as:

- Motor vehicles (except when used for certain business purposes)
- Goods/services under the composition scheme
- Personal consumption
- Goods lost, stolen, destroyed, written off, or disposed of by way of gift/free samples
- Construction of immovable property (other than plant/machinery) on own account
- Membership of clubs, health and fitness centres; employee travel benefits.



Sales Tax / VAT - Historical Development, Constitutional provisions, Charge, Valuation, and its culmination in GST [including Schedule II entry 6 of CGST Act]

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CA Parind Mehta

Overview

India's indirect tax landscape has undergone a major evolution—from disparate State sales tax systems to VAT, and finally to the comprehensive Goods and Services Tax (GST). Historically, State taxation powers under the Constitution enabled a wide array of levies, with sales tax on goods (Entry 54) being the most prominent. States experimented with first-point, last-point, and multi-point taxation, supported by complex declarations, concessional forms, and mechanisms for set-off and input tax credit. Inter-State trade complications led to the Central Sales Tax Act, 1956, which introduced the origin-based CST regime.

Judicial interpretations significantly shaped the law, especially in defining "goods," taxation of intangibles, and distinguishing sales from services. The landmark 46th Constitutional Amendment introduced 'deemed sales', enabling taxation of works contracts, leasing, hire-purchase, catering, and supplies by unincorporated associations. Despite VAT introducing uniformity and eliminating intra-State declaration forms, cascading of taxes persisted due to CST, excise duty, and non-VATable levies like luxury tax and entry tax, and restrictions on the claim of set-off or input tax credit.

GST marked a paradigm shift to a destination-based, consumption-linked tax, broadening the concept of supply, taxing related-party and inter-branch transactions, and eliminating concessions. However, challenges continue—classification disputes (especially intangibles), valuation complexities, place-of-supply anomalies, and fragmented State-level administration.

GST 2.0 brings clarity, but achieving a seamless, nationally uniform tax framework remains essential for realising GST's full economic potential.

Introduction



The levy of indirect taxes by the States covers a wide gamut of tax laws, beyond the traditional sales tax or Value Added Tax (VAT) on the sale of goods. The taxing powers of the States are enshrined in List II of the Seventh Schedule of the Constitution of India and provide a wide latitude to the States for raising revenues. Of the various powers, the most commonly known and pervasive amongst the various taxes was the levy of tax under entry 54, on sales and purchases of goods

The traditional economy was largely dependent on the trading (including manufacturing) of tangible goods, and States (and the Central Government, in respect of Union Territories) introduced their respective State Sales Tax laws in order to levy tax on the sale of such goods. However, State laws were built on the experience and ground realities of the respective States and differed in the scope, models of taxation, and the administrative setup.

Models of the Levy

In the initial decades after independence, the States adopted a combination of the following three models, namely First Point taxation, where the levy of tax was only at the point of first sale within the State, which would typically be the first sale after manufacture or import of the goods into the State. However, this required a system of forms and declarations to be exchanged between the purchasers and sellers to evidence the payment of tax at the first stage; Last Point Taxation, where tax was payable at the stage of last sale within the State, that is, at the point of sale to the end consumer. This was also evidenced through a system of forms and declarations to be provided by the purchaser, declaring that his purchase of goods was meant for further sale or for use in manufacture of goods for sale; or the Multi Point Taxation, as the nomenclature suggests is the levy of tax at every stage in the chain of transactions with the tax being on the value addition.

However, it should be noted that the levy of tax was not only restricted to sales. Many States provided for the levy of tax on purchases also (essentially, a reverse charge tax) in certain specified situations or on agricultural commodities, such as sugarcane and cotton. This was necessary with a view to ensuring uniform taxation irrespective of the source of purchase and the ultimate sale or use of the goods.

Appropriate State

The State Sales Tax laws could be implemented with reasonable certainty when the sales and purchases took place within the respective States, that is, on intra-State sales and purchases of goods. However, disputes arose in the case of inter-state transactions, with the seller and the buyer being in different States or goods being dispatched to a location outside

the State boundaries. Disputes arose about the 'appropriate state'[1] that should be entitled to levy tax on such transactions. Demands were sought to be raised on different facets of a transaction, such as the place of contract, the State where the property passed[2], the state from where the



goods were dispatched, or where the goods are delivered[3][4]. This resulted in a multitude of demands and disputes hampering inter-state trade and commerce.

Central Sales Tax Act, 1956

The disputes relating to the 'appropriate state' to levy tax were sought to be addressed by amendments to the Constitution and the introduction of the Central Sales Tax Act ('CST Act') in 1956. The CST Act formulates the principles as to when a sale takes place in the course of inter-State trade or commerce or outside a State or in the course of import or export, and inter alia provides for the levy, collection, and distribution of taxes on sales of goods in the course of inter-State trade or commerce.

The Central Sales Tax Act was an 'origin-based' system of taxation, where tax was payable in the State from where the goods were dispatched. This origin-based system of taxation, therefore, benefited the manufacturing States by way of taxes irrespective of consumption thereof.

Recognising the cascading effect of Central Sales Tax levied in the State of dispatch, provision for the levy of CST at a concessional rate was introduced in the form of a declaration in Form C to be issued by the purchaser to the seller. This provision enabled inter-state purchase of goods for further resale, use in manufacturing, generation of electricity, mining, and for use in telecommunication networks at a concessional rate (ranging from 4 percent to 2 percent). Exemption was provided for subsequent inter-state sales through a system of forms (E-I/E-II forms), and penultimate sales preceding exports were exempt upon presentation of a certificate in Form H. Similar exemptions were introduced for sales to Special Economic Zones, subject to declaration in Form I, and for sales to diplomatic missions, subject to a certificate in Form J.

The Central Sales Tax Act was an 'origin-based' system of taxation, where tax was payable in the State from where the goods were dispatched.

Stock Transfers

The fundamental principle for the levy of Sales Tax was the existence of a transaction of sale of goods between a buyer and a seller. At the same time, the requirements of business dictated that goods, from raw materials to finished goods, were required to be moved between factories or

1 *Article 286, prior to its amendment in 1956.*
2 *Popatlal Shah v. State of Madras (1953 – 4 STC, 188 – SC).*
3 *State of Bombay v. United Motors (India) Ltd. (1953 – 4 STC 133 – SC).*
4 *Bengal Immunity Co., Ltd. v. State of Bihar (1955 – 6 STC 446 - SC).*

units of the same legal entity, and no tax could be demanded on such movement of goods.

The CST Act cast the burden of proof on the dispatching unit by requiring it to obtain and furnish a certificate in Form F from the receiving unit in the other State.



Meaning of 'Goods'

As the economy progressed and new business models evolved, disputes began arising about the interpretation of the term 'goods' under Article 366(12) of the Constitution and as defined under the State Sales Tax laws. These disputes were in the context of intellectual property, software, and even electricity and EXIM scripts. The Supreme Court, in a plethora of judgments, held that the term 'goods' could not be restricted to tangible property only and will also cover intangible property having the specified characteristics. Accordingly, it was held that intellectual property rights, such as trademarks, patents, copyrights[5], software[6] and other intangibles, such as gases and steam[7], electricity[8], REP Licences and DEPB Passbook[9] are 'goods' under Article 366(12) and the Sales Tax laws.

Forty-Sixth Constitutional Amendment and Deemed Sales

It was always accepted that the sale of goods would be subject to Sales Tax. However, disputes arose in the context of transactions which were not 'sales' in the traditional sense but which involved passing of property or rights in goods, such as works contracts, leases, and even in the case of the supply of food and drinks as part of service. While deciding the matter relating to a transaction of a works contract, where the Department demanded tax on the materials used in the construction of an immovable property, the Supreme Court[10] held that, under the Constitution, 'sale' means a sale defined under the Sale of Goods Act, 1930 only. The Supreme Court, therefore, held that there was no sale of goods in a transaction of a works contract.

As the economy progressed and new business models evolved, disputes began arising about the interpretation of the term 'goods' under Article 366(12) of the Constitution and as defined under the State Sales Tax laws.

5 *A. V. Meiyappan v. Commissioner of Commercial Taxes (1967 – 20 STC 115 – Mad.).*

6 *Tata Consultancy Services v. State of Andhra Pradesh (2004 – 137 STC 620 – SC).*

7 *Nizam Sugar Factory Ltd. v. Commissioner of Sales Tax (1957 – 8 STC 61 – Hyd.).*

8 *Commissioner of Sales Tax, Madhya Pradesh v. Madhya Pradesh Electricity Board (1970 – 25 STC 188 – SC).*

9 *Vikas Sales Corporation v. Commissioner of Commercial Taxes (1996 – 102 STC 106 – SC) and Yasha Overseas v. Commissioner of Sales Tax (2008 – 17 VST 182 – SC).*

10 *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. (1958 – 9 STC, 353 – SC).*

Similarly, in the context of the lease of a cinematographic film for a period of 49 years, the Madras High Court[11] held that the transaction did not connote a sale at all and, therefore, was not liable to sales tax.

Further, regarding the taxability of food served in a restaurant, the Supreme Court[12],[13] held that the service of food to a guest in a hotel or restaurant is with a view to satisfying the hunger of the guest and not a sale of food per se. Accordingly, there cannot be a levy of sales tax thereon.

The above decisions prompted an amendment to the Constitution of India vide the Constitution (Forty-Sixth Amendment) Act, 1982, and the introduction of clause (29A) in the Definitions under Article 366. The clause deemed six different kinds of transactions, which did not meet the test of traditional sales under the Sale of Goods Act, 1930, to be 'sales' for the purposes of levy of sales tax under the Constitution. These transactions, called 'deemed sales', are: involuntary acquisition, works contracts, hire purchase and installment sales, leases, supply of goods by an unincorporated association to its members, and supply of food and drinks as part of any service.

After the Forty-Sixth Amendment, the field of taxation widened, and the States were empowered to levy sales tax also on the supply of goods in the course of rendition of services specified in clause (29A), namely works contracts, leases, and catering or supply of food and drinks.

After the Forty-Sixth Amendment, the field of taxation widened, and the States were empowered to levy sales tax also on the supply of goods in the course of rendition of services specified in clause (29A), namely works contracts, leases, and catering or supply of food and drinks[14]. However, it should be noted that the meaning of the word 'goods' under Article 366(12) remained unchanged[15].

Valuation

Sale Simplicitor - 'Sale Price' is defined under the Sales Tax laws as the consideration paid or payable for the goods sold, that is, the sale price of goods sold. The definition under the CST Act is similar and further allows a deduction towards the Cash Discount. The Supreme Court has held that tax can be levied only on the 'sale price' of the goods that is agreed by and contracted between the seller and the buyer, and what is actually payable by the buyer to the seller[16],[17],[18].

At the time of the introduction of the value-added tax regime in 2005, the States introduced a First Point Taxation model in respect of drugs and medicines, on which tax was payable on MRP. The Supreme Court struck down the provision and held that the measure of tax must have a nexus to the 'sale' and must relate to the actual transaction of sale, which is being subjected to tax[19].

The question arises about the taxability of

11 *A. V. Meiyappan v. Commissioner of Commercial Taxes (1967 – 20 STC 115 – Mad.).*

12 *State of Himachal Pradesh v. Associated Hotels of India Ltd. (1972 – 29 STC 474 – SC).*

13 *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi (1978 – 42 STC 386 – SC) and Review Petition (1980 – 45 STC 212 – SC).*

14 *The Supreme Court in the case of State of West Bengal v. Calcutta Club Ltd (2019 – 70 GSTR 209 – SC) held that the doctrine of mutuality continued to be applicable to incorporated and unincorporated members' clubs even after the Forty-Sixth Constitutional Amendment.*

15 *Bharat Sanchar Nigam Ltd. v. Union of India (2006 – 145 STC 91 – SC).*

16 *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. (1958 – 9 STC, 353 – SC).*

17 *Indian Aluminium Cables Ltd. v. Commissioner of Sales Tax (1999 – 115 STC 161 – All.), affirmed in 1999 – 115 STC 172 – SC.*

18 *Hindustan Sugar Mills Ltd. v. State of Rajasthan (1979 – 43 STC 13 – SC).*

19 *State of Rajasthan v. Rajasthan Chemists Association (2006 – 147 STC 542 – SC).*

additional amounts charged by the seller to the buyer. These could include packing charges, freight, loading and unloading charges, installation charges, transit insurance, or any other charges for customization or modification to the goods being sold. The definition of 'sale price' under the Sales Tax laws generally includes any sum charged for anything done in respect of the goods before or at the time of delivery thereof. Accordingly, the charges for such additional activities will also form part of the sale price of the goods. The definition of 'sale price' generally excludes the cost of transit insurance, freight, installation, etc. However, the exclusions from the definition of 'sale price' are not uniform between State Sales Tax laws and the Central Sales Tax Act, 1956, and differences would be observed.

Deemed Sales – The valuation of 'deemed sales' would be subject to similar provisions, although the subject matter of the transaction would be restricted to the goods and supplies in the course of the deemed sales transactions. For convenience, the deemed sales under Article 266(29A) and valuation thereof are tabulated below.



Clause of Article 266(29A)	Particulars	Valuation
(a)	Involuntary transfer of ownership in goods	Consideration or compensation received
(b)	Transfer of property in goods involved in the execution of a works contract	Consideration or value of the goods in which property passes.
(c)	Hire purchase and installment sales, where title to the goods is not transferred	Full value of the installment, including interest or finance charge
(d)	Transfer of the right to use goods (lease)	Full value of lease rental, including interest or finance charge
(e)	Supply of goods by an unincorporated association or body or persons to its members (otherwise covered under the principle of mutuality)	Price paid by the Member
(f)	Supply of food or drinks by way of or as part of catering or any service	Full price paid for the food, drinks, catering, etc. No deduction is allowable for the value of the service

The Value Added Tax regime

In 2000, the States, along with the Central Government, came together to establish the Empowered Committee of State Finance Ministers ('Empowered Committee'), leading to the implementation of the State-level Value Added Tax ('VAT') regime in 2005. The intention was to provide for a uniform model of taxation based on the multi-point system with the mechanism of set-off or input tax credit.

The State VAT regime introduced uniformity amongst the States to the extent of the multi-point taxation model, system of set-off or input tax credit, and to a large extent, the rates of taxes on goods. A significant achievement was the elimination of the local declarations and certificates to be exchanged between the sellers and the purchasers within the States. However, the other provisions relating to the meaning of sales (including deemed sales), levy of tax, valuation, etc., were borrowed from the sales tax laws without significant changes.



The State VAT system continued to be an 'origin-based' system of taxation, with the CST Act, 1956, continuing without any change. The challenges of the cascading effect on account of restrictions on the claim of input tax credit, levy of CST, and the Central Excise duty continued without much relief.

However, the successful implementation of the VAT regime and the institutionalization of the Empowered Committee set the stage for the introduction of the comprehensive Goods and Services Tax regime. The Empowered Committee eventually transformed into the Goods and Services Tax Council, duly recognized under Article 279A[20] of the Constitution.

The Goods and Services Tax regime

Under the sales tax system, States acted autonomously; the value-added tax regime introduced cooperation among states, and the Goods and Services Tax (GST) regime formalized collaboration between the States and the Central Government. The GST law was a culmination of deliberation of the representatives of the GST Council, States, and Centre, which drew from the collective wisdom and experience from the operation of the earlier laws.

The most significant achievements, shortcomings, and areas of similarities and dissimilarities between the GST law and the sales tax and VAT laws have been summarized below:

i The indirect tax regime was reformed into a 'destination-based-consumption-tax' from the 'origin-based' tax system;

ii A wider definition of 'supply' to include transfers, exchange, barter, or disposal, in addition to the traditional concept of sale and lease. The requirement of 'consideration' continued to be an important criterion;

iii Introduction of a concept of 'Distinct Persons' where tax becomes payable on supplies between the units of the same legal entity and on supplies made to 'Related Persons' even in the absence of 'consideration';

20 Introduced vide the Constitution (One Hundred and First Amendment) Act, 2016.

iv Liability on disposal of business assets, goods put to personal use, or assets held at the time of closure of business as deemed supplies;

v Provisions relating to valuation in the case of transactions between Related Persons, Distinct Persons, and in cases where price is not the sole consideration, introduce a significant change, which are similar to the provisions under the earlier Central Excise law;

vi Complete elimination of deductions, exemptions, and concessions, and the requirement of exchanging declaration forms and certificates;

vii Subsumption of some other indirect tax laws, which will reduce significant disputes, compliance, and cascading, namely, tax on advertisements, luxury tax, entry tax, and octroi, and also tax on betting and gambling;

viii An important area which remains to be addressed is the classification of intellectual property and intangible property and intangible between 'goods' or 'services;

ix The provisions relating to Place of Supply in relation to certain services, especially property-related services, including accommodation, performance-based services, intermediary services, admission to events, etc., are against the 'destination-based-consumption-tax' principle;

x The separate State GST laws, Union Territory law, and the Central GST law, and their implementation at a state level, are promoting sectionalism in the levy and collection of taxes.

Schedule II of the CGST Act, 2017

Sub-section (1A) of section 7 of the Central Goods and Services Tax Act, 2017 ('CGST Act') provides that when certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as a supply of goods or a supply of services as referred to in Schedule II.

The various entries of Schedule II may be referred to, and their treatment (between goods or services) under the sales tax and VAT regime can be compared.

Sr. No.	Sub-entry	Description	Treatment under the GST regime	Treatment under the sales tax, VAT, and Service Tax regimes
1	(a)	Transfer of the title in goods	Supply of Goods	Sale of Goods
	(b)	Transfer of right or of undivided share in goods without transfer of title	Supply of Services	Not a Sale of Goods
	(c)	Transfer of title in goods under an agreement where property passes upon full consideration	Supply of Goods	Deemed Sales of Installment Sales
2	(a)	Lease, tenancy, easement, licence to occupy land	Supply of Services	Not Sale of Goods
	(b)	Lease/letting out of building	Supply of Services	Not Sale of Goods
3	—	Treatment or process applied to another person's goods	Supply of Services	Maybe a Deemed Sales of Works Contracts

4	(a)	Transfer/disposal of business assets, whether or not for consideration	Supply of Goods	Will be a sale of goods only when transferred or disposed of for a consideration
	(b)	Private or non-business use of business assets	Supply Services	Will be a Deemed Sale of Lease when goods are made available for a consideration.
	(c)	Deemed supply of assets upon closure of business	Supply of Goods	Not a Sale
5	(a)	Renting of immovable property	Supply of Services	Not a Sale of Goods
	(b)	Real Estate Construction intended for sale	Supply of Services on the entire value	Deemed Sale of Works Contract – Tax payable on the value of the materials used. No tax on labour and services.
	(c)	Temporary transfer/permits use of IPR	Supply of Services	Taxable, if it amounts to a Lease as Deemed Sale. Not taxable in case of a Licence (Disputes between Lease and Licence)
	(d)	Development/design/ customization, etc. of software	Supply of Services	Not a Sale of Goods (Disputed as the Sale of new Software)
	(e)	Agreeing to refrain from an act, tolerate an act, or do an act	Supply of Services	Not a Sale of Goods
	(f)	Transfer of the right to use goods	Supply of Services	Deemed Sale of Lease. Tax payable on full lease rental
6	(a)	Works contract	Supply of Services on the entire value	Deemed Sale of Works Contract – Tax payable on the value of the materials used. No tax on labour and services.
	(b)	Supply of food/drink as part of any service	Supply of Services	Deemed Sale of supply of food and drinks. Taxable on full consideration

Conclusion

The State sales tax system has witnessed significant evolution since independence, from the single point model to the comprehensive Goods and Services tax regime. Many principles settled by the Courts still hold the fort and can aid in the interpretation of the provisions of the GST law. Unfortunately, the GST law falls short in achieving its full potential, with the GST authorities failing to draw from past experience and jurisprudence, questioning settled concepts and principles, and treating the GST law as a fresh piece of legislation requiring renewed enquiry and debate. This is resulting in a spate of litigation, which is feared will take decades to settle.

The recent changes introduced to the GST law, referred to as GST 2.0, bring some semblance of clarity and logic to the tax rates. However, in order to achieve its full potential as an enabler for economic growth, GST will have to transform into a single common piece of legislation enabling businesses 'any-time-any-where' without undue restraints and constraints.

From Set-off in Sales Tax/VAT to Input Tax Credit in GST – A Journey

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CA Rakesh Garg
Advocate

Overview

This article traces the evolution of the Input Tax Credit (ITC) mechanism in India's indirect tax system—from the fragmented Sales Tax framework to the limited credit mechanism under Value Added Tax (VAT), and ultimately to the seamless, nationwide credit chain envisioned under the Goods and Services Tax (GST). It examines the limitations of the VAT regime, ongoing challenges within the GST framework, and offers insights for reforming the ITC process in "GST 2.0."

Key Highlights:

- *Government initiatives to minimize cascading effects under the Sales Tax regime up to the year 2005 through statutory/declaration forms;*
- *Introduction of State-level VAT in 2005 — its benefits, inherent limitations, and the pressing need for a Central-level set-off mechanism;*
- *Comparative analysis of the credit/set-off mechanism under VAT and GST, and how certain VAT-era constraints persist post-GST;*
- *Major challenges encountered by taxpayers in availing and reconciling ITC under the current GST structure; and*
- *Recommendations for an improved ITC framework under GST 2.0.*

The transition from State and Central VAT systems to a comprehensive GST framework represents more than a legislative overhaul — it signifies a structural economic integration. This transformation has redefined India from a cluster of fragmented State economies into a unified national market, with Input Tax Credit serving as the cornerstone of this historic evolution.

Introduction

The history of India's indirect taxation is a chronicle of continuous reform, aimed at fostering a unified economic space. At the heart of this evolution lies the concept of Input Tax Credit (ITC), a mechanism designed to eliminate the cascading "tax-on-tax" effect that once plagued the Indian economy.

The transformation from a fragmented Sales Tax system to the partial credit regime under Value Added Tax (VAT), and finally to the seamless, nationwide credit chain under the Goods and Services Tax (GST), represents one of the most significant fiscal milestones in post-independence India. This transition was fundamentally driven by the need to perfect the ITC mechanism, reducing the tax burden on the ultimate consumer while enhancing the global competitiveness of the Indian industry.

Post-Independence – Sales Tax Regime Till 2005

In the years following independence, India's indirect tax structure was complex and predominantly revenue-oriented, comprising the Sales Tax levied by the respective States, and Central Excise Duty levied by the Union Government. The Constitution empowered States to tax the sale or purchase of goods within their borders, while the Centre could impose duties on manufacture and tax on inter-state trade.

The Constitution empowered States to tax the sale or purchase of goods within their borders, while the Centre could impose duties on manufacture and tax on inter-state trade.

After 1950, the State Sales Tax was levied under Entry 54 of List II (State List) in the Seventh Schedule to the Constitution. The Doctrine of Territorial Nexus determined which State had authority to tax transactions involving the movement of goods between the States. Conflicting judicial views often arose as to whether the selling or purchasing State had the power to tax inter-state sales.

Birth of the Central Sales Tax Act, 1956 (CST Act) with cascading effects

To address these inconsistencies, Parliament enacted the CST Act, following the Sixth Constitutional Amendment, which introduced Entry 92A in the Union List, empowering the Centre to legislate on inter-State trade taxation. Consequently, intra-State transactions continued to be taxed by the States, while inter-State trade and commerce came under the CST Act — both operating at similar tax rates. The most serious drawback of the CST Act was its non-creditable nature. The rate of CST on inter-State sale to registered dealers against Form 'C' was gradually reduced from 4% to 2% during the years 2007 to 2008.

Partial Mitigation through Statutory Forms

It would be inaccurate to describe this period as one characterized purely by a multi-point tax system, or a "tax on tax." In specified cases, the cascading effect on local sales was mitigated through the use of local statutory forms to a great extent; and on inter-state sales, through central statutory forms, partially. Importantly, in the case of inter-state sales, the purchasing dealers were not entitled to claim any set-off for the tax paid on such purchases. Critically, CST was an origin-based tax, meaning the tax accrued to the State from where the sale originated, not where the goods were consumed. Thus, while these statutory forms provided a limited mechanism to reduce the cascading burden, they did not eliminate it entirely.

Harmonisation of sales tax rates (2000)

By the late 1990s, States had entered into "rate wars," offering differential rates and incentives to attract trade and investment, leading to revenue losses and market distortion. To restore balance, uniform floor rates of sales tax were introduced in 2000, marking a critical step toward the eventual adoption of the State-level VAT system in 2005.



MODVAT in 1986; Later CENVAT in 2000

At the Central level, the first major attempt to counter cascading taxation came with the introduction of Modified Value Added Tax (MODVAT) in 1986. This allowed manufacturers to offset the excise duty paid on inputs, ensuring taxation only on value addition. In 2000, MODVAT evolved into CENVAT, which extended the credit mechanism across Excise Duty and Service Tax — representing an early blueprint for a unified value-added framework.

Introduction of "Value Added Tax" (VAT) at State Level in 2005

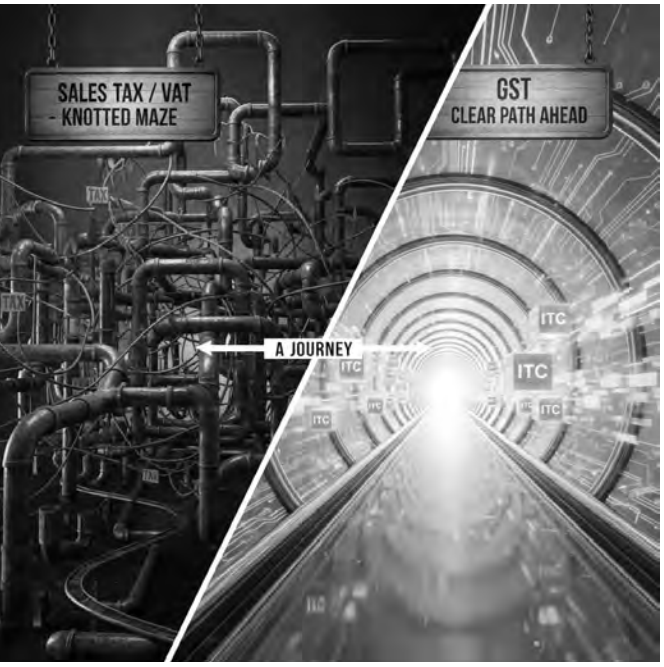
The economic inefficiencies caused by the cascading taxes of the Sales Tax regime were well-recognized. The solution lay in the adoption of a VAT system, which is based on the principle of levying tax only on the 'value added' at each stage, and was achieved through a comprehensive ITC mechanism. VAT, one of the biggest reforms in the history of indirect tax structure in India, was implemented by a majority of the States with effect from 1st April 2005, and this could be possible due to joint efforts of the Central Government and the State Governments.

VAT, as its name suggests, is a tax on value addition. It is a multi-point tax, which is levied at every stage of sale, collected at the stage of sale, and contemplates rebating of tax paid on inputs and purchases. Despite its name, VAT is intended as a tax on consumption and is a destination-based tax.

It is important to mention that set-off of central excise and service tax, within and across each other, was already allowed by the Central Government through the CENVAT Mechanism. When we refer to the term 'VAT', it is used in the context of State-level VAT on sales and purchases.

It is a multi-point tax, which is levied at every stage of sale, collected at the stage of sale, and contemplates rebating of tax paid on inputs and purchases.

In India, some States, e.g., Madhya Pradesh and Maharashtra, incorporated the concept of tax on value addition in their respective Sales



Tax Legislations in the mid-1990s in relation to selected commodities, but could not succeed, as desired.

The design of State-level VAT in India had been worked out initially by the Governments, and then by the Empowered Committee through several rounds of discussion and striking a federal balance between the common points of convergence regarding VAT and flexibility for the local characteristics of the States.

VAT replaced the general sales tax structure, which was levied at the State level; the only difference is in the manner of levy. Powers of the States to levy tax on sales transactions, in the form of VAT, continued to be drawn from entry 54 in List II of the Seventh Schedule of the Constitution of India. On account of a set off being provided on the preceding purchase, the cascading effect on the cost of goods was avoided. VAT eliminated the complex procedure of Local Statutory Forms. However, Central Forms continued under the CST Act, that too, with a cost of 4% (later reduced to 2% in phases).

Shift of responsibilities between the purchasers and sellers per-se in the VAT regime: Sales tax was a regime where the seller had to depend upon the purchaser: if the later gives the statutory form, seller will get the exemption/concession; however, the VAT regime has changed the paradigm — Now the seller is supreme; purchaser will get credit only upon payment of tax by the seller.

Limitations of VAT Regime – Broken Chain

Despite the success of the State VAT, the overall indirect tax landscape in India remained fragmented and inefficient due to the severe limitations on the ITC mechanism, primarily in the following key areas:

- **Existence of the CST:** Since CST was not subsumed under any State VAT or CENVAT scheme, it remained an uncreditable cost for the purchaser;
- VAT ITC was subject to certain restrictions, particularly when the goods were transferred to other States by way of stock transfer. In such cases, while some States barred the claim of ITC, others permitted a truncated claim of ITC, generally, pegged to the rate of CST by permitting ITC in excess of the CST rate; and
- The most structural issue was the non-integration of Central and State levies. Thus, VAT was being levied on a value that already included another tax, leading to a major element of cascading.

Need for National Level VAT

Though the VAT system successfully eliminated the cascading effect on intra-state transactions within a State's sales tax domain, yet the system was riddled with fundamental, structural flaws that prevented the full realization of a national VAT. Thus, the consensus emerged that the only way to eliminate the cascading effect completely and establish a unified national market, "a concept of 'One Nation, One Market'", was to integrate the Central and State taxes on goods and services into a single, comprehensive Value

Added Tax system. This was the genesis of the Goods and Services Tax (GST).

Goods and Services Tax (GST) and set-off mechanism

The idea of a National GST was not a sudden revelation. The journey to GST, which spanned nearly two decades from the first proposal in 2000, was a testament to India's cooperative federalism. After years of intense negotiations and efforts, both Houses of Parliament passed the 101st Constitution Amendment Act, 2016.

On the midnight of July 1, 2017, the GST was launched, replacing almost 17 Central and State taxes, except Alcoholic Liquor for human consumption and specified petroleum products. Due to the federal structure, India adopted a Dual GST Model, where tax is levied concurrently by both the Central Government and the State Governments. The GST structure is composed of four key components, which dictate the flow and distribution of the ITC:

(i) **Central GST (CGST):** Levied by the Centre on intra-state supplies of goods and services, subsuming taxes like Central Excise Duty and Service Tax.

(ii) **State GST (SGST):** Levied by the State on intra-state supplies, subsuming taxes like State VAT, Luxury Tax, Entertainment Tax (except those levied by local bodies), etc.

(iii) **Integrated GST (IGST):** Levied by the Centre on all inter-state supplies and imports. This forms the cornerstone of the new system, replacing the dreaded, non-creditable CST.

(iv) **Union Territory GST (UTGST):** Replaces SGST in Union Territories without a legislature.

Perhaps, the most revolutionary aspect of the GST regime is its comprehensive and seamless ITC mechanism. GST's architecture, being a consumption-based, destination-based tax, is built entirely upon the principle of an unbroken credit chain, ensuring that tax is paid only on the final value of the supply and accrues to the State of final consumption.

The journey to GST, which spanned nearly two decades from the first proposal in 2000, was a testament to India's cooperative federalism.



A Comparative Analysis: VAT vs. GST ITC

S.N.	Feature	Pre-GST Regime (VAT/CENVAT/ CST)	Post-GST Regime (GST)
1	Tax Base	Fragmented (different taxes on manufacture, sale, and service)	Unified (GST on supply of goods or services or both)
2	Intra-State Credit Flow	Available (State VAT on State VAT)	Available (However, no cross-set-off between CGST & SGST)
3	Inter-State Credit Flow	Broken (CST, non-creditable)	Seamless (IGST enables credit flow across States)
4	Cross-Credit (Goods & Services)	Limited/Denied	Comprehensive
5	Cascading Effect	High, due to non-creditable CST and non-integration of Central and State taxes	Minimised/Eliminated, due to seamless credit chain
6	Registration	Multiple – In every State (Though centralised registration was possible in Service Tax)	Multiple (State-wise, but uniform compliance)
7	Non-creditable goods/ supplies	Existed	Exist
8	Credit for exempt sales/ supplies	No (fully or partially)	No
9	Credit to exporters	Yes	Yes
10	Capital Goods Credit	Deferred	Immediate

Limitations: Set-off of ITC in GST – Legacy of VAT Continues

A closer examination of India's GST framework—its laws and procedures—reveals that it is not a fully unified GST system but rather a hybrid mechanism. Several limitations from the erstwhile VAT regime appear to have continued, as stated below: -

A closer examination of India's GST framework—its laws and procedures—reveals that it is not a fully unified GST system but rather a hybrid mechanism.

1. No Set-off of CGST with SGST and vice-a-versa

The utilization of CGST against SGST/UTGST, and vice versa, is expressly prohibited.

Furthermore, as per the provisos to sections 49(5)(c) and 49(5)(d), the ITC on account of SGST/UTGST may be utilized towards payment of IGST only when the ITC balance of CGST has been completely exhausted. Due to this sequencing rule, the CGST ledger is depleted first and often

shows a lower balance compared to SGST. Consequently, in case of any subsequent GST liability, taxpayers may be required to discharge CGST in cash, despite having sufficient overall ITC accumulation.

2. No ITC to the Specified Sectors

Several sectors are not eligible to claim ITC and are instead mandatorily required to pay tax at specified (usually lower) rates. These sectors include -

- Construction and supply of residential apartments before completion of construction,
- Supply of 'hotel accommodation' below a specified tariff value,
- Supply of specified 'restaurant service' and 'outdoor catering service',
- Certain passenger transport services,
- Beauty and physical well-being service.

This restriction, though intended to simplify taxation in such sectors, is a barrier to seamless input credit flow.

3. No Credit for Exempt Supplies

In the VAT regime, generally, the businesses engaged exclusively in exempt supplies could not avail any ITC, nor were they eligible for a refund; though many states allowed ITC partially. In cases where both taxable and exempt supplies are made, the ITC attributable to exempt supplies was to be reversed proportionately (fully or partially, varied from State to State), thereby restricting the benefit of the credit flow mechanism. In GST, no ITC is allowed on inputs and input services that are used for making exempt supplies.

4. Blocked Credits

In VAT, every State specified its list of non-creditable goods either by way of a separate schedule to its VAT Act or through a separate Notification. Similarly, Section 17(5) of the CGST Act specifically blocks ITC on certain goods and services, such as, motor vehicles and related services, construction-related goods and services, food and beverages, membership of clubs, health and fitness centres, goods or services used for personal consumption, goods lost, stolen, destroyed, written off or disposed of as gifts or free samples. Such restrictions significantly dilute the principle of seamless credit under GST



5. Interpretation Issues

Several expressions used in sections 16 and 17 of the CGST/SGST Acts continue to create interpretational ambiguities, such as:

(a) "*In the course or furtherance of business*" — whether it covers employees' townships, guest houses, captive power generation, etc;

(b) The distinction between "*business purposes*" and "other purposes" under section 17(1);

(c) Whether "*goods lost or destroyed*" in Section 17(5) includes normal manufacturing loss;

(d) The scope of "goods used for personal consumption" and "gifts and samples" in Section 17(5).

These unresolved issues often lead to divergent interpretations, undermining the objective of a simplified and uniform GST regime.

Moreover, when interpretational disputes arise, their resolution often takes years—moving from adjudication to successive appeals before the Appellate Authority, High Court, and Supreme Court. This prolonged process creates uncertainty, exposes taxpayers to retrospective liabilities, and weakens the objective of legal clarity in taxation. The Supreme Court judgment in Safari Retreats and the subsequent amendment to Section 17(5)(d) are the classic examples of this delayed resolution of interpretational issues.

Set-off of ITC in GST – Major Challenges for the Taxpayers

1. Supplier's Failure to Pay Tax or Non-Reflection in GSTR-2B

Key conditions for availing ITC are matching of supplies declared by the counterparty supplier with the person claiming ITC, and the tax charged by the supplier is actually paid to the government. If the supplier fails to file his GSTR-1 or GSTR-3B return and/or deposit tax, the recipient's ITC claim will be denied or he will be required to reverse ITC with interest, even if the recipient has already paid the tax to the supplier—this places an onerous burden on the recipient to constantly monitor and ensure the compliance of all their suppliers.

2. Time Limit for Claiming ITC

Credit must be claimed by 30th November of the following financial year or before filing the annual return—without exceptions for bona fide cases.

3. Litigation in Credit/Apportionment for Exempt Supplies

If a business makes both taxable and exempt supplies, the calculation and apportionment rules (Rules 42 and 43) for computing common inputs and input services to be reversed are complex and often a source of litigation.

4. Procedural and Reconciliation Issues

- Regular GSTR-2B reconciliation is essential.
- Documentation and proof of receipt of goods/ services must be meticulously maintained.
- Reconciliation of supplies in GSTR-1 with e-way bills.
- Evolving GSTN portal functionalities require constant adaptation by businesses.

Looking forward to the ITC Mechanism in GST 2.0

The entire philosophy of GST is to eliminate the cascading effect of taxes through a seamless flow of ITC. Section 16 of the CGST Act supports this by granting ITC on all goods and services used or intended to be used in the course or furtherance of business. However, Section 17(5) overrides this fundamental principle by disallowing ITC on specific supplies, even when their nexus with the business is clear and undeniable. This leads to the following adverse effects:

> The current restrictions under Section 17(5) run counter to the spirit of a unified, seamless tax structure and unnecessarily inflate the cost of doing business.

- Tax Cascade: Since ITC is disallowed, the GST paid on these inputs becomes a part of the final cost of the output supply, effectively reintroducing the cascading effect that GST was meant to abolish.
- Arbitrary Classification: The list includes items

like food and beverages, rent-a-cab services, life/health insurance, and construction of commercial property (other than plant and machinery): all of which are often necessary operational expenditures for a business entity.

- Increased Compliance Burden: Businesses must meticulously track and segregate inputs that fall under the blocked list, diverting resources that could be used for core business operations.

The need for rationalisation stems from the principle that tax on inputs forming part of the business expenditure and factored into the cost of final supply should be available as credit. The current restrictions under Section 17(5) run counter to the spirit of a unified, seamless tax structure and unnecessarily inflate the cost of doing business.

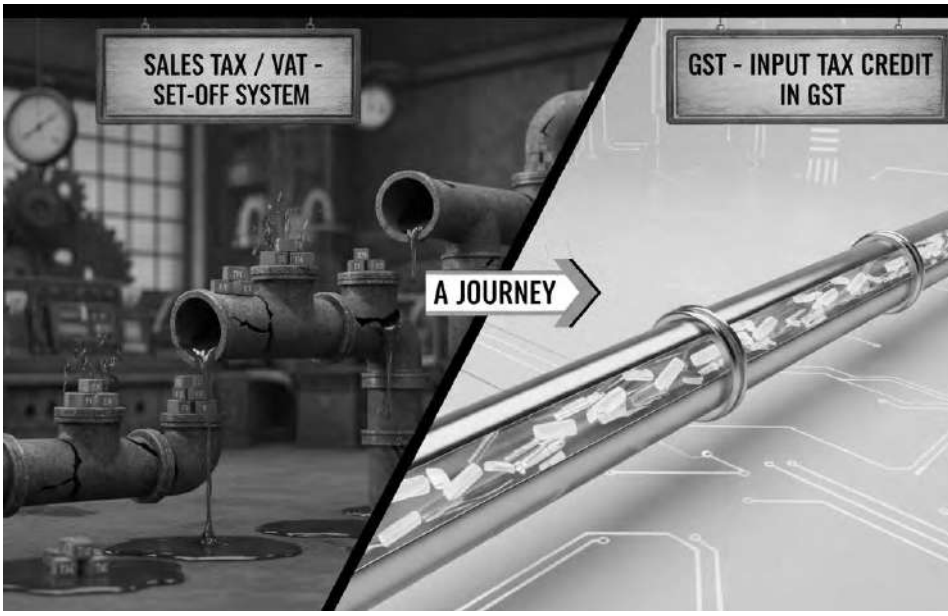
A review should aim to:

- **Link ITC directly to business usage:** If an expense is allowed as a business deduction under the Income Tax Act, a strong argument exists for allowing its ITC under the GST.
- **Simplify the Law:** Reduce ambiguity and litigation by providing a clearer, narrower list of truly personal or non-business blocked credits, rather than a broad, restrictive list with complex exceptions.

Rationalising Section 17(5) would ensure better compliance and truly make GST a cost-neutral tax on business inputs. Likewise, the terms 'personal expenses' and 'exempt supplies' should be defined in a manner so that ITC is allowed on all expenses incurred in the course of business. This would help eradicate litigation regarding ITC on various expenses, such as those related to employees and their townships, the listing of shares and securities, share buybacks, etc.

Conclusion

The evolution of the ITC mechanism in India is the central story of its indirect tax reform. The initial Sales Tax era was characterised by economic distortion and cascading, followed by the VAT regime, which introduced the concept of set-off but was fundamentally handicapped by the constitutional division of taxing powers and the non-creditable Central Sales Tax. The GST, anchored by its comprehensive ITC system, despite a few limitations, has resulted in greater transparency and significant efficiency gains in the logistics sector. The shift was not merely a legislative exercise but a fundamental economic integration, transforming India from a collection of fragmented State economies into a single, unified market, with ITC standing as the indispensable prerequisite of this historic transformation.



Service Tax' to 'Goods and Service Tax' ... Millennials to Gen Z?

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Bharat Raichandani
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Overview

Service tax in India evolved from having no statutory levy before 1994 to becoming a comprehensive tax on all services until its subsumption into GST. Since the Constitution did not specifically provide for taxing services, Parliament relied on its residuary powers under Article 248 read with Entry 97. Based on the Tax Reforms Committee's recommendations, service tax was introduced through the Finance Act, 1994, initially covering only three services but later expanding to 119.

Over the years, the levy faced significant constitutional challenges—on goods transport operators, professional services, restaurants, works contracts, leasing, and royalty. Courts clarified the distinction between service and sale, upheld Parliament's competence, and struck down levies where valuation or charging provisions were inadequate. The 2012 shift to the "negative list" regime broadened the tax base and introduced key concepts relating to consideration, valuation, exemptions, and reverse charge, many of which continue to influence GST.

GST, introduced through the 101st Constitutional Amendment, fundamentally reorganised indirect taxation by defining "services" and granting concurrent taxing powers. Transitional provisions, particularly on input tax credit, led to widespread litigation, culminating in the Supreme Court's intervention in Filco Trade.

Overall, India's service tax journey set the foundation for GST, though many interpretational issues continue even today.

Introduction

Taxation of "services" in India has evolved significantly over the past few decades. From the levy of selective entry-based tax to omnibus taxation (subject to exceptions and exemptions) and, finally, to all-pervasive tax on goods and services, this evolution has been significant.

Though many arenas are still marred by disputes and wanting clarification in implementation, this scheme has been fruitfully rewarding for the exchequer.

In this piece, let us take a trip down memory lane to trace the birth of the levy of tax on services provided in India. Cut to where we stand today!

Pre-Service Tax Era

Prior to 1994, there was no statutory levy on services. The Constitutional framework under Article 246, read with the Seventh Schedule, allocates powers between the Union and the States to levy and collect taxes. List I (Union List) empowered Parliament to levy duties of excise on goods (Entry 84), customs duties (Entry 83), and income tax (Entry 82). The List II (State List) conferred on States the power to tax the sale or purchase of goods (Entry 54), excise on alcoholic liquor (Entry 51), and taxes on luxuries and entertainment (Entry 62). There was no specific entry explicitly covering the taxation of services. Consequently, the resort lay on the residuary powers of Parliament under Article 248 read with Entry 97 of List I.

Legislative Birth

In 1990, the Tax Reforms Committee (TRC) was set up for tax reforms in India. The Tax Reforms Committee was chaired by Prof. Raja Chelliah. The Committee on tax reforms recommended the introduction of service tax. In 1993-1994, the Union Budget continued the process of economic and tax liberalization based on the recommendations of the Committee, which submitted its final report that year. The Key aspects of the Indian tax changes in 1993 included: Customs Duty Rationalization, Excise Duties, and Direct Taxes. The Report recommended thus:

The Key aspects of the Indian tax changes in 1993 included: Customs Duty Rationalization, Excise Duties, and Direct Taxes.



> *9.48 From the economic point of view, there is little difference between the taxation of commodities and that of services. In both cases, the principle of value added taxation can be applied to tax the final users. As an economy develops the services sector expands relatively to the commodities sectors. Multifarious services are produced for the benefit of the consumers as well as producers. Exclusion of services from indirect taxation tends to create distortions, just as the exclusion of major commodity groups. There is no question, therefore, that services must be brought under taxation. As pointed out earlier, the substantial broadening of the base through the taxation of services would enable the lowering of rates of commodity taxation. A general value added tax levied even at 10 per cent, covering imports and domestically procured commodities and services, plus a selective excise at a limited number of higher rates on a few commodities, should be able to fetch sufficient revenues.*

9.49 It is extremely important, however, that we do not commit the same kinds of mistakes as we have committed in respect of commodities. We must ensure that there will be a unified and rational system of taxation of services applicable to the whole country. This means that the services tax must be part of value added tax in course in course of time and should be levied at the Central level. A cascading type of services tax should be avoided at all costs. We envisage that as the Union excise on commodities gets gradually transformed into a value added tax at the manufacturing level, the services tax will get woven into that system, and therefore, tax could be levied also on services that enter into the productive processes.

9.50 Towards the end of our discussion of the reform of the Union excises earlier in this chapter, we had indicated the manner in which the modvat system should be gradually converted into a comprehensive value added tax at the manufacturing stage. Once this is done, it would be possible to introduce a fairly comprehensive system of taxation of services also on the basis of the value added principle, so that the entire system of indirect taxation at the Central level would be devoid of cascading and would cause no distortion in costs or in the allocation of resources.



9.51 The power to levy a tax on services in general is not mentioned either in the Union List or in the State List in the VII Schedule of the Constitution. However, by virtue of Entry 97 in the Union List, which gives power to the Centre for the levy and collection of "any tax not mentioned in either of those Lists" (that is, the State List or the Concurrent List), it is clear that the Union Legislature is competent to levy indirect tax on services.

Thus, "service tax" was born. It was introduced in the Union Budget 1993-94; enacted vide the Finance Act, 1994.

Constitutional Challenges

As is common with any new scheme of taxation, the initial phase is to test the same on the constitutional anvil. Service Tax was no different. It had its share of challenges, being mounted on the vulnerability to sustain the legality tide. Some can be noted below:

1. Goods Transport Operator:

   The levy of Service Tax on Goods Transport Operators was a combative issue since its inception. An attempt to levy service tax on Goods Transport Operators failed, following a nationwide strike. However, the Government, not one to cow down, chose to tax the recipient of the service.

   Vide the Finance Act, 1997; certain amendments were made to Section 65. Rules 2(1)(d), (xii), and (xvii) of the Service Tax Rules, 1994 were amended by imposing the tax in effect on the customers of clearing and forwarding agents and goods transport operators. This imposition of service tax on customers was challenged before the Apex Court in the *Laghu Udyog Bharati*[1]. Accepting the challenge, the Court

1 *Laghu Udyog Bharati v. Union of India 1999 (112) ELT 365 (SC).*

held that the charging section (Section 66) provided for the tax to be paid by the provider. Section 68-1 A, which was merely the section that laid the machinery for collecting the tax, would not change the nature of the tax.

To overcome the same, an amendment was made on 12.05.2000. Section 117 of the Finance Act, 2000, sought to retrospectively validate the taxes earlier collected under the Service Tax Rules. While the writ petitions challenging the validity of the amendments made by the Finance Act, 2000, were pending, the Finance Act, 2003, was assented to by the President on 14.05.2003. There cannot be any doubt that the object of these sections was to nullify the effect of the decision in the *Laghu Udhyog Bharati* by retrospectively amending and validating provisions held to be illegal. The same again came to be challenged in *Gujarat Ambuja Cements*[2] case. The Apex Court, this time, upheld the said amendment as valid and legal.



2. Professional services:

   The constitutional validity of service tax on services provided by practising tax consultants, chartered accountants, and architects under section 116 of the Finance (No. 2) Act of 1998 was challenged before the Hon'ble Bombay High Court in the *All India Federations*[3] case. The challenge was mounted on grounds of lack of legislative competence and violation of rights under Articles 14 and 19(1)(g) of the Constitution. It was claimed that such taxation fell under the States' jurisdiction as per the State List. The Bombay High Court upheld the validity. It ruled that the Union had the authority, and it rightly exercised its residuary powers. The Court clarified that while professions themselves may fall within State jurisdiction, the taxation of services rendered by those professions is a distinct subject on which Parliament is competent to legislate. A challenge to the said judgment was also repelled by the Supreme Court. It held that service tax is a tax on the activity of providing services, not a tax on the profession itself[4].

3. Restaurants and Accommodation Services:

   The constitutional validity of service tax on these services was challenged on multiple occasions. The issue was raised whether the Union Government has legislative competence to levy service tax on restaurant and short-term accommodation services, when States are empowered to tax the same.

2 *Gujarat Ambuja Cements Limited v. Union of India 2006 (3) STR 608 (SC).*

3 *All India Federation of Tax Practitioners v. Union of India 2002 (256) ITR 401 (Bom).*

4 *All India Federation of Tax Practitioners v. Union of India 2007 (7) STR 625 (SC)*

The Kerala High Court in *Kerala Bar and Hotel Association*[5] case struck down the levy. The court held that the supply of food and accommodation was a "deemed sale" under Article 366(29A)(f), taxable only by States under Entry 54, List II. Accommodation services fall within the luxury tax, exclusively under Entry 62, List II. The Parliament invoked the residuary power (Entry 97, List I). However, residuary power can be used only if the State



clearly lacks legislative competence. Since Entries 54 and 62 expressly empower States, the Union cannot invoke the residuary entry.

In *Kerala Classified Hotels*[6] case, an identical view was taken, holding that classification as "service" does not override constitutional allocation of taxing powers.

Per contra, the Delhi High Court in *Federation of Hotels*[7] case upheld service tax, holding that service tax on restaurants is a distinct levy on the service component of the restaurant transaction. The sale of food (State subject) and service provided in a restaurant (Union subject via residuary power) are conceptually separable. The pith and substance theory was applied. A challenge to the said ruling was negated by the Supreme Court[8].

4. Hire Purchase and equipment leasing:

   In the *Association of Leasing*[9] case, the challenge was on the levy of "banking and other financial services". The challenge was mounted on the ground that hire purchase and equipment leasing, though financial transactions, by virtue of the Constitution (Forty-sixth Amendment) Act (Article 366(29A)), hire-purchase/leasing is deemed to be a sale. Any attempt to levy service tax on the same transaction will amount to a colourable exercise of power. Negating the above, the Supreme Court held that service tax in the present case is neither on the material nor on the sale. It is on the activity of financing/funding of equipment/assets within the meaning of the words "financial leasing services" in Section 65(12)(a)(i). The doctrine of pith and substance was invoked.

5. Construction/Works Contracts:

   'Works contract' or 'Contract of work' has been the question all along. The said contract has been the subject matter of challenge since time immemorial. In *Larsen and Toubro Limited*[10] case, the issue before the Apex Court was whether there was a works contract, attracting sales tax, on the sale of a flat in a building. A tri-partite agreement was entered into between the

5 *Union of India v. Kerala Bar Hotels Association [2014] 48 GST 705 (Kerala High Court)*

6 *Kerala Classified Hotels and Resorts Association v. Union of India [2013] 40 STT 253 (Kerala)*

7 *Federation of Hotels and Restaurants Association of India v. Union of India [2016] 72 taxmann 161.*

8 *Civil Appeal Nos. 4932-4934 of 2001, order dated 19th April, 2018*

9 *Association of Leasing & Financial Service Companies v. Union of India 2010 (20) STR 417 (SC)*

10 *Larsen and Toubro Limited vs State of Karnataka 2014 (303) ELT 3 (SC).*

developer, the flat purchaser, and the owner of the land. Answering the above question in the affirmative, the Supreme Court held that states had the power to levy sales tax in terms of Article 366(29A). The above view was affirmed by the Constitution Bench judgment in the case of *Kone Elevators*[11].

This gave rise to the levy of service tax on the service element in the works contract. In *Larsen and Toubro*[12] case, the Supreme Court held that prior to July 2007, no service tax could be levied on the service portion in a works contract in the absence of a charging provision. A notification granting an abatement/exemption cannot govern the levy when none exists.

The Delhi High Court in *Suresh Kumar Bansal*[13] case held that service tax could not be levied on composite contracts if there was no statutory mechanism to segregate the value of the service portion from the value of the land/goods.

6. Royalty:

In the *Mineral Development Area Authority*[14] case, the Supreme Court was dealing with a case of the real nature of royalty paid by the lessee to the State Government. The Apex Court held it was not a tax but a contractual consideration. The levy of service on such royalty is still pending consideration. However, the Chhattisgarh High Court in the *Mahesh Sharma*[15] case has rejected the petition challenging the Show Cause Notice demanding service tax on royalty, relying on the said decision.

11 Kone Elevators India Private Limited vs State of Tamil Nadu 2014 (34) STR 641 (SC).

12 Commissioner Vs. Larsen and Toubro Limited AIR 2015 SC 3600.

13 Suresh Kumar Bansal v. Union of India 2016-TIOL-1077-HC-DEL-ST.

14 Mineral Area Development Authority vs. Steel Authority of India 2024 (7) TMI 1390 (SC) (LB).

15 Mahesh Sharma v. Union of India 2024 (9) TMI 1388 - Chhattisgarh High Court.

Indirect Tax

Service Tax is an indirect tax, albeit from an economic point of view. From a legal standpoint, it is a tax levied on the provision of taxable services in India. It is a transaction-based tax. It is a transaction-based levy.

To begin with, only three services, viz., telecommunication, stockbroker, and general insurance services, bore the brunt. With each budget, the list kept expanding (just like our population) and gradually rose to 119 services. With effect from 1st July, 2012, the Negative list regime entered. The Parliament was bored of defining taxable service after taxable service; hence, it chose to define "service" for the first time, and levied tax on all services (with certain exceptions).

Section 65B(51) of the Finance Act defined taxable services as any service subject to service tax under Section 66B. Section 66B was the charging section. Section 66D listed out the negative list of services (those which had been granted immunity from taxation).

Service Tax is an indirect tax, albeit from an economic point of view.

Section 65B(44) defines "Service" with effect from 01.07.2012. It provides that service means any activity undertaken by one person for another for a consideration (with certain exclusions, which were carved out to avoid constitutional trangress). With this arose arenas of interpretation. A few may be referred here to gauge the evolutionary path. The same is relevant even under the GST regime.

Person

The term "activity" is not defined. It states from one "person" to "another". Thus, the existence of two independent and distinct parties (service provider and service recipient) is mandatory.

In the *Calcutta Club*[16] case, the Larger Bench of the Supreme Court held that a member in a members' club is not subject to service tax. One cannot make a profit out of oneself. This doctrine of mutuality was applied and upheld. It affirmed the principle in *Venkatesh Premises Co-op Housing Society*,[17] holding that receipts by a co-operative housing society do not amount to "income".

Consideration

The term "consideration" has not been defined in the Act. The Indian Contract Act, 1872, defines consideration. It can be inferred that 'consideration' means everything received in return for a provision of service, which includes monetary payment and any consideration of a non-monetary nature, as well as deferred consideration.

The concept of consideration, as derived from the Latin Maxim quid pro quo (something for something), must flow from the contract of service. Any and every transaction involving the exchange of funds will not amount to consideration. In *R. J. Tolsma*[18], the European Court of Justice held that there has to be a legal relationship between the service provider and recipient pursuant to which there is reciprocal performance.

The concept of consideration, as derived from the Latin Maxim quid pro quo (something for something), must flow from the contract of service.

The Supreme Court in *Edelweiss*[19] case was dealing with an issue relating to the levy of service tax on corporate guarantee offered to group companies without consideration. It held that it would not fall under the definition of "service" as defined under 65B(44) of the Finance Act 1994, as there was no "consideration".

In *Golcha Properties*[20], the Tribunal held that no "renting of immovable property" service was provided to the Distributor by the exhibitionist as there was no consideration received from them.

Valuation

Section 67 provided for valuation. It provided that the value shall be the gross amount charged for the service. Rules were framed when a value could not be arrived at under special circumstances. In the *Taj Mahal*[21] case, the Supreme Court held that the Rules were meant only for the purpose of carrying out the provisions of the Act, and they could not take away what was conferred by the Act or whittle down its effect.

The valuation provisions also covered inclusions and exclusions. Rule 5 provided for "inclusion in or exclusion from value of certain expenditure or costs". The Delhi High Court in the *Intercontinental Consultants*[22] case held that reimbursements could not be subjected to service tax as the rule was ultra vires section 67. The value of service to be taxed can, therefore, never exceed the gross amount charged by the service provider for such service provided. Thus, there can be no Service Tax on reimbursements, such as reimbursements, say, travelling, accommodation, etc. This decision was subsequently upheld by the *Supreme Court*[23].

In *Bhayana Builders*[24] case, the Supreme Court

16 *State of West Bengal v. Calcutta Club Limited 2019 (110) Taxmann.com 47 (SC).*
17 *Income Tax Officer v. Venkatesh Premises Co-op Housing Society Limited (2018) 15 SCC 37.*
18 *R. J. Tolsma v. Inspector (Case No.C-16/93).*
19 *Commissioner of ST v. Edelweiss Financial Services Ltd Appeal No. (s) – 5258 of 2023 (SC).*
20 *Golcha Properties (P) Ltd. v. CST, 2020 SCC OnLine CESTAT 269.*
21 *Commissioner of Income-Tax, AP v. Taj Mahal Hotel- 1971 (8) TMI 2- Supreme Court.*
22 *Intercontinental Consultants and Technocrats Pvt. Ltd. v. Union of India 2012 (12) TMI 150.*
23 *Civil Appeal No.2013 of 2014.*
24 *Commissioner of Service Tax v. Bhayana Builders (P) Limited 2018 (3) SCC 782.*

held that what is to be taxed is the gross amount charged by the service provider 'for such service'. It is only the value of 'such service' which can be taxed and nothing else. However, Finance Act 2015 amendment (w.e.f. 14.05.2015) explicitly included reimbursable expenditures or costs incurred by the service provider and charged in the course of providing/agreed to provide taxable service, in the definition of "consideration". The same, yet, does not seem to overcome the above decisions.

Exemptions

Section 66D of the Act, notified from 1st July 2012; vide Notification No. 19/2012-ST dated 05.06.2012, lists out a "Negative List of Services". A list of "services" which will not be subject to service tax. It would be out of the purview of taxation under section 66B.

Similarly, vide Notification No. 12/ 2012-ST dated 17.03.2012 (commonly referred to as the "Mega Exemption Notification"), about 34 services had been notified to be exempt from payment of service tax; in addition to 17 mentioned under section 66D. This list includes services like funeral, burial, crematorium, or mortuary services for the deceased, agricultural services, services provided by the government, healthcare, educational institutions, and services by charitable organisations, subject to specific conditions.

The issue of whether "bowling alleys" are amusement facilities and hence, subject to service tax or not was considered by the Tribunal. It held that bowling alleys are not subject to service tax as they were covered under the Negative List. This decision was affirmed by the *Supreme Court*[25].

Reverse Charge Mechanism

Section 68 of the Act mandated the tax to be paid by the provider of the Service. It is a tax on the rendition of the service, irrespective of whether the customer reimburses the tax to the service provider or not. The service provider was required to deposit service tax with the government. However, section 68(2)



of the Act provided for an exception. The Reverse Charge Mechanism (RCM) represents an exception, whereby the service recipient is made liable to pay service tax and comply with all statutory provisions, as if it were the service provider. They can run but cannot hide. However, critically, "service recipient" was not defined.

Notification No. 36/2004-ST, effective from 01.01.2005, to begin with introduced reverse charge on certain services. This continued in Notification No.28/2012-ST post Negative List regime. A parallel provision applied to services received from abroad, where the Indian recipient became liable to pay service tax under Section 66A of the Finance Act.

The Madras High Court in Chennai and Ennore

25 *2024 (10) abacus.in SC.*

Steamer Agents[26] case held that service tax cannot be levied on steamer agents in India for transportation service provided by foreign shipping lines to Indian exporters/importers. It noted that the steamer agents are not "service recipients". A similar view has been taken by the Karnataka High Court in Managalore Steamer Agents.[27] case.

Transition of Service Tax to GST

The introduction of GST was not a tax reform. It was a constitutional reset. With the 101st Constitutional Amendment, India introduced Article 246A, which permitted concurrent jurisdiction for the levy of tax on the intrastate supply of goods & services. Article 269A provided for the power to tax interstate trade. Article 279A provided for the creation of the GST Council, sadly as a recommendatory body. Article 366(12)(a) defines "Goods & Services Tax" as any tax on the supply of goods or services or both, except taxes on the supply of alcoholic liquor for human consumption. Article 366(26)(a) defines "Services" means anything other than goods. Similarly, certain consequential amendments were made in the Seventh Schedule, consisting of the Union List and the State List.

The Reverse Charge Mechanism (RCM) represents an exception, whereby the service recipient is made liable to pay service tax and comply with all statutory provisions, as if it were the service provider.

Thus, the statute (Central Goods & Services Tax Act, 2017, State Goods & Services Tax and Union Territory Goods & Services Tax Act, 2017, and rules framed thereunder) came to be enacted, deriving power from Article 246A. Hence, the same would always be subject to constitutional boundaries and must pass scrutiny of Article 14, Article 19(1)(g), Article 21, Article 265, read with Article 300A of the Constitution.

The transition framework focused on three areas: carry forward of ITC, continuation of certain procedures, and handling of claims under the old laws.

Transitional provisions

Sections 140 to 143 of the CGST Act 2017 provided the taxpayers to carry forward the Input Tax Credit (ITC) earned under the existing laws to the GST regime and deal with past issues. Rules were also framed. But as is well known, the past keeps haunting. This provision was subject to endless disputes relating to technical glitches, systemic issues, and interpretational hazards, leading to amendments at early stages of the introduction of the law itself.

In Filco Trade[28], the Supreme Court had to step in, directing the re-opening of the online common portal for all assessees to refile or fresh-file the forms to avail of this transitional benefit.

Conclusion

The evolution of service taxation in India shows a clear shift from a narrow system to a broad, unified tax framework. This is being enlarged under the GST regime. However, the so-called "progressive" system is also carrying the ailments of the past with it. Identical issues of charge, taxability, exemptions, valuation, reverse charge, and compliance are seen under the new regime. It appears that 'demons' have also crossed the bridge with the 'angels'. Only time would be the penultimate judge.

26 The Chennai and Ennore Steamer Agents Association v. Union of India (WP No.2147/2017).

27 Mangalore Steamer Agents Association v. Union of India (WP No. 32835/2017).

28 Union of India v. Filco Trade Centre and Ors (SLP No. 32709-32710/2018).

GST – One Nation One Tax and Constitutional Provisions for the levy of GST

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Overview

The Goods and Services Tax (GST), introduced on 1st July 2017, is India's most significant indirect tax reform since Independence. By bringing together multiple central and state taxes into a single, unified system, GST embodied the concept of "One Nation, One Tax, One Market".

Its introduction dramatically reshaped India's federal structure by centralizing key fiscal powers, changing how taxes are levied and how financial autonomy is exercised by states. Constitutionally, the 101st Amendment introduced new provisions to empower both the Centre and States to simultaneously levy and collect GST. It created a dual GST model with joint jurisdiction and established the GST Council as a constitutional body under Article 279A.

In this article, the authors explore the evolution of GST, tracing its inception and the challenges faced in creating a unified tax regime. They explain how GST subsumed numerous central and state taxes to simplify taxation. Additionally, they examine the constitutional changes introduced by the 101st Amendment, which authorizes simultaneous taxation power. The article also lays emphasis on the interplay of constitutional powers and legislative provisions.

In India, the conceptual idea of GST was introduced in the year 2000 by the government headed by the then Prime Minister, Mr. Atal Bihari Vajpayee. In 2003, the Central Government formed a task force on Fiscal Responsibility and Budget Management, which in 2004 recommended GST to replace the existing tax regime by introducing a comprehensive tax on all goods and services, replacing Central-level and State-level indirect taxes, except customs duty.



Thereafter, the movement towards GST was taken forward by the then Finance Minister, by making an announcement during the central budget of 2007–2008, that GST would be introduced from April 1, 2010 and that the Empowered Committee (EC) of State Finance Ministers would work with the Central Government to prepare a road map for the introduction of GST in India. The detailed view of the Empowered Committee on the structure of GST was presented in terms of the First Discussion Paper in November 2009, which spelt out the comprehensive features of the model GST.

The 115th Constitutional Amendment Bill, 2011 was put before the Parliament by the Finance Minister on 22nd March 2011. However, due to a lack of political consensus, the bill lapsed. This Constitutional Amendment Bill, 2011 did not provide any power to the States and Centre to levy taxes jointly.

With no headway made, on 19th December 2014, the Constitution (122nd Amendment) Bill 2014 was introduced in the Lok Sabha and was passed by the Lok Sabha in May 2015. This Bill was taken up in the Rajya Sabha and was referred to the Joint Committee of the Rajya Sabha and the Lok Sabha on 14th May 2015. The Select Committee submitted its report on 22nd July 2015. Thereafter, the Constitutional Amendment Bill was moved on 1st August 2016 based on political consensus. The Bill was passed by the Rajya Sabha on 3rd August 2016 and by the Lok Sabha on 8th August 2016. After ratification by the required number of State legislatures and assent of the President, the Constitutional amendment was notified as the Constitution (101st Amendment) Act, 2016 on 8th September 2016. This Constitutional amendment paved the way for the introduction of the Goods and Services Tax in India.

GST was launched with a great fanfare on 1 July 2017 by the Government of India and was claimed to be the biggest revolution in indirect taxes in the country since Independence.

GST was launched with a great fanfare on 1 July 2017 by the Government of India and was claimed to be the biggest revolution in indirect taxes in the country since Independence. Before its introduction, the tax structure could be accurately depicted as under:

Charge / Taxable Event	Center	Charge / Taxable Event	State
Manufacture	Excise	Sales (intra-state)	VAT
Import / Export	Customs	Luxury products	Luxury Tax
Provision of service	Service tax	Entry of goods from another state	Entry tax / Octroi
Sale (inter-state)	Central Sales Tax	Entertainment	Entertainment Tax

The above structure suffered from multiplicity of taxes, double taxation, cascading effect, complex and different tax laws for each state. GST was introduced to replace these multiple indirect taxes with a single taxation system applicable uniformly. Its objective was to remove the cascading effect of taxes and provide for a common national market for goods and services.

One of the most important aspects of GST is the federal structure, wherein both the Centre as well as the respective State within which the supply has been made are allowed to tax simultaneously. These dual and simultaneous taxation powers required substantial changes to the Constitution, which were brought through the Constitution (101st Amendment) Act, 2016.

Article 246, read with Schedule VII of the Constitution, gives power to the Union as well as the States to enact legislation on various subjects, including taxes. Schedule VII of the Constitution provides the fields of legislation, distributed between the Union and the States. Through the Constitution (101st Amendment) Act, 2016, the Seventh Schedule was amended as under:

Union List/ State List	**Entry No.**	**Prior to Amendment**	**Post Amendment**
Union List	84	Excise Duty leviable on: (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products.	Excise Duty leviable on: (a) alcoholic liquors for human consumption; (b) opium, Indian hemp, and other narcotic drugs and narcotics.
Union List	92	Taxes on the sale or purchase of newspapers and on advertisements published therein.	Omitted
Union List	92C	Taxes on services.	Omitted
State List	52	Taxes on the entry of goods into a local area for consumption, use, or sale therein. (Octroi)	Omitted
State List	54	Leviable on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.	Leviable on: (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) alcoholic liquors for human consumption – only intra-state.
State List	55	Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.	Omitted
State List	62	Taxes on luxuries, including taxes on entertainment, amusements, betting, and gambling	Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council, or a District Council

Article 246A of the Constitution empowers States and the Centre to enact legislation with respect to GST. Whereas Article 246A(1) empowers the Parliament and the State Legislatures to concurrently make laws with regard to tax on "intra-state" supply of goods and services, Article 246A(2) states that Parliament alone shall have exclusive power to make laws with respect to tax on goods and services on supplies made in the course of "inter-state trade or commerce". Article 246A of the Constitution is a special provision defining the source of power and the field of legislation for the Parliament and the State Legislature with respect to GST. The GST Acts, in pith and substance, pertain to Article 246A of the Constitution, and the powers to summon, arrest, and prosecute are ancillary and incidental to the power to levy and collect goods and services tax.[1]

While examining the constitutional validity of GST Compensation Cess, the Apex Court[2] held that Article 246A (2) uses the phrase "with respect to" which indicates an expansive sense. The power to make law, thus, is not a general power related to a general entry; rather, it specifically relates to goods and services tax, and there was no reason to exclude the power to levy cess on GST.

Article 246A of the Constitution empowers States and the Centre to enact legislation with respect to GST.

It may also be noted that Article 246A (1) of the Constitution empowers the Parliament and the State Legislatures to concurrently make laws with regard to the levy and collection of tax on intra-state supply of goods and services. However, Article 246A begins with the words 'notwithstanding anything contained in Article 246 and 254 ….'. This would mean that though Article 246 demarcates the law-making powers of the Union and States (in the Seventh Schedule) and Article 254 provides for supremacy of law in case of repugnancy, the law with respect to GST could be made by the Union as well as states to simultaneously levy and collect GST. Another interpretation of this could also be that the GST cannot be levied on those domains that are exclusive to the State. This is for the reason that the Constitution (101st Amendment) Act, 2016, only amended the Seventh Schedule and did not delete the same. If the non-obstante clause in Article 246A is given an interpretation to mean that Article 246A overrides all the fields covered under Article 246, then the entire scheme of allocation of the fields of law-making power between the Union and States, as also amendment subsuming only a few of the taxing entries into GST while retaining certain taxing powers with the State or Union would become otiose.

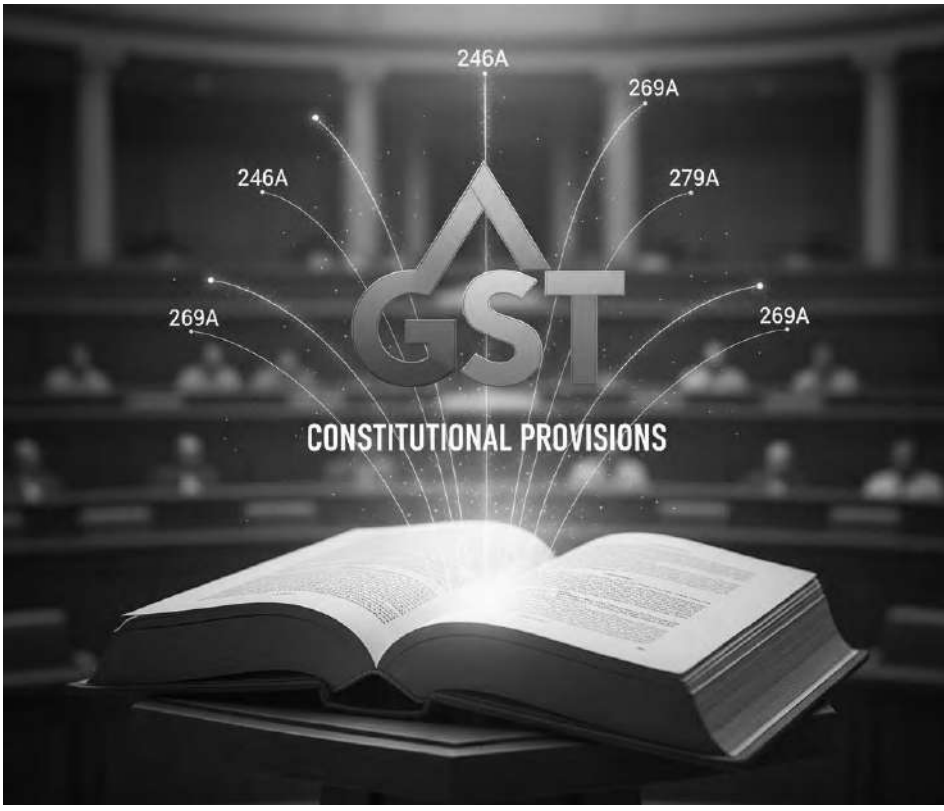
The Constitution (101st Amendment) Act, 2016 also inserted Article 366(2A), which defines "goods and services tax" as any tax on the supply of goods, or services, or both, except taxes on the supply of alcoholic liquor for human consumption. Whereas 'goods' was already defined in Article 366(12) to include all materials, commodities, and articles. The term 'services' broadly came to be defined in Article 366(26A) as anything other than goods. However, stamp duty transactions are kept outside the purview of GST.[3]

It may also be noted that Article 269A (1) empowers the Union to levy and collect tax on inter-state trade or commerce; however, the proceeds are to be apportioned between the Union and the States. Clauses (2), (3), and (4) of Article 269A make it clear that the amount appropriated to the State out of the tax on interstate trade or commerce shall not form the Consolidated

1 *Radhika Agarwal v. Union of India, 2025 (392) E.L.T. 273 (S.C.).*

2 *Union of India v. Mohit Minerals Pvt. Ltd, 2018 (17) GSTL 561 (SC).*

3 *Union of India v. VKC Footsteps India Pvt Ltd 2021 (52) GSTL 513 (SC).*



Fund of India. Article 269A (5) provides that Parliament may, by law, formulate principles to determine the place of supply when supply of goods or services or both takes place in the course of inter-state trade or commerce. This gives teeth to the place of supply provisions found in the IGST Act, 2017.

Explanation to Article 269A (1) deems that the supply of goods or services in the course of import into the territory of India to be a supply in the course of interstate trade or commerce. However, it may be noted that the proviso to Section 5(1) of the IGST Act, 2017 read with Section 3(7) of the Customs Tariff Act, 1975 seeks to levy IGST on goods imported into India. Further, Section 7(2) of the IGST Act states that the supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

The phrase "imports" has been defined to mean bringing goods into India from a place outside India.[4] It commences when the goods cross into the territorial waters, but continues and is completed when the goods become part of the mass of goods within the country.[5] The import is completed only when the goods have crossed the customs barrier, and that is the time when import duty is paid[6]. Interestingly, the expression used in explanation to Article 269A is in the course of import. The word 'course' means "progress from point to point". The course of import, accordingly, starts from one point and ends at another. It starts when the goods cross the customs barrier in a foreign country and ends when they cross the customs barrier in the importing country.[7] It

The phrase "imports" has been defined to mean bringing goods into India from a place outside India.

means the sale was made before the completion of the actual import.[8] Therefore, it appears that while IGST is levied on imports, the Explanation to Article 269A does not cover direct imports,

4 *Section 2(10) of IGST Act, 2017.*
5 *Garden Silk Mills Ltd (1999) 8 SCC 744.*
6 *Kiran Spinning Mills (2000) 10 SCC 228.*
7 *JV Gokal & Co v. CST AIR 1960 SC 595.*
8 *Hotel Ashoka v. ACCT 2012 (276) ELT 433 (SC).*

thereby making the levy of IGST on imports unconstitutional.

Article 270(1A) provides that CGST collected by the Union shall also be distributed to the states as per the recommendations of the Finance Commission. Further, Article 270(1B) states that IGST levied by the Union and portion appropriated to the Union in terms of Article 269A, and the IGST used to pay CGST shall also be distributed between the Union and the States in the manner prescribed by the Finance Commission. The important difference between the distribution of IGST and CGST is that while the SGST portion of IGST would be transferred to the consuming state, the CGST and CGST portions of IGST would be distributed not on the basis of the destination of consumption but on the basis of recommendations by the Finance Commission.

Further, Article 286(1) seeks to restrict the power of the States to levy tax on the supply of goods or services where such supply takes place (a) outside the state and (b) in the course of import of goods or services or export of goods or services, outside the territory of India. Article 286(2) provides power to the Parliament to formulate principles for determining when a supply of goods or services takes place in any of the ways mentioned in 286(1).

Article 279A establishes the GST Council, a joint forum of the Centre and the States, responsible for governing and regulating the implementation of GST in India.

Article 279A establishes the GST Council, a joint forum of the Centre and the States, responsible for governing and regulating the implementation of GST in India. It is created to examine the issues relating to GST and make recommendations to the Union and the States on parameters like rates, taxes, cesses, and surcharges to be subsumed, the exemption list, threshold limits, etc. The council functions under the chairmanship of the Union Finance Minister and will have the State Minister in charge of Revenue, Finance, or Taxation, or any other nominated Minister as its members. It is intended to function towards the advancement of a harmonised structure for GST and the market for goods and services.[9] Though the recommendations of the GST Council are not binding on the Union and States but the same have persuasive value.[10] It is, however, disheartening to note that the GST council seems to be getting involved in the classification of individual products and/or services[11] and undermining its constitutional position.

Further, Article 265 of the Constitution states that no tax shall be levied or collected except by authority of law. There are three stages in imposition of tax, namely: (i) the declaration of liability that is the part of the statute, which determines which person is liable and in respect of what property; (ii) the assessment which particularizes the exact sum which a person is liable to pay; and (iii) method of recovery if the person taxed does not voluntary pay.[12] The expression "levied and collected" takes in every stage in the entire process of taxation. 'Levy' takes in all the stages of charge, quantification, and recovery of duty.[13] Where any provision under which duty is levied is found to be unconstitutional, Article 265 comes into play. The person who has paid such tax is entitled to claim a refund. However, in indirect taxes, the claimant (for a refund) must establish that he has not passed on the burden of the duty/tax to others.[14]

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9 See Art. 279A (6) and UOI v. VKC Footsteps India Pvt Ltd 2021 (52) GSTL 513 (SC).

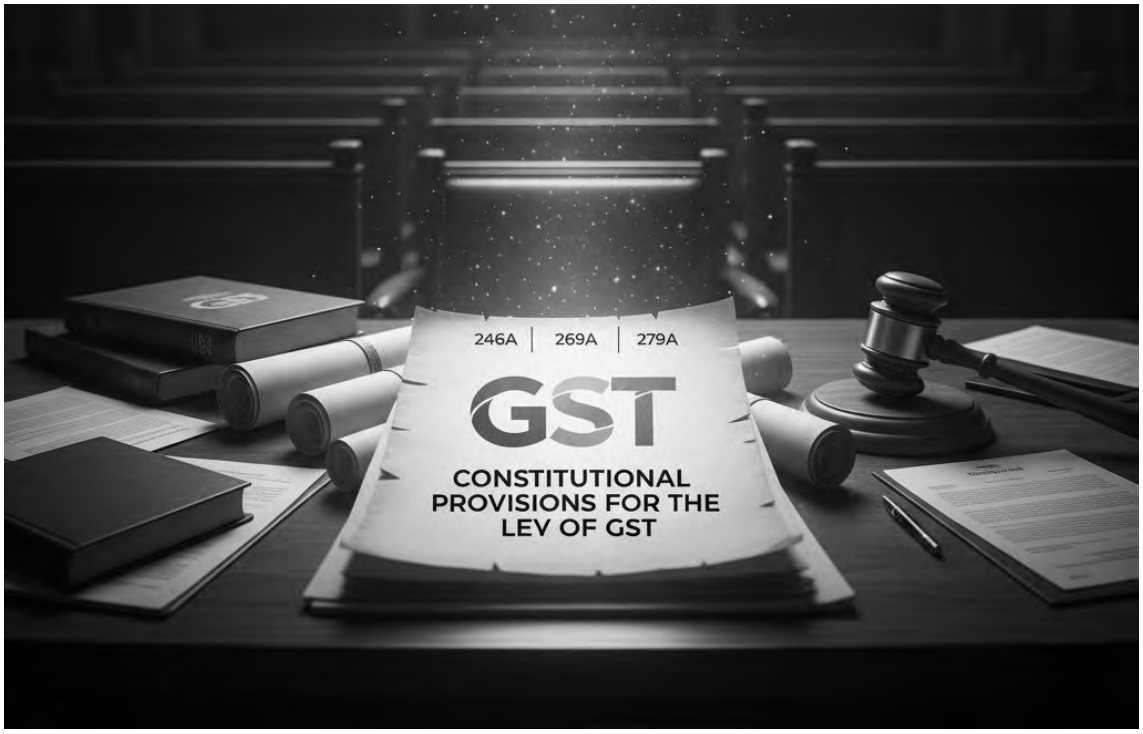
10 UOI v Mohit Minerals Pvt Ltd 2022 (61) GSTL 257 (SC).

11 Parle Agro Pvt. Ltd. v. Union of India (2023) 12 Centax 199 (Mad.)/2024 (81) G.S.T.L. 283 (Mad.).

12 Whitney v. Inland Revenue Commissioner 1926 AC 37.

13 Ujagar Prints v. Union of India AIR 1989 SC 516.

14 Mafatlal Industries Ltd v. Union of India 1997 (89) ELT 247 (SC).



It may also be interesting to note that Article 366(29A), which defines tax on sale of goods to include certain transactions such as works contract, leasing of goods, hire purchase system of purchase, tax on supply of food, etc. This entry was introduced vide the 46th amendment, in the background that prior to the amendment, the Courts consistently held that these activities are not outright sales and hence, the State did not possess the power to impose Sales tax on them. It may be noted that this entry remained untouched after GST. One of the possible reasons could be that the entry is only a definition, which in turn has to be read with other entries, which provide power to the State/ Union to impose tax on the sale of goods. Once the articles relating to the power to levy tax on the sale of goods have been amended so as to subsume the same into GST, the retention of the definition clause would not make any impact on GST. Therefore, the next question is, what would be the implication of the same? Let's take the case of a works contract. Article 246A of the Constitution, as also Section 9 of the CGST Act, provides for the levy of tax on either 'goods' or 'services' or 'both'. Works contract being indivisible, can neither be classified as goods nor as services. A view could emerge that the 46th Amendment would not be applicable, and principles elucidated

> In terms of the constitutional provisions, such supply has not been deemed to be a "service", and the concept of "service" itself has not undergone a change to include within its fold such activities or transactions.



in Gannon Dunkerley[15] would prevail. If that be so, the works contract goes back to being an indivisible contract akin to the sale of immovable property, which is not covered in Article 246A and consequently the charging section 9 of the CGST Act, 2017.

Similarly, Section 7(1) (aa) of the CGST Act, 2017 seeks to tax "activities or transactions" between clubs and their members as supply. However, Article 246A uses the word "supply" without giving it an artificial meaning that would take in even a "deemed supply". Significantly, in terms of the constitutional provisions, such supply has not been deemed to be a "service", and the concept of "service" itself has not undergone a change to include within its fold such activities or transactions.[16] Accordingly, since both Parliament and State legislature have no powers under Article 246A or any other Article of the Constitution, to tax the transactions between clubs/ associations and their members, the amendment under Section 7(1) of the CGST Act, 2017 seems to be a colourable exercise, which lacks legislative competence.[17]

The attempt to bring in all immovable property transactions within the ambit of the GST regime, like taxation of compensation paid for the acquisition of land[18], taxation of the sale of unfinished buildings on an is-where-is basis[19], assignment of leases[20] has been resisted successfully in courts on the grounds that the levy does not contemplate transactions of transfers in immovable property, the same being exclusively demarcated for the exercise of powers by the State Legislature.

The aforementioned constitutional amendments are intended to transform the indirect tax structure in India. However, conflict between the constitutional powers and the GST legislation (like taxing immovable property, etc.), bringing in every activity under GST by the tax administration, and illogical restrictions on input tax credits, is leading to numerous litigations, which is of grave concern. Authors are of the view that reforms to the statutory provisions, proper training to the tax administration, as well as implementation of a good and faster redressal mechanism, would ensue the objective of one nation, one market, and one tax.

15 *State of Madras v. Gannon Dunkerley & Co (Madras) Ltd AIR 1958 SC 560.*

16 *Indian Medical Association v. UOI 2025 (29) Centax 232 (Kerala); Pending before Hon'ble Supreme Court as reported in Union of India v. Indian Medical Association (2025) 34 Centax 243 (S.C.).*

17 *Assistant Director of Inspection v. Kumari A.B. Shanthi (2002) 255 ITR 258 (SC).*

18 *Asha R v. JCCT 2025 (4) TMI 548 (Kar).*

19 *Rohan Corporation v. UOI 2025 (4) TMI 549 (Kar).*

20 *Gujarat Chamber of Commerce and Industry v. UOI 2025 (1) TMI 516 (Guj).*

Concept of Valuation and Input Tax Credit in GST – Special Facets

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Overview

This article explores certain special facets of valuation and Input tax credit (ITC) schemes under the GST law, reflecting on how these concepts have evolved in the Indirect tax regime of India and in the years after the implementation of GST. It traces the evolution from transaction value to broader constructs like open market value, examines certain statutory inclusions and exclusions that influence value determination, and highlights the growing role of deeming fictions and amendments on specific issues like corporate guarantees. On ITC, it assesses the gap between the promise of seamless credit flow and expanding statutory and policy-driven constraints, including blocked credits, rate conditions denying ITC, etc. It also makes pragmatic reflections on structural improvements, such as greater fungibility of credit that could better align the GST regime with its foundational objectives. The article underscores the interplay between legislative design and administrative implementation, noting areas where recent reforms have eased compliance and those where litigation risk and policy incoherence persist.

Introduction

Implementation of GST in the year 2017 has been a path-breaking milestone in the evolution of the Indian Indirect tax regime. With a significant number of Central and State levies getting subsumed into the GST, this milestone paved

> The foundation of GST is to eliminate any cascading effect of taxes by allowing the seamless flow of Input tax credit ("ITC").

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the way for a unified Indirect tax regime in the country. The recent rollout of GST 2.0 has been a further historic step in the evolution journey.

The foundation of GST is to eliminate any cascading effect of taxes by allowing the seamless flow of Input tax credit ("ITC"). Valuation is another fundamental aspect of the GST law impacting the tax liability of the assessee. In this article, we will deliberate on some of the special facets of valuation and ITC schemes under the Central Goods and Services Tax Act, 2017 ("CGST Act") read with the Central Goods and Services Tax Rules, 2017 ("CGST Rules").

Valuation

Under the erstwhile Indirect tax regime, different laws had their own valuation mechanisms, such as transaction value, MRP-based value, sales price, tariff valuation, etc. In essence, these mechanisms sought to tax a transaction based on its intrinsic value in an arm's length transaction.

Some of the unique and new features of the valuation mechanism under the GST regime are discussed in the ensuing paragraphs.

Open Market Value

The CGST Act has carried forward the transaction value mechanism, while introducing the concept of Open Market Value ("OMV") for the first time. The basic guiding principle continues to be determining a fair and objective value that is not affected by relationships or other impacting factors. Interestingly, OMV can also be nil, and this position is being adopted for personal guarantees issued by directors given the mandate by the RBI. However, this position is not sought to be accepted for corporate guarantees.

Subsidy from the Government

The inclusion or exclusion of subsidy received from the Government was long-litigated under the erstwhile Indirect tax laws, with several landmark decisions such as *CCE, Jaipur-II v. Super Synotex (India) Ltd*.[1] and *CCE Raigad v. Uttam Galva Steels Limited and others*[2] adopting distinguishing positions.

The CGST Act put this controversy at rest by providing a specific exclusion for "any subsidy given by the Central Government or a State Government" from the definition of consideration under Section 2(31) as well as exclusion provided under Section 15(2)(e) of the CGST Act. It is noteworthy that the exclusion does not apply to subsidies granted by government entities.

Circular No. 190/02/2023- GST issued by the CBIC had clarified the position that an incentive in the nature of a subsidy directly linked to the price of the services does not form part of the transaction value. However, the AAR in the case of *M/s. Hitze Boilers Private Limited*[3] had clarified that when a subsidy is separately received by a supplier in an escrow account and does not impact the supply price between the supplier and the recipient, the same cannot be excluded from the value of supply.

While some interpretational issues on the subject continue to persist around the specific nature of a Government subsidy and the mode of grant, as a concept, exclusion of Government subsidy from the value of supply brings the desired clarity.

1 *2014-TIOL-19-SC-CX.*
2 *2016 (331) ELT 0261 (Tri. – Bom.).*
3 *2023 (9) TMI 1122 – AAR, Karnataka.*

Interest on delayed payment

Interest on delayed payment of consideration was not treated as an additional consideration for the principal supply under the erstwhile regime. In fact, the valuation rules[4] under the erstwhile Service tax regime, it provided a specific exclusion for such interest.

Section 15(2) of the CGST Act has provided a specific inclusion for such interest or late fee in determining the value of the underlying supply, albeit provided that the time of supply to the extent of such interest would arise only upon receipt thereof. It is interesting to examine if this inclusion can lead to applicability of GST on interest charged for delay in settlement of financial transactions, such as payment to stockbrokers, which do not involve any underlying service by way of extending loan or deposits (interest on which is specifically exempted).

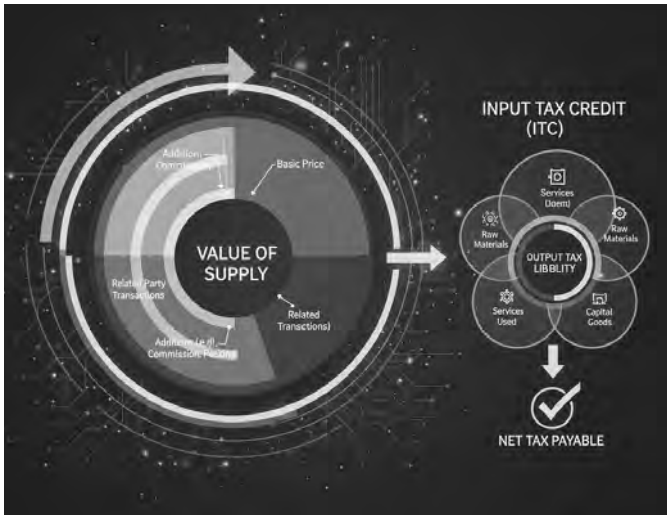
Proviso to Rule 28 – a game changer for related party transactions

The specific valuation immunity provided under the second proviso to Rule 28 of the CGST Rules for cases where the recipient is eligible for full ITC has been a breather for businesses. Circular no. 199/11/2023-GST issued by the CBIC in the context of distinct person transactions further liberally interpreted the scope of the proviso, benefiting the industry at large. However, the interpretation of what constitutes "full ITC" in itself and whether the same needs to be construed with respect to the specific supply transaction or overall credit position of the recipient continues to be an area of potential controversy. This is surely a welcome concept. The point to ponder is why the same concept should not be extended to transactions between unrelated parties where GST is required to be paid under RCM by the recipient eligible for full ITC.

Corporate guarantee valuation

Whether transactions of corporate guarantee constitute any "supply" considering their nature and intent continues to be a debatable issue. The arguments of stewardship function and shareholder activity may justify that extending such guarantees does not amount to supply at all.

Amendment of Rule 28 of the CGST Rules in the year 2023 to provide deemed valuation of 1% p.a. or actual consideration, whichever is higher, for such transactions and specific non-applicability of valuation immunity brought them to the forefront of controversy. The subsequent retrospective amendment introduced in July 2024 and the corresponding clarification[5] as regards acceptance of invoice value in cases where the recipient is eligible for full ITC did some course-correction. However, the fundamental legal issue as regards whether a deemed valuation mechanism like this is permissible under the

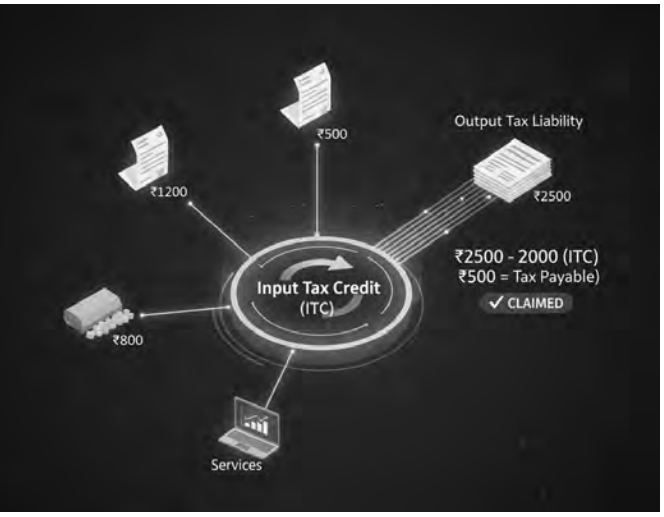


scheme of valuation provisions under the CGST Act continues to persist.

In most cases, commercial value of potential service by way of granting such guarantees is considered to be in the range 0.20 to 0.30% of guarantee amount for the entire tenure. As opposed to this, deeming of 1% of gross value

4 *Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006.*

5 *Circular No. 225/19/2024-GST dated 11.07.2024.*



of guarantees on per year basis seems to defy the fundamental principle of OMV.

The controversy as regards taxability of corporate guarantees per se and valuation mechanism introduced vide Rule 28(2) of the CGST Rules continues to be sub-judice, and various High Courts have issued interim stay orders in the matter[6].

Discounts

The GST regime carried forward the concept of permitting the deduction of only pre-agreed and pre-sale discounts from the erstwhile regime. Section 15(3) of the CGST Act, as it stands before incorporating amendments proposed by the 56th GST Council Meeting, permits the deduction of a discount granted post supply only if such a discount is established in terms of a pre-existing agreement, is specifically linked to relevant invoices, and corresponding ITC is reversed by the recipient.

The roll-out of GST 2.0 sought to relax these conditions by permitting the deduction of all discounts as long as the corresponding ITC is reversed by the recipient.

6 *JSW Steel Limited v. DGGST [2024 (10) TMI 1031 – Delhi High Court], Sterlite Power Transmission Limited v. UOI [2024 (3) TMI 1311 – Delhi High Court], Schloss HMA Pvt. Ltd. v. UOI [2025 (1) TMI 589 – Bombay High Court], Vedanata Limited v. UOI [2025 (1) TMI 590 – Bombay High Court].*

Circular No. 251/08/2025-GST, issued in this regard, has clarified that unless an agreement for promotional activities with specific consideration is entered into between a manufacturer and dealer, post-supply discounts cannot be treated as consideration for such services. Similarly, it has been clarified that post-sale discounts by the manufacturer to the dealer may be treated as consideration only in cases where the manufacturer has "some agreement" with an end customer to supply goods at a discounted price.

The proposed amendment and the Circular issued thereafter are likely to settle several issues around discount deductibility in favour of the assessee. However, the controversy as regards the treatment of post-supply discounts by the manufacturer to the dealer and the treatment thereof as additional consideration may still persist. The authorities may potentially seek to read "some agreement" referred to in the Circular broadly to construe knowledge of a discounted price on the part of the end customer in the nature of an agreement.

> In most cases, commercial value of potential service by way of granting such guarantees is considered to be in the range 0.20 to 0.30% of guarantee amount for the entire tenure.

Deeming fictions

While the overall scheme of Section 15 of the CGST Act, read with the corresponding rules, seeks to determine the value of supply with respect to transaction value or corresponding market values, there are several instances where a deeming fiction on valuation is created by way of entries or conditions in rate notifications. These include the deeming fiction for one-third deduction of land value in cases of construction

services, including transfer of land,[7] and 70:30 deemed value of renewable energy devices vs. services in case of EPC contracts for supply of such devices with other goods and services[8].

The validity of such deeming fictions has been challenged before Courts on several grounds, such as arbitrariness and lack of nexus with the charge, etc. The one-third deduction of land value, even in cases where the actual value of land is available, was found to be unconstitutional by the Gujarat High Court in the case of *Munjaal Manishbhai Bhatt v. Union of India*[9] and the matter is now pending before the Supreme Court, wherein interim relief[10] was already granted. Similarly, the Karnataka High Court has granted a stay on recovery proceedings initiated by relying on the 70:30 deemed ratio of goods vs. services in the case of *DGGST, Chennai v. Vestas Wind Technology Pvt. Ltd*[11].

On an overall basis, the valuation mechanism under the GST law is based on the holy grail of the transaction value mechanism.

Unlike several deemed valuation mechanisms for works contracts under the erstwhile VAT laws, which were upheld by the Supreme Court on account of being optional[12], these valuation mechanisms under the GST law are mandatory and apply even where actual values may be available.

On an overall basis, the valuation mechanism under the GST law is based on the holy grail of the transaction value mechanism. While the measures such as valuation immunity may reduce litigation, several deeming fictions referred to above may continue to fuel controversies and dilute the objective of transaction value-based taxation.

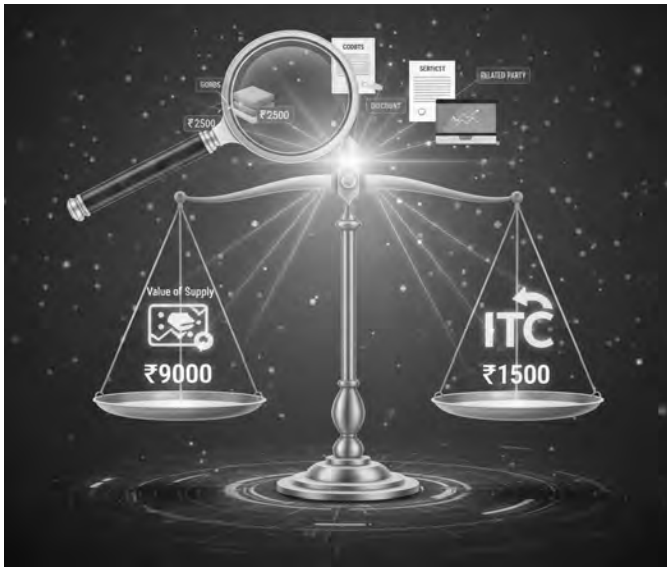
Input tax credit

Elimination of the cascading effect of taxes is crucial for a successful GST and was also one of the foremost objectives that paved the way for the introduction of GST. Globally also, "right to deduct" and "Input tax credit" have been treated as cornerstones of VAT/GST legislations.

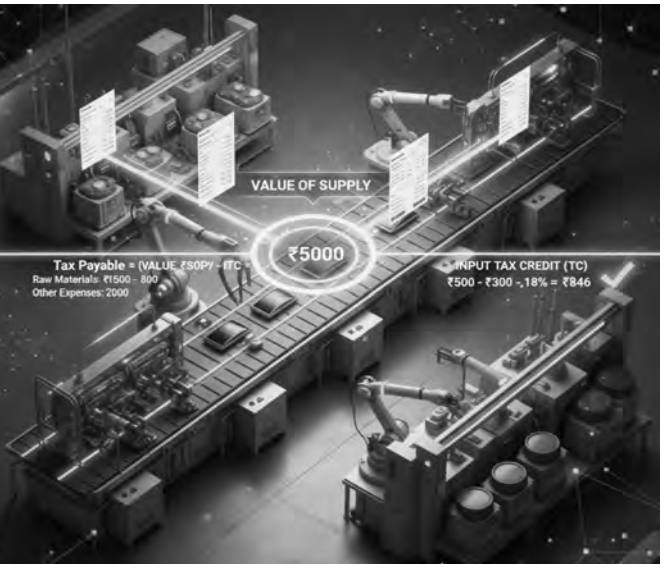
Blocked credits

While reasonable restrictions on ITC are a common feature of VAT/GST legislations in several countries, the CGST Act adopts comparatively broader restrictions through its concept of "blocked credits". This construct, reminiscent of the erstwhile CENVAT regime, represents a notable departure from the concept of seamless credit flow.

Among these restrictions, those contained in Section 17(5)(c) and (d) of the CGST Act, relating to works contract services and goods or services used for the construction of immovable property,



7 *Para 2 of the Notification No. 11/2017 – Central tax (Rate)*
8 *Entry no. 437 of the Notification no. 1/2017 – Central tax (Rate) read with Entry 38 of the Notification No. 11/2017 – Central tax (Rate)*
9 *2022 (5) TMI 397 – Gujarat High Court*
10 *2024 (10) TMI 1697 – Supreme Court*
11 *WP 26470/2025, Karnataka High Court*
12 *State of Kerala v. Builders Association of India [(1997) 2 SCC 183].*



are particularly misaligned. The development of immovable property, whether factories, office premises, or warehouses, is an essential economic activity for most enterprises. Denying credit for goods and services used in such construction introduces a cascading tax burden, distorting the supply chain. But for the explicit restrictions introduced in the law to restrict such credits, the nexus of such procurements with taxable outward supplies is well established in several judicial precedents[13]. Considering that such transactions are treated as capital in nature, ITC could be provided over a reasonable period of time. But altogether denial of ITC on the same seems unjustifiable.

The events from the Supreme Court's expansive interpretation of "plant or machinery" in Commissioner of *CGST v. Safari Retreats Pvt. Ltd*.[14] to the subsequent retrospective amendment to nullify the effect of that ruling illustrates only one dimension of the evolving ITC landscape and its potential to create uncertainty for investors. The broader policy concern lies in the legislative inclination to curtail credit on high-value transactions like these, potentially prioritizing short-term revenue considerations over the foundational GST principle of seamless credit flow.

ITC on insurance benefits granted to employees

Section 17(5)(b) of the CGST Act *inter-alia* restricts ITC on life insurance and health insurance policies. Notably, this blocked credit entry seeks to treat insurance benefits at par with beauty treatments, club memberships, renting of vehicles, etc., which are categories generally associated with personal consumption or non-business expenditure.

The revised GST rate structure unveiled with GST 2.0 has provided exemption from GST to all individual life and health insurance policies where the *insured is not a group*[15]. In contrast, group insurance policies typically procured by corporations as part of employee welfare programs fall outside the scope of this exemption. The underlying reasoning appears to be that such group policies are used by businesses in the course of their operations and therefore should remain taxable.

On one hand, ITC on group insurance is denied on the premise that it constitutes personal or non-business expenditure. On the other hand, these very policies are excluded from the exemption applicable to individual insurance on the assumption that they serve a business purpose. This divergent treatment of a fundamental employee welfare measure like insurance raises questions about the internal coherence of the GST framework and warrants a reconsideration of the policy rationale.

Lower rate of GST with no ITC

The enabling ITC provisions of Sections 16 and 17 of the CGST Act grant entitlement of

13 CCE, Visakhapatnam II v. Sai Samhita Storages Pvt. Ltd. [2011 (270) ELT 33 (AP)], Navratan S.G. Highway Properties Pvt. Ltd. v. Commissioner of Service Tax, Ahmedabad [2012 (28) STR 166 (Tri.-Ahmd.)], Intime properties Ltd. v. CCE [2023 (11) TMI 892 – CESTAT Hyderabad].

14 2024 (10) TMI 286 – Supreme Court.

15 Entries 36C and 36D of Notification no. 12/2017 – Central tax (Rate) inserted vide the Notification no. 16/2025 – Central tax (Rate).

ITC on supplies which are used or intended to be used in the course of business of making taxable outward supplies. Thus, fundamentally, the provisions of the CGST Act do not seem to envisage a scenario where a supply is charged to GST, and yet, ITC is not granted at all.

However, as the law has evolved, several categories of supplies have been notified for a lower rate of GST with a condition to not avail ITC, either as an optional scheme or as a mandatory rate structure. With the roll-out of GST 2.0, the list has been further expanded by prescribing no-ITC lower GST rates for supplies such as restaurant services, hotel accommodation, etc.

The enabling ITC provisions of Sections 16 and 17 of the CGST Act grant entitlement of ITC on supplies which are used or intended to be used in the course of business of making taxable outward supplies.

This approach implies deliberate denial of ITC to several industry sectors as a whole and thus, seems like going back to the pre-GST era of cascading effect of taxes. As long as a rate of GST is prescribed for outward supplies, denial of GST merely due to a reduced rate is unjustified.

Fungibility of ITC

Widely canvassed as one nation one tax, the dual GST structure of India has created three taxes in the form of CGST, SGST and IGST to align with the federal Constitutional structure of India. With a robust IT infrastructure in place, inter-State fungibility of credit pools of CGST and IGST is a measure that is practical as well as hugely beneficial for the industry. As the GST law in India matures, structural improvements like these could go a long way.

Similar to this, fungibility of SGST ITC with CGST could also be implemented as the next step. With the settlement mechanism between the Center and the States already in place, such a measure would only be an extension of the current set-off mechanism, where SGST credits are eligible for utilization against IGST and vice-versa.

The next round of reforms in the Indian GST law ought to address such structural issues and improvements.

Administrative implementation

The administrative implementation of the ITC mechanism under the CGST Act has been inconsistent and at the discretion of each jurisdictional officer. In several cases, it has been left to the assessee to prove their claim of self-assessment ITC and submit repeated reconciliation statements. Issuance of show cause notices demanding substantial amounts of ITC claims merely on the allegation of possible mismatch or potential contraventions is not uncommon.

Despite several High Court decisions[16] stressing that in case of a mismatch of ITC or non-payment by the supplier, automatic demand or ITC reversal cannot be sought from the recipient availing ITC, these issues continue to persist for many taxpayers.

Conclusion

The valuation and ITC-related provisions under the GST law seem to be a mixed bag. While significant strides have been made in certain areas, a lot still remains to be done. The rising disputes on ITC are clearly indicative of the gap between the intent vis-à-vis its implementation. We have come a long way from the era of Sales tax, Modvat, and CENVAT. However, the Government still has "promises to keep" and definitely, "Miles to go before I (we) sleep".

16 *D.Y. Beathel Enterprises v. State Tax Officer [2021 (3) TMI 1020 – Madras High Court], Suncraft Energy Pvt. Ltd. v. Assistant Commissioner of SGST [2023 (8) TMI 174 – Calcutta High Court], RT Infotech v. Additional Commissioner [2025 (6) TMI 116 – Allahabad High Court].*

GST - A Technology-based Law – Significance of Portal – Is Portal the King?

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CA Sunil Gabhawalla

Overview

The article examines the central role of the GSTN portal as the technological backbone of India's GST regime, enabling registration, return filing, payment, e-invoicing, e-way bills, adjudication, and appeals. It explains the statutory mandate under section 146 of the CGST Act and traces how successive notifications and rules have expanded the portal's scope far beyond its originally notified functions. The article highlights how technological limitations shaped policy—most notably, the shift from the intended GSTR-1/2/3 matching system to GSTR-3B as the primary return. It analyses the conflict between taxpayer records and GSTN data, the evolution of ITC matching, and unresolved inconsistencies where portal design deviates from statutory provisions. Taxpayer adaptation, especially for SMEs, is discussed along with the increasing use of data analytics tools such as BIFA, PRIME, and e-invoice analytics for enforcement. The article concludes by emphasising the need for a law-first approach, stronger grievance mechanisms, and future integration of AI and automated accounting.

Introduction

I asked an AI Tool to provide me with a brief introduction of the role of GSTN in the effective implementation of GST, and this is what it gave as a response:

The Goods and Services Tax Network (GSTN) certainly didn't sign up for a quiet life. One might argue its role during GST implementation was akin to a digital air traffic controller, but for an entire nation's economic transactions, all while the aircrafts were still being built and pilots trained mid-flight. Tasked with constructing and maintaining the very IT infrastructure underpinning the unified indirect tax regime, GSTN became the indispensable digital backbone, transforming a fragmented, paper-heavy system into a seamless, if occasionally bewildering, online ecosystem. It



is the brave soul attempting to corral millions of taxpayers onto a single, standardized platform, handling everything from initial registrations to the ceaseless deluge of monthly returns, all with the unwavering zeal of a super-efficient, albeit humourless, digital bureaucrat.

Foundational Role of GSTN Portal in GST Implementation

The above response is interspersed with both humour and hard-hitting facts. The functions of the GSTN portal encompass every aspect of a taxpayer's compliance journey – right from obtaining & amending registrations, filing monthly and quarterly returns, making online payment of taxes, applying for refunds, etc. The portal works in active coordination and alignment with another portal developed and maintained by NIC to generate e-way bills and e-invoices.

The functions of the GSTN portal encompass every aspect of a taxpayer's compliance journey – right from obtaining & amending registrations, filing monthly and quarterly returns, making online payment of taxes, applying for refunds, etc.

From the Department's perspective, the utility of the GSTN portal extends to most of the operations of the tax administration, including monitoring, administration, and record-keeping. The portal functions as a vast data repository generating analytical reports. Through the application of sophisticated data analytics and risk management tools, the system enables the non-intrusive identification and selection of taxpayers for scrutiny, audit, or enforcement actions.

The GSTN common portal maintains its utility across the appellate mechanism as well.

Beyond enabling back-end processes, the common portal is the mandated electronic medium for administering statutory proceedings, ensuring transparency, and providing an audit trail for enforcement actions. This includes the electronic service of a summary of show cause notices issued under various sections, such as Section 73 or Section 74, in DRC-01. Upon adjudication, the summary of the resultant order, specifying the demand, is uploaded electronically in DRC-07. The portal's functionality further supports various administrative functions like managing Electronic Cash, Credit, and Liability Ledgers, and integrating with external systems, thereby centralizing the entire gamut of tax administration.

The GSTN common portal maintains its utility across the appellate mechanism as well. Appeals preferred by an aggrieved person must be filed electronically in APL-01. Extending this digital framework, the Goods and Services Tax Appellate Tribunal (GSTAT) leverages its distinct "GSTAT Portal" for the second level of appeal. Filing appeals (APL-05), departmental applications (APL-07), and memorandums of cross-objections (APL-06) are strictly mandated to be electronic and are processed through this specialized GSTAT Portal.

These intricate technological ecosystems, however, cannot operate in a vacuum; they need to be and are empowered and governed by specific legal mandates.

The Legal Mandate: Section 146

Section 146 of the CGST Act, 2017 provides the necessary statutory authority for the digital infrastructure, ensuring that actions performed on the portal have legal validity and that the requirements for taxpayers to interact with it are enforceable. The relevant provisions are reproduced below for ready reference:

The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

Thus, the Government is empowered to notify a common portal for carrying out or facilitating specific functions. Pursuant to the said empowerment, the Government has issued three notifications as under:



Notification/Date	Purpose/Function Notified	Portal Address
Notification No. 4/2017-CT, dt. 19-06-2017	Facilitating registration, payment of tax, furnishing of returns, computation, and settlement of integrated tax	www.gst.gov.in (managed by GSTN)
Notification No. 9/2018-CT, dt. 23-01-2018	Furnishing of electronic way-bill (EWB)	www.ewaybillgst.gov.in
Notification No. 69/2019-CT, dt. 13-12-2019	E-invoice preparation (Invoice Registration Portal - IRP)	www.einvoice1-10.gov.in (and related sub-domains)

Each of the notifications not only mentions a particular online resource but also the purpose for which the said resource is to be used. Interestingly, the legal mandate under section 146 itself lists a series of specific functions like registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, and electronic waybill. After listing such specific functions, the section permits the Government to prescribe such other functions which may be carried out through the common electronic portal. On a perusal of the rules, it is evident that the role of the common portal is not restricted to merely the functions mentioned above, but extends much beyond. In fact, the rules prescribe interactions between the Department and the taxpayer through the electronic common portal in more than 200 instances.

On going through the notifications, one may be tempted to treat the common portal as notified only for the limited specific functions listed therein. However, a broader and more conservative approach would be to consider the prescription within the rules (such as Rule 108, Rule 109, and Rule 115) that appeals, applications, or communications be filed electronically on the Common Portal as sufficient to mandate that function. This is because "prescribed" functions are defined by the Rules, and these rules operationalize the Common Portal notified generally under the authority of Section 146.

While the matter is not free from doubt, a balanced view would be that no supplementary notification under Section 146 for the specific purpose of mandating electronic appeal filing, etc., is required, as the necessary prescription exists within the statutory rules, establishing a clear and binding procedure for electronic submission.

The Evolution of the GSTN Portal: From Stop-Gap Measures to a Dynamic System

The GSTN portal was not launched as a finished, static platform but has undergone continuous evolution since its inception. This development is in response to technical challenges, ongoing policy shifts, and taxpayer feedback.

The GSTN portal was not launched as a finished, static platform but has undergone continuous evolution since its inception.

A prime example of this evolution is the return filing system. The originally envisaged system involving two-way upload and matching through Forms GSTR-1, GSTR-2, and GSTR-3 could not be fully implemented. As a "temporary stop-gap arrangement," the supplier-centric upload in GSTR-1 was supplemented by a summary return in GSTR-3B. Later, a retrospective amendment to Rule 61(5) formally upgraded the status of

GSTR-3B as the primary return. Indeed, the portal limitations prompted this policy change. However, this change had dire consequences – a floodgate of litigation where credit was denied to the recipients due to errors at the supplier's end (non-payment of tax or non-upload, or erroneous upload of the invoice). The law was progressively amended, and incremental portal improvements saw the introduction of features like e-invoicing, Invoice Management System, etc. While these improvements permitted the recipients to have earlier and better visibility over supplier action, the supplier-centric model of uploading data continues to be the essence of the portal even today.



Taxpayer Records vs. GSTN Portal Data: The Supremacy Dilemma

There could be various reasons for a conflict between the data as per the taxpayer's statutory books of accounts and the data reflected on the GSTN portal, two primary reasons being errors and omissions (either by the taxpayer or by his supplier) and timing differences. Except in cases of taxpayer errors and omissions, it is logical to consider the taxpayer's statutory records as supreme and treat portal data as mere prima facie pointers rather than conclusive evidence. In fact, the Supreme Court ruling in the case of *Bharti Airtel Limited* 2021 (54) G.S.T.L. 257 (S.C.) analyses this facet clearly. To quote from the said decision:

> *The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment. The primary source is in the form of agreements, invoices/challans, receipts of the goods and services and books of account which are maintained by the assessee manually/electronically.*

The observations of the Supreme Court pertain to the period of 2017-2018. Subsequently, Rule 36(4) was introduced to restrict a taxpayer's ITC claim to the credit reflected in their auto-populated FORM GSTR-2A, plus a specified tolerance (e.g., 20%, gradually reduced to NIL, and thereafter incorporated in the law as section 16(2)(aa)). This effectively made the portal's data, derived from supplier filings, an important determinant for the claim of input tax credit, partially eclipsing the primary role of taxpayer records or books.

On a different note, the claim of input tax credit matching also bears a dimension of timing, complicating the Government's efforts to ensure correctness of matching and also complicating inter-se settlements in case of non-creditable B2B supplies. These challenges prompted the Government to bring in a shift in perspective. Welcome Circular No. 170/02/2022-GST, dated 6-7-2022, which mandated that credits reflected on the portal in GSTR2B, but not appearing in the books of accounts, should be mandatorily claimed and reversed (either temporarily or permanently) by the taxpayers.

The combined impact of Section 16(2)(aa) and Circular 170 implies that, for practical purposes, the portal data substantially eclipses the

taxpayer records despite the ultimate supremacy of taxpayer records. This shadowing is observed not only at the time of filing of returns, but also triggers unwanted allegations. For example, a stranger to a transaction may wrongly upload an invoice as well as a credit note in his returns, populating both the transactions in the GSTR-2B of the taxpayer. The system may selectively detect that the taxpayer has not reversed the credit attributable to the credit note, without taking cognisance of the fact that the credit was not claimed at all initially. Though legally not sustainable, such system system-generated notices shift the entire onus of establishing that the credit was not claimed ab initio entirely on the helpless taxpayer.

The Law vs. The GSTN Portal: Analyzing the Ultimate Authority

One is prompted to ask the question: In a technology-driven tax system, does the technology dictate the law, or does the law govern the technology? The tension between what the law prescribes and what the portal implements has led to several conflicts. Many such conflicts have been resolved by judicial intervention or legislative amendments. However, many conflicts still continue to be unresolved.

The tension between what the law prescribes and what the portal implements has led to several conflicts.

Two specific unresolved conflicts where the portal mandates an action at variance with the law are explained below:

Section 37 permits rectification of errors committed while filing the GSTR1 of a particular month in subsequent months without any qualification, albeit within prescribed timelines. However, the portal introduces challenges in such rectification of errors. For example, it neither permits rectification of the value of exempted supplies erroneously mentioned in earlier returns nor does it permit amendment of B2C Large taxable supplies. Even an amendment to B2C Small taxable supplies is permitted only once for each month (despite the law not having any specific restriction)

As a best practice, the GSTN portal must function solely as an instrument for implementing the law, not as a source of parallel or conflicting legal obligations or result in adversarial actions based on presumptions.

While the law permits payment of taxes through DRC-03 in case the same was missed while filing the monthly return in GSTR3B, the annual return format in GSTR9 does not consider the said tax payments even though the taxpayer is obliged to report the turnover, thus resulting in a gap in the GSTR9, which needs to be explained through the DRC-03 in case of inquiry

There are many more such unresolved conflicts. For brevity, this article merely showcases two such instances. As a best practice, the GSTN portal must function solely as an instrument for implementing the law, not as a source of parallel or conflicting legal obligations or result in adversarial actions based on presumptions. Its architecture and operational rules cannot supersede the substantive rights and duties established by the CGST Act. To mitigate these risks, a 'law-first' protocol must be embedded in the GSTN's development cycle, including mandatory legal vetting and public sandboxing of new functionalities before deployment. Without such safeguards, the portal risks becoming an

engine of, rather than a solution to, tax disputes. Continuous and rigorous alignment between the portal's architecture and the statutory framework is essential to foster a tax environment built on transparency, legal certainty, and the rule of law.

Taxpayer Adaptation: Efforts to Align with the GSTN Portal

The narrative of technology and GST implementation must acknowledge the significant compliance burden on taxpayers and the commendable efforts undertaken by them towards the said compliance. Aligning with a constantly evolving digital system is a complex task that extends far beyond simple data entry; it necessitates substantial investment in technology, process re-engineering, and specialized expertise.

This challenge is particularly acute for small and medium-sized firms, which often face a distinct set of hurdles in keeping pace with the digital mandate. Key struggles include:

The Department's arsenal—comprising BIFA (Business Intelligence and Fraud Analytics), GST PRIME, and E-Invoice and E-Way Bill Analytics—enables officers to identify anomalies, detect fraud, and forecast tax trends.

- A lack of adequate in-house technology staff and support.
- A gap in understanding the available technological advancements that could ease compliance.

Beyond strategic challenges, taxpayers have been forced to make specific procedural adaptations to interact with the portal. The requirement for e-invoicing represents another major area of adaptation. Businesses have been forced to ensure that invoices created on their own Accounting or ERP systems are successfully transmitted to the central Invoice Registration Portal (IRP). Only after the IRP validates the invoice and returns it with a unique Invoice Reference Number (IRN) and a QR Code does the document become legally valid. This process demands a seamless technological integration between a company's internal systems and the government's centralized portal. Since the GSTN portal does not permit direct programming access through Application Programming Interface (API), most of these technological integrations require an intermediary technology provider like a GSP or an ASP. Only a structured implementation and integration of the internal accounting systems with the GSP/ASP systems, which in turn integrate with the GSTN Portal, can ensure effective compliance with the onerous obligations cast on the taxpayers.

The Portal as an enabler of enforcement action

The data generated through the taxpayer efforts listed above does not just sit idly; it is actively used by the department as a powerful tool for enforcement. The Department now functions less as a reactive authority and more as an intelligent data organisation. Allegations of fake invoicing, input-tax-credit (ITC) mismatches, and return discrepancies are identified algorithmically. A departmental training manual succinctly captures this shift: "*The advent of GST has pushed all of us into an era of data… The challenge, now, is the effective use of the data to improve tax administration.*"

The Department's arsenal—comprising BIFA (Business Intelligence and Fraud Analytics), GST PRIME, and E-Invoice and E-Way Bill Analytics—enables officers to identify anomalies, detect fraud, and forecast tax trends. Understanding how these tools operate is now vital for every

compliant business. Each tool plays a distinct role:

1. **BIFA** – the Department's principal anti-fraud engine, generating pre-packaged investigative leads, mapping supply-chain relationships, and detecting risk clusters.
2. **GST PRIME** – a central dashboard for jurisdictional officers, providing an AI-driven 360° view of collections, defaulters, and risk indicators.
3. **E-Invoice Analytics** – aggregates billions of B2B invoices to monitor economic activity, inter-state trade, and revenue forecasts with over 99 % accuracy.

These tools identify "digital signals" or triggers—anomalies that initiate investigations.

Automated detection generally begins with mismatches across GST returns and declarations. Reports such as *Mismatch Reports* and *Non-Filer Reports* form daily worklists for officers. Such mismatches usually result in DRC-01C or ASMT-10 notices. Repetitive notices, unresponded notices, or high-value differences attract deeper scrutiny.

The system also correlates return data with e-way-bill and TDS/TCS records to uncover concealed activity:

- **E-way bills without GSTR-3B** suggest unreported outward supplies.
- **Full-ITC tax payments** may indicate inflated credits via fake invoices.
- **TDS/TCS credits without returns** expose non-filers engaged in business transactions.

Individually, these are red flags; connected through network analysis, they reveal entire fraud ecosystems. However, beyond such isolated mismatches, the Department now employs supply-chain mapping to expose circular trading and shell-company webs.

- **BIFA** enables officers to visually trace inter-taxpayer relationships, highlighting abnormal loops.
- **GST PRIME** builds backward- and forward-linkages of suppliers and recipients, identifying entities that only circulate invoices.

To systematise investigations, predefined analytical models called "Use Cases" automate risk detection. Perhaps the most potent tool



is Taxpayer Profile 360, a consolidated digital dossier covering registration details, filing history, e-way-bill patterns, refund activity, enforcement actions, and assessments. It provides instant situational awareness—allowing officers to decide whether a matter warrants a notice, provisional attachment, or deeper probe. This integration converts isolated filings into a contextual compliance history.

As can be seen from the above, data analytics has transformed GST enforcement into a predictive, AI-assisted mechanism. Every return, invoice, or e-way bill feeds into algorithms that constantly evaluate risk. Enforcement today is less about field visits and more about digital footprints. Therefore, for businesses,

compliance is no longer reactive—it must be anticipatory. Clean data, reconciled ledgers, and documented explanations are essential defence lines. Tax professionals must evolve from record-keepers to data interpreters, ensuring that the very analytics used by the Department for enforcement are mirrored within the enterprise for self-verification.

> Enforcement today is less about field visits and more about digital footprints.

The future of GST administration thus rests on transparency, traceability, and technological literacy. As the Department's systems grow in sophistication, those taxpayers who internalise the same analytical discipline will remain resilient in this new era of algorithmic taxation.

Conclusion: The Way Forward for India's Digital Tax Regime

India's GST regime is a bold experiment in building a legal framework on a technological foundation. The GSTN portal is central to its operation, acting as the digital marketplace, compliance engine, and enforcement tool. However, its journey has been marked by a persistent tension between technological capabilities, the letter of the law, and the adaptive capacity of taxpayers. The system's evolution from stop-gap measures to a more dynamic platform highlights both its potential and its growing pains. The experience thus far has revealed several key challenges and dynamics that continue to shape the GST ecosystem:

The difficulty in achieving a fully functional and stable portal that perfectly aligns with all statutory provisions, as exemplified by the long-delayed implementation of the originally envisaged two-way ITC matching system.

The ongoing necessity for taxpayers, especially small and medium-sized firms, to invest in technology, training, and processes to keep pace with the portal's continuous evolution and complex compliance requirements.

The increasing sophistication of the tax department in leveraging the portal's centralized data for targeted enforcement, data analytics, and fraud detection, shifting the balance of power in tax administration.

Looking ahead, a critical "Way Forward" for the GST ecosystem is the establishment of a more robust and responsive grievance redressal mechanism for taxpayers, particularly for resolving system-related errors and disputes arising from the portal's functionality. As technology becomes more embedded in the tax process, a clear and efficient pathway to resolve these issues becomes paramount to ensuring fairness and maintaining trust. As this technology-based law continues to mature, the integration of Artificial Intelligence (AI) and the potential move towards "Integrated Accounting" represent the next logical phase, promising even greater automation and data-driven oversight in India's ambitious digital tax regime.



GST 2.0 and Beyond

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K Vaitheeswaran
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Overview

On 01.07.2017, India's taxation system underwent a metamorphosis with the introduction of GST. Eight years later, with much fanfare, GST 2.0 was implemented through a slew of notifications, effective from 22.09.2025, introducing significant changes through rate reductions, structural simplifications, and facilitation of dispute resolution. This Article provides a bird's-eye view of the effect of GST 2.0 on various stakeholders and examines the reforms anticipated under GST 3.0, which is likely to unfold in the next few years. GST 3.0 may usher in further reforms and may tackle the complex issue of taxing petroleum, mines, and minerals; foray into alcohol; eliminate the concept of blocked credits, and probably bring in stamp duty and registration within the fold of GST. There are other reforms linked to ease of doing business that need not await GST 3.0.

Introduction

India's indirect taxation journey has been nothing short of transformative. While there is a lot of attention given to GST 2.0 and criticism thrown for having higher rates prior to 2.0, one cannot forget the business and tax reform that was ushered in from 01.07.2017.

Why GST?

Prior to 01.07.2017, there were a plethora of indirect taxes. The Central Government had levied the following taxes:

- Excise Duty
- Countervailing Duty
- Customs Duty
- Duty of 4% under Section 3(5) of the Customs Tariff
- Service Tax
- Primary education cess
- Secondary education cess
- Products specific cess (automobile / tractor / jute / sugar / tea / tobacco / paper / rubber / iron ore / cement)
- Research and Development cess
- National Contingent Calamity Duty
- Clean Energy Cess
- Swachh Bharath Cess
- Krishi Kalyan Cess
- Infrastructure Cess on motor vehicles

The State Governments levied/collected the following taxes:

- VAT
- Purchase tax

- CST by originating State
- Entry tax
- Octroi by Municipality
- Entertainment tax
- Luxury tax
- Stamp duty and Registration fee

GST, as a reform, was suggested, debated, discarded, introduced, reintroduced, and finally saw the light of day. GST was needed to mitigate the following issues

- Multiple rates
- Different rates in different States
- Different definitions
- Multiple forms
- Cascading effect
- Deviations
- Excise vs. VAT
- VAT vs. Service Tax



- VAT vs. CST
- Excise vs. Service Tax
- Overlapping of Taxes

The political and media narrative in some parts of the country, as well as the warriors on social media, is that the old rates were lower, and GST rates from inception were high, and even after 2.0, some rates are still high. This is because of the fact that only VAT was seen in the invoice. The price had already factored in the other indirect taxes, and hence none of them were visible as line items, making people believe that VAT was the only indirect tax. In fact, the indirect tax incidence was around 30% to 36% and when GST was introduced, most of the products were

GST, as a reform, was suggested, debated, discarded, introduced, reintroduced, and finally saw the light of day.

in the range of 5/12/18% while some goods were at 28%, still lower than the effective incidence of the pre-GST regime.

Why GST 2.0?

The tax reform was well-intended, and all the stakeholders, namely the industry, the Government, and the consumer, gained. However, frequent changes in law, tinkering of the rules, multiple notifications, technology-related challenges, adverse effects of AAR Rulings, and classification disputes made this law extremely complicated in a short span of time, and the chorus rose for reforms.

On 22nd September 2025, a slew of notifications came into force, and what is interesting is that GST 2.0 became a marketing tool and advertising gimmick by itself. Most retailers announced price cuts and called it a GST saving mela. Newspapers were flooded with advertisements indicating price reductions.

The GST Council got the confidence to implement significant changes by way of rate reduction due to robust GST collections, intention of the Government to drive growth through consumption, and the confidence that, despite rate reductions, the growth would take care of the potential revenue losses.

2 Slabs and More

The USP of GST 2.0 is the elimination of multiple slabs of rate of tax rate and that there are only two slabs. It is true to some extent, and more than 99% items fall under the exempt or 5% or 18% category. But these are not the only slabs. There is a 3% slab for Jewellery and coins; 0.25% slab for diamonds; 28% for pan masala, tobacco, cigarettes with compensation cess; 40% for cars not falling under the 18% category. Interestingly, 12%, as a slab, cannot be seen in notification No. 9/2025 – CTR, which is the new rate of tax notification for goods but through a separate notification, there is a 12% levy on fly ash bricks, fly ash aggregates, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks earthen or roofing tiles.

GST 2.0 has settled many classification disputes. It has solved the parotta parody; arrested the auto components vs. other goods issue; solved the popcorn puzzle, and more.

It is interesting to note that despite GST 2.0's rate reductions, structural simplifications, and facilitation of dispute resolution, petroleum products and alcohol still remain outside the purview of the levy of goods and services tax.

The tax reform was well-intended, and all the stakeholders, namely the industry, the Government, and the consumer, gained.

Highs and Lows of taxing Alcohol

'Alcohol Consumption is injurious to health' is a phrase that rings a bell to every citizen of India, thanks to the movies that made this infamous statutory warning a part of the film. Some States have implemented prohibition and made a case to say that the health of their revenue is pretty robust despite not taxing alcohol. There are other States which derive Own Tax Revenue (OTR) by



levying VAT on alcohol, and this revenue is so significant that there is no interest in the State in pooling this item into GST. However, the social pitfalls on account of the consumption of alcohol keep the debate on prohibition alive, and it is also a matter of politics.

Some States have not been happy with GST, and despite the robust collections, these States come up with data to demonstrate that the revenues in the VAT regime were better.

GST is the perfect example of fiscal federalism, and 8 years since its inception, the recommendations of the GST Council have been completely followed by the Centre and the States.

Article 246 of the Constitution is designed in such a manner that the power of levying tax, which is the measure of raising revenue, is distributed between the Centre and the States. This is achieved through specific subjects identified in the Lists in the Seventh Schedule to the Constitution of India.

The State List of the Seventh Schedule bestows upon the States the autonomy over the manufacture, sale, and taxation of Alcoholic liquor. This power of the States flows from Entry No.8 and Entry No. 51 of the State List of the Seventh Schedule

8. *Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.*

51. *Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India: —*

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

GST 2.0 has settled many classification disputes.

Further, Entry 54 of the State List was amended by the 101st Constitutional amendment, granting the States the power to levy taxes on the sale of alcoholic liquor for human consumption and a few other items, such as petroleum and crude even after GST.

However, GST 3.0 cannot include alcohol for human consumption unless and until the Constitution is amended. This is because of the fact that the 101st Constitution (Amendment) Act has defined the broad contours of GST. Article 366(12A) introduced by the Amendment Act defines 'Goods and Services Tax' *to mean tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption*'. Therefore, the exception is carved out in stone. Removal of this exception would require another Constitutional Amendment Act.

The reasons for the exclusion are obvious. It is well established that the State controls the manufacture, production, transport, and sale of alcoholic liquor, and each of these elements is viewed as a source of revenue. While a few States auction out the retail and wholesale licenses of liquor, some states hold their own monopoly. Karnataka has recently amended a spate of laws in the context of auctioning of liquor licenses for various categories, such as retail sales, bars, and restaurants etc. The State is expected to make up to Rs. 500 crores through the auctioning of approximately 579 licenses[1]. Maharashtra also licenses out the wholesale and retail sale of alcoholic liquor and has recently lifted the ban on the serving and consumption of alcoholic liquor near dam backwaters. However, States like Tamil Nadu have a monopoly over the State's wholesale and retail license of liquor through TASMAC.[2]

While the licensing yields a huge amount of revenue, State taxes such as excise duty, VAT, and other state-specific surcharges also contribute towards the State's treasury.

The Centre and the State Governments cannot find an easy path for any changes in this segment. Apart from the fact that a Constitutional Amendment would be required, taxing alcohol would also mean giving up on prohibition. This is completely political, and one cannot easily visualize a simple tweak or change in law. If

While the licensing yields a huge amount of revenue, State taxes such as excise duty, VAT, and other state-specific surcharges also contribute towards the State's treasury.

alcohol for human consumption has to be taxed under GST, the following would be required:

(i) Constitutional amendment;

(ii) Acceptance of alcohol in society as akin to any other product;

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1 *https://www.newindianexpress.com/cities/bengaluru/2025/Nov/06/karnataka-notifies-excise-rule-changes-for-e-auction-of-unused-liquor-licences*

2 *https://www.thehindu.com/news/national/tamil-nadu/from-prohibition-to-monopoly-tracing-liquor-policy-and-emergence-of-tasmac/article69504573.ece*

(iii) Availability across the country in all segments of consumption and not confined to only bars;

(iv) Prohibition becoming irrelevant. This is also a challenge since Article 47 (Directive Principles of State Policy) provides that the State shall endeavor to bring about the prohibition of consumption, except for medicinal purposes, of intoxicating drinks and drugs which are injurious to health.

Taxing Petroleum Products

It has been more than eight years since the 2017 rollout, and yet, petroleum and GST remain far apart from each other. However, unlike alcohol, the scenario is much simpler. Article 279(5) provides that the GST Council shall recommend the date on which the Goods and Services Tax be levied on petroleum crude, high-speed diesel, motor spirit (commonly known as Petrol), natural gas, and aviation turbine fuel. Therefore, there is no Constitutional bar, and a decision can trigger a change.

GST 3.0 could be implemented, say 3 to 5 years from now, and is likely to see the inclusion of petroleum products within the ambit of GST. The biggest challenge in this is the VAT revenue that is collected by the States and the excise and other surcharges levied by the Centre. Section 9(1) of the CGST Act, 2017, and the SGST Act currently provide for a maximum rate of GST of 40% (CGST + SGST). If petroleum products have to enter GST, this rate would be insufficient in the context of the existing revenues collected by the Centre and State. Therefore, the GST Council would probably decide on increasing the ceiling limit for the rate of tax to enable a special high rate on such products.

One of the main reasons for the need to bring petroleum products into GST is to eliminate the cascading effect of taxes. The exclusion of fuel goes against the very principle of an anti-cascading mechanism, as businesses are required to pay VAT on fuel and cannot claim ITC on the same. In industries such as aviation and logistics, disallowance of credit adversely affects the input cost, and consumers face the burden of rising prices.

There is one more angle to this issue. While excise duty and VAT is being levied on these products and tax credit cannot be claimed in GST, the main cost in transportation of goods by road or rail or sea, or air is fuel. Therefore, when GST is levied on the service charges for transportation, there is an indirect levy of GST on the fuel component. For example, air freight attracts GST at 18%. The ATF component in air freight is about 30% to 45% and the prices



fluctuate based on global cues. The air freight rates are high based on the fuel rate as well as the ED / CVD / BCD / VAT, which do not qualify for ITC. On this, when GST at 18% is levied, the Government is in fact collecting GST on ATF. The same is the story for transportation of goods by road or sea, or rail. While the rate of tax is not as high as 18%, even the general ITC is restricted through notifications, thereby driving the cascading effect of tax. In fact, the right way till petroleum is brought into GST is to give an abatement towards petroleum while taxing freight segments. This becomes critical since it is a settled position of law that what cannot be done directly cannot be done indirectly.

In Australia, 'fuel tax', which is the excise duty payable on fuel manufactured and purchased in Australia, is eligible for fuel tax credits to recover

the amount of tax paid by businesses on fuel. New Zealand charges GST and excise duties on most fuels while allowing businesses to claim credits for tax paid on fuel, subject to certain exceptions. Singapore allows businesses to claim input tax credits on GST charged for fuel used in business activities.

One of the main reasons for the need to bring petroleum products into GST is to eliminate the cascading effect of taxes.

The argument that States may lose out on revenue if petroleum products enter GST may not be completely true since an appropriate rate can ensure revenues. However, it is imperative that petroleum products walk into GST at the earliest since the current regime is already fiscally unequal, as different States charge different rates of VAT. As these rates are continuously being revised, it creates a situation of price volatility. The levy of GST would ensure fiscal stability, and amendments to Section 9(1) by way of an increase in the ceiling rate would address the issue of loss of revenue while bringing uniformity in the rate. ITC would anyway not be available for non-business use.

Input Tax Credit and Ease of Doing Business

Ease of doing business should be implemented and should travel beyond policy documents, mission statements, and sermons. The first and easiest way of achieving this would be to get rid of the obsession in GST administration that each and every input tax credit should be verified based on invoices. Invoice level verification is not done as a rule by other countries and is done only if there are serious violations. Driving the recipient of goods or services to constantly spend all his working hours before the portal; waste countless hours on reconciliation; reply to multiple notices that question every ITC claimed is not ease of doing business. Further, saddling huge taxes and penalties on the recipient for supplier truants without taking action on the supplier is not fair.

A good GST law should not deal with multiple returns, portal challenges, advisories from GSTIN, matching of credit, verification of credit, monthly notices, notices by different authorities on the same issue, multiple audits, mechanical orders, etc.

In this context, GST 3.0 need not wait for three years, and the following changes can be implemented immediately:

(i) Amend Section 16(2) of the CGST Act, 2017 whereby ITC can be claimed based on invoices without the requirement of supplier uploads and payment of tax by the supplier. This methodology of duty credit worked quite well in the MODVAT and Cenvat Credit regimes and the VAT regime.

The argument that States may lose out on revenue if petroleum products enter GST may not be completely true since an appropriate rate can ensure revenues.

(ii) There should not be any time limit for the availment of credit.

(iii) Payment to the supplier is a commercial call between the transacting parties, and the law cannot stipulate a time frame.

(iv) Section 17(5) of the CGST Act, 2017, in its entirety should be deleted.

(v) Lower rate of tax without ITC as a concept must be done away with.

Trust is the key. Countries that have implemented VAT and GST, even without technology, have

followed a much simpler system with fewer complications, fewer technicalities, and still garner revenue.

While it is true that certain parties mind the system and indulged in a fake invoice racket, the same is not confined only to India. The EU also has the same problem, and it is called carousel trading. However, EU VAT has not made ITC complicated for its assessee because of this malaise.

Mines and Minerals

GST is sought to be levied on the royalty paid by the licensee to the State on the ground that royalty constitutes consideration, and the issue stands settled by the 9-member Bench of the Supreme Court[3]. However, the Tax Department, as well as some of the Courts, have not considered one key aspect. The Supreme Court also said that the States have the exclusive power to levy tax on lands which comprise of mines and quarries under Entry 49 of List II. There is a clear difference between exclusive power under Article 246, read with Entry 49, List II, as against simultaneous levy by the State and the Centre under Article 246A. GST must give in since States levy taxes on the entire royalty as well as the contribution to funds.

Stamp Duty and Registration

This would require constitutional amendments. The law itself is quite interesting. The Parliament has the power to make laws and prescribe rates for stamp duty on commercial documents set out in Entry 91 of the Union List. Through Entry 63, the State has the power to make laws and prescribe rates for documents other than those specified in the Union List. Under Entry 44 of the Concurrent List, both the Parliament and the State have the power to legislate on matters related to stamp duty on items therein. A calibrated approach would be required to bring in appropriate amendments.

GST must give in since States levy taxes on the entire royalty as well as the contribution to funds.

When this is effectively done, the real estate sector would be within GST, and immovable property transactions would also be within the ambit of GST.



What Lies Beyond GST?

The fact that the 101st Constitution Amendment brought about a significant tax reform in indirect taxes shows that taxes are evolving, and the future may see new forms and systems of taxation. While there is no solid basis to predict what the future holds, some possibilities are listed below:

(i) Entry 97, Union List, Constitution of India is still available as a residual entry and can be used for new levies;

(ii) States already have the power to tax agricultural income. However, very few States exercised the power and even in such cases, they confined the levy to plantation and other crops. Given the changing nature of society, the States are likely to exercise their power and levy taxes on agriculture. Currently, agricultural produce is outside the ambit of GST, and changes in the policy with reference to taxing agriculture will also reflect itself in changes in GST.

3 *Mineral Area Development Authority v. SAIL (2024) 10 SCC 1.*

Epilogue



We hope
After reading this story
About the Indirect tax history
Unravelling its mystery
It has not made you weary
But incited you to write your own story
Pursuing the profession of indirect tax advisory
For you to be the object of praiseworthy
On this subject of indirect tax advisory
Making you Happy and Merry

- A R Krishnan



Shri M K Sinha : Leading India's DIGITAL TAX REVOLUTION

"A robust GST platform is not just technology— it's trust between the taxpayer and the state."

The Goods and Services Tax (GST) transformed India's indirect tax landscape, but its success rests on a seamless, technology-driven backbone — the GST Network (GSTN). At the helm of this digital revolution is Shri Manish Kumar Sinha, CEO of GSTN since July 2022, whose vision and leadership continue to strengthen the platform for millions of taxpayers.

Building a Resilient Digital Backbone

Under Shri Sinha, GSTN has evolved far beyond a filing portal. Today, it is a resilient, scalable, and secure public infrastructure that automates compliance, connects businesses, banks, and authorities, and handles massive volumes of registrations, returns, and invoice data with near-perfect uptime. This has directly contributed to the government's ease of doing business initiatives.

Championing E-Invoicing Innovation

A hallmark of his tenure has been the push for B2C e-invoicing, with the design architecture now ready for rollout. Once implemented, this will enhance transparency and efficiency across the retail sector — a significant leap forward in India's digital tax journey.

Future-Ready and Taxpayer-Centric

Shri Sinha's leadership blends technical excellence with stakeholder engagement, ensuring GSTN remains user-centric, secure, and future-ready. His tenure reinforces the promise of GST: a single, trusted, and digitally empowered platform for India's taxpayers.



TOP 2025 SUPREME COURT JUDGMENTS ON INDIRECT TAXES

Radhika Agarwal v. Union of India & Others

Citation: 2025 SCC OnLine SC 449

Topic: Constitutional Validity of Arrest & Summons under GST

Summary: The Supreme Court upheld the constitutional validity of Sections 69 and 70 of the CGST Act, which empower GST officers to arrest and summon in serious tax evasion cases. The Bench ruled these powers are ancillary to Parliament's GST levy powers under Article 246A of the Constitution and permissible, subject to CrPC safeguards and due procedural compliance.

Why It Matters: This judgment confirms that GST enforcement mechanisms involving custodial powers are constitutionally sound, but procedural safeguards must be respected — a key consideration in high risk enforcement matters.

State of Karnataka & Anr. v. Taghar Vasudeva Ambrish & Anr.

Citation: 2025 INSC 1380

Topic: GST Exemption on Renting Residential Premises (Hostels/PG)

Summary: The Supreme Court held that renting residential premises used as hostels or PG accommodations for long term stays (3–12 months) qualifies for exemption under Entry 13 of Notification No. 9/2017 (renting residential dwelling for use as residence), as the ultimate use remains residential.

Why It Matters: This clarifies a contentious issue where taxing authorities previously denied exemption on technical grounds; it's particularly relevant for education and residential housing sectors.

Union of India v. Yasho Industries Ltd.

Citation: 2025 (5) TMI 1614 – SC (Order)

Topic: Use of ITC for Mandatory GST Appeal Pre Deposit

Summary: The Supreme Court upheld the Gujarat High Court's decision that taxpayers can use Input Tax Credit (ITC) from the Electronic Credit Ledger (ECL) to make the 10% pre deposit required under Section 107(6)(b) of the CGST Act for filing an appeal.

Why It Matters: This is a major relief for businesses — especially MSMEs and exporters — easing liquidity pressures and aligning GST procedures with the credit-based nature of the law.

Central Board of Indirect Taxes & Customs v. M/s Aberdare Technologies Pvt. Ltd. & Ors.

Citation: 2025 (4) TMI 101 – SC Order

Topic: Right to Rectify Bona Fide Clerical/ Arithmetical Errors in GST Returns

Summary: The Supreme Court dismissed the government's appeal and endorsed the High Court's approach, allowing taxpayers to correct bona fide clerical errors in GST returns (such as GSTR 1/GSTR 3B) without penal consequences, particularly where there is no revenue loss. It emphasized that such corrections are part of the right to do business and that portal/software limitations cannot justify the denial of relief.

Why It Matters: This judgment protects ITC claims from being denied on technical grounds and can reduce litigation arising from innocent return filing mistakes.

SC Stay on GST Show Cause Notices (Online Gaming Cases)

Citation: Stay Orders reported in January–October 2025 (SC)

Topic: GST Notices Against the Online Gaming Sector

Summary: The Supreme Court stayed GST show cause notices worth ~₹1.12 lakh crore issued to online gaming companies, and later stayed a ₹780 crore GST notice to Nirdesa Networks, grouping similar petitions for final hearing.

Why It Matters: While not a full judgment yet, this stay underscores the apex court's caution in complex classification and valuation disputes in the digital economy, highlighting a pending blockbuster decision for practitioners.

State of NCT of Delhi v. Central Electricity Regulatory Commission (CERC) & DERC

Citation: Reported Supreme Court order rejecting government appeal (July 23, 2025)

Topic: GST Exemption for Regulatory Fees

Summary: The Supreme Court upheld the Delhi High Court's ruling that fees/charges collected by electricity regulators (CERC/DERC) in discharge of statutory duties are not taxable under GST, affirming that these are not "business" supplies but statutory/regulatory activities.

Why It Matters: This judgment solidifies that statutory fees for quasi-judicial/regulatory functions are outside GST, providing certainty for other regulatory bodies.



Union of India v. Brij Systems Ltd. & Ors. (Error in Returns/ITC Protection)

Citation: 2025 (3) TMI 1395 – SC Order

Topic: ITC Denial Due to Errors

Summary: The Supreme Court (in orders disposing of Revenue appeals) held that ITC should not be denied simply due to clerical/technical errors by the seller or matching issues if the taxpayer has genuinely paid tax and there is no revenue loss. It directed the CBIC to re-examine timelines and rectify bonafide mistakes.

Why It Matters: Reinforces a pro taxpayer approach to GST compliance and reduces disputes over ITC mismatches.

SC Order on GST Enforcement: Procedural Safeguards in Arrest/ Prosecution

Citation: Radhika Agarwal v. Union of India (2025 SCC OnLine SC 449)

Topic: Safeguards in GST Enforcement Actions

Summary: Alongside upholding arrest powers, the Court clarified that coercive recovery before adjudication/penal actions must comply with statutory safeguards (e.g., no arrests for simple demand recoveries), and procedural steps like issuing a show cause and opportunity must precede enforcement.

Why It Matters: Important for structuring defence strategies in high value GST investigations and ensuring rights are protected.



Fiscal Remedy Matters: Anticipatory/Criminal Protections Under GST

Citation: 2025 Radhika Agarwal v. Union of India

Topic: Criminal Law Protections Apply in GST Investigations

Summary: The Supreme Court emphasized that CrPC protective measures (e.g., bail rights) apply to people subject to GST arrests/prosecutions, reinforcing that enforcement provisions cannot override basic rights to life and liberty.

Why It Matters: A nuanced addition to the arrest decision — crucial for tax litigators dealing with criminal GST matters.

Right to Correct GST Errors — Fundamental Right Context

Citation: 2025 SC Orders on Aberdare Technologies / Clerical Errors

Topic: Business Right to Rectify Errors and Preserve ITC

Summary: The Supreme Court has ruled that the right to correct clerical/arithmetical errors in GST filings flows from the fundamental "right to do business," and denial of ITC for such errors is not justified where there is no loss of revenue.

Why It Matters: Establishes a broader jurisprudential principle — encouraging substance over form in GST compliance — and may guide future portal rule changes.

Supreme Court



Keshav B Bhujle
Advocate

Principal CIT v. Paradeep Phosphates Ltd.: (2025) 480 ITR 659 (SC): 2025 SCC OnLine SC 2388: Dated 02/05/2025:

Appeal to High Court — Appeal dismissed on the ground that counsel of Department was unable to answer when query was put to State what happened during the period 2018 to 2024 and that no endeavour made by Department to get matter listed — Supreme Court held — No fault of appellant if appeal is not listed for hearing — Appeal cannot be dismissed on ground that appellant made no efforts to get it listed – Failure to answer question put by Court not ground to dismiss appeal – Appeal was restored to High Court: S. 260A of ITA, 1961:

An appeal filed by the Department was dismissed by the Orissa High Court on the Ground that when a query was made to the learned counsel for the Department to state what happened during the period from 2018 to 2024, he was unable to answer and that no endeavour was made by the department to pursue the matter by getting it listed.

The Supreme Court allowed the appeal of the Department and held as under:

"i) Leave granted. Heard the learned counsel appearing for the parties.

ii) A statutory appeal preferred by the appellant has been dismissed by a Division Bench of the High Court [*Pr. CIT v. Paradeep Phosphates Ltd.*, (2025) 480 ITR 657 (Orissa).] on strange grounds. The first ground is that when a query was made to the learned counsel for the appellant to state what happened during the period from 2018 to 2024, he was unable to answer that question. The second ground is that no endeavour was made by the appellant to pursue the matter by getting it listed.

iii) If the appeal was not listed for hearing, it is not the fault of the appellant, and surely the appeal cannot be dismissed on the ground that the appellant made no efforts to get the appeal listed. Failure to answer the question put by the Bench is no ground to dismiss the appeal.

iv) Accordingly, we set aside the impugned order dated April 12, 2024, in I.T.A. No. 144 of 2018 [*Pr. CIT v. Paradeep Phosphates Ltd.*, (2025) 480 ITR 657 (Orissa), and restore the appeal to the file of the High Court of Orissa at Cuttack. The restored appeal shall be listed before the roster Bench on June 26, 2025, in the morning, when the parties to the appeal shall be under an obligation to appear before the roster Bench. No further notice shall be served by the High Court to the parties.

v) A copy of this order shall be forwarded to the Registrar (Judicial) of the High Court of Orissa at Cuttack, who shall ensure that the restored appeal is listed before the roster Bench as directed above."

Interim Board for Settlement v. Krushang Prakashbhai Soni: (2025) 480 ITR 695 (SC): 2025 SCC OnLine SC 2387: Dated 24/03/2025:

Settlement of cases — Settlement Commission inoperative w.e.f. 01/02/2021 — Establishment of Interim Board — Cases pending — Notification restricting filing of file application before Interim Board for settlement by assessee eligible on 31/01/2021 — Settlement Commission legally existed till 31/03/2021 — Last date mentioned in notification should be read as 31/03/2021 — Assessee's application was filed prior to 31/03/2021 — Interim Board held that the application is invalid — High Court held that the order of the Interim Board is not sustainable and remanded the matter for consideration on merits — Supreme Court dismissed the special leave application filed by the Interim Board leaving the question of law open: Ss. 245A(b), 245C and 245D(4) of ITA, 1961:

In a group of petitions before the Gujarat High Court the Interim Board for Settlement had held that the applications filed by the petitioners for settlement for the said assessment years, the petitioners were not eligible to file application for settlement as the petitioners have not filed application for settlement on or before January 31, 2021 in view of the amendment in section 245C of the Act by the Finance Act, 2021 (2021) 432 ITR (Stat) 52) with effect from February 1, 2021.

It is the case of the petitioners that the petitioners are liable to file application for settlement on or before March 31, 2021 as the Finance Act, 2021 received the assent of the President on April 1, 2021 and therefore till March 31, 2021, the Settlement Commission continued to operate and it cannot be said that the Finance Act, 2021 would come into effect with effect from February 1, 2021. The Gujarat High Court allowed the petitions and held as under:

"i) Therefore adopting the reasons given in the above decision of the hon'ble Madras High Court and more particularly when the petitioners have filed their applications before March 31, 2021, the date on which amendment Finance Act, 2021 did not come into effect and therefore the petitioners had vested right of preferring the application in the absence of any statute prohibiting the same application. It is also pertinent to note that the Central Board of Direct Taxes has extended the last date from February 1, 2021 to September 30, 2021 for filing applications for settlement eligible on January 31, 2021 and the Central Board of Direct Taxes could not have prescribed the eligible date of filing of application up to February 1, 2021 for the assessee relying upon the provisions of section 245C(5) of the Act which was not in existence up to March 31, 2021 and therefore the application for settlement made by the petitioners are valid applications filed prior to March 31, 2021 in the absence of the provisions of section 245C(5) of the Act. Therefore an application already filed

after February 1, 2021 but before March 31, 2021 cannot be declared invalid and the provisions of section 245C(5) has rightly been read down that no application shall be made after April 1, 2021 once the provisions of section 245C(5) received the assent of the hon'ble President of India on April 1, 2021, however before the assent being accorded to the Finance Act, 2021 the applications made by the petitioners cannot be held to be invalid by virtue of sub-section (5) of section 245C of the Act.

ii) In view of the foregoing reasons, the petitions succeed and are accordingly allowed. The applications filed by the petitioners in respect of the cases arising between February 1, 2021 and March 31, 2021 shall be deemed to be the pending applications and shall be applications for the purpose of consideration by the Interim Board considering the last date of eligibility mentioned in para 4(i) of the circular dated September 28, 2021 (2021) 438 ITR (Stat) 5) shall be read as March 31, 2021 by reading down the last date February 1, 2021 as March 31, 2021 in section 245C(5) of the Act as amended by the Finance Act, 2021. The impugned orders of the Interim Board are therefore set aside and the applications filed by the petitioners shall be deemed to be the pending applications for the consideration by the Interim Board, if otherwise, in order and eligible and shall be dealt with in accordance with law on the merits and in accordance with the scheme that may be framed by the Central Government as in respect of the other cases which were pending as on January 31, 2021.

iii) Consequential actions to the impugned orders passed by the Interim Board, if any taken by the respondent-Assessing Officer, shall also stand quashed and set aside, and the matter is remanded back to the Interim Board for settlement for deciding the applications filed by the petitioners on the merits. Rule is made absolute to the aforesaid extent."

(See *Vetrivel Infrastructure v. CIT*, (2024) 468 ITR 665 (Guj): 2024 SCC OnLine Guj 4041)

The Supreme Court dismissed the special leave application filed by the Department and held as under:

"i) Delay condoned. We heard Ms. Nisha Bagchi, the learned senior counsel appearing for the petitioners.

ii) We are not inclined to interfere in the matter. However, the question of law, if any, shall remain open.

iii) The special leave petition is, accordingly, dismissed."



High Court



Jitendra Singh
Advocate



Radha Halbe
Advocate



Harsh Shah
Advocate

Pr. CIT v. Jealous Commercial (P.) Ltd. [2025] 180 taxmann.com 199 (Calcutta)

Cash credit - Section 68 of the Income Tax Act 1961 - share application money - assessee furnished all relevant documentary evidence to prove the genuineness of share application money received - addition made by AO merely because directors had not appeared during the course of assessment proceedings - unjustified.

Facts:

The assessee, during the assessment year 2012–13, raised approximately ₹9 crore by issuing 90,000 shares of ₹10 face value at a premium of ₹990 per share to seven investors. The assessee company recorded the allotment in its books and filed Form No. 2 with the Ministry of Corporate Affairs (MCA), evidencing compliance with statutory requirements. The assessee filed its return of income claiming the receipt of the share application money. The return was taken up for scrutiny assessment. During scrutiny, the assessee furnished:

- Income-tax return acknowledgements of the investors.
- Audited balance sheets and bank statements of the investors.
- Confirmations and source-of-fund details from each subscriber.
- Its own audited financial statements and bank statements.

The AO issued summons under Section 131 to the company's directors, requiring personal appearance. In response to the summons, the directors submitted all requisitioned documents, however, did not appear in person. The AO while finalizing the assessment under section 143(3) of the Act doubted the identity and creditworthiness of the shareholders and the genuineness of the transactions and added the entire ₹9 crore as unexplained cash credits under Section 68 of the Act. On appeal, the first appellate authority deleted the addition, holding that the assessee had discharged its onus. On further appeal by the department to the Appellate Tribunal, the Tribunal affirmed the order passed by Ld. CIT(A).

The department being aggrieved by the order passed by the Tribunal, challenged the same, before the Hon'ble Calcutta High Court under section 260A of the Act on the ground that non-appearance of directors amounted to failure to explain the nature and source of the credits.

Ruling of the High Court:

Hon'ble Calcutta High Court was pleased to dismiss the appeal filed by the department by observing that in the present case, the assessee furnished comprehensive documentation, including statutory filings with MCA, audited financials, and bank statements of investors. The AO's conclusion that no explanation was offered merely because the directors did not appear was unsustainable. Personal appearance is not a statutory requirement when documentary evidence is available. The appellate authorities' concurrent findings that the investors were identified and the source of funds explained were based on evidence and not perverse.

Amns Gandhidham Ltd. v. Assistant Commissioner of Income-tax [2025] 180 taxmann.com 43 (Bom.)

Carry forward and set off losses – Section 79 of the Income Tax Act 1961 – Revenue cannot deny carry forward of losses after approval of the resolution plan under IBC.

Facts:

The assessee i.e., Amns Gandhidham Ltd. entered Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code (IBC), 2016

(IBC). A resolution plan submitted by AM Mining India Pvt. Ltd. was approved by the National Company Law Tribunal (NCLT) under Section 31 of IBC. The NCLT categorically ruled that:

- All claims not included in the resolution plan shall stand extinguished.
- No person shall initiate or continue proceedings for such claims post-approval.

This order was upheld by the National Company Law Appellate Tribunal (NCLAT) and later by the Supreme Court, giving the resolution plan finality.

During CIRP:

- The Interim Resolution Professional (IRP) intimated the Principal Commissioner of Income-tax under Section 79(2)(c) about the ongoing process.
- Despite this, the Income-tax Department did not file any claims for the relevant assessment years nor raise objections during plan approval.

After implementation of the resolution plan (effective 6 May 2023), the AO issued notices under Sections 143(2) and 142(1) for AYs 2022–23 and 2023–24, seeking to deny carry forward of losses. The assessee challenged these proceedings before the Hon'ble Bombay High Court by way of Writ Petition, on the ground that it violated the "clean slate" principle and undermined the resolution process.

Before, the Hon'ble High Court, the Assessee contended that:

- Once a resolution plan is approved under Section 31, all prior claims, including tax dues, stand extinguished.
- The Revenue had notice under Section 79 but failed to act during CIRP; it cannot reopen issues post-approval.
- Denial of carry forward of losses would defeat the purpose of IBC, as resolution applicant's factor in tax attributes like losses when bidding.
- Relied on Ghanashyam Mishra & Sons and subsequent rulings affirming that statutory dues not part of the plan cannot be enforced later.

On the other hand, the revenue contended that:

- The Department argued that allowability of losses could still be examined during assessment proceedings.
- Claimed that extinguishment of claims under IBC does not automatically validate carry forward of losses under the Income-tax Act.

The assessee being aggrieved by the order of the Principal Commissioner of Income Tax, challenged the same before the Hon'ble Bombay High Court by way of Writ Petition.

Ruling of the High Court:

Hon'ble High Court was pleased to allow the writ petition filed by the assessee by observing that section 31 of IBC provides that once a resolution plan is approved, it binds all stakeholders, including government authorities. Claims not forming part of the plan stand extinguished. The Supreme Court in Ghanashyam Mishra & Sons [2021] 126 taxmann.com 132 (SC) clarified that statutory dues owed to the government, if not included in the resolution plan, cannot be enforced post-approval. In this case, the Revenue had notice under Section 79(2)(c) during CIRP but did not file claims or object at the plan approval stage. The principle of "clean slate" ensures that the resolution applicant takes over the corporate debtor free from past liabilities. Tax attributes like carry forward of losses influence the resolution applicant's bid and viability of the plan. Thus, allowing the Revenue to reopen assessments would undermine the finality of the resolution plan and the objectives of IBC.

Mukesh Gupta v. Dy. Commissioner of Income-tax [2025] 180 taxmann.com 188 (Karnataka High Court)

Business Income - Section 28(i) of the Income Tax Act 1961 – remuneration received by the director from the company cannot be treated as business income in the absence of proof of rendering of professional / technical services. [Section 17 of the I.T. Act]

Facts:

The assessee before the Hon'ble Karnataka High Court was an individual and director in Smile Electronics Ltd. The assessee had filed his return declaring receipts from Smile Electronics Ltd. amounting to ₹66 lakh as professional/technical service fees taxable under "Profits and Gains of Business or Profession". The assessee had also claimed deduction of ₹45.27 lakh as interest on borrowed funds, which he advanced to the company. During the course of assessment proceedings, the AO issued notices and provided opportunities to furnish evidence of professional services rendered. Despite this, the assessee failed to produce any documentation - such as agreements, invoices, or correspondence - showing the nature of services. The AO, thereafter, framed the assessment under section 143(3) by treating the amounts received from Smile Electronics Ltd. as salary income by observing that:

- The receipt was in the nature of salary, not professional income.
- Interest deduction was disallowed for lack of nexus with any business activity.

On appeal, the Commissioner (Appeals) upheld the AO's findings. On further appeal by the assessee, the Tribunal also affirmed the view of the AO, observing that mere deduction of TDS under Section 194J or service tax treatment does not determine the nature of income.

The assessee being aggrieved by the order of the Tribunal filed an appeal before the Hon'ble Madras High Court under section 260A of the Act. Before the Hon'ble High Court, the Assessee contended that:

- The payment was professional fees, evidenced by TDS under Section 194J

and service tax treatment by the Excise Department.

- The AO erred in disregarding these indicators and in failing to prove an employer-employee relationship.
- Interest on borrowed funds should be allowed on grounds of commercial expediency, as the funds were advanced to the company to support its operations.
- Alternatively, interest should be set off against income from other sources.

On the other hand, the Revenue contended that:

- The assessee failed to produce any evidence of professional or technical services rendered.
- Deduction of TDS or service tax treatment is not conclusive for classification under the Income-tax Act.
- Interest deduction cannot be allowed without proof of nexus with the assessee's business; advancing funds to the company does not constitute commercial expediency for the assessee's own business.

Ruling of the High Court:

Hon'ble Karnataka High Court has upheld the view of the lower authorities by observing that a director may act in dual capacity - as an agent or employee -but whether remuneration is salary or professional fees depends on contractual terms and nature of services. The burden lies on the assessee to prove that services were rendered in a professional capacity. In this case, despite repeated opportunities, no evidence was furnished. Deduction of TDS under Section 194J or service tax treatment does not override the requirement of proof under the Income-tax Act. With respect to deduction of interest expenditure, the Court noted that Section 37(1) permits deduction only for expenditure incurred wholly and exclusively for business. The assessee failed to establish any business nexus between borrowed funds and his own professional activity. [AYs 2013–14, 2014–15, and 2015–16]

H. K. Jewels (P) Ltd v. Assistant Director of Income Tax Investigation [2025] 180 taxmann.com 664 (Bombay)

Search and seizure - Section 132 of the Income Tax Act 1961 - seizure of gold jewellery representing stock in trade during air-transit – panchnama was drawn long after seizure of the jewellery – seizure of gold jewellery is invalid.

Facts:

The assessee, a private limited company, is engaged in the trading, manufacturing, import, and export of gold, silver, platinum, and other precious metals, and conducts business both within and outside Maharashtra. Although it has no branch, office, or shop in Bhubaneshwar, Odisha, it regularly transacts with customers in that region by sending gold jewellery to Bhubaneshwar for display and sale. In the first week of May 2024, the assessee dispatched a consignment of gold jewellery to Bhubaneshwar. Upon arrival, the assessee's employee collected the jewellery from the courier service and began exhibiting it to prospective customers. A portion of the jewellery was sold and delivered to customers in Bhubaneshwar. The remaining stock was to be returned to Mumbai and was handed over to a courier company for air transit. On 12.05.2024, officials of the Income Tax Department intercepted the remaining jewellery at the Bhubaneshwar Airport and took it into custody. The Deputy Director of Income Tax (Investigation), Unit 1(2), Bhubaneshwar, subsequently recorded the statement of the assessee's employee under Section 131(1A), seeking information regarding the assessee's business operations and the jewellery taken into custody. Statements under Section 131(1A) of another employee, the employee who had exhibited the jewellery, and the director of one of the assessee's customers

were also recorded. On 01.06.2024, when the employees of the assessee were summoned to the Income Tax Department for recording his statement, a panchanama was prepared stating that gold jewellery weighing 7,748.74 grams had been seized - even though the jewellery had already been under the Department's custody since 12.05.2024.

The assessee filed a writ petition before the Hon'ble Bombay High Court challenging the Income Tax Department's continued retention of its stock-in-trade. Hon'ble High Court vide its order dated 24.02.2025, directed the assessee to raise objections regarding release of the seized stock-in-trade before the competent authority. Pursuant to the order of the Hon'ble High Court, the assessee submitted an application dated 28.02.2025 seeking release of the seized gold. However, the Deputy Director rejected the application by order dated 14.03.2025, holding that the seized jewellery constituted unaccounted assets of the assessee and was not liable to be released.

The assessee being aggrieved by the order of the competent authority challenged the same before the Hon'ble Bombay High Court by way of Writ Petition under Article 226 of the Constitution of India.

Ruling of the High Court:

Hon'ble Bombay High Court was pleased to allow the Writ Petition filed by the assessee by observing that the affidavit filed by the authorities contained statements inconsistent with the record, which clearly showed that the gold jewellery had been in the Department's custody since 12.05.2024 and that its valuation had been carried out on 17.05.2024. The explanation offered in the affidavit dated 26.09.2025 was therefore not only unacceptable but directly contrary to the material on record. Based on the evidence produced, the Hon'ble Court held that the jewellery constituted the petitioner's stock-in-trade, and once this was established, the actions of the authorities in seizing the gold jewellery were contrary to law.

Zydus Healthcare Ltd v. Asst. CIT [2025] 180 taxmann.com 207 (Sikkim)

Appealable orders - section 148A of the Income Tax Act, 1961 - order passed under section 148A(d) can be challenged before Ld. CIT(A) under section 246A - power of High Court to issue prerogative writs under Article 226 of Constitution of India is plenary and discretionary in nature - High Court could entertain writ petition against order under section 148A(d) notwithstanding availability of alternative remedy.

Facts:

The AO, upon receiving information suggesting escapement of income under Section 147, issued a notice under Section 148A(b) on following issues:

(a) alleged incorrect levy of income under Section 115JC linked to donations claimed under Section 80GC;

(b) alleged incorrect computation of book profit and escapement of income relating to an Excise Duty refund of ₹22.99 crores;

(c) the assessee's treatment of the same refund as a capital receipt.

The assessee duly responded to the said notice. However, the AO not satisfied with the reply of the assessee passed an order under Section 148A(d) and held that present case is fit for issuing the notice under section 148 of the Act and had also issued the said notice under section 148 of the Act.

The assessee challenged the order passed under section 148A(d) and also the notice issued under section 148 of the Act before the Hon'ble Sikkim High Court under Article 226 of the Constitution of India.

Ruling of the High Court:

Hon'ble Sikkim High Court was pleased to allow the writ petition and quashed the order passed under section 148A(d) as well as notice issued under section 148 of the Act by observing that the argument of the assessee that the order passed under section 148A(d) is not appealable is unpersuasive as a reading of section 246A(1)(b) makes such room. However, it is now a settled position of law that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary and discretionary in nature. Thus, in light of the settled position of law and the questions raised before this Court by the assessee, it is viewed that nothing prevents this Court from exercising its discretion and plenary powers provided under Article 226 of the Constitution of India to consider the matter at hand. The Court, thus, overruled the preliminary objection on maintainability and disposed of the writ petition to that extent.



TRIBUNAL



CA Nikhil Mutha



CA Viraj Mehta



CA Kinjal Bhuta
Advocate

Section 2(15)– Determining Charitable Status of a Non-Affiliated Institution Imparting Specialised Technical Education Courses

GIA India v. ITO (Exemptions) – II(1), Mumbai [I.T.A. No. 5422 to 5429/Mum/2025, 11/11/2025] [AYs 2010-11 to 2017-18]

FACTS OF THE CASE:

The Assessee, GIA India, is a Section 25 (now Section 8) Non-profit company registered under Section 12A and engaged in imparting education in gemmology, jewellery design, coloured stone identification, and related jewellery arts. The Learned Assessing Officer held that the activities of the Assessee are for the advancement of general public utility and are hit by the first proviso to Section 2(15) of the Act, as the assessee has undertaken activities in the nature of business. Accordingly, the Ld AO denied the exemption under Section 11 on the grounds that the Assessee was neither affiliated to a university nor authorised to award recognised degrees, that the courses were of short duration, and that the activities constituted vocational or commercial training related to the jewellery industry. The Learned CIT(A) affirmed this view, holding the Assessee's activities to be commercial in nature. The assessee appealed to the Hon'ble Mumbai ITAT.

HELD:

The Hon'ble ITAT held that the Assessee satisfies all essential elements of "education" as interpreted by the Hon'ble Supreme Court in *Loka Shikshana Trust* (1975) (101 ITR 234), including structured curriculum, systematic classroom instruction, qualified faculty, evaluation, and certification. The Hon'ble ITAT further held that affiliation to a university or statutory authority is not a pre-requisite for an institution to be regarded as imparting education, relying on the decisions in the case of *Delhi Music Society v. DGIT* [2012] (17 taxmann.com 49) (Gujarat HC), *Samudra Institute of Maritime Studies Trust* [2014] (49 taxmann.com 510) (Bombay HC) and *National Institute of Bank Management* [2018] 92 taxmann.com 25 (Mumbai-Tribunal). The Hon'ble ITAT also held that short-term or specialised courses do not cease to be educational merely because of their duration, as recognised by the Hon'ble Gujarat High Court in *Gujarat State Co-*

operative Union v. CIT [1992] 195 ITR 279. The Hon'ble ITAT also distinguished the decision of the Hon'ble SC in the case of *Victoria Technical Institution* [1991] 188 ITR 57 (SC). Thus, the Hon'ble ITAT concluded that the activities carried out by the Assessee in providing training in respect of gemmology and jewellery arts do not detract from the educational character of the activity. Accordingly, the Assessee's entitlement to exemption under section 11 of the Act was upheld.

Section 56(2)(x) – New Flat received in lieu of surrender of tenancy rights under the Permanent Alternative Accommodation Agreement ('PAAA') – Not taxable

Haresh Damji Shah v. ITO [ITA No. 4445/Mum/2025 dt. 13.10.2025] [AY 2018-19]

Facts of the case

The assessee was a joint tenant along with his wife in a residential premises in Dadar, Mumbai. The property underwent redevelopment, and under a Permanent Alternate Accommodation Agreement (PAAA), the assessee surrendered his tenancy rights in exchange for a new residential flat, car parking, hardship compensation, transit rent, shifting charges, brokerage, and stamp-duty payments made by the developer. The Assessing Officer invoked section 56(2)(x) and made an addition by treating the benefits received as "income from other sources." The CIT(A) upheld the addition. Being aggrieved, an appeal was filed before the Hon'ble ITAT.

Held

The Hon'ble ITAT held that the assessee is allotted alternative accommodation in a redevelopment project, being flat No. 401 in the property. From the contents of the redevelopment agreement, it is clearly discernible that the assessee and his wife were tenants in the property and both were allotted alternative/ new flats under a redevelopment project in exchange/lieu of surrender of tenancy. It held that tenancy rights were surrendered in favour of the developer and against such surrender developer allotted a new flat for nil consideration, as tenancy right was a capital assets which was liable to be taxed under section 45, and there was an investment by way residential flat allotted to equivalent stamp duty value against surrender of tenancy, applicability of section 56 of ruled out. Tenancy right was surrendered in favour of the developer, and then was invested by way of permanent alternative accommodation of a residential flat, equivalent to stamp duty value capital gain so computed would be eligible for deduction under section 54F. On aforesaid basis, the Hon'ble ITAT deleted the addition.

Section 68 – Long Term Exemption Denied – Sale of Shares Treated as Penny Stock – All details submitted – No involvement of the assessee found - Jurisdictional High Court relied upon - Kolkata High Court in case of Swati Bajaj to be not considered – Addition Deleted [Sec. 10(38)]

Mrs. Sanjana Anil Agarwal v. ITO [ITA No. 4194/Mum/2025] [AY 2014-15]

Facts of the case

During the assessment, the assessing officer noted that the main reason for the selection of scrutiny of case was suspicion of a capital gain transaction on the sale of share scrips of KDJ Holiday Scapes and Resorts Ltd. The assessing officer further noted that he has information

about penny stock company operators and exit providers who are involved in providing bogus entities. Sometimes, shares are purchased for the beneficiaries of losses and sometimes for the purpose of benefit of long-term capital gain. Such transactions are carried out through the stock exchange. The investigation was carried out about the role of brokers, and some of the persons during the investigation admitted to the overall affairs of KDJ Holiday Scapes and Resorts Ltd (KDL Holidays). The assessing officer concluded that the generation of long-term capital gain through the process of entry provider through different entities is nothing but unexplained cash credit. The assessing officer treated the long-term capital gain of Rs. 4.53 Crore as unexplained and added it under section 68 of the Act. CIT(A) upheld the addition. Being aggrieved, an appeal is filed before the Hon'ble ITAT.

Held

The Hon'ble ITAT held that there is no allegation that the assessee is directly or indirectly involved in any irregularities or activities relating to the manipulation of the alleged share. The shares were sold on a public platform, on the Bombay Stock Exchange, through a registered broker. The shares were kept in a Demat account. The bonus shares and sales were made through a Demat account. There is no allegation of price rigging against the assessee or his sharebroker. The Hon'ble Jurisdictional High Court in the case of *PCIT v. Indravadan Jain*, HUF in Income Tax Appeal No. 454 of 2018 dated 12.07.2023 also held that when the assessing officer nowhere alleged that transactions made by the assessee with a particular broker or share broker was bogus, merely because investigation was done by SEBI against the broker or its activities, the assessee cannot be said to have entered into ingenuine transaction. The assessee made sales of shares through BSE and paid security transaction tax, and there is no allegation against the share broker through whom the assessee has made sales that they were indulging in any price manipulation. The Ld. Sr DR for the revenue, while making his submissions, strongly relied on the decisions of the Kolkata High Court in Swati Bajaj (supra), which is a non-jurisdictional High Court, though there are contrary decisions of the Jurisdictional High Court. The Hon'ble Apex Court in *Union of India Kamalakshi Finance Corporation Ltd* (1991) (55) ELT 443-SC held that the decision of the jurisdictional High Court would have higher precedence value on the Tribunal than the decision of the non-jurisdictional High Court. Considering the same, additions made were deleted, and the appeal of the assessee was allowed.

Section 68 – Cash Credits – addition on account of cash deposits – transaction explained – not in the format required – addition sustained to 10% of the cash deposits - section 115BBE does not apply to transactions before 01.04.2017

M/s. Gold Spice Impex v. ITO Ward 47(2), Delhi (ITA No. 2244/Del/2024) [Assessment Year 2017 - 2018]

Facts:

M/s Gold Spice Impex filed its return declaring nominal income, but the case was scrutinized because of large cash deposits made on 11.11.2016 during demonetization. The AO repeatedly sought specific details of cash sales and cash deposits for earlier years, and also issued a summons to partners, but the assessee did not furnish the information in the required format and did not comply with the summons. On this basis, the AO concluded that the cash deposits represented unexplained credits and added the entire amount of ₹1,15,00,000 under section 68, taxing it under section 115BBE. The CIT(A) upheld the addition, holding that the

assessee failed to explain the source of cash deposits. Before the Tribunal, however, the assessee produced audited books, inventories, VAT and FSSAI reconciliations, quantitative statements, and bank statements, all showing that the sales were recorded, accepted by other authorities, and that the deposited cash was subsequently used for regular business payments like imports and supplier dues.

Held:

The Tribunal held that since the books were maintained properly, sales were recorded and reconciled with statutory authorities, and the bank statement showed business use of the deposited cash, the cash deposits could not be treated as entirely unexplained. While acknowledging that the assessee had been non-compliant in not furnishing information in the prescribed format or responding to summons, the Tribunal found that this did not justify the full addition. In the interest of fairness, it sustained only 10% of the cash deposit as an addition under section 68 and deleted the rest. As regards to the application of special rate tax u/s. 115BBE, the Tribunal relied upon the decision of SMILE Microfinance Ltd (W.P. (MD) No. 2078 of 2020 & 1742 of 2020) and held that section 115BBE did not apply to transactions before 01.04.2017, directing assessment under normal provisions. The appeal was accordingly partly allowed.

Section 132- Uncorroborated WhatsApp Chats have no evidentiary value; INR 3.16 Crore Addition Deleted

DCIT v. Niru Dhiren Shah [ITA No. 4294/MUM/2025 dated 27/10/2025] [AY 2022-23]

Facts of the Case

The assessee declared an income of INR 30,50,500. A search under section 132 of the Act was followed by an assessment under section 143(3), where the learned Assessing Officer (AO) assessed income at INR 3,47,15,985 by making an addition of INR 3,16,65,485 under section 69A of the Act as unaccounted cash received over the disclosed sale value of a shop. The Ld. AO relied on a WhatsApp chat seized from the residence of Shri Rounak Kumar (son of the buyer) with Shri Prashant Somnath (Accountant), containing a screenshot of an Excel sheet with indicative rates, and adopted an adjacent-area rate of INR 4,40,680 per sq. mtr. from the Registration Department's website to compute a market value of INR 6,55,24,709.

The assessee argued that the stamp duty value (SDV) was only INR 2,56,17,339 (less than the sale consideration of INR 3,38,59,224) and that the WhatsApp chat had no evidentiary value because it mentioned neither her name nor her property. The Ld. Commissioner of Income Tax (Appeals) ('CIT(A)') found no material in either search showing consideration at INR 6.55 crore or any cash payment. The Ld CIT(A) also observed that in the statement recorded under section 132(4) of both parties, there is no reflection of any adverse inference and held that the chat was uncorroborated. Relying on the decision in the case of *ACIT v. Designers Point (India) Pvt. Ltd* (ITA No 2517/Del/2022), the Ld. CIT(A) deleted the addition.

The Revenue carried the matter before the Hon'ble Mumbai Tribunal and urged that the Ld CIT(A) has adopted a narrow view on the matter, ignoring the holistic framework, search evidence, digital records, market corroboration, and test of human probabilities. The Ld DR relied on various decisions in this context.

Held

The Hon'ble Mumbai Tribunal held that the impugned screenshot had no authenticity, as it did not bear any signature of a government authority and appeared to be a rough calculation. The Ld. AO had not brought any comparable instances from the locality to justify

the adopted rate, which was, in fact, contrary to the government-notified stamp duty value. The AO brushed aside the official rate without identifying any infirmity and conducted no enquiry with the Registration or Stamp Duty authorities. The Hon'ble Tribunal observed that mere screenshots or forwarded WhatsApp chats have no evidentiary value, being susceptible to tampering or fabrication. Unless the source device is produced or a certificate under Section 65B of the Indian Evidence Act, 1872 is furnished, such material cannot be relied upon. The assessment order was silent on compliance with Section 65B. Accordingly, the Hon'ble Tribunal upheld the order of the Ld. CIT(A) is deleting the addition of 3.16 crores.

Section 143(2) - CBDT Circular No. F. No. 225/157/2017/ITA-II dated 23.06.2017: Notices not issued in the required format - Invalid

M/s. Nihal Projects v. ITO [ITA Nos. 929/RJT/2024 dated 27/10/2025] [AY 2017-18]

Facts of the Case

The Assessee, a partnership firm engaged in excavation, civil contract work, and acting as a sub-contractor, filed its return of income on 31.10.2017, by declaring the total income INR 3,28,650. The books were regularly maintained and audited under Section 44AB of the Act. The case was selected for scrutiny, and the Assessing Officer issued two notices under Section 143(2) dated 17.08.2018 and 23.08.2018. During assessment, the AO made several additions, including disallowance of service tax liability u/s 43B, additions on account of differences in Form 26AS, unexplained cash deposits u/s 68, employee contribution u/s 36(1)(va), interest on delayed TDS, culminating in an order u/s 143(3) dated 24.12.2019. The assessee appealed to the CIT(A), who confirmed all additions. The Assessee filed a further appeal to the ITAT and raised an additional legal ground that the Notices issued under section 143(2) were invalid as they did not comply with the mandatory formats prescribed in the CBDT Circular No. F.No.225/157/2017/ITA-II dated 23.06.2017.

Held

The Hon'ble ITAT observed that the notices issued to the assessee under section 143(2) on 17.08.2018 and 23.08.2018 did not follow the mandatory formats prescribed in CBDT Circular F.No.225/157/2017/ITA-II dated 23.06.2017, which prescribes three specific formats for scrutiny notices: (i) Limited Scrutiny (CASS) (ii) Complete Scrutiny (CASS) (iii) Compulsory Manual Scrutiny. In the assessee's case, the 143(2) notices did not specify the category of scrutiny and merely stated that the return was selected for scrutiny. The Hon'ble ITAT relied upon the Hon'ble Apex Court decision in *UCO Bank* (1999) (237 ITR 889), wherein it has been held that CBDT Circulars issued under Section 119 are binding on tax authorities. The Hon'ble ITAT also relied upon the Kolkata Tribunal decision in the case of *Sajal Biswas* (ITA No.1244/KOL/2023 A.Y. 2017-18) wherein it has been held that a notice issued in a format contrary to CBDT Instruction F.No.225/157/2017/ITA-II dated 23-06-2017 is void ab initio, ultra virus and nullity in the eyes of law thus, rendering the assessment invalid. The Hon'ble Tribunal also relied upon the Calcutta High Court decision in the case of *Weilburger Coatings (India) Pvt. Ltd v. PCIT* (2023) (155 taxmann.com 580) (Calcutta HC) and the decision in the case of *Anita Garg v. ITO* (ITA No.4053/Del/2024) holding that assessments based on an invalid 143(2) notice are unsustainable. Following these authorities, the Hon'ble ITAT held that Notices issued under section 143(2) are invalid and consequently the assessment framed under Section 143(3) is quashed. Since the assessment itself is annulled, all other grounds on merits become academic and infructuous. Consequently, the appeal was allowed.

Section 148 – TOLA Applicable – Notice not issued as per the Surviving Period – Reopening Struck down

ITO v. Ilesh Infracap Private Limited [ITA. No. 2114/Ahd/2024 dt. 25/11/2025] [AY 2014-15]

Facts of the case

The assessee's case was reopened vide issue of notice u/s 148 of the Act dated 30.06.2021. Department, in consequence to the direction of the Hon'ble Supreme Court in the case of Ashish Agarwal and others, that the notice u/s 148 of the Act issued under the old provisions shall be treated as a show cause notice in terms of Section 148A(b) of the Act. The Assessing Officer had issued a notice u/s 148A(b) of the Act on 24.05.2022, which was compiled by the assessee. Thereafter, a fresh notice u/s 148 of the Act was issued by the Assessing Officer on 27.07.2022, after passing an order u/s 148A(d) of the Act on the same day. Additions were made in the assessment proceedings, which were deleted by the CIT(A). Before the Hon'ble ITAT, an appeal was filed by the department challenging the addition that was deleted. The assessee, by virtue of Rule 27 of ITAT Rules 1963, challenged the notice u/s 148 on the grounds that the same is time-barred.

Held

The Hon'ble ITAT held that the Hon'ble Supreme Court in case of *Rajeev Bansal* [2024] 167 taxmann.com 70/301 Taxman 238/469 ITR 46 (SC) had thus categorically held that the assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA and that all notices issued beyond the surviving period were time barred and liable to be set aside. This timeline was also demonstrated in para 112 of the order with an illustration. In the present case, the original notice u/s 148 of the Act was issued on 30.06.2021, which was treated as a deemed notice u/s 148A(b) of the Act. Since this notice was issued on 30.06.2021, the surviving time period available to the Assessing Officer to complete the further proceedings, including the issue of notice u/s 148 of the Act, was one day only, which was extended to seven days. Accordingly, the Assessing Officer was required to pass the order a u/s 148A(d) of the Act and also to issue notice u/s 148 of the Act in this case within a period of seven days from the date of receipt of the reply of the assessee. As the assessee had filed its reply on 07.06.2022, the time limit available to the Assessing Officer to issue the notice u/s 148 of the Act was till 14.06.2022 only. As the notice in the present case was issued on 27.07.2022, the same is found to be beyond the limitation period. In view of the explicit direction of the Hon'ble Supreme Court to complete the remaining proceedings within the surviving or balance time period, the provision of section 148A(d) of the Act was overridden to that effect. It further held that in view of the facts and the judgment of the Hon'ble Supreme Court as well as the jurisdictional High Court, the impugned notice dated 27.07.2022 issued u/s 148 of the Act is held to be invalid as the same was issued beyond the surviving period as per the decision

> "The old India was economically fragmented.
> The new India will create one tax, one market, one nation."
>
> **— *Arun Jaitley,*** *Former Finance Minister of India*

of the Hon'ble Supreme Court in the case of Rajiv Bansal (supra). Accordingly, the proceeding initiated u/s 148 of the Act is quashed, being time-barred. On the said basis, notice issues u/s 148 were held to be time-barred, and reassessment was liable to be quashed.

Section 148 – Sanctioning authority in the notice issued u/s. 148 was PCIT- beyond three years – correct authority is PCCIT – provision to section 149 applicable only after 01.04.2023 – notice quashed.

Shabbir Taheri v. ITO Ward – 4(1)(1), Mumbai. (ITA No. 1574/Mum/2025) [Assessment Year 2018 - 2019]

FACTS:

For AY 2018-19, the Assessing Officer reopened the assessment by issuing a notice under section 148 on 06.04.2022 after obtaining approval from the Principal CIT. The assessee challenged the reopening on the ground that the sanction was invalid because, once more than three years had elapsed from the end of the relevant assessment year, section 151(ii) required approval from the Principal Chief Commissioner (PCCIT) and not the PCIT. The assessee argued that since the notice was issued in April 2022, beyond the three-year limit, the AO should have obtained a sanction from PCCIT. The Department contended that the approval was valid and argued that the limitation had to be computed after excluding time periods under the provisos to section 149. The assessee countered that such provisos became effective only from 01.04.2023 and did not apply to AY 2018-19.

HELD:

The Tribunal held that the approval obtained from the PCIT was invalid because, for reassessments initiated after three years from the end of the relevant assessment year, section 151(ii) (as it existed before its 2023 amendment) mandated approval from the PCCIT. Since the notice dated 06.04.2022 fell beyond the three-year period, the sanctioning authority was incorrectly chosen, rendering both the order under section 148A(d) and the subsequent notice under section 148 invalid. The Tribunal relied on the Bombay HC decision in the case of *Vodafone India Ltd.* (W.P. No. 2678 of 2022), *Mystique Media Pvt. Ltd.* (WP (L) No. 12562 of 2024), and *Purnima Jitendra Navsariwala* (W.P. No. 7 of 2024), all of which held that the proviso to section 151 introduced from 01.04.2023 cannot be applied retrospectively. The Tribunal also followed its own coordinate bench rulings in *Davos International Fund* (ITA No. 1190/Mum/2024) and *Asha P. Kedia* (174 taxmann.com 99), which had applied the same High Court doctrine against the Revenue. As a result, the reopening was quashed for lack of a valid sanction, and the entire assessment was set aside without going into the merits.

"GST is the biggest economic reform after Independence … it will change both condition and direction of the Indian economy."

— Mukhtar Abbas Naqvi
Indian Politician & Former Minister of State

Case Law Update



Dr. (CA) Sunil Moti Lala
Advocate

PERMANENT ESTABLISHMENT

NCR Global Solutions Ltd v. DCIT, IT-(2025) 180 taxmann.com 129 (DEL-TRIB)

Non-exclusive distributor (ICO) of an Irish Co (assessee), selling software & hardware products procured from assessee directly to customers on its own account -Not DAPE - (India - UK DTAA)

The assessee, a tax resident of Ireland, was a principal distributor and licensor for software and hardware products and related support services. It had appointed one, CIPL in India, as its non-exclusive distributor in exchange for payments for distribution activities. The Hon'ble Tribunal held that since hardware and software procured by CIPL from the assessee were sold to its customers on its own account and not on behalf of the assessee, CIPL could not be treated as a dependent agent PE of the assessee in India. [*NCR Global Solutions Ltd. v. DCIT* [IT Appeal Nos.- 1756 & 1776(Delhi) of 2022, dated 10-04-2023] followed]

Concentrix CVG Customer Management Group Inc. v. DCIT, IT- (2025) 179 taxmann.com 38 (DEL -TRIB)

Onus is on the AO to bring material on record to demonstrate and establish existence of fixed place PE, service PE or DAPE. Mere outsourcing or assignment of work to Indian subsidiary would not determine applicability of Article 5 (India – USA DTAA)

Assessee, a USA-based company, provided outsourced customer and marketing support services and comprehensive customer management services. Its Indian subsidiary, Convergys India Services (CIS), rendered IT-enabled services, i.e., call centre and back-office services, to the assessee on a sub-contract basis with a 14 per cent mark-up over cost. AO held that the assessee had a fixed place PE, service PE, and a dependent agent PE in India and attributed

income accordingly. The Hon'ble Tribunal held that revenue had failed to bring any material on record to demonstrate and establish the existence of fixed place PE, service PE, or dependent agent PE. Outsourcing or assignment of work to CIS would not determine the applicability of Article 5(1) of DTAA. CIS only rendered support services, which enabled the assessee to render services to its clients abroad. No part of the assessee's main business or revenue-earning activity was carried out through any fixed business place in India and put at the assessee's disposal. Thus, there was neither a fixed place PE nor a service PE nor a dependent agent PE in India, and consequently business income of the assessee was not chargeable to tax in India. [*Asstt. DIT v. E-Funds IT Solution Inc.* [2017] 86 taxmann.com 240/251 Taxman 280 (SC) followed.]

NOTE: Also see Case no 6 under Royalty

Oxbow Energy Solutions B.V v. DCIT, IT- (2025) 180 taxmann.com 357 (MUM-TRIB)

Liason office maintained by Netherlands-based company in India - solely for activities of gathering market information, without any authority to conclude contracts or undertake business activities - could not be considered as a PE. (India – Netherlands DTAA)

Assessee, a Netherlands-based company, was engaged in the international trade of petroleum coke. It maintained a Liaison Office (LO) in India with RBI permission and filed a NIL return, and it submitted that LO acted as a channel between Indian parties and group companies, gathering and relaying market information, incurred only routine office expenses, undertook no business activity or transactions/receipts from India, and had no authority to conclude contracts. It claimed these activities did not create a business connection or PE in India. The AO rejected the assessee's position, noting that LO employed qualified personnel and its services could not be regarded as merely preparatory or auxiliary. He treated LO as constituting a PE and attributed 50% of the income/profit, resulting in an addition. The Hon'ble Tribunal noted that the assessee was not carrying on any business activity in India, and neither LO nor the subsidiary of the assessee was concluding any business activity in India using information collected. Further, the employees of the LO were not authorised to conclude any business contracts nor had any signing authority. The Hon'ble Tribunal concluded that since activities of LO were within scope of what was permitted by RBI to a LO in India, the said LO of the assessee could not be treated as a PE within meaning of Article 5 the DTAA and accordingly, adhoc addition made in this regard was liable to be deleted [*Union of India v. U.A.E. Exchange Center* [2020] 116 taxmann.com 379 (SC) Followed]

SHIPPING & AIR TRANSPORT (ARTICLE 8)

Atlantic Shipping (P.) Ltd. v. ITO - (2025) 180 taxmann.com 21 (GUJ)

Order of Tribunal remanding the claim of exemption under Article 8 of the DTAA to the file of the AO to verify the contents of the certificate issued by IRAS asserting non-applicability of article 24-set aside by High Court (India – Singapore DTAA)

Assessee, an Indian company, acted as shipping agent for a Singapore-resident enterprise (ST Shipping) engaged in operating

owned/chartered ships in international waters. ST Shipping's ships performed voyages from Indian ports, and the assessee filed vessel voyage returns under section 172(3) declaring Nil income in India by claiming exemption under Article 8 of India–Singapore DTAA. AO invoked Article 24 (Limitation of Relief), denied Article 8 exemption, and held assessee liable to tax under section 172 on the ground that freight amounts were remitted to a bank account in London, not to Singapore. Assessee had tendered a certificate issued by the Inland Revenue Authority of Singapore (IRAS) asserting non-applicability of Article 24. However, the Hon'ble Tribunal restored the matter to the AO to verify the contents of said certificate. The Hon'ble HC held that the Tribunal ought not to have restored the matter back to AO only on mere suspicion and doubts in the absence of any other material on record to demonstrate that the veracity of the certificate issued by IRAS was doubtful. It concluded that profits derived from the operation of ships in international traffic at Indian ports would be governed by Article 8 and not Article 24. [M.T. Maersk Mikage v. DIT (International Taxation) [2016] 72 taxmann.com 359 (Gujarat) followed]

Virgin Atlantic Airways Ltd. v. DCIT, IT - (2025) 180 taxmann.com 794 (DEL-TRIB)

Delivery order charges received by UK tax resident engaged in transportation of passenger, goods through aircraft in international traffic - Not taxable in India under article 8 (India – UK DTAA)

Assessee, a UK tax resident airline, had a branch office in India. It was engaged in the business of transportation of passengers, mail, livestock, and goods by air through aircraft in international traffic. It received delivery order charges. AO held that said charges were taxable in India as same were derived from an activity after transportation of goods in international traffic. The Hon'ble Tribunal held that 'operation of aircraft' in clause (3) of article 8 not only includes transportation by air, but it also includes sale of tickets for such transportation, incidental lease of aircraft on charter basis, and any other activity directly connected with such transportation. Since the assessee was complying with delivery orders which were inextricably linked to the main activity of transportation by air of goods or mail in international traffic, delivery order charges received by the assessee would also not be taxable in India by virtue of the provisions of Article 8 of the DTAA. [Turkish Airlines Inc. v. ACIT- IT appeal no. 3776(Delhi) of 2023, dated 26-3-2025 followed]

Celestial Aviation Trading 36 Ltd. v. ACIT, IT-(2025) 180 taxmann.com 337 (DEL-TRIB)

Lease rentals earned by Irish company from leasing aircraft to Indian airline companies - Taxable only in Ireland and not in India under Article 8 (India – Ireland DTAA)

The assessee, an Irish company, as aircraft lessors, leased Airbus aircraft to Indian airline companies and retained ownership throughout, while lessees merely paid lease rentals. The Hon'ble Tribunal held that such agreements constituted operating leases and not financial leases since no ownership was transferred to lessees at any stage. [Celestial Aviation Trading 15 Ltd. v. Asst. CIT [2025] 176 taxmann.com 902 (Delhi - Trib.) followed]. It further held that lease rental income was covered under Article 8 of India-Ireland DTAA and thus rental of aircraft in international traffic was taxable only in Ireland, not in India. [Kosi Aviation Leasing ltd. v. ACIT [IT Appeal No.994 (Del) of 2025, dated 30-9-2025] Followed]

Vertical Aviation no. 1 Ltd. v. ACIT - (2025) 180 taxmann.com 111 (DEL-TRIB)

Lease rentals earned by Irish company from leasing aircraft to Indian airline companies-Taxable only in Ireland and not in India under Article 8 (India – Ireland DTAA)

The assessee, a tax resident of Ireland, leased helicopters to an Indian company. The Hon'ble Tribunal, following the coordinate bench's decision in *Celestial Aviation Trading 36 Ltd. v. ACIT, IT*-(2025) 180 taxmann.com 337 (DEL-TRIB), held that lease agreements were in the nature of an operating lease and not a financial lease. It further held that consequently, lease rentals were not taxable in India, being covered under Article 8 of the India–Ireland DTAA [*Kosi Aviation Leasing Ltd. v. ACIT* [IT Appeal No.994 (Del) of 2025, dated 30-9-2025] Followed]

ROYALTY

DCIT, IT v. ORANGE – (2025) 180 taxmann.com 287 (SC)

Revenue's SLP Dismissed against order of High Court that interconnect service charges paid by assessee to telecom service provider would not constitute royalty.

The Hon'ble SC dismissed the above SLP as there was a gross delay of 256 days in filing the SLP, and the reasons assigned for seeking condonation of delay were neither satisfactory nor sufficient in law so as to condone the delay, and thus, the SLP filed by the revenue was dismissed. [SLP dismissed against *Deputy Commissioner of Income-tax International Taxation v. Orange* [2025] 180 taxmann.com 108 (Karnataka)]

John Wiley And Sons v. ACIT, IT –(2025) 180 TAXMANN.COM 389 (DEL-TRIB)

Revenue earned by assessee, a US-based company by providing Indian customers access to its online journals and databases - Not royalty /FTS under Article 12(India -USA DTAA)

Assessee-company, a tax resident of the US, was engaged in the business of providing access to online journals/online library, containing scientific, technical, medical, and scholarly journals as well as related content to Indian customers from outside India. AO held that revenue earned by the assessee for providing access to online databases/ journals, etc., to Indian customers from outside India was in the nature of royalty/Fees for Technical Services (FTS). The Hon'ble Tribunal, following its own order in the assessee's own case for the earlier assessment year, held that subscription fees from Indian customers for providing access to online database and/or journals were not 'royalty' as customers did not acquire copyright. Further, it was held that the assessee had neither employed any technical/skilled person to provide any managerial or technical service nor was there any direct interaction between the customer/ user of the database and the employees of the assessee. The customer/user was allowed access to the online database through various search engines provided through an internet connection. There was no material on record to demonstrate that while providing access to the database, there was any human intervention. It noted the judgments of the Hon'ble Supreme Court in *CIT*

v. Bharati Cellular Ltd., [2010] 193 taxman 97 (SC) and *DIT v. A.P. Moller Maersk A.S*., [2017] 392 ITR 1 86 (SC), wherein it was held that for providing technical/managerial service, human intervention is a sine qua non. Further, Article 12 provides that payment for the service of a managerial, technical, or consultancy nature, including the provisions of services by technical or other personnel, can be termed as fees for technical services. It was concluded that none of the features of fees for technical services could be found in the subscription fee received by the assessee.

GSMA Ltd v. ACIT, IT – (2025) 180 taxmann.com 320 (DEL -TRIB)

Administration fee received by assessee, a U.S. tax resident to act as sole Global Decimal Administrator (GDA) responsible to coordinate allocation of International Mobile Equipment Identifier to device manufacturers - NOT ROYALTY u/s 9(1)(vi) /article 12 (India – USA DTAA)

Assessee, a US-based company, was appointed by the mobile industry as a sole Global Decimal Administrator (GDA) and was responsible for coordinating allocation of 'International Mobile Equipment Identifier' (IMEI) to device manufacturers in accordance with specifications developed for mobile telecommunications. In discharge of its GDA responsibilities, the assessee appointed one company as the Regional Administrator, also known as the Reporting Body (RB) in India. As per the agreement executed between the assessee and its RB, said RB was required to pay an administration fee to the assessee at a rate of 70 per cent of the service fee received by it from third parties, i.e., Mobile Equipment Manufacturers. AO held that the administration fee received by the assessee was in the nature of royalty as per section 9(1)(vi) as well as article 12 of India-US DTAA. The Hon'ble Tribunal, following its own order in the assessee's case in earlier years, held that the administration fee was not in the nature of royalty u/s 9(1)(vi) of the Act/article 12 of the DTAA.

(In the earlier years, Tribunal's order, it was noted that the agreement itself made it explicit that there was no transfer of right to use any patent, invention, model, design, secret formula or process or trademark, or similar property. It also did not impart any information concerning technical, industrial, commercial, or scientific experience. What the assessee provided was a database containing unique numbers, which had to be provided to the mobile equipment manufacturers for implanting in the mobile devices so that the devices could be tracked and put in the blacklist in case of theft or misuse to prevent crime. Further, as per article 12(3) of India-USA DTAA, the amount received could not fall within the ambit of royalty, as the consideration received could not be construed to be for use or right to use any copyright of literary, artistic or scientific work including motion picture films and works on film or video tape for use in connection with television. Neither could it be a consideration for any patent, trademark, design or model, plan, secret formula or process. It also could not be for information concerning industrial, commercial or scientific experience nor could it be considered to be payment for use of or the right to use industrial, commercial or scientific equipment.)

GSMA Ltd v. ACIT, IT – (2025) 180 taxmann.com 320 (DEL -TRIB)

Subscription fee received by assessee, a U.S. company from Indian companies for providing them non-transferable, non-sub -licensable, nonexclusive limited license to access data of assessee - Not Royalty under 9(1)(vi) / article 12 (India -USA DTAA)

Assessee, a US-based company, had received a subscription fee from two Indian companies, namely, CTL and PGT, in terms of agreements entered into between them. As per agreements, the assessee provided a non-transferable, non-sub-licensable, non-exclusive, limited license to access data of the assessee with respect to global subscriber, SIM, and connection, MNO financial and operation performance data, MNO network data, and qualitative reports and feed. AO held that the subscription fee received by the assessee was in the nature of royalty both under the Act /DTAA. The Hon'ble Tribunal noted that the facility provided by assessee provided limited access to subscriber to copyrighted article and not to copy rights of article. Since there was no material available on record which would show that while allowing access of material and data, assessee had transferred its right to use copyright in any literary, artistic and scientific work to subscribers, subscription fee received by assessee was not in nature of royalty (both under the Act and DTAA) [*CIT v. RELX Inc* [2024] 160 taxmann.com 109 (Delhi) and *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT* [2021] 125 taxmann.com 42 (SC) Followed.]

SNC Lavalin Inc v. ACIT, IT – (2025) 180 taxmann.com 141 (DEL-TRIB)

GIT infrastructure charges received by Canadian company from Indian group entities for use of 3rd party software- Not royalty/FIS under article 12 (India - Canada DTAA)

Assessee, a Canadian company, was engaged in the business of rendering consultancy, design, and engineering services to various clients. During relevant assessment year, assessee received certain amount from its Indian group companies towards GIT infrastructure charges for use of various third-party software procured by assessee from third-party vendors and given for use to its Indian entities. AO noted that assessee had rendered Monthly IT services to operationalize softwares and provided local product support and services. He, thus, held that services rendered by assessee were in nature of Fees for Included Services (FIS) and, accordingly, taxed said amount as FIS. The Hon'ble Tribunal following its earlier order in the assessee's own case held that GIT charges were only for providing use of third-party software and was towards a 'copyrighted article', without any copyrights being granted for its commercial exploitation. Consequently, the amount received by the assessee as GIT Infrastructure Charges was neither taxable as FIS nor royalty, and additions made by AO were to be deleted [*Snc Lavalin Inc. v. Asstt. CIT* [IT Appeal No. 3691(Delhi) of 2023, dated 25-6-2024] followed.]

Concentrix CVG Customer Management Group Inc. V. DCIT, IT - (2025) 179 TAXMANN.COM 38 (DEL -TRIB)

Amounts received by the assessee, a US based company from its Indian subsidiary for a portion of the cost incurred towards international Pvt leased circuits (IPLC)- Not Royalty u/s 9(1)(vi) Explanation 2 clause (iva) / article 12 (India – USA DTAA)

The Indian subsidiary, CIS, reimbursed the assessee, a US based company for a portion of the cost incurred towards international private leased circuits (IPLC) used to provide a secure communication link between India and the US. The AO held that such payments were in the nature of "equipment royalty" and "process royalty" within the meaning of section 9(1)(vi) and article 12 of the India–USA DTAA and, therefore, taxable in India. CIT(A) noted that the assessee and its subsidiary had no possession, control or right to use the underlying telecommunication equipment, and that the payments represented

mere reimbursement of service cost. He, therefore, deleted the addition. The Hon'ble Tribunal held that the word 'use' in relation to equipment occurring in clause (iva) of explanation 2 to section 9(1)(vi) is to be some positive act of utilization, application or employment of equipment for the desired purpose having certain degree of possession and control of such equipment. For the applicability of the article 12 of the DTAA, the following factors have to be tested:

i. In whose physical possession & control the said property/equipment is?

ii. Who has significant economic or possessory interest in the property?

iii. Who bears the risk of substantially diminished receipts or substantially increased expenditure if there is non-performance under the contract?

iv. Who uses the property/equipment concurrently to provide significant services to entities unrelated to the service recipient?

v. Total payment for the service does not substantially exceed the rental value of the computer equipment for the contact period

In the instant case, the revenue had not established that the CIS exercised a certain degree of possession and control over the equipment and the fulfilment of make available clause. Further, the revenue had failed to bring any material on the record to contradict the above finding of the Tribunal on the issue of taxability of payment of link charges/IPLC charges as royalty. Accordingly, this issue of taxability of payment of link charges/IPLC charges as royalty was decided against the revenue.

NOTE: Also see case no 2 under Permanent Establishment

Bekaert Industries (P) Ltd v. DCIT, IT – (2025) 179 taxmann.com 683 (PUNE -TRIB)

Consideration paid by Indian company [assessee] to its Belgian AE for use of IT infrastructure facility-Not Royalty under article 12 (India -Belgium DTAA)

The assessee, engaged in manufacturing and trading of steel tyre cord and related products, had availed IT support services from its Belgian associated enterprise, including SAP licences and maintenance, application support, backups/ disaster recovery, antivirus, remote helpdesk, and internet/VPN. The Belgian AE, a tax resident of Belgium under the India–Belgium DTAA, had global agreements with service providers. The resultant costs were allocated to and billed to group companies. The AO held these payments taxable as Royalty as well as Fees for Technical Services under the Act and the India–Belgium DTAA, which required tax withholding, and for non-withholding, disallowed the amount under section 40(a)(i). The Hon'ble Tribunal initially recharacterized the entire consideration as payment for use of the IT infrastructure facility and held it taxable as industrial/equipment royalty under section 9(1)(vi) and Article 12(3)(a) of the India–Belgium DTAA, affirming the disallowance. The assessee then filed a miscellaneous application contending that the applicable India–Belgium DTAA did not contain the clause concerning the use of industrial, commercial, or scientific equipment; the Tribunal partly recalled its order to examine treaty taxability under the correct treaty. On rehearing, the Members differed, and the matter was referred to a Third Member. The Third Member, while concurring with the viewpoint of the Judicial Member, held that payment for the 'use of IT infrastructure facility' did not fall within the definition of 'Plant' since the language in Article 12(3)(a) of the India-Belgium Tax Treaty contains the words 'Plan' and not 'Plant'. Therefore, on account of the absence of the relevant clause 'for the use of or right to use industrial/commercial, scientific equipment', the payments made by the assessee for the use of the IT infrastructure facility would not be liable for TDS, and the consequent disallowance u/s 40(a) (i) was liable to be deleted.

FEES FOR TECHNICAL SERVICES

CPPGroup Services Ltd v. ACIT - (2025) 180 taxmann.com 296 (DEL -TRIB)

Amount received by a UK-based company for providing IT support services to its Indian AE - NOT FTS under article 13 (INDIA -UK DTAA)

Assessee, a UK-resident company, provided ongoing IT support services to its Indian AE. It earned a certain sum and did not offer this to tax in India. AO held that IT support receipts were taxable in India as Fees for Technical Services under Article 13 of India-UK DTAA, on the ground that contemporaneous IT development enabled Indian AE to perform IT support functions independently, thereby meeting the 'make available' test. The Hon'ble Tribunal followed its earlier orders in the assesse's own case, wherein similar additions were deleted. It was noted that the agreement between CPP (India) and the assessee was perpetual, and such services were provided by CPP (UK) on a recurring basis. Since no tangible or reliable evidence had been brought on record by AO to show that Indian AE had been enabled to perform IT services on its own, receipts from IT support services could not be taxed in India as FTS. [*CPP Assistance Services (P.) Ltd. v. CIT* (Appeal) NFAC, New Delhi [2023] 147 taxmann.com 484 (Delhi - Trib.) Followed]

CPPGroup Services Ltd v. ACIT - (2025) 180 taxmann.com 296 (DEL -TRIB)

Amount received by a UK-based company for providing Non-IT support services in HR, finance, legal, etc, to its Indian AE - NOT FTS under article 13 (INDIA -UK DTAA)

Assessee, a UK resident company, rendered non-IT support services to its Indian AE in human resources, finance, legal, compliance, and secretarial, and internal audit, earning a certain sum which it did not offer to tax in India. AO treated these receipts as FTS under Article 13 of India-UK DTAA, stating that intra-group services involved consultancy and guidance on a long-term basis with high human intervention and ongoing coordination, leading to training of AE employees and satisfaction of the 'make available' test. The Hon'ble Tribunal noted that there was no mention of training in the agreement or transfer of any technical knowledge enabling AE to use it, and no tangible finding had been brought in the final assessment order to even indicate that, as per said agreement and by rendering of services, the 'make available' clause had been satisfied. Since there was no transfer of any technical knowledge, experience, skill, know-how, or process that would enable AE to use them, the 'make available' clause was not satisfied, and, therefore, the amount received by the assessee could not be taxed as FTS. [*CPP Assistance Services (P.) Ltd. v. CIT* (Appeal) NFAC, New Delhi [2023] 147 taxmann.com 484 (Delhi - Trib.) Followed]

Invesco U.K. Ltd. Holding Company (US) Inc. v. ACIT, IT - (2025) 173 taxmann.com 145 (DEL -TRIB)

Provision of IT support services by US based company to Indian AE - Not FTS under Article 12 (India – USA DTAA)

Assessee, a US-based company, was engaged in providing IT support services to its Indian

associate enterprise (AE). AO held that said services were in the nature of fees for included services (FIS) under Article 12 of the India-USA DTAA. The Hon'ble Tribunal followed its earlier orders in the assessee's own case, *Invesco Holding Company (US) Inc. v. ACIT* [2024] 165 taxmann.com 330 (Delhi - Trib.) wherein it was held that condition of make available was not satisfied as services provided by assessee did not enable AEs to apply technology independently and, therefore, receipts of assessee were not in nature of FIS under India-USA DTAA but was reimbursement on cost-to-cost basis.

Enea Software Inc. v. DCIT - (2025) 180 taxmann.com 96 (DEL -TRIB)

Consideration for software licensing and support services (AMC) - Not Royalty /FTS (India-USA DTAA)

Assessee, a tax resident of the USA, received consideration of Rs. 4.69 crores from licensing of software to RJIL and Rs. 27.84 lakhs from support and maintenance services - Assessee claimed that these were business income not chargeable to tax in India in the absence of any PE. AO held that the right imparted was to use a proprietary process taxable as process/copyright royalty, and that support and maintenance were inextricably linked to the license and constituted FTS with the 'make available' test satisfied. Accordingly, AO proposed to assess the entire receipts as FTS taxable at 10 per cent under Article 12 of DTAA. The Hon'ble Tribunal followed its earlier order in the assessee's own case wherein it was held that consideration for both software licensing and support services (AMC) was not taxable in India as 'Royalty' or 'Fees for Technical/Included Services' under Article 12 of India–USA DTAA, but constituted non-taxable business income which was not taxable in absence of a Permanent Establishment. [*Openwave Mobility, Inc. v. Dy. CIT* (International Taxation) [2024] 162 taxmann.com 434 (Delhi-Trib.) followed]

AKA Ausfuhrkredit-Gesellschaft MBH v. DCIT, IT - (2025) 180 taxmann.com 135 (DEL -TRIB)

Management /processing fee received by a German company(assessee) from ICO linked to ECB loan- Not FTS under Act /DTAA (India -Germany DTAA)

The assessee, a German company, received management/processing fee from an Indian company linked to an ECB loan and tax authorities treated this as FTS under section 9 and Article 12 of India-Germany DTAA. The Hon'ble Tribunal followed its earlier order in assessee's own case wherein it was held that payment towards management fee made by assessee was not taxable. [*AKA Ausfuhrrkredit-Gesellschaft MBH v. Asstt. CIT* [2024] 158 taxmann.com 627 (Delhi - Trib.) followed]

Hal Offshore Ltd v. ITO - (2025) 179 taxmann.com 664 (DEL -TRIB)

Payments made by Indian assessee to a Norway company for work contract of replacing defective parts of its ship constitute business receipts and not fees for technical services. Consequently, no TDS was liable to be deducted from the said payments as the Norway company did not have a PE in India.

Assessee, an Indian company, made payments to a non-resident company, Brunvoll AS, Norway, for a work contract of replacing defective parts of its ship. Assessee did not deduct tax at source on said payments on the ground that activities of said company were in the nature of carrying out a work contract and not in the

nature of rendering technical services. The payments were business receipts, which were not taxable in India in the absence of a PE. The Hon'ble Tribunal noted that Brunvoll AS, being a tax resident of Norway, had no PE in India, and personnel of the vendor company stayed in India for only 29 days for the replacement/ installation of spare parts, which was less than 'three months' as provided in Article 5 of DTAA. Further, payments made by the assessee were also not covered under 'fees for technical services' as defined in section 9(1)(vii) or article 12, as work carried out by the vendor company specifically fell under article 7, leading to commercial profits. Thus, since the contract was primarily for the sale of spare parts and the replacement of defective parts, which was incidental to the sale of spare parts, the whole contract was to be considered as a work contract. Consequently, no tax was deductible at source on payments made to the non-resident company for said work contract since the said payments constituted business receipts which were not taxable in India in the absence of a PE. Thus, the authorities below had erred in treating the assessee as 'assessee in default' for non-deduction of TDS under section 201(1). [*Lufthansa Cargo India (P.) Ltd. v. DCIT* [2004] 140 Taxman 1 (Mag.) (Delhi) and *ADIT (IT) v. BHEL-GE-Gas Turbine Servicing (P.) Ltd.* [2012] 24 taxmann.com 25 (Hyd) followed].

John Wiley And Sons v. ACIT, IT –(2025) 180 taxmann.com 389 (DEL-TRIB)

Revenue earned by assessee, a US-based company by providing Indian customers access to its online journals and databases - Not royalty /FTS under Article 12(India-USA DTAA)

See Case no 2 under Royalty

SNC Lavalin Inc v. ACIT, IT – (2025) 180 taxmann.com 141 (DEL-TRIB)

GIT infrastructure charges received by Canadian company from Indian group entities for use of 3rd party software - Not royalty/FIS under article 12 (India - Canada DTAA)

See Case No. 5 under Royalty

Solvay SA v. DCIT, IT - (2025) 180 taxmann.com 14 (MUM -TRIB)

Consideration received by Belgian company(assessee) for provision of support services to its Indian group entities - Not FTS under article 12(b)(India – Belgium DTAA)

Assessee, a Belgium-based company, received consideration for the provision of support services to two Indian group entities. It claimed that since in the course of rendition of such services, it had not made available any technical know-how skill, etc., in terms of the Most Favoured Nation (MFN) clause incorporated under the protocol to India-Belgium DTAA, it would not qualify as FTS. AO noticed that the assessee had entered into a Functional Service Agreement with Indian group entities for providing business support services and treated receipts as FTS. The Hon'ble Tribunal held that by the very nature, it could not be said that while providing services, the assessee, in any manner, either wholly or partly, was in overall control of the management of Indian group entities. Moreover, services rendered were not in the nature of managerial, technical, or consultancy services and thus consideration received for the same could not be treated as FTS under Article 12(3)(b) of India-Belgium DTAA.

CAPITAL GAINS

CPI v. DCIT –(2025) 180 taxmann.com 94 (DEL -TRIB)

Gains rising to a Mauritian company from sale of shares in India - Not chargeable to tax in India under Article 13. Treaty benefits cannot be denied on the basis of vague allegations by departmental authorities that the assessee was a mere paper company. (India – Mauritius DTAA)

Assessee, a Mauritius-based company, was an investment holding company. It had sold shares of an Indian company and claimed exemption on capital gain arising on the sale of shares by taking shelter under Article 13(4). AO held that the assessee was a mere paper company created in Mauritius to avail treaty benefits and, thus, was not entitled to treaty benefits. The Hon'ble Tribunal followed its earlier order in the assessee's own case, wherein it was noted that the assessee had furnished all materials and evidence to establish its residential status, bank statements reflecting details of investments made in foreign currency, Foreign Inward Remittance Certificate (FIRC), and various other documents had also been submitted by the assessee before the departmental authorities. Except for making vague allegations, departmental authorities had failed to bring on record any cogent material to substantiate their allegations that the assessee was merely a paper company and that, being the established factual position, the assessee would certainly be entitled to the benefit provided under Article 13(4). [*CPI India Ltd. v. ACIT* (IT) [2025] 173 taxmann.com 1 (Delhi - Trib.) Followed]

Fullerton Financial Holdings Pte. Ltd. v. ACIT, IT – (2025) 180 taxmann.com 241 (DEL -TRIB)

Treaty benefits under article 13(4A) of the India-Singapore DTAA could not be denied to a substantive policy-driven investment vehicle of the Singapore sovereign group (India–Singapore DTAA)

Assessee, a Singapore company, was indirectly owned by Temasek (ultimately owned by the Government of Singapore) and functioned as an investment holding and operating platform for financial services investments across Asia. It invested in Fullerton India Credit Company Limited (FICCL) before 1-4-2017 and held about 3.79 per cent (approximately 8.53 crore shares). In the financial year 2021-22, it sold its entire stake in FICCL to Sumitomo (Japan) and declared long-term capital gains of about Rs. 681.32 crores as not taxable in India under Article 13(4A) of India–Singapore DTAA. AO examined the assessee's employee/expense details and issued a SCN proposing the application of Article 24A. In reply, assessee stated its affairs were not arranged to obtain DTAA benefits, that it availed operations-related services from its group management company, FFHI, and that it satisfied $200,000 expenditure-on-operations test, supporting this with audited financials, invoices/agreements, an IRAS letter, and a KPMG Singapore certificate. AO noted that the assessee had no employees and that the largest expense was management fees paid to FFHI. He recorded the absence of timesheets/working of hours, details of services solely rendered to the assessee, or basis of apportionment, and treated directors' fees and D&O insurance as not attributable to operational expenses. He rejected reliance on IRAS and KPMG certificates and invoked Article 24A(3) to treat the assessee as a deemed shell/conduit, thereby denying Article 13(4A) benefit. Consequently, he brought gains to tax. The Hon'ble Tribunal held that on the facts, the assessee was not a mere 'shell' or 'conduit' company, but a substantive, policy-driven investment vehicle of the Singapore sovereign group. It could not be said that obtaining a treaty benefit was one of the principal purposes of the transaction. Further, given that the ultimate beneficial owner of the investment was the Government of Singapore, the assessee satisfied the Principal Purpose Test (PPT) under Article 24A (1) and (2) of India-Singapore DTAA, and the claim of treaty benefit could not be denied on this ground.

FOREIGN TAX CREDIT (FTC)

Canon India (P.) Ltd. v. DCIT – (2025) 180 taxmann.com 306 (DEL -TRIB)

Claim of FTC cannot be denied merely because it pertains to receipts which are either exempt under section 10A or neutralised by brought forward business losses. (India - Japan DTAA)

Assessee earned certain income from its operations in Japan, on which taxes were withheld in Japan in accordance with the domestic tax laws of that jurisdiction. In its return, the assessee claimed Foreign Tax Credit (FTC), which was disallowed by the AO on the ground that in the same year, income corresponding to Japanese receipts was either exempt under section 10A or neutralized by brought-forward business losses, resulting in no tax liability in India. The Hon'ble Tribunal allowed the claim of FTC by following the jurisdictional High Court judgement wherein it was held that the assessee was eligible for the entire credit of foreign taxes deducted in Japan, even if taxability was nil consequent to deduction under section 10A /brought forward losses. [*PCIT v. HCL Comnet Systems and Services Limited* [IT Appeal NO. 546 of 2022, dated 23-11-2023 followed].

Canon India (P.) Ltd. v. DCIT – (2025) 180 TAXMANN.COM 306 (DEL -TRIB)

Claim of interest under section 244A on refund arising from allowance of FTC was rejected since there was no excess payment to Indian exchequer by way of advance tax, TDS, or TCS, after taking into account FTC.

Assessee filed its original return with nil income under normal provisions after set-off of brought-forward losses and paid MAT claiming FTC of the same amount. Separately, it filed an application seeking a refund of the entire Japanese taxes withheld under India-Japan DTAA, read with Section 90(2). The Hon'ble Tribunal noted that the assessee had merely determined tax payable on MAT under section 115JB and had offset the same with Foreign Tax Credit. It held that since there was no excess advance tax/TDS/TCS/tax paid to the Indian exchequer, after taking into account FTC, no interest under section 244A was available to the assessee. On the very same fact, it also distinguished *CIT v. Tech. Mahindra Ltd.* [2016] 69 taxmann.com 402 (Bombay) relied upon by the assessee.

OTHERS

Manthan Software Services Pvt. Ltd - [TS-1578-SC-2025]

SC dismissed Revenue's SLP on the applicability of the beneficial TDS rate under DTAA over sec. 206AA

Hon'ble SC dismissed Revenue's SLP against Karnataka HC judgment in *Manthan Software Services Pvt. Ltd*. where in HC had held, relying on Karnataka HC ruling in Wipro Ltd., that the DTAA overrides Section 206AA rate and hence, when the recipient entity is eligible for benefit of DTAA, the TDS rate shall be taken as per the applicable DTAA and not as per the provisions of Section 206AA. The Hon'ble SC accepted the assessee's contention that the issue in the present SLP was squarely covered by the SC judgment in SLP(C) Diary No.19016/2023 - *CIT (IT) v. Air India Ltd*. wherein it was held that TDS at beneficial DTAA rate prevails over non-obstante Sec. 206AA provisions.

GST
Recent Judgments and Advance Rulings


CA Naresh K Sheth


CA Jinesh Shah

A. WRIT PETITIONS

MILROC Good Earth Developers v. Union of India [(2025) 179 taxmann.com 465] – BOMBAY HIGH COURT

Facts and issues involved:

Petitioner challenged consolidated SCN and consequential orders issued by the department for multiple financial years, alleging short GST payment and ineligible ITC. The impugned SCN dated 28.03.2025, received on 11.04.2025, sought to invoke Sections 74(1) and 74A of the CGST Act, 2017, along with consequential interest and penalties, covering the extended period from FY 2017-18 to FY 2023-24. The consolidated demands included GST of Rs. 2,16,31,813/- and Rs. 9,32,63,552/- on construction services, reversal of alleged ineligible ITC of Rs. 2,30,24,751/- under Section 17 of the CGST Act, read with Rule 42 of the CGST Rules, and a demand of Rs. 2,39,95,000/- under the Reverse Charge Mechanism (RCM) on TDR services.

Petitioner's Submissions:

Petitioner contended that the clubbing or bunching of different financial years in a single Show Cause Notice was impermissible under the scheme of the CGST Act, 2017. Citing the definitions of 'assessment' under Section 2(11), 'return' under Section 2(97), and 'Tax period' under Section 2(106), the Petitioner argued that the procedure mandates self-assessment and return filing for "each Tax period" as specified under Section 39 of the CGST Act. It was submitted that the Act does not contemplate assessment beyond the relevant financial year. Furthermore, the issuance of consolidated notices was argued to frustrate the limitation scheme, causing serious prejudice by curtailing the time limit prescribed for subsequent financial years under Sections 73(3) and 74(3), and that when the Act mandates for issuance of notice in a particular manner, it has to be done in that same manner and in no other way. Reliance was placed on the judgment of the Madras High Court in *R A And Co v. Additional Commissioner of Central*

Taxes 176 taxmann.com 731, wherein it was held that issuance of composite show cause notices covering multiple financial years will frustrate the limitation scheme and also prevent the assessee from giving year-specific rebuttals, which result in jurisdiction overreach.

Respondent's Submissions:

Revenue raised a preliminary objection regarding the maintainability of the Petitions, arguing that they were premature as they challenged only Show Cause Notices and the Petitioners should be relegated to contest the claims before the Competent Authority. Revenue cited the Bombay High Court decision in *RioCare India Pvt. Ltd v. Asstt. Commissioner, CGST and C.Ex*. 170 taxmann.com 605 and the Delhi High Court decision in *Ambika Traders v. Additional Commissioner* 177 taxmann.com 134 in support of its stand.

Discussions by and Observations of the High Court:

The High Court first rejected the preliminary objection, holding that the challenge went to a jurisdictional issue concerning the Authority's power to conduct a composite assessment for different tax periods/assessment years. The Court scrutinized the statutory scheme, noting that Section 59 provides for self-assessment and return furnishing for each Tax period as specified in Section 39. The Court found that the statutory scheme required year-wise determination up to 2023-24 and thereafter, a separate regime from 2024-25 (under Section 74A). Therefore, consolidation was impermissible in the eyes of the law. The prescribed limitation under Section 73(10) and 74(10) of the CGST Act mandates that the assessment order should be issued within a period of three / five years from the due date for furnishing of the annual Return for the relevant financial year. There is no scope for consolidating various financial years/tax periods, which is attempted by the impugned Show Cause Notices assailed in the Petition.

The Court affirmed the Madras High Court's reasoning in R A And Co (supra) that the GST Act considered each and every financial year as a separate unit and clubbing financial years is impermissible because the limitation period would vary from one financial year to another. Citing the Kerala High Court in *Harayil Medicals v. Deputy Commissioner,* SGST Department, the Court held that independent SCNs must be issued for each year, as a composite notice could lead the assessing authority to bypass the mandatory requirement of Section 73 of the CGST Act to complete the assessment by falling back on a larger period of limitation under sub-section (10) of Section 74, which would constitute a colorable exercise of the power conferred by the statute and would offend express provisions of the CGST/SGST Act qua limitation. The court held that consolidation frustrates limitation and impedes year-specific rebuttals.

Decision of the High Court:

Issuing consolidated Show Cause Notices for multiple assessment years was without jurisdiction. Such consolidation is impermissible and hence, composite SCNs were quashed.

B. RULINGS BY APPELLATE ADVANCE RULING AUTHORITY:

Gujarat Namrada Valley Fertilizers & Chemicals Ltd. [2025] 179 taxmann.com 539 – GUJARAT AAAR

Facts and issues involved:

Appellant initiated a share buyback program in December 2023 pursuant to the Government of Gujarat resolution dated 24.04.2023. Appellant incurred professional, legal, consultancy, and incidental expenses essential for the buyback.

Appellant was of the view that they are eligible to avail ITC in respect of expenses so incurred on the following grounds:

(a) any activity carried on with a purpose to achieve business objectives, principles, continuity, and stability is in the course or furtherance of business;

(b) that while the buyback process does not directly result in immediate outward supply, it is an essential step towards optimizing financial health; that they would like to rely on the case of *Coca Cola India (P.) Ltd. v. CCE* [2009] 22 STT 130/ 15 STR 657 (Bombay);

(c) that buyback, though not directly generating immediate taxable supplies, will contribute to a company's overall well-being and future taxable capacity;

(d) that term 'transaction in securities' is very wide; it should be read in conjunction with the value of exempt supply and not read independently;

(e) that buy-back of shares is no sale and purchase transaction; that there is only capital reduction; that the nomenclature 'buy back' is not a purchase transaction;

(f) that ITC is eligible in case of issuance of fresh shares, and similarly, ITC should be eligible even in case of buyback of shares;

(g) that they would like to rely on the case of Kretztechnik, pronounced by the European Court of Justice

An application was filed before the Gujarat AAR seeking a ruling on the availability of ITC of GST paid on such expenses as incurred in the course or furtherance of business. Gujarat AAR vide Advance Ruling No. GUJ/GAAR/R/2025/11 dated 25.03.2025 held that the applicant is not eligible to avail the ITC involved in the expenditure incurred for buyback of its share and is also required to reverse the ITC on common inputs and input service used in relation to the expenditure incurred for buyback of share.

Appeal to AAAR and appellant's submissions:

Aggrieved by the above-referred ruling of the Gujarat AAR, the appellant preferred an appeal on the following grounds:

(a) In terms of section 2(17)(b), ibid, the definition of 'business' covers the activity of buy-back of shares;

(b) that professional fees, legal expenses, consultancy charges, & other incidental costs incurred in relation to the buy-back of shares are directly connected to & undertaken in the furtherance of business and are therefore eligible for ITC u/s 16(1);

(c) while buyback process does not directly result in immediate outward supply, it is an essential step towards optimizing financial health & ultimately increasing its ability to make taxable supplies;

(d) that the term 'transaction in securities' is very wide & should be read in conjunction with the value of exempt supply & not independently;

(e) that in case of buyback of shares per se, there is no supply in a conventional sense; that the shares bought back are not in the nature of assets for the company & have to be cancelled after buyback within a prescribed time frame;

(f) that in terms of the FAQ issued by the ICAI [The Institute of Chartered Accountants of India], ITC is eligible in case of issuance of fresh shares;

(g) that the expenses incurred are in the course of furtherance of business and therefore do not constitute a transaction in securities within the meaning of section 17(3);

(h) that GAAR read section 16(1) by putting in an additional requirement that the purpose for which input services are used must itself be a supply under GST;

(i) that even the direction of reversal of ITC attributable to the common expenses is not correct, as these are legally admissible.

Discussion by and Observations of AAAR:

What stands factually undisputed is that shares are securities in terms of section 2(h)(i) of the Securities Contracts (Regulation) Act, 1956, and owing to this, they are neither goods [u/s 2(52)] nor services [u/s 2(102)].

The buy-back program constitutes a 'business' activity undertaken to achieve the core objectives. The term business is defined u/s 2(17), ibid; that clause (b) encompasses activities like buy-back of shares/issue of shares by a Limited Company. Appellant's contention is that any input tax charged on any supply of goods or services or both to them, which are used or intended to be used in the course or furtherance of their business, is available to them. However, the authority does not subscribe to the view that any tax paid on the cost incurred for the furtherance of the business is eligible for credit.

Subsection (1) of Section 16, while laying down the eligibility of input tax credit, also states that it is subject to conditions and restrictions. Such conditions and restrictions have been imposed vide Sections 16(3), Section 16(4), Section 17, and Section 18, ibid. Therefore, even though there may be various goods and services which are used in the furtherance of business, the credit of the input tax paid on each of these goods or services will be subject to the restrictions mentioned in the sections mentioned supra. Further, the Supreme Court in the case of *TVS Motor Co. Ltd. v. State of Tamil Nadu* [2018] 98 taxmann.com 343/70 GST 501/18 GSTL 769 (SC)/2019 (13) SCC 403 has held that the claim of ITC is not a vested right or an indefeasible right. It is a benefit conferred under the Act in certain contingencies and subject to conditions prescribed in the statutory scheme.

Section 17(2) ibid, restricts the allowance of input tax credit of goods or services or both to the extent of expenses attributable to taxable supplies. Therefore, any tax paid on goods or services or both used for transactions in securities, which is not even a supply under GST, is not allowed as input tax credit. Further, as per Section 17(3), the value of a transaction in securities is included in the value of the exempt supply. Thus, the intention of the legislature is not to allow the input tax credit for the various costs incurred in the transaction of securities. On reading Section 17(5)(d), ibid, it is further fortified that all costs incurred for the furtherance of the business is not eligible for credit, as the said section restricts input tax credit on goods or services or both received by a taxable person for construction of an immovable property, even if they are used in the course of furtherance of business. Therefore, there is no merit in the argument that the ITC on expenses like professional fees, legal expenses, consultancy charges, etc., relating to buyback of shares, if used in the course of furtherance of business, should be allowed.

'Securities' are excluded from the definition of goods & services. Therefore, they stand excluded even from the ambit of exempt supply [u/s 2(47)] and non-taxable supply [u/s 2(78)]. However, section 17(3) r.w. explanation at the end of Chapter V of CGST Rules provides for deeming fiction to reverse common ITC pertaining to securities, and hence, the averment of appellant that there is no requirement to reverse ITC of tax paid on common inputs and input services in relation to buy back of shares, is not legally tenable.

Ruling of AAAR:

The appeal filed by the appellant is rejected.

> "Tax reform is not an event but a process of evolving simpler, efficient and growth-oriented systems."
>
> ***— Raja Chelliah***
> *Indian public finance expert, Father of Tax Reforms*

C. RULINGS BY ADVANCE RULING AUTHORITY:

Angeet Sky Aviation (IFSC) Pvt. Ltd. [2025] 179 taxmann.com 534 (AAR - GUJARAT) – GUJARAT AAR

Facts and issues involved:

Applicant is a SEZ unit at GIFT City engaged in the dry leasing of aircraft/helicopters (i.e., without operator). Applicant enters into lease agreements whereby the aircraft is handed over to the lessee, who thereafter holds possession and operational control.

Applicant approached the AAR seeking clarification on:

1. Classification of the activity of dry leasing of helicopters/aircraft without an operator.
2. Applicability of Sl. No. 17(iii) of Notification No. 11/2017-CT (Rate) relating to transfer of the right to use goods.
3. GST rate applicable to such leasing activity.

Applicant's submissions:

Applicant submitted that dry leasing, being without an operator, ought to be covered under Heading 9973, since Heading 9966 covers services with an operator only. Based on the UNCPC classification, leasing of aircraft without an operator falls under the class 73111 / 73116, which corresponds to SAC 9973.

The lease agreement satisfies the criteria laid down by the Hon'ble Supreme Court in the BSNL judgment for determining when a transaction constitutes "transfer of the right to use goods", since the aircraft is identifiable, exclusive possession is transferred to the lessee, control and operational rights are with the lessee, and the lessor cannot effect simultaneous use by any other person.

Hence, the activity should fall under Sl. No. 17(iii) of Notification No. 11/2017-CT (Rate), which states that the GST rate shall be the same as applicable on the supply of the goods involved. As aircraft/helicopters (other than for personal use) are taxable at 5% GST, the leasing service must also attract 5% IGST.

Discussion by and Observations of AAR:

Authority examined the amendments carried out in the GST rate notification effective from 01.10.2019 and noted that:

- Heading 9966 is limited only to transport vehicles with an operator.
- Heading 9973 specifically covers leasing or rental services without an operator. Since the applicant leases aircraft without an operator, the activity naturally falls under Heading 9973.

Further, the AAR referred to the UNCPC structure adopted for GST classification in India, where:

- Division 73 deals with leasing without an operator,
- Class 7311 covers transport equipment without an operator, and
- Subclass 73116 specifically covers leasing of aircraft without an operator.

Authority examined the lease agreement and confirmed that all characteristics required to constitute a "transfer of right to use goods" were fulfilled. The lessee was provided exclusive possession, identifiable goods, a legal right to operate the aircraft, and complete control during the lease period. The activity is not a mere permission to use goods but amounts to a transfer of the right to use the aircraft. Authority, therefore, held that the applicant's supply gets appropriately classified under SAC 9973, as dry lease services.

Since Sl. No. 17(iii) of Notification No. 11/2017-CT (Rate) prescribes that the GST rate shall be the same as the rate applicable to the goods, and if the aircraft supplied is not for personal use, the corresponding rate is the one applicable under Notification No. 1/2017-CT (Rate) for aircraft under Heading 8802, i.e., 5%. Authority also noted that, being a supply from the SEZ unit to the DTA, the levy would be IGST.

Ruling of AAR:

Dry leasing of aircraft/helicopter is correctly classifiable under HSN 9973 – Sl. No. 17(iii) of Notification 11/2017-CTR. Since the applicant is an SEZ unit, the applicable tax on such leasing is 5% IGST.

Ramdharsan Thanikachalam [(2025) 179 taxmann.com 98] – KERALA AAR

Facts and issues involved:

Applicant is engaged in the trading of poultry meat (frozen chicken), covering HSN Codes 02071200 and 02071400. The product is supplied as a pre-packaged commodity in wholesale bags of 30 kg, which contain 15 smaller packs of 2 kg. The packaging explicitly states, "Packed exclusively for Institutional Sale and not for Retail Sale". The primary sales are intended for specific institutional buyers, including the likes of the Indian Army, Ministry of Defense, Taj Kerala Hotel & Resorts Ltd (Gateway, Varkala), etc.

The applicant has sought an advance ruling on the GST liability concerning three supply scenarios:

(a) direct supply to institutional buyers;

(b) supply to a distributor who then supplies to institutional buyers; and

(c) rare sales to non-institutional buyers.

Applicant's submissions:

Applicant submitted that when frozen chicken is pre-packed and labelled, GST is applicable at the rate of 5% (w.e.f. 18.07.2022), but if it is not pre-packed and labelled, the supply is exempted.

The supply of the frozen chicken (in 30 kg wholesale bags containing 15 small packs of 2 kg each) directly to institutional consumers is exempted under Sl. No. 13 of Notification No. 2/2017-Central Tax (Rate), under HSN 0207, which covers "All goods other than fresh or chilled, other than pre-packaged and labelled".

Furthermore, the supply of the same frozen chicken to a distributor, who subsequently supplies it to institutional consumers such as the Indian Army and Taj Kerala Hotel & Resorts Ltd, is also exempted under the same entry. Conversely, the applicant acknowledged that if the same product is supplied to non-institutional consumers, it would attract GST at the rate of 5%, pursuant to Sl. No. 1 of Schedule I to Notification No. 1/2017-Central Tax (Rate), as amended, read with Notification No. 6/2022-Central Tax (Rate) dated 13-07-2022, under HSN 0207, which covers "All goods other than fresh or chilled, pre-packaged and labelled".

Discussion by and Observations of AAR:

Authority observed that pre-packaged and labelled goods attract 5% GST as per Notification No. 41/2017-Central Tax (Rate) amending Notification No. 1/2017-Central Tax (Rate) but exemption is available if the goods are not "pre-packaged and labelled," as defined in section 2(1) of the Legal Metrology Act, 2009, read with Notification No. 6/2022-Central Tax (Rate).

Crucially, Rule 3(c) of the Legal Metrology (Packaged Commodities) Rules, 2011, excludes packaged commodities meant for industrial or institutional consumers from the retail sale declaration requirements. Since customers like the Army, Ministry of Defence, and Taj Hotels qualify as institutional consumers, and relying

on FAQ No. 7 issued by the Ministry of Finance (TRU), it will not be considered as pre-packaged and labelled for the purposes of GST levy.

Accordingly, such supplies to institutional customers do not attract Legal Metrology labelling requirements and, therefore, do not qualify as 'pre-packaged and labelled' for GST, making them exempt under Sl. No. 13 of Notification No. 2/2017-Central Tax (Rate).

Regarding supplies routed through distributors, the authority noted that the exclusion criterion rests on the intended end use of the goods by institutional or industrial consumers rather than the specific supply channel, applying the legal maxim substance over form. This is supported by Rule 2(bc) of the Legal Metrology (Packaged Commodities) Rules, 2011 which defines an "institutional consumer" as the institution which buys packaged commodities bearing a declaration 'not for retail sale', directly from the manufacturer or from an importer or from a wholesale dealer for use by that institution and not for commercial or trade purposes.

Thus, supplies through distributors are also exempt, provided a verifiable documentary trail establishes consumption by a qualifying institution and statutory requirements, including proper declarations, are met.

However, if the same goods are supplied to non-institutional or non-industrial consumers, the exclusion under Rule 3(c) does not apply, and the goods retain the character of pre-packaged and labelled frozen poultry meat under CTH 0207, resulting in a liability to GST at the rate of 5% (CGST + SGST) as per Notification No. 41/2017-Central Tax (Rate), provided the item is frozen and bears a brand name/label.

Ruling of AAR:

1. Supply of frozen chicken (HSN 02071200 & HSN 02071400) made directly to institutional consumers is exempted under Sl. No. 13 of Notification No. 2/2017-Central Tax (Rate) dated 28-06-2017, subject to compliance with the Legal Metrology Act, 2009, and Rules, and provided the supply is intended for consumption by such institutions.
2. The supply of the frozen chicken made to a distributor who further supplies it to institutional consumers is also exempted under Sl. No. 13 of Notification No. 2/2017-Central Tax (Rate), provided the supply is for consumption by institutional consumers and complies with the Legal Metrology framework.
3. The supply of frozen chicken (HSN 02071200 & 02071400) when made to non-institutional consumers shall attract GST at the rate of 5% (2.5% CGST + 2.5% SGST).

JBM Ecolife Mobility Surat Private Limited [(2025) 180 taxmann.com 431] – GUJARAT AAR

Facts and issues involved:

Applicant is engaged in providing mobility solutions for public transportation and functions as a concessionaire for the procurement, operation, and maintenance of electric buses. Convergence Energy Services Limited (CESL) issued a tender under the National E-Bus Programme (NEBP) – Phase I for 5,690 electric buses. M/s JBM Ecolife Mobility Pvt. Ltd. was awarded the contract for supplying and operating 150 BRTS AC electric buses in Surat.

To execute this project, the parent company incorporated the Applicant as a Special Purpose Vehicle (SPV) and entered into a Concession Agreement dated 21.08.2023 with the Surat Municipal Corporation (SMC). Thereafter, through a Tripartite Agreement dated 05.04.2024, the project was assigned to M/s Sitilink Limited (SSL) by SMC for operation and maintenance purposes.

Under the Concession Agreement, the Applicant is liable to pay liquidated damages to SSL in the

event of any material default, breach, or failure to fulfil contractual obligations such as non-operation or improper maintenance of buses, operational violations, non-rectification of defects, or deficiencies in goods or services.

Accordingly, the Applicant sought an advance ruling on the following issues:

1. Whether the liquidated damages payable by the Applicant to SSL for breach or non-performance under the Concession Agreement are liable to GST.
2. If taxable, the applicable GST rate and the appropriate Service Accounting Code (SAC).
3. If taxable, whether the Applicant would be eligible to claim input tax credit (ITC) of the GST paid on such liquidated damages.

Applicant's Submissions:

Under the GST regime, the primary test is whether a transaction qualifies as a "supply" under Section 7 of the CGST Act. Liquidated damages do not, by themselves, constitute a supply. The amounts paid by the Applicant to SSL represent compensation or penalty for loss caused due to breach or non-performance of contractual obligations under the Concession Agreement and not consideration for any supply of goods or services.

It is a settled position that GST is not leviable on payments made purely as compensation for damage or loss. There is no positive act of supply, no reciprocal benefit, and no agreement whereby one party intentionally undertakes to cause breach or loss in exchange for consideration.

CBIC Circular No. 178/10/2022-GST dated 03.08.2022 clarifies that liquidated damages arising from breach of contract do not constitute consideration and are not taxable. Similarly, CBIC Circular No. 245/02/2025-GST dated 28.01.2025 reiterates that penal charges, being compensatory in nature, are not subject to GST.

Further, the Concession Agreement demonstrates that SSL cannot be regarded as "tolerating" or intentionally permitting breaches by the Applicant. No contracting party would agree to suffer loss or non-performance as a service rendered to it. Accordingly, the liquidated damages in question fall outside the scope of "supply" under Section 7 and are not liable to GST.

Discussions by and Observations of AAR:

Authority first examined whether the Applicant, being a recipient and not a supplier, had locus standi to seek an advance ruling. Relying on the judgment of the Calcutta High Court in *Anmol Industries Ltd. v. West Bengal* AAR (150 taxmann.com 3), it held that the expression "applicant" under Section 95(c) of the CGST Act is broad enough to include any registered person. Since the Applicant is registered under GST, the application was held to be maintainable.

Authority noted that the liquidated damages arise strictly in terms of the Concession Agreement and represent a genuine pre-estimated compensation payable to SSL for breach of contract, as defined in Clause 1.2.1(y). These payments reflect mutually agreed consequences of non-performance and not a consideration for any supply.

Authority applied the principles laid down in the Circular 178/10/2022-GST, which clarifies that damages paid solely as compensation for injury or loss due to breach of contract do not amount to consideration for any supply, where there is no express or implied agreement for the aggrieved party to tolerate an act or situation. The test is whether such payments flow under a separate agreement to tolerate an act or whether they merely compensate for breach.

On examining the Concession Agreement, the Authority found no clause indicating that SMC/SSL agrees to tolerate breaches by the Applicant. All provisions demonstrate that the liquidated damages are triggered only as compensation for injury or loss resulting from defaults such as delay in procurement or non-compliance in operation and maintenance.

Authority also placed reliance on the following judgments:

- GSPC (JPDA) Ltd. (AAAR–Gujarat): Settlement fees upon termination are mere consequences of breach and not taxable.
- Achampet Solar (P.) Ltd. (AAAR–Telangana): Liquidated damages for delay in project execution are not consideration for a supply.
- South Eastern Coalfields Ltd. v. CCE: Penal clauses are deterrent in nature and do not represent the intended contractual outcome.

Though CBIC Circular No. 245/02/2025-GST clarifies the applicability of GST on penal charges by banks/NBFCs, its underlying principle, that compensatory charges imposed to enforce contractual discipline do not constitute consideration, applies equally to penal recoveries under the Concession Agreement.

Decision of AAR:

Liquidated damages payable by the Applicant to SSL are not taxable, as they constitute compensation for injury, loss, or damage suffered due to breach of contract and not consideration for any supply. The payments are a mere flow of money from the breaching party to the injured party, not constituting consideration for a supply.

Consequently, questions 2 and 3 are not required to be answered.

Crimson Dawn Apartment Owners Welfare Association [2025-TIOL-24-AAR-GST] – TAMIL NADU AAR

Facts and issues involved:

Applicant is a residents' welfare Association formed by individuals/flat owners, comprising 120 members, and is duly registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 [TNSRA]. Applicant ensures maintenance and repairs of the common areas of the apartments. Based on the area occupied by the members, the applicant collects maintenance charges, not exceeding Rs. 7,500/- per month per apartment, on a quarterly basis.

Applicant also collects 'Corpus fund' or 'Sinking fund', which is intended to cover planned or unforeseen capital expenses in the future, such as painting the exterior/common area, repairing/replacing major equipment like lifts and generators. The total amount expected to be collected from the members is Rs. 2,00,00,000/-, and the collection will be shown as a liability in the balance sheet, as per the existing practice.

The applicant has sought an advance ruling in respect of the following:

1. Whether the corpus /Sinking Fund collected from members is liable to GST? If charged with GST, what is the rate of GST to be charged on the collection of the Sinking fund? What is the SAC Code?
2. If the corpus/Sinking fund collected from members liable to GST, whether the GST paid on such services (input service) be set off against the GST payable on the amounts collected as corpus/sinking funds?
3. Once GST registration is taken, whether required to levy or collect GST on maintenance charges, provided that the monthly sum does not exceed Rs. 7,500/-?

Applicant's Submissions:

Quoting Section 7 and the definition of 'consideration' given under Section 2(31), the applicant contended that the amount collected is merely capital contributions and thus does not form part of consideration.

Applicant submitted that the contributions collections are not directly linked to any individual services rendered to specific clients. They are earmarked for defined future purposes and do not constitute application of funds in the nature of routine operational expenses. Rather, they represent contributions towards the

improvement of shared infrastructure within the apartment complex.

Corpus fund/sinking fund is mandatory under the byelaws of the Cooperative societies/Resident Welfare Association, and it is in the nature of deposit towards unforeseen events or planned events. Hence, collection in the form of sinking fund/corpus fund or capital contribution should be considered as payment for the current/future supply of service. At the time of collection, the association is not aware of where such funds will be utilized since the same have been collected to cater to the future needs/contingencies. Hence, it does not constitute consideration for service supply at the time of collection/utilization and is therefore not subject to GST.

Discussions by and Observations of AAR:

The primary question is whether the collection of corpus/sinking/capital funds from residents for painting and major maintenance of common areas constitutes a taxable supply under GST.

Entry 77 of Notification No. 12/2017-CT(R), as amended, provides an exemption only for monthly member contributions up to the prescribed limit. This exemption does not extend to one-time corpus or sinking fund collections. TRU Circulars clarify that the exemption applies solely to monthly subscription charges and not to other contributions collected for long-term capital works.

The applicant has argued that the corpus/sinking fund is a capital contribution held as a liability and not connected with regular business activities. However, the exemption under Notification 12/2017 relates only to the monthly subscription and not to amounts earmarked for substantial maintenance or improvement works.

Under Section 7, any activity carried out for consideration in the course or furtherance of business constitutes "supply". RWAs regularly provide various facilities and maintenance services to their members, and such activities clearly fall within the scope of business as defined in Section 2(17), which specifically includes facilities provided by an association to its members. Applicant is a "person" under Section 2(84), and the amount collected from members, whether monthly or one-time, constitutes "consideration" under Section 2(31) since it is collected for providing identified services, even if such services will be rendered at a later date. The corpus/sinking fund is not a refundable security deposit. It is collected specifically for undertaking planned capital repairs, painting, and major maintenance. Since the amount is intended to be utilised for the future supply of services to members, it is appropriately treated as advance consideration for such future services.

Accordingly, all elements of "supply" are satisfied, and the collection of corpus/sinking/ capital fund for common-area maintenance constitutes a taxable supply under GST. The association will be liable to register under Section 22 once the aggregate turnover exceeds ₹20 lakh. The exemption of ₹7,500 per month per member remains applicable only for the monthly subscription and not for the corpus/sinking fund.

With respect to input tax credit, Section 17(2) requires proportionate reversal where inputs are used for both taxable and exempt supplies. As the association provides taxable services (corpus fund-related works) and exempt services (monthly charges within the exemption limit), the applicant must proportionately restrict ITC as per Rule 42.

Ruling of AAR:

1. The amount of corpus/sinking/capital fund collected from the residents for the purpose of painting and carrying out some building maintenance work in the common area of the apartment is subject to CGST and SGST, and the applicable tax needs to be paid.
2. As the applicant is liable to pay GST on the collection of corpus/sinking/ capital fund, they can utilize the ITC availed towards their outward liability, subject to following the

provisions of Section 17(2) of the Act and Rule 42 of the Rules.

3. In terms of Sl. No. 77 of Notification No. 12/2017-CT(Rate) dated 28-06-2017, read with Circular No.109/28/2019-GST (F. No. 332/04/2017-TRU) dated 22nd July 2019, if the subscription/contribution per month per member is less than Rs. 7,500/-, no GST is liable to be charged and collected from the members.

PAARAGIRI BALARAMAN NAGARAJ ESWARAN [2025-TIOL-26-AAR-GST] – TAMIL NADU AAR

Facts and issues involved:

Applicant is engaged in the business of crafting silver products using raw materials like silver and copper. They purchase silver bars from vendors located outside Tamil Nadu, process them along with copper, and fashion them into silver ornaments. Sometimes they also outsource these processes through job work.

The applicant has sought an advance ruling on the following questions:

1. Barter Exchange in B2B Transactions: Does barter exchange apply to B2B transactions where payments are made without the involvement of bank transactions? Specifically, in a scenario where silver scrap is exchanged for finished ornaments.
2. Reverse Charge Mechanism (RCM) for Job Work: If Job Work is performed by an unregistered individual, does RCM apply? Additionally, does RCM cover job work provided by individuals to proprietorship concerns?
3. Shipping Label and Packaging Confidentiality: For security purposes, is it permissible to mention the legal name (PAARAGIRI BALARAMAN NAGARAJESWARAN) on shipping labels and use discreet packaging, thereby not disclosing the nature of the goods (e.g., silver ornaments) in the shipment?
4. Insurance Coverage for Goods: In cases where insurance for goods is mandatory, can the insurance coverage be based on a lesser value than the actual value of the goods?
5. HSN Codes for Silver and Scrap Products: What are the appropriate HSN codes for the Silver Scrap, Melted Scrap Bars, Melted Silver Rods, and Melted "Kacha" (imperfect silver)?
6. E-Way Bill Requirements for Silver Products: Is an E-way bill mandatory for the purchase and sale of Silver Scrap, Silver Ornaments, Silver Fine?
7. E-Way Bill for Delivery Challans: In what situations is an E-way bill required for goods sent under delivery challans, specifically for supply on approval, job work, or repair?
8. Valuation of Products with Varying Purity: How to differentiate the value of silver products that have varying purities but are otherwise identical in name? What documentation is necessary to validate these differences in value?
9. Payment to Job Workers in Materials: Is it permissible under GST regulations to make payments to job workers in the form of materials (such as silver or copper) rather than conducting a monetary sales transaction?

Discussions by and Observations of AAR:

From perusal of definition of outward supply u/s 2(83), scope of supply u/s 7 and definition of consideration u/s 2(31), it is quite clear that barter system is covered under the scope of 'supply' and specifically exchange of silver scrap for finished ornaments will be considered a 'supply' under the GST law, despite the absence of monetary payments.

Notification No.13/2017, CT(R) dated 28.06.2017 has clearly enumerated the situations which warrant payment of GST under reverse charge mechanism (RCM), and it can be seen that 'job-work' does not figure as one of the activities/ situations listed therein. Hence, job-work activities do not attract RCM.

HSN code for silver scrap and melted scrap bars would be 7112, viz. Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal. HSN code for Melted Silver Rods and Melted 'Kacha' (Imperfect Silver) would be 7106, viz. Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form.

By virtue of the provisions of provisions of Rule 138(14) of CGST Rules, 2017, goods under Chapter 71, including silver scrap, silver ornaments, and silver fine, as referred to by the applicant (except imitation jewellery under HSN 7117], stand exempted from E-way Bill generation at the national level, i.e., for inter-state supplies.

As the movement of goods in question in the instant case, whether it is in relation to a supply, or it is for reasons other than supply, both get covered under rule 138, and accordingly, the generation of E-way bill is not required in situations involving supply on approval, job work, and repair of silver bars and ornaments

Queries 3, 4, 8, and 9 do not fit into any of the clauses at (a) to (g) of Section 97(2) of the CGST Act, 2017, and hence, no ruling is required to be pronounced in this regard.

Ruling of AAR:

1. Barter system is covered under the scope of 'supply', and specifically, the exchange of silver scrap for finished ornaments will be considered a 'supply'.
2. Job-work does not attract RCM, and hence, answering the said query does not arise.
3. Appropriate HSN for Silver Scrap and Melted scrap bars is 7112, whereas for Melted Silver Rods and Melted 'Kacha' (Imperfect Silver) is 7106.
4. E-way bill is not mandatory for the movement inter-state and intra-state involving the purchase and sale of silver scrap, silver ornaments, and silver fine.
5. E-way bill is not mandatory for the movement of goods in question in situations involving supply on approval, job work, and repair of silver bars and ornaments.
6. No ruling is passed for the remaining queries, namely 3,4, 8, and 9.



Service Tax



CA Rajiv Luthia



Keval Shah
Advocate

Neelamber Caterers Pvt. Ltd. v. Commissioner, CGST, Central Excise, Appeal-I, Kolkata (2025) 32 Centax 441 (Tri.-Cal)

Backgrounds and facts of the case:

- The Appellant, M/s. Neelamber Caterers Private Ltd. is registered for providing outdoor catering services and renting of immovable property services.
- During the audit, the Service Tax Audit Commissionerate made several observations, which culminated in a Show Cause Notice (SCN) demanding Service Tax of Rs. 24,83,858/- and irregular Cenvat credit of Rs. 4,46,043/-.
- The demands related to four main issues upheld by the Commissioner (Appeals): 1) Service tax on the sale of sweet boxes, treating it as outdoor catering service; 2) Service tax liability under Reverse Charge Mechanism (RCM) on manpower supply services; 3) Service tax liability under RCM on remuneration paid to four Directors, alleging they were not full-time employees; and 4) Irregular availment of CENVAT Credit on maintenance services received from M/s Anandlok Welfare Association, partly because the billing address and registered address did not match.
- The Appellant voluntarily discharged tax liability under RCM for legal consultancy services and Goods Transport Agency (GTA) services

Arguments by the Appellant:

- The Ld. AR for the appellant made the following submissions:
  - (i) The Appellant argued that the supply of sweet boxes was a pure transaction of sale of goods with no element of service, and thus not liable to service tax, regardless of their registration category.
  - (ii) Regarding manpower supply services, the service provider had already collected and paid the service tax; demanding it again from the recipient under RCM would amount to double taxation.
  - (iii) Concerning Directors' remuneration, the payment was salary, TDS was deducted

under Section 192 of the Income Tax Act, and the Directors were employees. Service provided by a Director as an employee to the employer is outside the purview of 'service' under Section 65B(44)(b) of the Finance Act, 1994, a position clarified by CBEC Circular No. 115/9/2009-ST.

(iv) Maintenance services were input services received in the course or furtherance of the Appellant's renting of immovable property business, meaning there was no violation of Rule 9 of CENVAT Credit Rules, 2004, despite the address discrepancy. CENVAT was correctly availed.

(v) Furthermore, the demand for reversal of Cenvat credit related to M/S SONU SERVICES was unsustainable, as credit was availed once service tax was paid, regardless of whether it was paid by the service provider or the recipient.

Arguments by Department:

- The Ld. AR for the revenue made the following submissions:

  (i) The sale of sweet boxes was taxable under the Outdoor Catering Service per Rule 2C of the Service Tax (Determination of Value) Rules, 2006.

  (ii) The Directors were not full-time employees/whole-time directors, shared time with other companies, and their remuneration was professional fees, making it taxable under RCM.

  (iii) CENVAT credit was denied on maintenance services because the billing address and registered address of the Appellant did not match.

Decision of the Hon'ble Tribunal:

- Sale of Sweet Boxes: The supply was a pure sale of goods with no element of service; therefore, no service tax was liable.
- Manpower Supply Services (RCM): Since the service tax was collected and paid by the service provider (M/S. SONU SERVICES), demanding it again from the recipient under RCM would constitute double taxation.
- Directors' Remuneration (RCM): The remuneration paid was salary, and the Directors acted as employees of the company. Service provided by a Director as an employee to the employer is out of the purview of 'service' under Section 65B(44)(b) of the Finance Act, 1994.
- The input services were received in the course or furtherance of the Appellant's renting an immovable property business. There was no violation of Rule 9 of the CENVAT Credit Rules, 2004.
- CENVAT Credit Reversal (RCM): Once service tax is paid and the appellant has a proper invoice, CENVAT credit is available regardless of whether the service tax was paid by the service provider or the recipient.

METEC Construction Technology Pvt. Ltd. v. Commissioner of GST and Central Excise, Chennai (2025) 33 Centax 154 (Tri.-Mad)

Backgrounds and facts of the case:

- The Appellant, M/S. Meta Construction Technology Pvt Ltd., engaged in construction and works contract services, filed a refund claim of Service Tax amounting to Rs. 4,20,422/- on 19.02.2013, covering the period 02.05.2011 to 01.11.2012.
- The tax was paid on the construction of a Church. The adjudicating authority sanctioned a partial refund but rejected the remaining amount on the grounds of the limitation of time. The rejection was upheld by the Commissioner (Appeals).

- The claim in respect of these invoices was filed beyond the prescribed period of one year from the relevant date (date of payment of service tax) under Section 11B of the Central Excise Act, 1944.

Arguments by Appellant Assessee:

- The Appellant contended that the rejection of the refund claim based on the time bar under Section 11B was incorrect.
- Since the construction of the church was religious, the service rendered did not fall under "taxable service," and therefore the tax ought not to be retained by the department (invoking Article 265 of the Constitution).
- It was argued that duty paid under a "mistake of law" should be outside the purview of the limitation period specified in Section 11B of the Act.

Arguments by Department:

- The Department argued that the rejection was proper as the refund claim was barred by limitation, having been filed beyond the one-year period stipulated in Section 11B of the Central Excise Act, 1944.
- The rejection relied on the law laid down by the Honourable Apex Court in *Mafatlal Industries v. Union of India.*

Decision of the Hon'ble Tribunal:

- Claims for refund of service tax are governed by the provisions of Section 11B of the Central Excise Act, 1944 (as made applicable via Section 83 of the Finance Act, 1994) for the period of limitation.
- The law governing refunds is settled by the 9-Judge Constitution Bench decision in *Mafatlal Industries Ltd. v. UOI.* Where a refund is claimed on the ground that tax was collected by misinterpreting or misapplying provisions of the Act, Rules, or Notifications (i.e., 'illegal levy'), the claim must be preferred only under and in accordance with Section 11B.
- Section 72 of the Contract Act has no application to claims for refund arising from misinterpretation of law under these enactments.
- Since the claim falls under the category of misapplication of law, the strict limitation period of one year under Section 11B applies. The Appellant's contentions regarding the inapplicability of the time limit under Section 11B were held to be wholly untenable

Maa Kalyani Electrical v. Union of India (2025) 36 Centax 141 (Jhar.)

Backgrounds and facts of the case:

- The Petitioner filed an appeal against an Order-in-Original passed by the Deputy Commissioner, CGST & Central Excise. Initially, the Commissioner (Appeals) dismissed the appeal without going into the merits solely because the Petitioner had failed to make the mandatory pre-deposit of 7.5% of the Service Tax amount, as required by Section 35F of the Central Excise Act, 1944, read with Section 83 of the Finance Act, 1994. The Petitioner subsequently paid the requisite 7.5% pre-deposit and requested the Commissioner (Appeals) to decide the appeal on the merits.

Arguments by Appellant Assessee:

- The Petitioner argued that, having discharged the mandatory pre-deposit, the Appellate Authority should proceed to decide the appeal on the merits. The Petitioner claimed that they were not contesting the service tax liability and that there was no short levy in the case.

Arguments by the Department:

- The Commissioner (Appeals), the Appellate Authority, dismissed the appeal, observing that he had already issued an earlier order and had consequently become "functus officio" and therefore had no power to make changes or entertain the appeal for decision on merits.

Decision of the Hon'ble Jharkhand High Court:

- The Hon'ble High Court held that the reasoning given by the Commissioner (Appeals) that he had become functus officio was absolutely fallacious and based on a complete misunderstanding of the law.
- Since the appeal was dismissed earlier only for non-compliance with the mandatory pre-deposit requirement and was not decided or entertained on the merits, the question of the Authority having become functus officio after the subsequent deposit of 7.5% of the duty amount could not have arisen.
- The High Court set aside the impugned order and restored the appeal to its original number, directing the Appellate Authority to decide the appeal on merits after verifying the mandatory pre-deposit.





THEY SAY YOU CAN'T TAX... BUT GUESS BUT GUESS WHO FOUND TO DAM THEM!



THEY SAY THE FOCUS IN INTERNAL AS FREEE... BUT THE TAXMAN FOUND A GPS FOR BILL...

Case Law Update



CS Makarand Joshi

IBC

In the matter of EPC Constructions India Limited - formerly Essar Projects India Limited, represented by its Liquidator v. Matix Fertilisers and Chemicals Limited - Supreme Court order dated 28 October 2025

Facts of the case:

EPC Constructions India Limited - the Appellant executed a contract with Matix Fertilisers and Chemicals - Respondent for setting up a fertilizer complex on 11 December 2009. Under the contracts, a sum of Rs. 572.72 crores became due and payable by the respondent to the appellant.

A resolution dated 30 July 2015 was passed by the appellant giving consent to make an investment up to Rs. 400 Crores into 8% Cumulative Redeemable Preference Shares (CRPS) of Rs. 10/- each of the Respondent in one or more tranches.

Respondent, in consequence, allotted 25,00,00,000 8% CRP Shares of Rs. 10/- each to the appellant in terms and conditions mentioned therein. The CRPS were renewable within three years.

National Company Law Tribunal (NCLT) initiated Corporate Insolvency Resolution Process (CIRP) against the appellant by order dated 20 April 2018.

The appellant issued a letter on 28 August 2018 to the Respondent asking for redemption of CRPS, including dividend, aggregating to Rs. 310 Crore.

The Respondent sent a reply dated 24 August 2018 informing ability towards redemption of the CRPS, along with cumulative dividend (totalling ₹310 crore), had already been adjusted (set-off) against its claim pending against the Appellant.

Respondent also submitted a claim in the CIRP of Appellant of Rs. 377.87 Crores, information of which was also sent on 5 June 2018 for adjustment of the total liability of CRPS against the aforesaid claim.

The Resolution Professional of the appellant also wrote a letter on 27 October 2018 to the Respondent claiming the debt, which included an amount of Rs. 250 Crores towards investment in

CRPS with a dividend of Rs. 60 Crores, totalling to Rs. 310 Crores.

The Liquidator of the appellant moved an application before the NCLT seeking leave under Section 33 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) for taking proceedings for recovery of the debt of the appellant.

Consequently, an application u/s 7 of the IBC was filed by the Liquidator of the Appellant on 25 April 2022 against the respondent for its failure to pay the redemption amount of INR 310 Crores for the matured CRPS. The appellant contended that the transaction was, in essence, a "financial debt" because it had the "commercial effect of borrowing."

The NCLT dismissed the Section 7 application, holding that the CRPS were an investment and not a debt. It was found that the respondent had incurred losses, and under Section 55 of the Companies Act, 2013 (the Act), preference shares cannot be redeemed unless the company is making profits or issues fresh shares for redemption.

The NCLT ruled that the non-redemption of shares does not convert the preference shareholder into a creditor, nor does it make the value of the shares a debt.

An appeal was filed with the National Company Law Appellate Tribunal (NCLAT) challenging the above order of the NCLT.

The NCLAT, in its order dated 9 April 2025, upheld the NCLT's decision, dismissing the appeal. It concurred that the respondent had not earned profits or declared dividends to redeem the shares, and therefore, no debt became due. It affirmed that the shares were part of the Company's capital, extinguishing the earlier outstanding amount.

An appeal was filed at the Supreme Court by the appellant.

Arguments of the Appellant:

The Appellant's core argument was that the transaction, despite its form as preference shares, had the commercial effect of borrowing and therefore constituted a "financial debt" under Section 5(8)(f) of the IBC.

The conversion of outstanding dues into CRPS was explicitly requested by the respondent to meet its Debt-to-Equity Ratio (DER) requirement (2:1) for its project lenders. This was a necessary step for the respondent to draw further credit, proving the transaction was fundamentally about the corporate debtor managing its debt profile. The transaction was a temporary financing arrangement, or a "pause point," with the explicit understanding that the money would be repaid (redeemed) within three years upon raising equity, which demonstrated a clear obligation to repay, characteristic of a borrowing.

The underlying intent and economic reality of the transaction which was the conversion of an existing receivable/loan into an instrument designed for temporary capital infusion with a promise of repayment.

The CRPS structure merely masked an underlying borrowing arrangement to help the respondent with its regulatory/lender requirements.

The Appellant made an "investment" by converting an existing debt, which did not change the core financial characteristic of the original amount, especially since the expectation of repayment was clearly documented.

Arguments of the Respondent:

The Respondent countered that preference shares are part of the company's equity capital, not debt, and that the redemption was conditional, negating any claim of "financial debt." Under the Companies Act, 2013 (Sections 2(84), 43, 55), preference shares are unequivocally part of the share capital (equity). Amounts subscribed to shares are not considered loans or debt capital. The Appellant is a shareholder, not a creditor, and therefore cannot be considered a "financial creditor" entitled to invoke Section 7 of the IBC.

The redemption obligation was not absolute or unconditional. Section 55 legally mandates that preference shares can only be redeemed out of profits available for distribution as a dividend or out of the proceeds of a fresh issue of shares

made specifically for redemption. Since the respondent was reportedly incurring losses, the condition precedent for redemption was not met, meaning no unconditional liability (debt) arose against the company.

For a transaction to be classified as a financial debt, it must be against the "time value of money." The payment on CRPS is a dividend, not an interest payment, and the redemption amount is the return of capital, not the repayment of a loan with interest.

HELD:

The Supreme Court held that the amount due on the non-redemption of CRPS does not constitute a "financial debt" under the IBC.

Preference shares are unequivocally part of a company's share capital (equity) under the Act and not debt. The Appellant, as a holder of preference shares, is a shareholder and a part-owner of the company, not a creditor. The obligation to redeem preference shares is conditional, governed by Section 55 of the Act, which mandates that redemption can only be done out of distributable profits or the proceeds of a fresh issue of shares. Since it did not earn profits, the condition precedent for redemption was not met, meaning no legally enforceable debt had crystallized. The CRPS transaction lacked the essential characteristics of a "financial debt" under Section 5(8)(f) of the IBC.

Unlike debt, the repayment (redemption) was conditional on profits, making the repayment obligation uncertain and dependent on the company's performance.

The payment made (dividend) was not guaranteed interest, and the transaction did not, in a commercial sense, represent consideration for the time value of money.

Allowing a preference shareholder to be treated as a "financial creditor" under the IBC would improperly blur the fundamental distinction between equity/capital providers (shareholders) and pure credit providers (financial creditors). This would undermine the structure of the Companies Act and the priority order for claims under the IBC.

SEBI

SEBI Adjudication Order relating to Mr. Allam Raghunath, Mr. Subrato Saha, Brightcom Group Limited (BGL)

FACTS OF THE CASE:

Securities Exchange Board of India (SEBI) initiated an investigation into Brightcom Group Limited (BGL) following complaints regarding irregularities in its financial statements. Preliminary findings indicated an overstatement of profits by adopting wrong accounting practices, coupled with non-cooperation from the Company. A Forensic Auditor was appointed and submitted a report on December 08, 2022.

A Final Order dated February 06, 2025, was passed against BGL and its executive directors, holding that BGL's non-compliance with accounting standards resulted in misrepresentation of its financial statements for FYs 2014-15 to 2019-20.

The Noticees' in this matter are:

- **Noticee No.1. Mr.Allam Raghunath** (Non-Executive Independent Director from 26/06/2012 to 26/12/2021).
- **Noticee No.2. Mr. Subrato Saha** (Non-Executive Independent Director from 14/08/2015 to 25/10/2017).
- The above two are jointly referred as Noticees.
- These accounting irregularities led to an artificial inflation of headline profits to the extent of INR 1280.06 crore (comprising INR 860.30 crore in FY 2019-20 and INR 411.76 crore in FY 2018-19). This misrepresentation enabled the promoter group to offload shares

in BGL at inflated prices, thereby impacting investors at large.

- The accounting irregularities at BGL led to an artificial inflation of headline profits to the extent of INR 1280.06 crore during FYs 2018-19 and 2019-20.

SEBI made the following allegations:

A. In the context of Corporate Violations: The company's primary accounting violations included:

- Failure to Recognize Impairment Loss due to GDPR: BGL failed to make timely assessments regarding the impairment of intangible assets following the introduction of the General Data Protection Regulation (GDPR) in 2016. The company later incorrectly recognized a subsequent impairment loss of INR 868.30 crores in FY 2019-20 under "Other Comprehensive Income" instead of the "profit and loss" statement, which resulted in inflated profits.
- Failure to Recognize Loss from Failed Acquisition: BGL failed to recognize an impairment loss of INR 411.76 crores in FY 2018-19 related to a failed acquisition of Lycos. This loss was also incorrectly recognized under "Other Comprehensive Income" in the consolidated financial statement, which further inflated profits.
- Incorrect Capitalization of R&D Expenditure: BGL wrongly capitalized R&D expenses amounting to INR 504.49 crores as assets between FYs 2014-15 to 2019-20.

B. Violations in context to Noticees: SEBI further alleged that the Noticees had violated Regulation 18(3) of the LODR Regulations by failing to ensure that BGL's published financial statements complied with applicable accounting standards and presented a 'true and fair view'.

Failure to Exercise Due Diligence: The members of the Audit Committee are entrusted with the legal obligation of monitoring financial reporting and ensuring proper disclosures. Both Noticee No. 1and Noticee No. 2, by being involved in the approval of the misrepresented financial statements, failed to exercise due diligence and did not raise objections to any of the accounting irregularities, thereby breaching their fiduciary duty.

Specific Lapse by Noticee No.1: As an independent director and Audit Committee Chairman, Noticee No.1 was specifically cited for:

Failing to question why impairment assessments were not conducted when GDPR compliance was announced.

Failing to question why later-recorded impairment losses did not affect the company's profit and loss.

Submitting a false declaration of independence to BGL starting from FY 2015-16, violating Regulation 16(1)(b) of the LODR Regulations. This was because his daughter was employed by a BGL subsidiary (Lycos Internet Limited).

Arguments of Noticee No.1

- **Independence/Tenure:** Noticee No.1`s 2016 appointment should be treated as his first term under the Companies Act, 2013, as his tenure before April 1, 2014, is not counted, making his declaration of independence valid.
- **Daughter's Association:** Noticee No.1`s daughter's associations were limited to non-remunerative internships and a project-based freelance contract; she was never an employee, thus not compromising his independence under Regulation 16(1)(c).
- **Lack of Involvement:** Noticee-1 was a non-executive independent director and was not involved in the day-to-day affairs or decision-making of the company.
- **Liability:** Noticee1 was only liable for acts with his knowledge, consent, or lack of diligence (Section 149(12)), and he is not an 'officer in default'.
- **Reliance on Professionals:** Financial statements were prepared under the advice of qualified Chartered Accountants and Statutory Auditors. He was not a forensic auditor or part of the finance team.

Arguments of Noticee No. 2

- **Limited Role/Attendance:** Noticee No.2 was a member of the Audit Committee for a short tenure (Aug 2015 to Oct 2017). He attended only 2 out of 8 audit committee meetings, was based in Dubai, and relied on the CMD.
- **Reliance on Management:** Noticee No.2 had no reason to doubt the figures, as their correctness was attested by the CMD and CFO. He reviewed the limited information shared and asked clarifying questions.
- **Non-Receivable Agenda:** Noticee No.2 claimed he was not invited to every meeting, and the agenda was not provided in advance.
- **Forensic Audit Limitations:** The forensic audit relied upon by SEBI acknowledged limitations, was based on limited information, and was not verified for genuineness.

Reply by SEBI:

- **Failure of Due Diligence:** The director's reliance solely on the auditor's opinion without seeking clarification constituted a failure of due diligence and an abdication of his core responsibility. As an Independent Director and Audit Committee Chairman for four years, he was required to apply an independent mind and ensure the financial statements presented a true and fair view, not merely rubber-stamp the auditor's work.
- **Failure to Question & Improbable Ignorance:** SEBI found it highly improbable that a senior director with a long tenure was oblivious to widely reported, significant events like the GDPR enactment (2016) and the failed Lycos acquisition. Specifically, he failed to question why impairment assessments were not conducted due to GDPR, and later, why the massive impairment losses recorded did not affect the Profit and Loss (P&L) account (which improperly inflated profits). SEBI asserted, citing a Supreme Court precedent, that directors cannot "shut their eyes to irregularities that are obvious."
- **SEBI's Counter (Violations Overlapped with Tenure):** This contention was found to have no merit. The investigation period (FY 2014-15 to 2019-20) and the primary violations—such as incorrect R&D capitalization (starting FY 2014-15) and the need for impairment assessment due to GDPR (enacted April 2016)—substantially overlapped with his nine-year tenure. He was responsible during the period the seeds of non-compliance were sown.
- Non-attendance at certain meetings was due to personal reasons (e.g., being in Dubai) and he relied on the CMD. SEBI's Counter (Dereliction of Duty): The explanation for non-attendance and reliance on the CMD was deemed untenable. Independent Directors are "duty-bound" to attend meetings and act as "watchful monitors" on behalf of the shareholders. Failure to attend all necessary meetings and exercise due diligence constitutes a fundamental dereliction of his duty to ensure the financial integrity of the company.
- Responsibility lay with the management (Executive Directors) and the Auditor- SEBI's Counter (Direct Involvement): Noticee No.1 was a signatory to the FY 2019-20 financial statements. Being a direct signatory to the documents that contained the incorrect recognition of the massive impairment loss establishes his direct and personal accountability for the misrepresentation.

Penalty:

- After considering the facts, submissions of the Noticees, and the factors prescribed by SEBI in exercise of the powers conferred upon me under Sections 11(4A) and 11B (2) read with Section 15A(b) and 15HB of the SEBI Act, imposed monetary penalties on the two Noticees in the matter BGL for their dereliction of duty and failure to ensure the financial statements presented a true and fair view on Noticee No.1 was Rs. 30 lakhs and Noticee No.2 with Rs. 5 lakhs. Penalty imposed on them within a period of forty-five (45) days from the date of receipt of this Order

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 Notifications

Amendments to Directions - Compounding of Contraventions under FEMA, 1999

RBI has changed the account details designated for receiving the compounding application fee and compounding amount remitted through National Electronic Fund Transfer (NEFT), Real Time Gross Settlement (RTGS).

A.P. (DIR Series) Circular No. 15 dated 3rd April 2025

(***Comments***: RBI has changed the account details for NEFT and RTGS payments for compounding. The change is undertaken to streamline the receipt of the compounding application fee and compounding penalty. Annexure I of the Master Directions on Compounding of Contraventions has also been modified to include the revised account details.)

B. Update through Notifications

Foreign Exchange Management (Export of Goods and Services) (2nd Amendment) Regulations, 2025

i. RBI has extended the time period for realisation and repatriation of the full export value of goods/software/services exported from India. This period has been increased from 9 months to 15 months, to be calculated from the date of export from India.

ii. RBI has increased the time period for shipment of goods from 1 year to 3 years from the date of receipt of advance payment or as per the agreement, whichever is later.

FEMA 23(R)(7)/2025-RB dated 13th Nov. 2025

(***Comments***: As part of the trade relief measures announced by RBI, the abovementioned actions are taken with a view to mitigating the impact of trade disruptions on exports and to stabilise export cash flows during periods of supply-chain congestion, logistics delays, and heightened tariff actions by the US. This provides a wider financial and operational buffer.)

Best of the Rest



Rahul Hakani
Advocate



Niyati Mankad
Advocate

M/S Poly Medicure Ltd. v. M/S Brillio Technologies Pvt. Ltd – Judgment Dated 13 November, 2025 [2025 INSC 131]

Consumer Protection Act, 1986—S. 2(1)(d) ("consumer")—"Commercial purpose"—What constitutes—Purchase of goods/services by a commercial entity to automate its business processes not just for better management of the business but to reduce costs and maximise profits—Held, the transaction has a nexus with generation of profits and is therefore, for a "commercial purpose"—Such a purchasing entity does not qualify as a "consumer" under S. 2(1)(d), as it does not fall under the main definition or the "self-employment".

Facts:

M/S Poly Medicure Ltd. (Appellant), a company incorporated under the Companies Act, 1956, and engaged in export and import of medical devices, filed a consumer complaint against M/S Brillio Technologies Pvt. Ltd. (Respondent). The complaint claimed a deficiency in service related to the purchase of a product licence for "Brillio Opti Suite" software intended to install and implement an export/import documentation system at its plant. The Appellant sought a refund of the product licence and additional development costs, arguing that the software did not function properly. The Respondent contested the complaint, arguing the Appellant was not a "consumer" as defined in the Consumer Protection Act, 1986.

Issue Involved:

Whether in respect of the goods purchased/services availed, the Appellant would qualify as a 'consumer' as defined in Section 2(1)(d) of the 1986 Act?

Held:

The Supreme Court, affirming the State Commission and NCDRC, held that the transaction was for a commercial purpose, and thus, the Appellant is not a "consumer" as per Section 2(1)(d) of the 1986 Act. The Court relied on principles laid down in *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers and Ors* [(2020) 2 SCC 265] and *National Insurance Co. Ltd. v. Harsolia Motors and Ors* [(2023) 8

SCC 362], emphasizing that the purchase must have a "close and direct nexus with a profit-generating activity". Since the software was used to automate processes directly linked to the Appellant's import/export business, such as document management and credit handling, its object was to maximise profits and not merely to generate a livelihood by means of self-employment (the exception carved out by the Explanation to Section 2(1)(d)). The appeal was dismissed.

Livein Aqua Solutions Private Limited v. HDFC Bank Limited – Judgment Dated November 24, 2025 [2025 INSC 1349]

Insolvency and Bankruptcy Code, 2016 – Section 7(5)(b) Proviso – National Company Law Tribunal Rules, 2016 – Rule 28 & Rule 34(4): An application under Section 7 of the IBC, 2016, supported by a defective affidavit (verified on 26.07.2023 but supported by an affidavit deposed to on 17.07.2023) is not non est and is not liable to be rejected at the threshold on that ground, as the defect is curable and not fundamental.

Before rejecting an incomplete application under Section 7(5)(b) of the IBC, the NCLT is obliged to give notice to the applicant itself to rectify the defect within seven days of the receipt of such notice, and notice under the NCLT Rules' procedure (Rule 28) is insufficient to satisfy this mandate - Procedural defects which are curable should not be allowed to defeat substantive rights

Facts:

The appellant-company, Livein Aqua Solutions Private Limited, availed a loan facility of ₹5.5 crores from the respondent-bank, HDFC Bank Limited, which was classified as a non-performing asset on 04.08.20194. The respondent bank filed an application under Section 7 of the IBC5. This application was verified on 26.07.2023, but the supporting affidavit was deposed to earlier on 17.07.2023. The NCLT rejected the application on 18.06.2024, solely on this procedural ground. The NCLAT allowed the bank's appeal on 27.08.2025, restoring the application and remanding the matter for a decision on merits, holding that the defect was curable. The company appealed this decision to the Supreme Court.

Issues Involved:

i. Whether an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), which was verified on 26.07.2023 but supported by an affidavit deposed to on 17.07.2023, would be liable to be rejected at the threshold on that ground?

ii. Whether the consolidated notice of defects issued by the Joint Registrar of the NCLT under Rule 28 of the NCLT Rules, 2016, was sufficient to satisfy the mandatory requirement of issuing a notice to the applicant under the proviso to Section 7(5)(b) of the IBC?

Held:

The Supreme Court held that the rejection of the Section 7 application by the NCLT could not be sustained because no notice was given to the respondent-bank under the proviso to Section 7(5)(b) of the IBC (NCLT to give notice to applicant to rectify defect before rejection). The consolidated notice issued by the Joint Registrar under Rule 28 of the NCLT Rules was insufficient, as the IBC is the substantive legislation, and the notice to cure defects had to be given under the IBC provision, which requires notice to the applicant itself to rectify the defect within seven days of receipt. The Court affirmed that a defective affidavit does not render the application non est or warrant rejection at the threshold, as it is a curable defect. The Court relied on *Dena Bank (now Bank of Baroda) v. C. Shivakumar*

Reddy [(2021) 10 SCC 330], and the principles in *Vidyawati Gupta and others v. Bhakti Hari Nayak and others* [(2006) 2 SCC 777] and *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and another* [(2006) 1 SCC 75] regarding procedural rules as handmaidens of justice. The appeal was disposed of by directing the respondent bank to cure the defects, including the defective affidavit, within seven days.

Hindustan Construction Company Ltd. v. Bihar Rajya Pul Nirman Nigam Limited – Judgment Dated November 28, 2025 [2025 INSC 1365]

Arbitration and Conciliation Act, 1996 – Ss. 11(6), 12(5), 4 & 29A – Appointment of Arbitrator – Judicial Review – Existence of Arbitration Agreement – Waiver – Held:

- The Supreme Court affirmed that an order passed by the High Court under Section 11(6) of the A&C Act is final and not amenable to the review jurisdiction, as the Act is a self-contained code;
- The Court held that the existence of a valid arbitration agreement under Section 7(4)(c) is established where a party has actively participated in proceedings for a substantial period – Crucially, a joint application by both parties seeking an extension of the arbitrator's mandate under Section 29A constitutes an express or implied waiver of the ineligibility under Section 12(5), thereby precluding a subsequent challenge under Section 4;
- The Court stressed that the unenforceability of a unilateral appointment clause does not destroy the arbitration agreement itself, requiring the Court to intervene under Section 11(6) to substitute a neutral appointing mechanism.

Facts:

The Appellant, Hindustan Construction Co. Ltd., was awarded a construction contract by the Respondent, Bihar Rajya Pul Nirman Nigam Ltd., on 04.03.2014, which contained Clause 25 for arbitration. After the first dispute under this clause was resolved by an award accepted by the Respondent, the Appellant raised fresh claims for the extended period of work. The Managing Director failed to appoint an arbitrator upon request, leading the Appellant to file a petition under Section 11 of the A&C Act, and the High Court appointed a sole arbitrator on 18.08.2021. Both parties actively participated in the arbitration for over three years, with over seventy sittings, and jointly applied for mandate extensions under Section 29A on multiple occasions. Despite this participation, the Respondents filed a Civil Review Application in 2024 to challenge the 2021 appointment order, arguing that Clause 25 was no longer a valid arbitration clause. The High Court, by its impugned judgment dated 09.12.2024, dismissed the Appellant's original Section 11 petition.

Issues involved:

(i) Whether the High Court possessed the jurisdiction to review or recall its earlier order passed under Section 11(6) of the A&C Act, and whether the exercise of such power was valid in law?

(ii) Whether a valid and subsisting arbitration agreement existed between the parties within the meaning of Section 7 of the A&C Act, and whether clause 25 of the contract satisfies the statutory requirements of a binding arbitration clause?

(iii) whether the joint application filed by both parties, seeking extension of the arbitrator's mandate under Section 29A constitutes an express or implied waiver of the ineligibility under Section 12(5), and Section 4 of the Act?

Held:

The Supreme Court allowed the appeal and set aside the High Court's judgment.

- The Court relied upon the principle of minimal judicial intervention under Section 5 of the Act. It held that the High Court's review on merits was a gross excess of jurisdiction as the A&C Act has no provision for review.
- On the second issue, the Court, relying on Central Organisation for *Railway Electrification v. ECI SPIC SMO MCML* (JV) [(2025) 4 SCC 641], *TRF Ltd. v. Energo Engineering Projects Ltd.* [(2017) 8 SCC 377], and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* [(2019) SCC OnLine SC 1517], held that the unenforceability of the unilateral appointment clause (Managing Director) only necessitated the appointment of an independent arbitrator under Section 11(6), not the nullification of the entire arbitration agreement.
- Furthermore, the Court concluded that the Respondents' joint application under Section 29A amounted to an express waiver under Section 4 of the Act, curing any defect of ineligibility under Section 12(5), a position affirmed by *Narayan Prasad Lohia v. Nikunj Kumar Lohia and others* [(2002) 3 SCC 572].
- The Court then appointed Mr. Justice V. Ramasubramanian (Retd.) as the substitute arbitrator under Section 29A(6) read with Section 11 of the A&C Act.

Raj Kumar Sonwani v. Kumari Purnima - Judgment Dated 21.11.2025 [2025:CGHC:56721-DB]

Hindu Adoptions and Maintenance Act, 1956— S.3(b) & S. 20(3)—Maintenance of daughter—Unmarried daughter's right to maintenance and marriage expenses from father—Statutory obligation— The provision of Section 20 of the 1956 Act casts a clear statutory obligation on a Hindu father to maintain his unmarried daughter who is unable to maintain herself - This right of an unmarried daughter to claim maintenance from her father when she is unable to maintain herself is absolute - An unmarried daughter is clearly entitled to maintenance from her father till she is married even though she has become major, which is a statutory right recognized by Section 20(3) - Further, "Maintenance" under Section 3(b) of the Act includes the reasonable expenses of and incident to the marriage of an unmarried daughter - A father cannot deny to pay the marriage expenses on any ground whatsoever when he is reasonably well-earning.

Facts:

The Respondent/Plaintiff, Kumari Purnima (aged 25), is the unmarried daughter of the appellant/defendant, Raj Kumar Sonwani. She filed an application u/s 20 read with Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956, stating she was unable to maintain herself. Her father, the Appellant, a Government Teacher, had entered into a second marriage and earned Rs. 44,642/- per month. The daughter claimed Rs. 15,00,000/- for marriage expenses and maintenance, which her father opposed. The Family Court, Surajpur, allowed the application, granting Rs. 2,500/- per month as maintenance and Rs. 5,00,000/- towards her marriage expenses. The father/Defendant preferred this Appeal against the Family Court's judgment and decree.

Issue/s Involved

1. Whether the Family Court was justified in granting maintenance and marriage expenses to the unmarried daughter, who is a major, under Section 20 read with Section

3(b) of the Hindu Adoptions and Maintenance Act, 1956?

2. Whether the Family Court's judgment and decree are liable to be set aside because neither party filed an affidavit in terms of the Supreme Court's decision in Rajnish v. Neha?

HELD:

The High Court dismissed the appeal, upholding the Family Court's judgment and decree. The Court held that the unmarried daughter, though a major aged 25 years, is clearly entitled for maintenance from her father till she is married, as well as marriage expenses, as a statutory right. This conclusion was based on a careful perusal of Section 3(b)(ii) of the Act, which includes the reasonable expenses of and incident to the marriage of an unmarried daughter in the definition of "maintenance" , and Section 20(3), which casts a statutory obligation on a Hindu to maintain an unmarried daughter who is unable to maintain herself. The Court relied upon the Supreme Court judgment in Abhilasha v. Parkash [(2021) 13 SCC 99], which held that the right of an unmarried daughter under Section 20 to claim maintenance from her father when she is unable to maintain herself is absolute. Reference was also made to *Jagdish Jugtawat v. Manju Lata* [(2002) 5 SCC 42], which recognized the right of a minor girl to claim maintenance after she attains majority till her marriage. The High Court found the Family Court was absolutely justified in granting the maintenance of Rs. 2,500/- per month and Rs. 5,00,000/- towards marriage expenses.



The Chamber News



CA Mehul Sheth



CA Ankit Sanghavi

Important events and happenings that took place online/ physical between November 1, 2025, to November 30, 2025, are being reported as under:

ADMISSION OF NEW MEMBERS:

The details of new members who were admitted in the Managing Council Meeting held on November 21, 2025, are as under:

Type of Memberships	**No. of Members**
Life Member	10
Ordinary Member	20
Half-yearly - Ordinary	32
Digital Membership	9
Student Member	2
Associate	1
Total	74

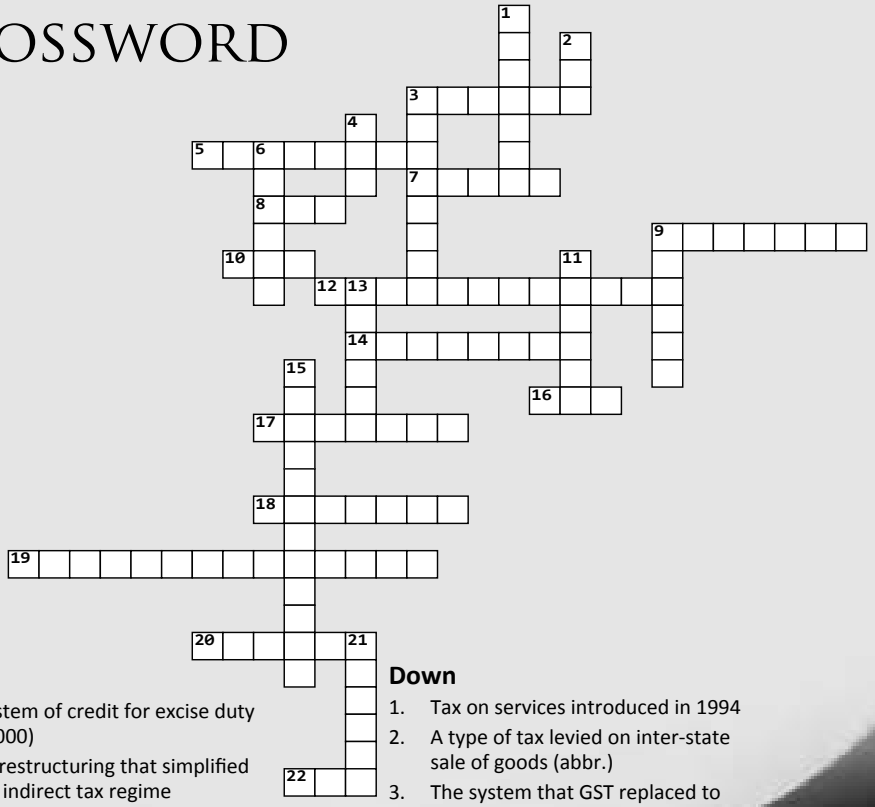
PAST PROGRAMMES

Sr. No.	Date	Topics	Speakers
Direct Taxes			
1	05.11.2025	ISG - Recent Important Decisions Under Direct Tax	CA Dhiraj Dandgaval
2	Essentials of Employee Stock-Based Compensation: Aligning Compensation, Taxation, and Accounting		

a	18.11.2025	Legal Aspects of ESOP and Other Benefit Plan	Ms. Vichita Malhotra
b	22.11.2025	Taxation of ESOPs and Other Benefit Plans	CA Ameya Kunte
c		Accounting Aspects	CA Hemal Shah & CA Amrish Darji
Commercial & Allied Laws			
1	06.11.2025	Related Party transactions - the new regulations	CS Saurabh Agarwal
2	25.11.2025	Webinar on P.U.C. check for practicing Professionals	Adv. Varun Joshi
Indirect Taxes			
1	12.11.2025	Study Circle - GSTR-9 & GSTR-9C: Recent Amendments and AI Driven Compliance	CA Bijal Doshi CA Rahul Gabhawala
Study Group & Study Circle			
1	18.11.2025	Recent Judgements under Income Tax Act, 1961	Adv. Devendra Jain



Crossword



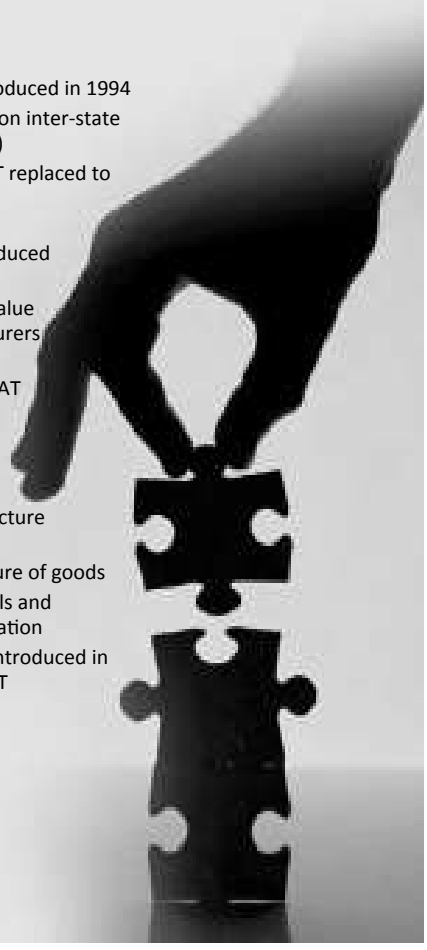
Across

3. Old system of credit for excise duty (pre-2000)
5. Major restructuring that simplified India's indirect tax regime
7. Indirect levies collected by government (plural)
8. Tax that applied to inter-state movement of goods pre-GST
9. Broad framework that governs taxation by national authority
10. Comprehensive reform that replaced many indirect taxes in 2017
12. Initiative for simplification that continued post-1991 reforms
14. Dual tax structure combining Centre and States under GST
16. The law framework that governs GST
17. Liberalisation era that changed fiscal systems
18. Name of the levy on goods imported into India
19. Increased ease in paying taxes
20. Broad changes to create efficiency in tax administration
22. One-nation, one-tax reform model

Down

1. Tax on services introduced in 1994
2. A type of tax levied on inter-state sale of goods (abbr.)
3. The system that GST replaced to reduce cascading
4. A destination-based multipoint tax introduced before GST
6. Central tax on the value added by manufacturers (pre-GST)
9. Successor to MODVAT allowing input tax credit
11. Sub-national governments involved in GST structure
13. A major pre-GST tax levied on manufacture of goods
15. Reduction of controls and simplification of taxation
21. Credit mechanism introduced in 1986 before CENVAT

Scan to check the Answers



Notes

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GLIMPSES

OF THE TURF CRICKET TRIANGULAR LEAGUE CRICKET TOURNAMENT

The Chamber of Tax Consultants Jointly with The Goods & Service Tax Practitioners' Association of Maharashtra & The Malad Chamber of Tax Consultants held on 6th December, 2025 at Player's Turf - Infinity Malad, New Link Road, Mindspace, Malad (W) Mumbai.



Winning Team – The Chamber of Tax Consultants



Captain of Winning Team - Vishal Shah



Best Batsmen, Man of the Series & Man of Match for Qualifier Round 2 - Aagam Sanghavi



Man of the March of the Finals and Best Bowler of the Tournament - Ankit Sanghavi



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