THE CHAMBER OF TAX CONSULTANTS

Estd. 1926
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Celebration function of the 50th Years of The Chamber's Journal held on 25th April, 2025 at Walchand Hirachand Hall, IMC, Mumbai



CA Vijay Bhatt, President-CTC giving the welcome address

(L-R) : CA Ameya Kunte, Chairman Journal Committee, Mr. Dakshesh Parikh, Senior Editor and Chief Guest, CA Jayant Gokhale, Vice President-CTC



CA Ameya Kunte giving brief of the Journal



Address by the Editor - CA Anish Thacker



Showcasing the 1st edition & 50th Edition of the Chamber's Journal (L-R) CA Ameya Kunte, Mr. Dakshesh Parikh, CA Vijay Bhatt & CA Jayant Gokhale





Address by the Chief Guest Mr. Dakshesh Parikh

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3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai-400 020
Phone : 2200 1787/2209 0423/2200 2455
E-Mail: office@ctconline.org
Website : http://www.ctconline.org.

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From the President

CA Vijay Bhatt

Dear Members,

My deepest prayers for the peace to the departed souls of Pahalgam attack on 22nd April, 2025 and Salute to Indian Army for the "Operation Sindoor" carried out on 7th May, 2025 as war against terrorism ! Cannot express any words beyond this !

The occasion of 50 Years of Chamber's Journal on 25th April, 2025 was witnessed by many Past Presidents, Managing Council Members, Editors, Editorial Board Members, Assistant Editors, Past Chairmen and members of the Journal Committee, Authors and Esteemed Journal Subscribers. The talk by Senior Journaist Mr. Dakshesh Parikh added glory to the event, with CA Ameya Kunte moderating the session. The Journal publisher, CA Shri Rajesh Bhagat (head of M/s. Finesse Graphics & Prints Pvt. Ltd.) was felicitated on this occassion for his long-standing partnership with the Chamber, spanning over 35 years. Dr. K. Shivram (Editor for longest term), Advocate Vipul Joshi (Guest Editor for April, 2025), CA Vipul Choksi (Chairman for longest Term), Editor Anish Thacker and Vice-President CA Jayant Gokhale presented their talks and led the audience to down the memory lane.

CA Ameya Kunte, Chairman and his team introduced the audio version of the Journal articles by using a QR code printed at every article. Convener CA Bhavik Shah presented the interesting demo before the august gathering. Hearty congratulations to CA Ameya Kunte and his team for bringing innovative features in the Chamber's Journal.

On 30th April, 2025, the auspicious Akshay Tritiya Day, Chamber's new office was inaugurated. The Opening Ceremony of the newly made office was witnessed very happily by the undersigned, Office Bearers, Past Presidents, Managing Council Members and the CTC staff.

The dream of our Past Presidents and our CTC members came true. I must thank Past Presidents Shri Kishor Vanjara, Shri Parag Ved, Shri Haresh Kenia, Shri K.K. Ramani & Shri Hitesh Shah, who all made great efforts in purchase of this office in July, 2023. The office, situated in the same building viz. Rewa Chambers, (Unit no.1 on ground floor), is now functional. I invite our esteemed members to visit our new office, whenever possible.

On 1st May, 2025, Smt. Malthi Sridharan, the newly appointed Hon'ble Principal Commissioner of Income Tax, Mumbai, assumed the charge of her office. The undersigned, along with two managing council members, had an opportunity to felicitate her. Our best wishes for her appointment as Principal Commissioner of Income Tax Mumbai. We also express our sincere thanks to Shri Raj Tandon, the immediate past Hon'ble Principal Commissioner of Income Tax, Mumbai, who retired from the post on 30th April, 2025. He had taken up personal efforts for improvising functioning of the Income Tax Department and the Income Tax Portal.

The International Tax Committee has organized "The Global Transfer Pricing Summit" on 17th May, 2025 at IMC Hall, Mumbai, on completion of 25 years of Transfer Pricing in India, to be led by experts. I urge the members to attend this important workshop to understand TP provisions in depth.

I am very glad to inform you all that more than 290 delegates from different cities have enrolled for the 18th RRC on International

Taxation at Goa from 12th to 15th June, 2025, leading to the houseful status of the RRC, more than 2 months before the RRC, for which I am thankful to the delegates.

During May & June, International Taxation Committee and Student Committee have jointly organized "2nd International Taxation Course for Beginners" (Virtual mode) comprising of 10 sessions of 2 hours each by eminent faculties. I encourage the members to take benefit of this learning opportunity in the field of International Taxation.

The Membership & Public Relations Committee organized Self Awareness Series on 24th April, 2025 virtually on the topic "Juggle Less, Achieve More : Time & Priority Hacks that work" by CA Atul Bheda, which was very well attended and appreciated by the members.

Our Delhi Chapter organized a webinar on a unique topic "US Tariff and Turbulence". It was joint presentation of panel discussion by Indian and international speakers. I congratulate Advocate Prakash Sinha and his team for organizing this interesting webinar.

This month's Journal features a special story on "Current Practical Issues in GST". I thank CA Ameya Kunte alongwith CA Rajiv Luthia, CA Rajkamal Shah and CA Jinit Shah and his team for selecting this unique topic. I thank all the authors for their contributions.

Centenary Year - Inaugural Function on 4th July, 2025

And slowly we are approaching towards the conclusion of the term 2024-25, after which we all will see the Sunrise of the Centenary Year.

Before I conclude, I appeal to you all to block Friday, 4th July, 2025 to witness the Inaugural Program of the Centenary Year of the Chamber of Tax Consultants.

Dear Members, The Centenary Year Inaugural Function, like Maha Kumbh Mela, is coming once in a span of One Hundred Years. It will come again only after another (2nd of) One Hundred Years.

CA Vipul Choksi, Chairman of the Centenary Year Committee and his team have planned a Grand Inaugural Program on Friday, 4th July, 2025 to celebrate the beginning of the Centenary Year of the Chamber. There will be a few special presentations in the function.

I urge the members to attend this once in life time celebration function in large numbers. Let all of us be witness to the Happening of the Chamber's 100th Year. The detailed program will be announced shortly. Keep watching for the announcement.

Jai Hind !

CA Vijay Bhatt
President



From The Editor's Desk

CA Anish M. Thacker

My Brothers and Sisters,

'There's no honourable way to kill,
no gentle way to destroy.
There is nothing good in war,
except its ending.'

– Abraham Lincoln

As I sit down to pen this communication, the welcome announcement of the cease fire between India and Pakistan comes as a huger relief to all of us. The pain, the loss of innocent lives, the anguish of the families of the bereaved Bravehearts who at one call of duty did not hesitate to lay down their lives for the nation, the damage and destruction the skirmishes have done to innocent civilians, are heart wrenching to say the least.

It is trite that war does no good to any one and it is also equally true that the only good thing about war is its ending. Let us join our hands in praying for the souls of the brave soldiers who were martyred and laid down their lives in the recent attacks.

We pray that the bravery of these martyrs is an inspiration to us to do all we can, in our own way, for the interest of and the protection of our beloved Mother India.

The world is at a very precarious position both politically and economically. There are cease fires announced by India and Pakistan and also, Russia and Ukraine, and bilateral talks will decide how the situation there will take shape.

The United States continues its tough stand on tariffs and immigrants. The position of Europe continues to be that of muted growth and China will oppose the tariffs tooth and nail with a promise of reciprocal tariffs. All these make for a very delicately poised geo political situation and one will have to be watching the developments on the geo political front with care and caution.

The Government's efforts to simplify the Income-tax Act, are going on in full steam, with suggestions being invited from the stakeholders by the Parliamentary Select Committee, on the changes required to the present draft of the Income-tax Bill, 2025.

The Select Committee has already stared meeting various stakeholders. In the week of 12th May, the Select Committee is going to be in Mumbai to meet with some of the stakeholders in the Western part of the country, including what I consider welcome, a few Chartered Accountants in their individual capacity.

The Chamber also has been invited to present its suggestions to the Select Committee and will do so, on 16th May 2025. The L&R committee and Chairman, Past President, Ketan Vajani are working hard to prepare the submissions. We are hopeful that we will carry the voices of our members and make a constructive presentation to the Committee.

It is almost eight years into the introduction of the Goods and Services Tax, a major revamp of India's indirect tax landscape, but the indirect tax landscape is far from settling down. It continues to evolve with the Goods and Services Tax and unfortunately, not the Good and Simple tax (and any thing but), continuing to engage the attention and

indeed sometimes resulting in consternation, of the taxpayers and tax practitioners alike, necessitating discussion of practical issues that come up every so often.

This month's issue picks up some of the 'Current Practical Issues in GST' and places educated articles, written by very experienced and learned authors, on these topics, for the readers' consideration. I express my sincere thanks to all the authors and convey my appreciation to the Journal Committee, its Chairman Ameya Kunte, and to CA Rajiv Luthia, CA Rajkamal Shah and CA Jinit Shah for their role in curating this issue from though to finish.

In the blink of an eye, the year 2024-25 has almost passed by and we will in a few days from now, enter the 100th year of the Chamber, a year which we will never experience again.

The Centenary Year Committee, ably steered by experienced past President, Vipul Choksi, has planned several memorable events for the centenary year, including a grand curtain raiser, which our Hon. President has talked about in his communication. I urge all of you to come together and join as one, in celebrating the Chamber's Centenary Year!

I end with a couplet from the famous Urdu poet, Dr. Bashir Badr, which I heard as the opening 'sher' of a celebrated Ghazal and which refuses to go out of my mind, it being simple, powerful and apt in the current situation. I have reproduced this in Hindi instead of Urdu for ease of the readers.

"खुदा हम को ऐसी खुदाई न दे
कि अपने सिवा कुछ दिखाई न दे"

Jai Hind!

CA Anish M. Thacker
Editor



Inauguration of the new office of The Chamber of Tax Consultants

at 1, Ground Floor, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020



Entrance of the new office



CA Vijay Bhatt, President-CTC inaugurating the new office



CA Vijay Bhatt, President performing puja alongside office bearers and Past Presidents



CTC Office Bearers alongwith office staff



Office Bearers - Sitting (L-R): CA Vijay Bhatt, CA Jayant Gokhale
Standing (L-R): CA Mehul Sheth, CA Neha Gada, CA Vitang Shah



View of the new office

Felicitation of Smt. Malthi Sridharan, Principal, Chief Commissioner of Income-tax, Mumbai, on her assuming office from 1st May, 2025



Seen from L to R:
CA Hinesh Doshi, Past President, CA Vijay Bhatt, President,
Smt Malthi Sridharan, PR.CCIT, Mumbai, CA Karishma Phatarphekar,
Chairperson, International Taxation Committee

IMPLICATIONS OF AMENDMENT IN RULE 96(10) OF THE CGST RULES, 2017



Abhay Desai
Advocate

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* See Disclaimer on page 4

Overview

The OECD, in their publication on International VAT/GST Guidelines, 2017, has indicated at paragraphs 1.8 to 1.15 that the application of destination-based consumption tax in the context of international trade requires that the origin country does not tax exports, but the destination country where the eventual consumption takes place should levy the tax. Hence, exports must be zero-rated with a refund of input taxes, and imports are taxed on the same basis and at the same rates as domestic supplies. India has largely adopted the said principles by providing for zero-rating of the exports as well as supplies made to SEZ developers/units. However, from time to time, the Government, exercising its rule-making authority, has prescribed Rules to regulate, curtail, or curb the benefits of zero-rating in certain situations.

In the present article, we seek to analyse the issues arising in the context of one such restrictive Rule, viz. Rule 96(10) of the CGST Rules, 2017. Particularly, we examine the issues related to the validity of Rule 96(10) when it was in force. We also examine the issues related to the application of the said Rule when it was in force. Most importantly, we discuss the validity of the Revenue's action post the omission of the said Rule from 08/10/2024.

I. Brief background of the relevant provisions of the law

Sec. 16(1) of the IGST Act, 2017, defines "Zero rated supply" to mean export of goods or services or both and supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit. Sec. 16(2) provides that the credit of input tax (ITC) shall be available for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Hence, in effect, Sec. 16(2) creates the right to avail of the ITC and, consequently, refund of the unutilized ITC qua the zero-rated supplies even if such supplies are exempt from tax. Sec. 16(3) as in existence till 30/09/2023 provided two options to the person making the zero-rated supply to claim the refund of the unutilized



ITC viz. (a) supply under bond or LUT without payment of IGST and claiming the refund of unutilized ITC or (b) supply on payment of IGST and claiming a refund of such tax paid. Both options were subject to such conditions, safeguards and procedures as may be prescribed. The refund shall be allowed as per Sec. 54 of the CGST Act, 2017 or the rules made thereunder. Finance Act, 2021 w.e.f. 01/10/2023 substituted Sec. 16(3) and introduced Sec. 16(4) to the IGST Act, 2017. The substituted Sec. 16(3) now provides that the registered person shall be eligible to claim the refund of the unutilized ITC by making zero-rated supplies without payment of IGST. Sec. 16(4), however authorized the Government on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify a class of persons or a class of goods or services which are permitted to make zero rated supply on payment of IGST and claim refund thereof. The Government has issued Notification No. 1/2023-IT dated 31/07/2023 as amended to notify the restricted list of goods which are not permitted to be supplied on payment of IGST. Hence, the goods not covered in the said notification, as well as all the services, can be supplied on payment of IGST with a refund thereof. Sec. 16(5) as inserted vide Finance (No. 2) Act, 2024 w.e.f. 01/11/2024 restricts the refund of the unutilised ITC under both the aforesaid modes where such zero-rated supply of goods is subjected to export duty.

Sec. 16(4), however authorized the Government on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify a class of persons or a class of goods or services which are permitted to make zero rated supply on payment of IGST and claim refund thereof.

Now, while the aforesaid events were taking place in the context of the Act, the Government, in exercise of its executive rule-making powers u/s 164 of the CGST Act, 2017, also introduced and amended the CGST Rules, 2017 from time to time. The said Rules are made applicable in the context of the IGST Act, 2017, vide Rule 2 of the IGST Rules, 2017. Rule 96 of the CGST Rules, 2017 was created to deal with matters concerning the refund of the IGST paid on exports of goods or services or both. Rule 96(1) indicates that the shipping bill for export will itself be treated as an application for refund. Sub-rule (9) was introduced in Rule 96 of the CGST Rules by Notification No. 75/2017-CT dated 29/12/2017 w.e.f. 23/10/2017 to the effect that the persons claiming refund of IGST paid on export of goods or services should not have received supplies on which the supplier has availed the benefit of Notification No. 48/2017-CT dated 18/10/2017 or notification No. 40/2017-CT (Rate) dated 23/10/2017 or notification No. 41/2017- IT (Rate) dated 23/10/2017. The three prescribed notifications cover the supplies which are considered as deemed exports and merchant exports made @ 0.1%. This sub-rule (9) was retrospectively substituted by Notification No. 3/2018-CT dated 23/01/2018, and a new sub-rule (10) was introduced w.e.f. 23/10/2017 effectively making additions to the list of notifications benefit of which should not have been taken by suppliers from whom exporters received the goods in order to claim a refund of IGST paid on exports. The added notifications included Notification No. 78/2017-Customs dated 13/10/2017 and Notification No. 79/2017-Customs

Rule 96 of the CGST Rules, 2017 was created to deal with matters concerning the refund of the IGST paid on exports of goods or services or both.

The retrospective effect given to Rule 96(10)(b) of the CGST Rules was withdrawn by Notification No. 53/2018-Central Tax dated 09/10/2018, and the rule as it stood prior to retrospective substitution by Notification No. 39/2018 was restored. On the very same day, another Notification No. 54/2018-Central Tax dated 09/10/2018 was issued whereby Rule 96(10)(b) was amended prospectively so as to debar refund of IGST paid on exports in cases falling under the aforementioned two categories as prescribed vide Notification No. 39/2018-Central Tax.

dated 13/10/2017. Both the notifications effectively exempted the import of goods under the Advance Authorisation (AA)/ Export Promotion Capital Goods (EPCG) schemes or imports by Export Oriented Units (EOU's), etc., as per the Foreign Trade Policy (FTP) from the levy of IGST/Cess. On 04/09/2018, sub-rule (10) of Rule 96 of the CGST Rules was retrospectively substituted w.e.f. 23/10/2017 by Notification No. 39/2018-CT dt. 04/09/2018 to the effect that the restrictions were bifurcated into two categories, viz. that the person claiming refund should not have received supplies on which benefits have been availed under deemed exports or merchant exports notifications, and that the person claiming refund should not have availed the IGST exemption under AA/EPCG/EOU, etc. The said restriction was applied retrospectively from 23/10/2017. Therefore, the persons hitherto not covered under the restrictions when exports were made were treated as defaulters in view of the retrospective effect. The retrospective effect given to Rule 96(10)(b) of the CGST Rules was withdrawn by Notification No. 53/2018-Central Tax dated 09/10/2018, and the rule as it stood prior to retrospective substitution by Notification No. 39/2018 was restored. On the very same day, another Notification No. 54/2018-Central Tax dated 09/10/2018 was issued whereby Rule 96(10)(b) was amended prospectively so as to debar refund of IGST paid on exports in cases falling under the aforementioned two categories as prescribed vide Notification No. 39/2018-Central Tax. Also, the situations wherein the exporter has availed the exemption under EPCG on capital goods were excluded from the given restriction of claiming the refunds. Further, vide Notification No. 16/2020-CT dated 23/03/2020, an Explanation was inserted in rule 96(10) with effect from the 23/10/2017 which provided that where IGST and Compensation Cess has been paid on procurement of inputs under Notification No. 78/2017- Customs, dated the 13th October, 2017 or Notification No. 79/2017-Customs, dated the 13th October, 2017 and exemption has been availed in respect of Basic Customs Duty (BCD) only, such procurements would not be considered to have been procured by availing the benefit of the said notifications. Subsequently vide Notification No. 20/2024 – CT dt. 08/10/2024, Rule 96(10) was omitted.

II. Legal issues

In view of the aforesaid background, we shall now deal with the legal issues.

A. Validity of Rule 96(10)

The first issue is whether Rule 96(10) of the CGST Rules, 2017, as it existed till 07/10/2024, can be said to be valid in the law or not? The said issue is required to be considered from two standpoints viz. (a) Whether the Rule is manifestly arbitrary, disproportionate, unjust, unreasonable and fails to achieve the legislative intent and hence violative of Article 14 & 19(1)(g) of the Constitution of India and (b) Whether the Government has

exceeded the rule-making authority granted by the Act.

Sec 16 of the IGST Act, 2017, as indicated earlier, grants the benefit of zero rating by ensuring that only goods and services are exported and not taxes. It therefore provides for the refund of the unutilized ITC. The same is in line with the basic principle of destination-based consumption tax. Now Rule 96(10) as it existed provided for complete restriction on claiming the refunds of the unutilized ITC by making exports on payment of IGST if the exporter has availed benefits (exemption or concessional rate of tax) under any of the five prescribed notifications (deemed export/merchant export/AA/EPCG/EOU's). The intention behind Rule 96(10) appears to be to restrict refunds in cases where the procurements have either not suffered GST (deemed export/AA/EPCG/EOU's) or suffered GST at a concessional rate of 0.1% (merchant export). The intention was therefore to avoid the possibility of the double benefit and to possibly ensure that ITC meant for domestic supplies was not used to offset IGST for exports. However, what the Rule achieves is disproportionate to the intent. This is so because it restricts a complete refund of the IGST paid on exports when the said exports will comprise certain inputs received without GST or at a concessional rate, and will also comprise certain other inputs and all input services received with applicable full GST. Author, therefore, contends that Rule 96(10), as it existed, meted out a disproportionate consequence on the person who had breached the said condition. Hon'ble Supreme Court has evolved a Doctrine of Proportionality to test the reasonableness of the law, considering the rights and the limitations imposed by such a law so as to determine whether it violates any of the fundamental rights. This test requires that the measure taken to restrict a fundamental right (a) has a legitimate goal, (b) is a suitable means of reaching that goal, (c) creates the least amount of restriction possible on the fundamental right, and (d) does not have a disproportionate impact on the right holder (see ***Modern Dental College & Res. Cen. & Ors vs. State Of Madhya Pradesh [2016] 3 S.C.R. 579***). The said doctrine was applied recently by the Constitution Bench in the case of the ***Association for Democratic Reforms (Electoral Bond Scheme) vs. UOI (2024) 5 SCC 1***, which struck down the Electoral Bond Scheme. Fundamental rights guaranteed under Article 14 & 19(1)(g) as made applicable to fiscal laws in terms of protection against manifestly arbitrary, unjust, and unreasonable laws, can be said to have been breached if the Act or Rule fails the proportionality test. It is also a settled law that the Rule can be challenged on the ground that it is in violation of any provision of the Constitution of India (see ***State of Tamil Nadu and Anr. vs. P. Krishnamurthy and Ors. (2006) 4 SCC 517***). Hence, the author contends that Sec. 16(3) of the IGST Act, 2017 (till 30/09/2023) and Sec. 16(3) r/w Sec. 16(4) (from 01/10/2023) r/w



Rule 96(10) of the CGST Rules, 2017 (till 07/10/2024) disproportionately curtailing the right of refunds on exports is violative of Article 14 and 19(1)(g) of the Constitution of India and hence is required to be struck down (it cannot be read down in absence of any practical mechanism to restrict the refunds only limited to the inputs which have enjoyed the exemption/concessional rate).

Now we can examine the second ground for challenge to the validity of the Rule. Sec. 16(3) of the IGST Act, 2017 (till 30/09/2023) granted two options to the exporters to claim the refund of the unutilized ITC. Even from 01/10/2023, Sec. 16(3) r/w16(4) of the IGST Act, 2017 permits the exporters to claim the refund of the unutilized ITC. Hence, the legislation granted statutory options, and the exporter was free to choose one of them to seek the refund. Further, Sec. 16(3) permitted the Government (rule-making authority) to prescribe "such conditions, safeguards and procedure" subject to which the refunds can be claimed. Sec. 164 of the CGST Act, 2017 permits the Government to prescribe the Rules for carrying out the provisions of the Act. Further perusal of Rule 96(1) to 96(9) shall indicate that it deals with all the procedural aspects for processing the refunds. The author hence contends that the Government, while prescribing the Rule, cannot take away the statutory right which is granted to the exporter under Sec. 16(3) of the IGST Act, 2017, of claiming the refund of the unutilized ITC by making exports on payment of the IGST. This is more so when the authority granted by the Act is only to prescribe procedural conditions and safeguards, and not to restrict the refunds in toto. It is a settled law that the Rule prescribed in violation or in excess of the authority permissible under the Act is ultra vires and invalid (see ***State of Tamil Nadu and Anr. vs. P. Krishnamurthy and Ors. (2006) 4 SCC 517***). The author hence contends that even on this ground, Rule 96(10), as in existence till 07/10/2024, can be said to be without the authority of the law.

Reference is invited to the decision of the Hon'ble Kerala High Court in the case of ***Sance Laboratories Private Limited vs. UOI (2024) 23 Centax 435 (Ker.)*** wherein the Hon'ble Court has struck down Rule 96(10) as ultra vires Section 16 of the IGST Act, manifestly arbitrary as the provision produces absurd results, not intended by the Legislature.

B. Effect of the restrictions during the period from 23/10/2017 to 07/10/2024

The next set of issues arises as regards the applicability of the restrictions during the period from 23/10/2017 to 07/10/2024. The perusal of the brief background indicated earlier shall reveal that the effect of the Rule during the said period will have to be examined in two sets of situations.

The first set of situations covers cases wherein the supplier to the exporter has availed the benefits under Notification No. 48/2017-CT dated 18/10/2017, or Notification No. 40/2017-CT (Rate) dated 23/10/2017, or Notification No. 41/2017-IT (Rate) dated 23/10/2017. The three prescribed notifications cover the supplies which are considered as deemed exports and merchant exports made @ 0.1%. In such a situation, the restrictions under Rule 96 by way of sub-rule (9) were introduced by Notification No. 75/2017-CT dated 29/12/2017 w.e.f. 23/10/2017. The said restriction was placed in Rule 96(10) vide Notification No. 3/2018-CT dated 23/01/2018 w.e.f. 23/10/2017. The expression "benefits" has not been defined under the Act or the Rules. In the given context, the author opines that the expression "benefits" shall mean

claiming refunds of the GST charged on deemed exports by the supplier or claiming of concessional rate of 0.1% on supplies made to merchant exporters. Further, the said restriction was modified w.e.f. 09/10/2018 vide Notification No. 54/2018-CT dated 09/10/2018 to the effect that the same applies if the benefit of the said notifications is availed (hence de-linking it with the person who has availed the benefit) and the said Restriction continued to exist till 07/10/2024.

The second set of situations covers cases wherein the exporter has availed the IGST exemption under Notification No. 78/2017-Customs dated 13/10/2017 and Notification No. 79/2017-Customs dated 13/10/2017 (AA/EPCG/EOU's, etc.). Now, as indicated earlier, Sub-rule (9) of Rule 96 as introduced vide Notification No. 75/2017-CT dated 29/12/2017 w.e.f. 23/10/2017 did not provide for any restriction, even if the exporter availed the IGST exemption under the given two notifications. Sub-rule (10) as introduced vide Notification No. 75/2017-Central Tax dated 29/12/2017 w.e.f. 23/10/2017 added the said two notifications; however, the restriction applied only if the "supplier" has availed the benefit under the said notifications. The same language continued till 08/10/2018, and it was only vide Notification No. 54/2018-CT dated 09/10/2018 that the restriction was applied if the benefits are claimed under the given two notifications (hence de-linking it with the person who has availed the benefit). Clearly, in case of imports under AA/EPCG/EOU's, etc., the supplier is outside India, and it is the importer who avails of the benefits under the given two notifications. Even CBIC vide Circular number 70/44/2018-GST dated 26/10/2018 at paragraph no. 3.2 clarified that the net effect of these changes would be that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs, both dated 13/10/2017, shall be eligible to claim a refund of the IGST paid on exports till the date of the issuance of the notification No. 54/2018 – Central Tax dated 09/10/2018, referred to above. The same clarification was reiterated in Circular No. 125/44/2019 – GST dt. 18/11/2019. Hon'ble Gujarat High Court in the case of ***Cosmo Films Ltd. vs. Union of India 2020 (43) G.S.T.L. 577 (Guj.)*** had inadvertently held that the restrictions under Rule 96(10) as inserted vide Notification No. 54/2018-CT dated 09/10/2018 shall apply from 23/10/2017. Recently, the Hon'ble Gujarat High Court vide order dated 19/09/2024 rectified the inadvertent error by holding that Notification No. 54/2018-CT dated 09/10/2018 shall apply only prospectively. The author, therefore, opines that the restriction under Rule 96(10) in the context of the benefits availed under AA/EPCG/EOU's, etc. by the exporter will not apply to the period prior to 09/10/2018.



First aspect to note is that GST Council also recognised the inherent disproportionality of Rule 96(10) and hence omitted the same. This further supports the contention advanced by the author earlier as regards testing the validity of the said Rule on the ground of proportionality.

C. Effect of the omission

54th GST Council in their meeting on 09/09/2024 recognised the inherent difficulties in implementing the intent behind Rule 96(10) of the CGST Rules, 2017, since the Revenue's interpretation resulted in the denial and recovery of the entire refund of the IGST paid on exports even if the exporter has availed the benefits only qua few inputs and have paid GST on other inputs and input services. GST Council also recognized that even the claiming of refund under Rule 89(4A) and 89(4B) if the exports in such situations would have been made under LUT required one-to-one correlation of inputs with exports and hence the same was contrary to the law, not feasible and led to different practices by field formations across India. GST Council, therefore, acknowledging the unnecessary complications without any intended benefit being served, decided to omit the restrictions contained under Rule 96(10) as well as alternative refund mechanisms under Rule 89(4A) and 89(4B). Consequential Notification No. 20/2024-CT dt. 08/10/2024 was issued omitting Rule 96(10).

First aspect to note is that GST Council also recognised the inherent disproportionality of Rule 96(10) and hence omitted the same. This further supports the contention advanced by the author earlier as regards testing the validity of the said Rule on the ground of proportionality.

The second aspect to consider is whether the Revenue can take any action for demanding and recovering the refunds of the IGST already sanctioned prior to 08/10/2024 after the omission of the Rule?

Sec. 6 of the General Clauses Act, 1897, provides for the effect of repeal. Sec. 6(b)/(c)/(e) provides that where the said Act or any Central Act or Regulation, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Sec. 3(7) of the General Clauses Act, 1897 defines the expression "Central Act" to mean an Act of Parliament. Therefore, it does not include any Rules made by the Government in exercise of their rule-making authority. Sec. 3(50) of the said Act defines the expression "Regulation" to mean a Regulation made by the President under article 240 of the Constitution and shall include a Regulation made by the President under article 243 thereof and or a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935. Sec. 3(51) of the said Act defines the expression "rule" to mean a rule made

in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment. The Rules, therefore, include a Regulation, but the Regulation will include only what has been stated u/s 3(50) and hence will not include a rule made by the Government in exercise of a power conferred by any enactment.

The perusal of the aforesaid provisions of the General Clauses Act, 1897 shall reveal that the savings provisions contained under Sec. 6 of the said Act cannot apply to the repeal made in the Rules made by the Government in exercise of rule making authority vested vide Sec. 164 of the CGST Act, 2017. Therefore, in absence of application of Sec. 6 of the General Clauses Act, 1897, the repeal or omission of the Rules will have the effect of obliterating the same from the Statute books and the liabilities accruing prior to the omission and the authority to take action for recovering such liability are required to be saved by inserting a savings clause while omitting the Rule. Now Notification No. 20/2024 – CT dt. 08/10/2024 has omitted Rule 96(10) without any savings clause. Further, the Government has also not prescribed any new Rule to replace Rule 96(10). The GST Council has, in fact, admitted the unreasonableness and impracticality of the Rule. The author hence contends that the omission of Rule 96(10) without a savings clause and without any new Rule substituting the old Rule cannot save the obligations, nor can it permit the authority to initiate any action for the purported violation of the said Rule on and after 08/10/2024. Constitution bench of the Hon'ble Supreme Court in the case of ***Kolhapur Canesugar Works Ltd. vs. UOI (2000) 2 SCC 536*** has held that the pending proceedings shall lapse on omission of a Rule in the absence of a savings clause or in the absence of substitution of the old Rule with a new Rule. The author hence contends that there is a strong force in the contention that Revenue cannot initiate any action, nor can it pass any order for the notices issued before 08/10/2024 in view of the omission of Rule 96(10) from the statute books from 08/10/2024 without the savings clause and without substituting the old Rule with any new Rule.

In absence of application of Sec. 6 of the General Clauses Act, 1897, the repeal or omission of the Rules will have the effect of obliterating the same from the Statute books and the liabilities accruing prior to the omission and the authority to take action for recovering such liability are required to be saved by inserting a savings clause while omitting the Rule.

III. Conclusion

The above analysis shall reveal that, admittedly, there was a mistake committed by introducing the disproportionate and impractical Rule 96(10) of the CGST Rules, 2017. It took seven years for the GST Council to recognize and correct the mistake. It is only hoped that the Revenue also gives a burial to any actions either taken in the past, ongoing or contemplated to make any recovery based on the omitted Rule. Better wisdom should prevail; better late than never.

■

ISD PROCEDURES AND COMPLIANCES



Keval Shah
Advocate

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* See Disclaimer on page 4

Overview

The Input Service Distributor (ISD) mechanism under GST becomes mandatory from April 1, 2025, aiming to streamline the distribution of input tax credit (ITC) across multiple GST registrations of an entity under the same PAN.

ISD is essential when input services are billed to a location different from where they are used. The article tries to provide an insight into the Procedures and Compliances that need to be followed including certain practical issues and a probable solution to the same. The gist of the article can be understood as under:

ISD distributes only ITC on input services. Credit must be allocated based on the turnover of each recipient unit as per Rule 39 of the CGST Rules, and distributed monthly via GSTR-6. Tax credits retain their nature (CGST, SGST, IGST) within the same state, and convert to IGST when distributed interstate.

Proper documentation, including issuing invoices and credit/debit notes, is required. RCM liabilities cannot be discharged through ISD; instead, they must be handled through regular registration and then transferred to ISD for credit distribution. Non-compliance, such as excess distribution of credit, may lead to recovery along with interest.

While ISD ensures correct credit allocation, it adds significant compliance responsibilities for businesses.

The provisions of Input Service Distributor (hereinafter referred as "ISD") have been made mandatory w.e.f. 01.04.2025. The conceptual understanding of the provisions of Input Service Distributor has been covered under a separate issue of this Journal. The present article discusses on the Procedures and Compliances required under the ISD provisions:

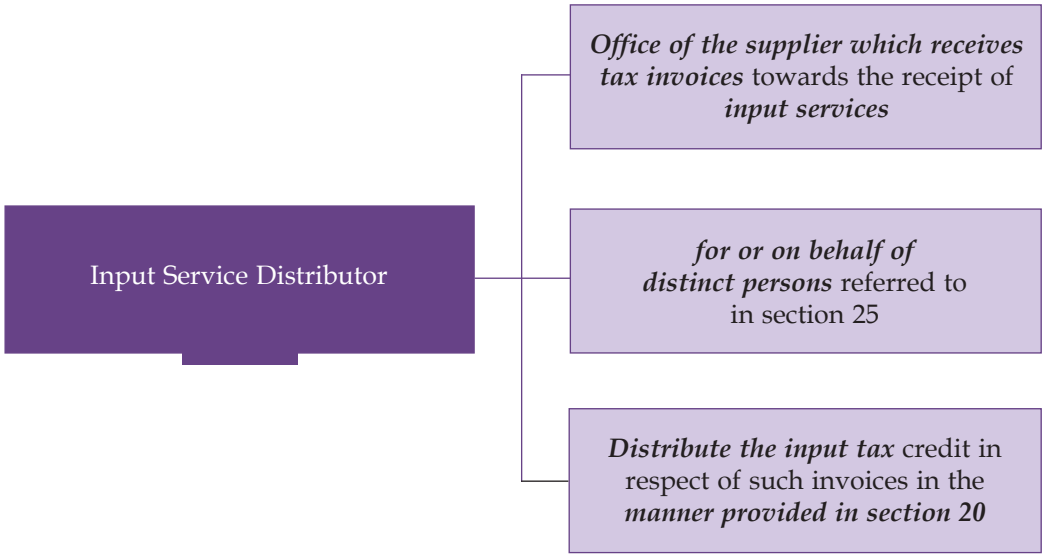
Brief Understanding of the concept of ISD

1.1 The concept of Input Service Distributor has been borrowed from the erstwhile provisions of CENVAT Credit Rules. The concept of ISD under the erstwhile laws aimed at enabling the flow of credits from one location to another. However, the said provisions are perceived differently under the GST Law. The

The major reason for such perception is that by virtue of Section 25(4) of CGST Act, 2017 read with Section 22 of CGST Act, 2017 considers each GSTIN as a distinct person for the purposes of implementation of GST Law.

major reason for such perception is that by virtue of Section 25(4) of CGST Act, 2017 read with Section 22 of CGST Act, 2017 considers each GSTIN as a distinct person for the purposes of implementation of GST Law.

1.2 The definition of Input Service Distributor has been provided under Section 2(61) of the CGST Act, 2017, which can be dissected as below:



1.3 Based on the above representation, it may be understood that the provisions of ISD will apply only in the following cases:

a) Where an assessee has multiple registrations under the same PAN.

b) The distribution of Input Tax Credit pertains to Input Services.

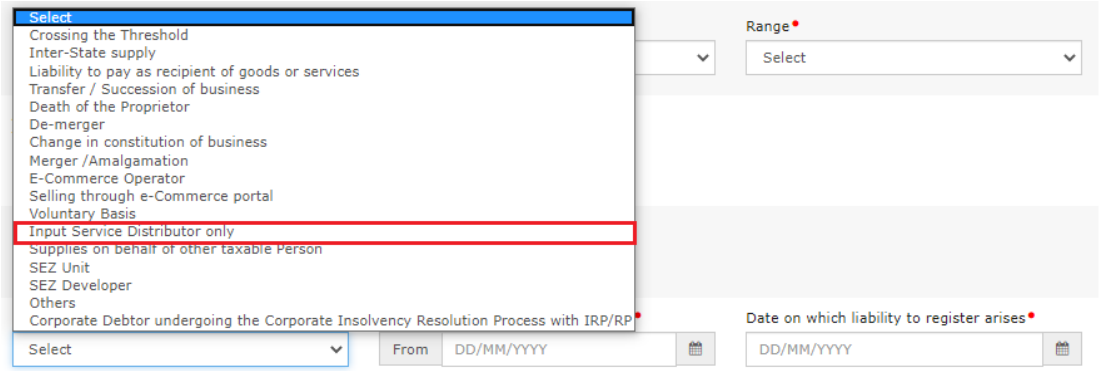
c) Further, the most crucial aspect for consideration is that the provisions of ISD apply only in cases where the tax invoices are received in a location other than the location for which such services pertain.

Just to explain the same in a layman's term e.g., if a service provider provides a service to a recipient in Gujarat but the invoice is raised on recipients another office in Maharashtra having a separate GSTIN. Since the input tax credit in Maharashtra GSTIN is for or on behalf of the GSTIN registered in Gujarat, the provisions of ISD shall be applicable in such situations.

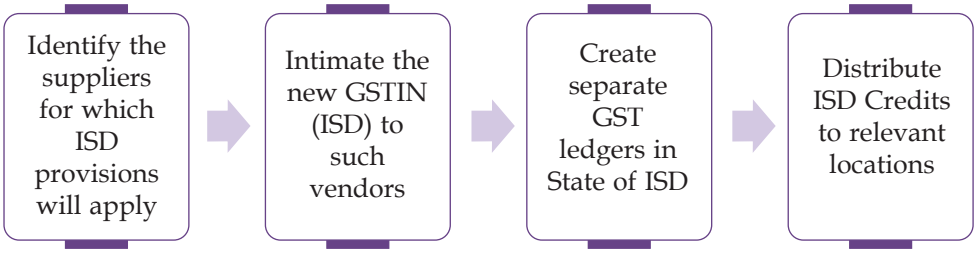
Separate Registration for ISD

2.1 Once it is established that the provisions of ISD are applicable, the first procedure to be complied with under the GST Law is to obtain separate registration for ISD. So therefore, in the above example, the office in the state of Maharashtra shall obtain separate registration for the purpose of implementing the provisions of ISD. The provisions of Section 24 of

CGST Act, 2017 provide that an Input Service Distributor, whether or not separately registered under the Act, needs to obtain compulsory registration. The category of registration shall also be selected as "Input Service Distributor":



2.2 It may be noted that the separate GSTIN is relevant only for those tax invoices, the input tax credit for which is received for or on behalf of distinct person. The input tax credit which pertains to the regular business conducted for the state of Maharashtra, shall be claimed in the regular GSTIN of Maharashtra. Once a registration has been obtained under ISD, the following follow up action needs to be done:



2.3 An interesting question which also comes up is whether an assessee can have more than one ISD registration. If one looks at the definition, it merely refers to an office of supplier who receives tax invoice for or on behalf of distinct person. So, if there are instances where more than one GSTIN of supplier receives tax invoices for or on behalf of distinct person, each such office shall require an ISD registration. There are various assessee's who have regional offices and invoices pertaining to multiple offices in such regions are accounted at such common regional office. In such cases, ISD registration shall be required for all such regional offices. Therefore, it may be important to identify the total number of ISD registrations that will be required.

Manner of Distribution of ISD Credit

3.1 Section 20 of CGST Act, 2017 read with Rule 39 of CGST Rules, 2017 provides for the manner in which the distribution of credit should be made by an assessee

registered as an ISD. Based on the above understanding of the ISD provisions, the flow of credit first is brought to the ISD registration and thereafter the same is distributed to various other offices of the supplier. The following aspects are relevant for the purpose of distribution of ISD Credit:

a) Formula for Distribution to various registrations

b) Which Tax will be distributed as what

c) Documentation to be followed for distribution

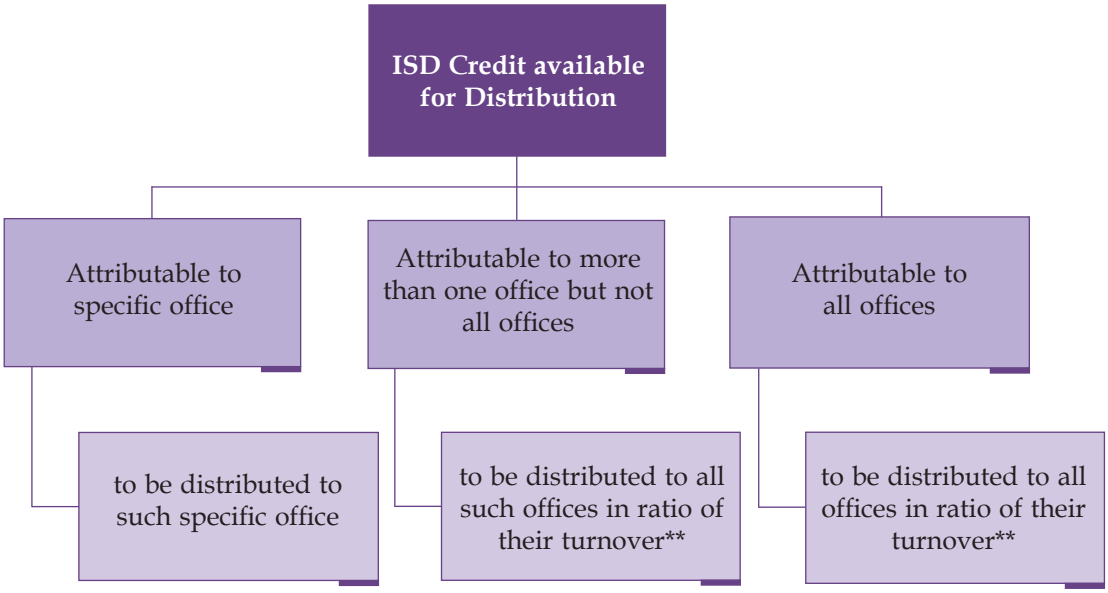
d) Liability under Reverse Charge Mechanism and its Distribution

It may be noted that the separate GSTIN is relevant only for those tax invoices, the input tax credit for which is received *for or on behalf of distinct person*.

Each of the above aspects has been elaborated below in detail

Formula for Distribution to various registrations

3.2 As explained earlier, the basic concept of ISD revolves around the idea that if any input tax credit is claimed for or on behalf of distinct person then such credit should be distributed. Based on this concept, the manner of distribution as provided in Rule 39 of CGST Rules, 2017 can be explained as below:



*** Turnover – is the aggregate turnover, during the relevant period* of recipients to whom such input tax credit is attributable*

** relevant period –*

(a) if recipients have turnover in their states in the preceding financial year, then such preceding year turnover

(b) if recipients do not have turnover in their states in the preceding financial year, then turnover of last quarter for which the details are available, previous to the month during which credit is to be distributed.

E.g.: A company has 3 units, one in Mumbai – MH, one in Baroda – GJ and one in Chennai – TN. Suppose the turnover for preceding financial year in each state/GSTIN is ₹ 1,00,000/-. An invoice for input service with ITC of ₹ 2,000/- is received in Mumbai – MH but the same is attributable to Baroda – GJ and Chennai – TN. Another invoice for input services with ITC of ₹ 30,000/- is attributable to all three states. As per the provisions of Rule 39, the ITC of ₹ 2,000/- will be attributable to Baroda – GJ and Chennai – TN as below:

2,000 (Total ITC)	X	1,00,000	(Turnover of Baroda - GJ)
		2,00,000	(Turnover of Baroda - GJ & Chennai - TN, since ITC is attributable to only 2 states)
	=	1,000	(ITC to be received by Baroda - GJ and Chennai - TN each)

Similarly, in the case, where ITC is attributable to all three states, the distribution shall be as below:

30,000 (Total ITC)	X	1,00,000	(Turnover of Baroda - GJ)
		3,00,000	(Turnover of all 3 states since ITC is attributable to all states)
	=	10,000	(ITC to be received by each of the states)

3.3 Rule 39 of CGST Rules, 2017 also provides that the input tax credit available for distribution shall be distributed in the same month. Further, it is also provided that the amount of distribution shall not excess the amount of credit available for distribution. This raises a concern as to whether all ITC appearing in GSTR – 6A (this form is specific for ISD, which is similar to GSTR – 2A for regular assessee's) needs to be distributed or it will be determined as and when the ITC is considered in the return of ISD. In view of the author, the claim of ITC in the ISD return can be made only when the conditions of Section 16 are complied with. For e.g., if an invoice is reported by the supplier in his GSTR – 1, the same will appear in GSTR – 6A of ISD recipient but in cases where he has not received the invoice, the ITC cannot be claimed and distributed. Therefore, it is believed that the claim of ITC in the ISD return is subject to compliance with provisions of Section 16, however, once the ITC is claimed, the same needs to be distributed and cannot be accumulated in ISD return.

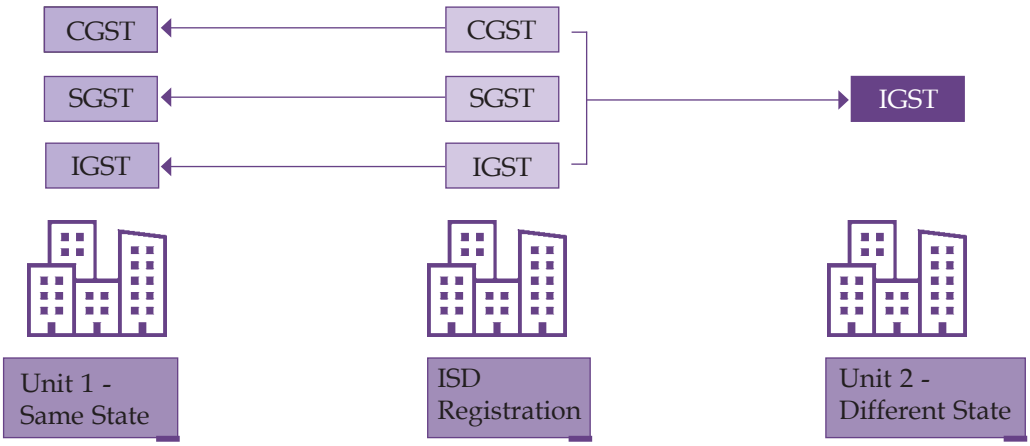
Section 20 of CGST Act, 2017 read with Rule 39 of CGST Rules, 2017 provides for the manner in which the distribution of credit should be made by an assessee registered as an ISD.

3.4 This does not mean that on immediate compliance of Section 16, the ITC should be claimed or else it would lapse. In view of the author, once the compliance to Section 16 is done, the ITC can be claimed within the timelines specified under Section 16(4) of CGST Act, 2017. However, the provisions suggest that once the ITC is availed/claimed in the ISD return, the same needs to be distributed in the same month. There is no Electronic Credit Ledger as far as ISD registration is concerned.

Which tax to be distributed as what?

3.5 As a country, we have adopted a dual structure of GST levy and Input Tax Credit is claimed under the heads CGST,

SGST and IGST. Rule 39 also provides for the manner in which such credit needs to be distributed. The following diagrammatic presentation explains the distribution of credit from one GSTIN to another:



3.6 Therefore, to summarize the distribution of credit is to be done as below:

- If the distribution is in the same state as registered for ISD, the tax credit will flow as it is i.e., CGST will be transferred as CGST, SGST will be transferred as SGST and IGST will be transferred as IGST.
- If the distribution is in different states, the entire credit will be distributed as IGST.

Each of CGST, SGST and IGST needs to be distributed separately in the GSTR – 6 to be filed by the assessee.

Documentation to be followed for distribution

3.7 For distribution of credit, the Input Service Distributor needs to issue an invoice in terms of Rule 54 of CGST Rules, 2017. The said invoice acts as a valid document as per Rule 36 for the receiving units to claim Input Tax Credit.

3.8 The invoice raised by the Input Service Distributor shall contain the following details:

(a) name, address and Goods and Services Tax Identification Number of the Input Service Distributor;

(b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as- "-", "/" respectively, and any combination

It is believed that the claim of ITC in the ISD return is subject to compliance with provisions of Section 16, however, once the ITC is claimed, the same needs to be distributed and cannot be accumulated in ISD return.

thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and Goods and Services Tax Identification Number of the recipient to whom the credit is distributed;

(e) amount of the credit distributed; and

(f) signature or digital signature of the Input Service Distributor or his authorised representative

The crux of the issue is that no liability can be discharged under the ISD registration but at the same time, the distribution of Input Tax Credit needs to be made through ISD registration.

3.9 Further, in situations where the credit is already distributed by the ISD and there is a credit note being raised by the supplier effectively reducing the value of supplies on which ITC has been distributed. The ISD registration needs to issue a credit note and apportion the amount of credit in the same ratio in which the earlier distribution was made. Further, the amount so apportioned shall be:

- Reduced from the amount to be distributed in the month in which the credit note is included in GSTR – 6; or

- Added to output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

3.10 Any additional amount of Input Tax Credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the month in which debit note is issued. The distribution of additional ITC on account of a debit note is not required to be made in the ratio in which the credit of the original invoice was distributed but it will be done as per the ratio of the month in which the debit note is issued. The credit notes as well as debit notes also need to have details as mentioned in para 3.8 above.

3.11 The unit which is receiving input tax credit from the ISD registration needs to maintain the documentation which are namely the invoice issued by ISD along with all supporting invoice on the basis of which the Input Tax Credit is distributed.

Liability under Reverse Charge Mechanism and its Distribution

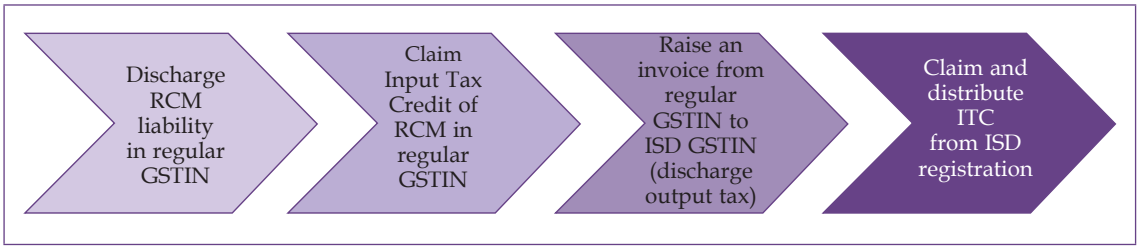
3.12 It may be interesting to understand, how does the compliance for RCM liability and credit distribution for such credit would work in the ISD mechanism. One needs to appreciate that the provisions for ISD are merely for distribution of Input Tax Credit and not for discharge of any liability. So, the crux of the issue is that no liability can be discharged under the ISD registration but at the same time, the distribution of Input Tax Credit needs to be made through ISD registration.

3.13 Therefore, as far as the liability towards the payment of RCM is concerned, the same should be done under the regular GST registration of the assessee in the state in which ISD registration is obtained. The Input Tax Credit should

be claimed under the regular registration and thereafter an invoice needs to be raised from regular registration to ISD registration. Further to that the credit needs to be distributed to other locations. The said understanding is based on the provisions of Rule 54(1A)(a) of CGST Rules, 2017 which provides for raising of invoice by a regular GSTIN of the person holding the same PAN as that of ISD. The relevant provisions are reproduced for reference:

(1A)(a) ***A registered person, having the same PAN and State code*** *as an Input Service Distributor,* ***may issue an invoice*** *or, as the case may be, a credit or debit note* ***to transfer the credit of common input services to the Input Service Distributor****……..*

3.14 Based on the provision, the below flow of RCM liability and its credit distribution can be done:



3.15 The provisions of Rule 54(1A)(a) do not specifically provide that the same are applicable in respect of ITC pertaining to RCM and therefore, there is a possibility of entertaining a view that the said methodology can be adopted for all such ITC which is common in nature. The ITC can be claimed under the regular GSTIN in the state in which ISD registration is obtained and by virtue of an invoice (provided under Rule 54(1A)(a)), such credit can be transferred to ISD registration and thereafter distributed therefrom.

Filing of Returns under ISD

4.1 Form GSTR-6 is a monthly return to be filed by all the Input Service Distributors (ISD) for distribution of credit (ITC) amongst its units. It is a mandatory return, to be filed on monthly basis. A 'Nil' return must be filed in case of no ITC being available for distribution or no ITC is being distributed during the month. ISD Returns for month M can only be filed on or before the 13th of month M+1. The format of return is broadly divided into 2 major parts, one pertaining to information with respect to Input Tax received and the other pertaining to total input tax available and distributed to other units:

Form GSTR-6 is a monthly return to be filed by all the Input Service Distributors (ISD) for distribution of credit (ITC) amongst its units. It is a mandatory return, to be filed on monthly basis. A 'Nil' return must be filed in case of no ITC being available for distribution or no ITC is being distributed during the month.

PART I

GSTR-6 - Invoice Details

ⓘTo Add/View Details in a Particular Table Please Click in the Respective Table.

3 - Input tax credit received for distribution	
Count of records	0
• Validated records	0
• Validated with error	0
• To be validated	0

6A - Amendment of information furnished in earlier returns in Table 3	
Count of records	0
• Validated records	0
• Validated with error	0
• To be validated	0

6B - Credit Notes/Debit Notes received	
Count of records	0
• Validated records	0
• Validated with error	0
• To be validated	0

6C - Amendment of Credit Notes/ Debit Notes received	
Count of records	0
• Validated records	0
• Validated with error	0
• To be validated	0

PART II

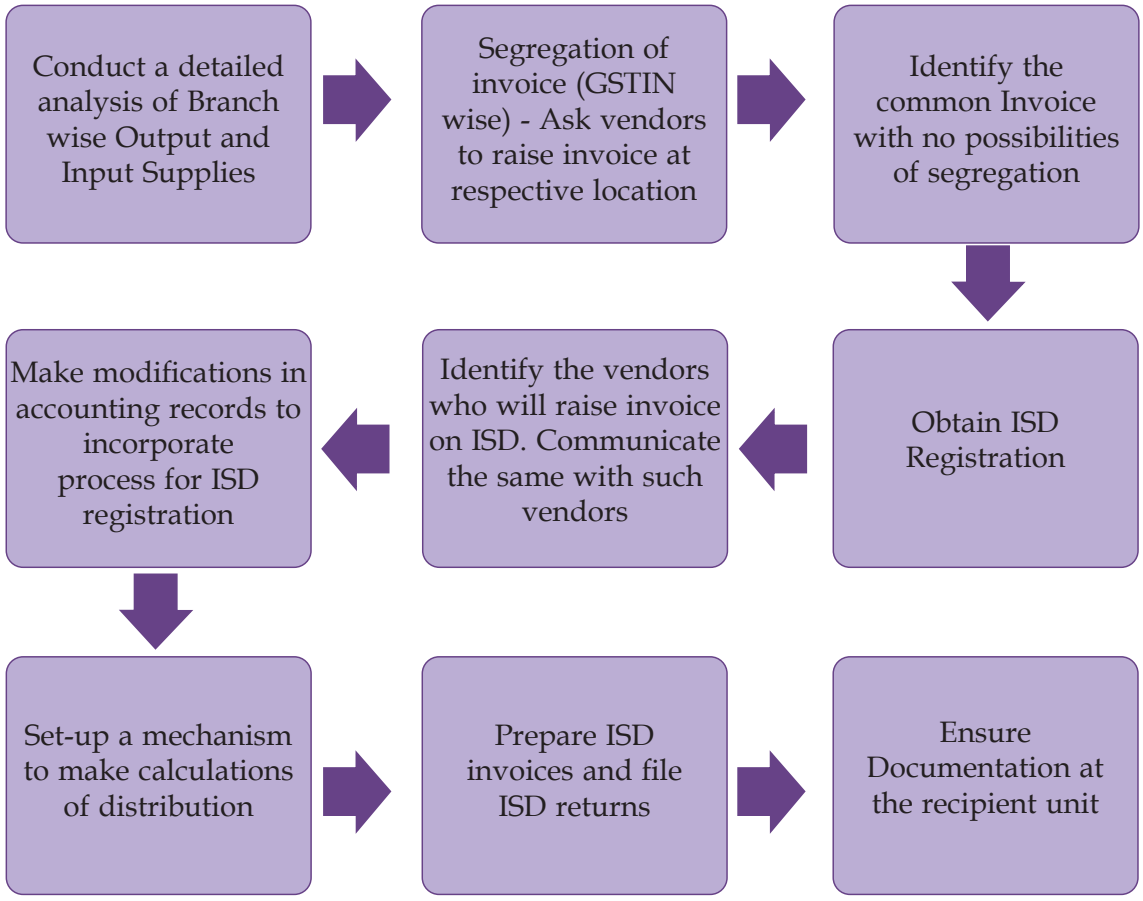
GSTR-6 - ITC Distribution

4 - Total ITC available and Eligible ITC/Ineligible ITC distributed	
Total ITC available	Total Eligible ITC
₹ 0.00	₹ 0.00
Total Ineligible ITC	0
₹ 0.00	

5, 8 - Distribution of input tax credit (ISO Invoices & ISO Credit notes)	
Count of records	0
• Validated records	0
• Validated with error	0
• To be validated	0

9 - Redistribution of ITC distributed in earlier returns	
Count of records	0
• Validated records	0
• Validated with error	0
• To be validated	0





The said information needs to be incorporated through an excel utility available

Implications of Non-compliance of ISD provisions

5.1 As per Section 21 of CGST Act, 2017, where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest.

5.2 The provisions of section 73 or section 74 or section 74A shall apply for determination of amount to be recovered from the recipient of ISD credit.

Conclusion

The above article briefly outlines the procedure and compliances that are required to be followed by an Input Service Distributor. The provisions of ISD certainly add to compliance and it casts an additional burden on assessee's having muti-locational businesses. The following process may help assessee's on reducing the overall compliance impact on account of ISD implementation.

CONCEPTS AND ISSUES IN INPUT SERVICE DISTRIBUTOR AND CROSS CHARGE



CA Sunil Gabhawalla

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Overview

The article explores the evolving framework of the Input Service Distributor (ISD) mechanism under GST, which becomes mandatory from April 1, 2025. It traces the concept's origins in the CENVAT Credit Rules, 2004, which allowed distribution of service tax credits by the corporate office to manufacturing/service units. With GST, although both the ISD and cross charge mechanisms co-existed to tackle the imbalance of input tax credits across states, their overlapping scopes caused significant confusion. The 50th GST Council meeting clarified that while ISD was optional earlier, it would become mandatory going forward. The article explains the revised definition of ISD, highlighting two key changes: the inclusion of the phrase "for or on behalf of distinct persons" and making the distribution of credit obligatory. It emphasizes how businesses must now differentiate between services received for internal use and those procured on behalf of other units. Through practical examples and legal interpretations, the article underscores the operational, compliance, and valuation challenges that organizations will face. It also highlights challenges in reverse charge scenarios and the compliance burden on recipient units. It concludes by urging the government to issue clear guidelines to help businesses adapt to the mandatory ISD regime.

Introduction

The provisions relating to 'input service distributor' have been made mandatory effective from 01.04.2025. While the said provisions have been in Statute ever since the GST law was implemented and even under the erstwhile CENVAT Credit Rules, 2004, the prescription to mandate a registration and distribution has opened up substantial issues of interpretation. This article touches upon some of the said concepts.

Background of Earlier Laws

Prior to the imposition of GST, central excise duty was imposed on manufacture of excisable goods. The central excise law required separate registration for each of the premises from where the manufacturing activity was carried out. While the CENVAT Credit Rules as amended from time to time provided for claim of credit of inputs and capital goods used in the manufacture of final products, there was substantial emphasis laid on receipt of the goods in the registered premises and documentary evidences in the form of tax compliant invoices reflecting the said address of the registered premises.

In the said backdrop, when the said Rules were expanded to also permit credit of input

services used in the manufacture of the final products, a need was felt for implementing the existing procedural framework in a realistic manner. In the case of services, it was very common for the said services to be centrally procured at the corporate office. To enable a free flow of credit to the manufacturing locations, the concept of 'input service distributor' was introduced under the erstwhile CENVAT Credit Rules, 2004. The said concept permitted an office of the manufacturer to receive invoices towards the receipt of services (either by the said office or by the respective manufacturing units) and distribute the credit embedded in such invoices to the respective manufacturing units. Based on the said concept and registration, the corporate office of a manufacturer could pay for a customs house agent from the office and receive an invoice in this regard and distribute the credit to the concerned manufacturing unit. Similarly, it could pay for corporate services like statutory audit and distribute the credit proportionately to all manufacturing units (since the definition of input service was wide enough to cover

In the case of services, it was very common for the said services to be centrally procured at the corporate office. To enable a free flow of credit to the manufacturing locations, the concept of 'input service distributor' was introduced under the erstwhile CENVAT Credit Rules, 2004.

services directly or indirectly used in the manufacture of final product and included various activities related to business and the law also did not require the receipt of input services at the registered premises, such statutory audit services were eligible for credit at the manufacturing locations).

The concept of input service distributor was therefore a blessing under the erstwhile CENVAT Credit regime permitting a free flow of credits from the corporate office to the duty discharging manufacturing locations.

It may be noted that the definition of 'input service distributor' under the CENVAT Credit Rules, 2004 laid emphasis on the office receiving an invoice and laid no emphasis on whether the services were received by the office or the manufacturing location and whether the invoice or the services were received by the office on its' own account or 'for or on behalf of' the manufacturing location. This is evident on a plain reading of the definition of input service distributor as provided under 2(m) of the erstwhile CENVAT Credit Rules, 2004, which is reproduced below for ready reference

"input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, [or an outsourced manufacturing unit] as the case may be

- Emphasis supplied

The concept of 'input service distributor' under the CENVAT Credit Rules, 2004 applied to service providers as well. However, in view of the facility for centralised registration available under the service tax law, the said concept had limited applicability except in case of taxpayers who had obtained decentralised registrations.

Welcome GST

GST was introduced as a comprehensive indirect tax modelled on the principle of destination-based consumption tax. However, in view of the federal structure and the

Constitutional mandate, the law required distinct registration in each of the States from which the taxpayer supplied taxable goods or services. This need for distinct State level registration triggered a fundamental challenge of imbalance in input tax credits and output taxes in cases where the procurements of inputs and input services are effected in one State and the outward supplies are effected from another State. Perhaps to address the said situation, Entry 2 was inserted in Schedule I to deem supply of goods or services or both between distinct persons as liable for payment of GST even if the said supplies are made without consideration.

Accordingly, an office or warehouse or factory in the State procuring the inward supplies was required to raise a tax invoice on a branch or warehouse or factory located in another State for effecting the deemed outward supplies to the said branch or warehouse or factory (even though there is no monetary consideration and the supply is between two units of the same legal entity). Such discharge of output tax by the first state would be eligible as input tax credit to the other state resulting in no revenue loss to the taxpayer but at the same time permitting free flow of credits from the input procuring locations to the output supplying locations.

The industry thus interpreted that such activities should be considered as an 'internally generated service' and implemented a 'cross charge policy' whereby the corporate office would raise an invoice on the States which are actually engaged in rendering services to external customers.

At the time of implementation of GST, organisations having presence in multiple States had to take cognisance of the above provisions. In case of supply of goods across various branches/warehouses of an entity, the said provisions could be easily implemented to replicate the movement of goods. Thus, the State from where the movement of goods begins would raise an invoice on the State where the goods are destined. However, due to the intangible nature of services, multi-State service organisations had to examine the implementation more closely. In case of an organisation supplying services from multiple States, typically the Corporate office may be involved in performing various activities which could result in supporting the services rendered by the branches. The industry thus interpreted that such activities should be considered as an 'internally generated service' and implemented a 'cross charge policy' whereby the corporate office would raise an invoice on the States which are actually engaged in rendering services to external customers. Conversely, in case of a business model where the branches merely act as cost centres and services to the customers are centrally rendered from the head office, the branches would be viewed as rendering 'support services' to the head office and accordingly, branches would raise cross-charge invoices to the head office.

A suitable branch transfer/cross charge policy ensured that despite multiple registrations, an entity does not face any challenge of imbalance in input tax credit and output taxes. Despite having introduced the above deeming fiction to address the issue of imbalance in input tax credits and output taxes, the Legislature, in its' wisdom deemed it fit to continue with the provisions of 'input service distributor' existing in the erstwhile CENVAT Credit Rules, 2004. The definition was amended mutatis mutandis, permitting the input service distributor to receive a tax invoice and issue an ISD Invoice for distribution of the said credit without any specific emphasis on whether the services were received by the said office or the other

unit and whether the invoice or the services were received by the said office on its' own account or 'for or on behalf of' the other unit. The relevant definition of 'input service distributor' under section 2(61) at the time of introduction of GST is reproduced below for ready reference

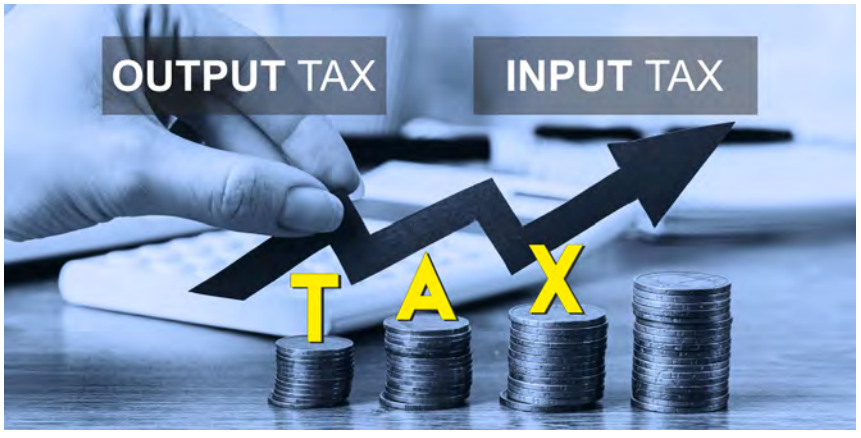
"input service distributor" means an office of the supplier of goods or services or both, which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, state tax, integrated tax or union territory tax paid on the said services to a supplier of taxable goods or services or both having the same PAN as that of the said office

- Emphasis supplied for suitable comparison with erstwhile definition under CCR, 2004

On a comparison of the above definition with the erstwhile definition under CCR, 2004, it is evident that both the definitions are pari materia with no substantial change in the scope of the said provisions.

Controversies Galore!

The co-existence of Schedule I, Entry 2 ('cross charge provision') and Section 20 ('input service distributor') presented substantial confusion since apparently both the provisions appeared to address a similar problem of 'imbalance in input tax credit and output taxes' in different ways. In view of the proviso to Rule 28(1) permitting a flexibility in valuation of the cross charge in case the recipient is eligible for full input tax credit and FAQ issued by the CBIC clarifying that registration as an input service distributor is optional, there was a view that a taxpayer may implement either of the two provisions to address the problem, whereas certain advance rulings canvassed a view that both the provisions operate in different set of situations and as such, both the provisions need independent implementation.



The matter was taken up by the GST Council in its' 50th Meeting held in July 2023, wherein it was clarified that the provisions of 'input service distributor' are indeed optional. Further clarifications were also provided relaxing the rigours of the applicability of 'cross charge' provisions. At the same time, the GST Council suggested that the provisions of 'input service distributor' be made mandatory prospectively from a date to be notified in the future. Accordingly, suitable changes have been carried out in the CGST Act, 2017 and the CGST Rules, 2017 and the said changes are made effective from 01.04.2025.

Key Amendment

As stated above, there are amendments to various sections and rules. However, the fundamental amendment pertains to the definition of 'input service distributor' and

the amended definition u/s 2(61) needs a detailed scrutiny to understand the impact of the change in the correct perspective. The amended definition (effective from 01.04.2025) is reproduced below for ready reference:

Even in the context of intermediary services under GST, the concept of agency vs. principal and the implications of the phrase 'on behalf of' has been exhaustively explained.

"Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, ***for or on behalf of distinct persons*** *referred to in section 25,* ***and liable*** *to distribute the input tax credit in respect of such invoices in the manner provided in section 20*

- Emphasis supplied for suitable comparison with erstwhile definition under CCR, 2004 and the pre-amended definition under section 2(61) of the CGST Act, 2017

On a perusal of the above amended definition, it is evident that there are two substantial amendments being carried out as compared to the erstwhile definition under CCR, 2004 and the pre-amended definition under section 2(61) of the CGST Act, 2017:

1. The phrase 'for or on behalf of distinct persons' is introduced for the first time in the definition of 'input service distributor'

2. The 'input service distributor' is made 'liable' to distribute the input tax credit, thus making the provisions of input service distributor mandatory.

Scope of the Amendment

The judicial interpretation of the phrase 'on behalf of' is fairly settled. The said phrase connotes the existence of an agency relationship between the two parties (State of Mysore vs. Gangamma AIR 1965 Mysore 235). In the context of property, it was held that the holder of the property was only a representative of the real owner (***Kripashankar vs. Commissioner of Wealth Tax AIR 1966 Patna 37***1). Even in the context of intermediary services under GST, the concept of agency vs. principal and the implications of the phrase 'on behalf of' has been exhaustively explained.

Extending the said interpretation of the phrase to the current context, it can be understood that the provisions of 'input service distributor' are triggered in a situation where an ISD office receives tax invoices towards receipt of input services for or on behalf of distinct persons. As compared to the erstwhile definition under the CCR, 2004 and the pre-amended definition under the GST Law, clearly the introduction of this phrase reduces the scope of coverage under ISD post amendment. Effective from 01.04.2025, it would therefore be important to distinguish between a situation where an input service is received by an office on behalf of a distinct person and an input service which is received by an office on its' own account.

A few examples may illustrate the implications of this interpretation:

1. The head office in Maharashtra appoints and pays for security services procured at the factory located in Gujarat. Since the security services are received by the factory located in Gujarat, the tax invoice for the said service is received by the head office 'for or on

Effective from 01.04.2025, it would therefore be important to distinguish between a situation where an input service is received by an office on behalf of a distinct person and an input service which is received by an office on its' own account.

behalf of' the factory in Gujarat, thus triggering the mandate of registration as an input service distribution and the consequent distribution of credit to Gujarat. Incidentally, a similar example was explained in a draft circular recommended by the Law Committee and placed before the GST Council in its' 35th Meeting. However, the said Circular never saw the light of the day.

2. The head office in Maharashtra appoints and pays for goods transportation services procured at the factory located in Gujarat. It also pays the GST under reverse charge mechanism on such GTA services. Since the GTA services are received by the factory located in Gujarat, the tax invoice for the said service is received by the head office 'for or on behalf of' the factory in Gujarat, thus triggering the mandate of registration as an input service distribution and the consequent distribution of credit to Gujarat.

3. The head office in Maharashtra enters into a contract with an insurance company for insurance of assets located across the country. There are assets located in Maharashtra and also in the state of Gujarat. To the extent of assets located at the Gujarat factory, the insurance service of coverage of risk is received by the factory located in Gujarat. Therefore, the tax invoice for the said service is received by the head office 'for or on behalf of' the factory in Gujarat, thus triggering the mandate of registration as an input service distribution and the consequent distribution of credit to Gujarat.

4. The corporate office nominates various employees for a training program conducted by an external agency. To the extent that the nominated employees are based at the Gujarat factory, the training services are received by the Gujarat factory. Therefore, the tax invoice for the said service is received by the head office 'for or on behalf of' the factory in Gujarat, thus triggering the mandate of registration as an input service distribution and the consequent distribution of credit to Gujarat.

While the above specific examples may look simplistic, where would one draw the line to say that the instance is that of service received 'on behalf of' a distinct person or a service received on 'own account'. Let us understand this through a couple of more examples:

1. The head office in Maharashtra imports certain raw materials at the Mumbai port and transports the said goods to a warehouse in Bhiwandi. It appoints and pays for goods transportation services for the movement from Mumbai port to Bhiwandi. After some time, the said raw materials are further supplied to the factory located at Gujarat at a value prescribed under rule 28. It is obvious that in this scenario, the transportation and warehousing services are not received by the factory located at Gujarat, but are received by the head office on its' own account. In fact, the cost of such transportation and warehousing services would become components of the cost calculation for arriving at a valuation under rule 28. Therefore, such services would not be a

subject matter of input service distributor (but indirectly become a part of Schedule I, Entry 2 by way of value of goods being 'branch transferred')

2. The head office in Maharashtra houses a centralised Human Relations Team. The said Team is responsible to address comprehensively all the HR requirements of the company including the employees at the factory located at Gujarat. If the HR Team places an advertisement in the newspaper inviting applications from prospective candidates, can it be said that the said advertisement service is received for and on behalf of Gujarat factory? The draft circular referred to earlier suggests that through the HR Team, the head office internally generates a support service for Gujarat factory, albeit through another circular, a relaxation in valuation has been provided to the extent of salary costs of the HR Team. If the Head Office is providing a support service to the Gujarat factory, is the advertisement service not received and consumed by the head office on its' own account for further rendition of the 'cross-charged support service'?

Based on the above examples, one may conclude that the provisions of input service distributor will get triggered only when the tax invoices for the services are received for or on behalf of distinct persons. Receipt would mean actual receipt of service and not an imaginary receipt in the form of perceived benefit. In cases where a service is received and consumed by the HO, the provisions of input service distributor will not get triggered. It may also be possible that the service is received for self-consumption by the head office and the consumption of the said service may result in the generation of another supply of goods or service for the branch. The two examples mentioned above drive home this interpretation.

There may also be situations where the service may be self-consumed by the head office with no further supply of goods or services to the branch. For example, a research service procured by the head office may not immediately result in a further supply of support services to the branches. At the same time, in many cases, it cannot be said that the research is undertaken for or on behalf of the branches. At some future point of time, an indirect benefit of the service may be derived by the branch, but merely a derivation of some indirect benefit cannot result in the presumption that the head office procured the service on behalf of the branch.

Impact in case of entities with centralised billing

Section 2(71) of the CGST Act, 2017 defines the 'location of supplier of service' and hence governs the location from where an entity having multiple registrations is required to raise an invoice on external customers. Sub-clauses (a) and (b) define the location of the supplier of service to be the location from where the supply is made. It is possible that a service organisation may have multiple offices but is rendering services from a single location. The other offices may only act as a support or facilitator to the centralised office rendering the service to the external customer. Similarly, even in cases where the other offices are also involved in joint execution of the service, sub-clause (c) may suggest that the office most directly connected with the provision of the service should raise an invoice. Therefore, in case of certain business models, organisations have implemented a centralised billing mechanism to external customers. As a natural corollary, the branches act as support function to the corporate office. In case of such business

A perusal of the definition of ISD would suggest that even situations triggering reverse charge mechanism are covered under the said definition and would mandate a distribution. However, since an ISD is merely an office of a person, the implementation provisions do not permit an ISD to discharge a tax liability.

models, the implementation of the ISD concept at the corporate office may represent an internal conflict, since the cross-charge model would suggest that the branch is supporting the corporate office and the ISD implementation may suggest that the input services are procured for or on behalf of branches. In such situations, one may need to flip the entire narrative and examine ISD implementation at the branch level rather than at the corporate office level.

Reverse Charge Mechanism

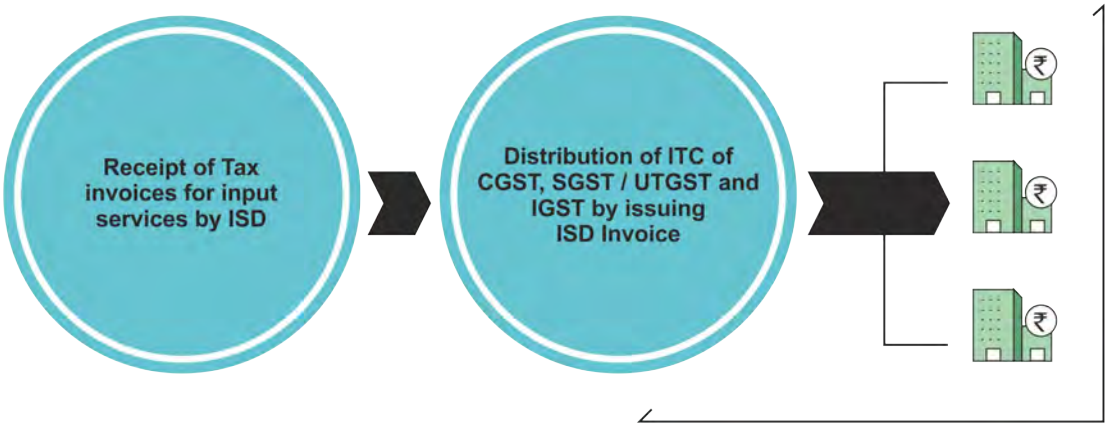
A perusal of the definition of ISD would suggest that even situations triggering reverse charge mechanism are covered under the said definition and would mandate a distribution. However, since an ISD is merely an office of a person, the implementation provisions do not permit an ISD to discharge a tax liability. This results in a practical implementation logjam. Though not expressly stated in the section or the rules, through flyer 10 dated 01.01.2018, it was suggested that the taxes be discharged by obtaining a normal registration.

While the above clarification may result in effective discharge of tax, the corresponding facet of input tax credit continues to be a puzzle. Since the underlying service is received by the branches, the normal registration at the head office cannot claim the credit. Rule 39(1A) therefore suggests that a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice to transfer the credit of such common input services to the Input Service Distributor.

Detailed Procedure for ISD

1. In view of the proviso to Rule 8(1), a separate registration as an input service distributor is required for each of the offices which carries out the activities of distribution as explained above.

2. Though not specifically mentioned, the said registration will have to be communicated to the respective vendors. The taxes charged by the vendors



would reflect in GSTR-6A of the ISD Registration number.

3. Based on matching and identification of eligible/ineligible credits and the recipient units, the ISD invoices will have to be raised for distribution of credits to the respective recipient units. It is further mandated that the distribution shall be effected in the same month in which the credit is available.

4. A return in GSTR-6 will have to be filed by the ISD providing details of such distribution. Based on the said return filed by the ISD, the distribution invoices will reflect in the GSTR2B of the respective recipient units.

5. Similar procedure will be required for distribution of credits pertaining to debit notes raised by the vendors and distribution of the reversal of credits pertaining to credit notes raised by the vendors.

6. The distribution has to be carried out based on the ratio provided under Rule 39. Any errors or omissions in distribution can be rectified by the ISD by means of a generation of an ISD debit note/ISD credit note. In case such errors are not rectified, show cause notices can be issued to the recipient units under section 21 of the CGST Act, 2017

Compliances & recovery at the recipient end

The various compliances which apply to a claim of ITC, such as receipt of goods/ services, payment of tax by the supplier, payment of consideration to the supplier, etc., in case of ISD shall apply to the receiving GSTIN. Therefore, the taxpayers will have to specifically keep track of payment to suppliers to ensure compliance u/r 37 & classification of the invoice for Rule 42 purposes and the said compliance will have to be done by the GSTIN receiving the ITC.

If the ISD receives any credit note for an invoice which has already been considered in the earlier period distribution, the ISD will have to ensure that the reduction in the distribution of the ITC on account of the credit note follows the same ratio applied for distribution of the ITC on invoice.

Lastly, if any excess distribution by ISD is determined, the recovery shall be done at the recipient end and not at ISD end. Therefore, an officer of the recipient GSTIN can very well demand to verify the compliances of ISD and may result in potentially multiple and in some cases, conflicting proceedings.

Conclusion

While both the concepts of 'cross charge' and 'input service distributor' attempt to address the same problem of non-alignment of input tax credits and output taxes, in terms of implementation, both of them differ significantly. With the concept of 'input service distributor' becoming mandatory, it will be important for taxpayers to implement the said concept with full precaution. It may also be appropriate for the Government to provide a detailed guideline on the extent of coverage of the provisions of input service distributor.

■

SAFARI RETREAT SC RULING IMPACT & AMENDMENT MADE THEREAFTER IN LAW





V. Raghuraman
Sr. Advocate

CA Suvrata Maheshwari

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Overview

The issue of eligibility of input tax credit on the construction of immovable property has been an area of much confusion and debate. The recent judgement of the Hon'ble Supreme Court in Safari Retreat Pvt Ltd and the retrospective amendments made thereafter, have sparked new concerns. In this article, we have tried to analyse the impact of the decision, the legislative competence of making retrospective amendments, the inbuilt-functionality test contained in the definition of 'plant and machinery' and the validity of the judgement after the amendment.

In the realm of GST, input tax credit (ITC) is the foundation to allow businesses seamless credit and eliminate cascading effect of taxes. All around the world, input tax credit is considered a necessity for the functioning of the value added tax system and not a largesse given to beggars. The eligibility of ITC on the construction of immovable property has always been a contentious issue. Section 17(5)(c) and (d) of CGST Act, 2017 prescribes certain restrictions on apportionment of ITC on construction of immovable property. The debate revolves around the issue whether ITC on input side can be denied when used for emergence of immovable property when such property is used for generating outward taxable supplies, thereby contradicting the very purpose of a robust, credit-friendly tax system.

In 2019, the constitutional validity of Section 17(5)(d) was challenged in the case of ***Safari Retreats Pvt Ltd***[1] before the Hon'ble High Court of Orissa. The petitioner was carrying on the business of constructing shopping malls for leasing purposes and sought to claim ITC on the construction cost, which was denied by the tax authorities citing Section 17(5)(d) of the CGST Act. The High Court acceded to the argument made by the petitioner and read down, instead of a declaration of unconstitutionality, the provisions of Section 17(5)(d) of CGST Act, 2017 and allowed the input tax credit on goods and services consumed in construction of shopping malls which were rented out by the assessee. The Court reasoned that the narrow construction of interpretation put forward by the Department is frustrating the

1. *Safari Retreats Private Limited vs. Chief Commissioner of CGST 2019 (25) GSTL 341 (Ori).*

very objective of the Act, leading to multi-taxation and resulting in petitioner paying huge amount of GST for which he was not liable. However, the Respondents challenged this decision before the Hon'ble Supreme Court.

In October 2024, the Hon'ble Supreme Court[2] delivered the landmark decision, upholding the constitutionality validity of Section 17(5)(c & d) of CGST Act, 2017. However, the Hon'ble Court gave salient findings:

a. The Court noted that clause (d) of Section 17(5) is different from clause (c) in various aspects.

b. Section 17(5)(c) of CGST Act, 2017 carves out two exceptions where the benefit of ITC in the case of works contract services supplied for the construction of immovable property is available. First is when goods or services, or both, are received by a taxable person for the construction of "plant and machinery", as defined in the explanation to Section 17. The second exception is where the works contract service supplied for the construction of immovable property is an input service for further supply of the works contract.

The Supreme Court enunciated the 'functionality test' to determine whether a building, mall or warehouse other than a hotel or cinema plays the role of a 'plant' in a business.

c. Section 17(5)(d) outlines two exceptions to the restriction on ITC for goods and services used in construction of immovable property. The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery".



2. *Chief Commissioner of CGST vs. Safari Retreats Private Limited 2024 (23) Centax 62 (SC).*

In line with the recommendation of the GST Council, Section 17(5)(d) of CGST Act, 2017 was retrospectively amended vide Finance Act, 2025.

The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property, not on his own account.

d. It was observed that construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot be on a taxable person's "own account" if it is intended to be sold or given on lease or license.

e. The Court noted that the expression "plant or machinery" used in Section 17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation to Section 17 or elsewhere in the CGST Act.

f. Since the expression "plant or machinery" has not been defined in the CGST Act, the ordinary meaning of the expression "plant" as well as "machinery" in commercial terms will have to be applied.

In addition to the above findings, the Supreme Court enunciated the 'functionality test' to determine whether a building, mall or warehouse other than a hotel or cinema plays the role of a 'plant' in a business.

With an intention to nullify the decision of the Hon'ble Supreme Court, in the 55th GST Council meeting held on 21st December 2024, it was recommended to align the provisions of section 17(5)(d) of CGST Act, 2017 by substituting the phrase "plant or machinery" with "plant and machinery", retrospectively, with effect from 01.07.2017, so that the said phrase may be interpreted as per the Explanation at the end of section 17 of CGST Act, 2017. In line with the recommendation of the GST Council, Section 17(5)(d) of CGST Act, 2017 was retrospectively amended vide Finance Act, 2025[3].

Now, the question which arises for consideration is whether the Government has succeeded in fully negating the effect of the judgement of the Apex Court or has it opened door for another round of litigation?

While the retrospective amendment has been termed as a "so called drafting error", it is a trite in law that retrospective amendments must be reasonable and not harsh[4]. The Constitution Bench of the Supreme Court held that while it is competent for the Legislature to enact with retrospective effect, the same can be tested on the grounds of reasonableness under Article 19(5) and (6) and also under Article 304 of the Constitution of India[5]. Further, it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure[6].

3. *To be made effective from the date notified.*
4. *National Agricultural Cooperative Marketing Federation of India Ltd & Anr vs. UOI 2003 (5) SCC 23.*
5. *Rai Ramakrishna vs. State of Bihar AIR 1963 SC 1667.*
6. *CIT vs. Vatika Township Private Limited 2015 (1) SCC (1).*

Notably, the three member bench of the Apex Court has held that ITC is a vested right and where rights are accrued to an assessee based on the strength of Section 16 of CGST Act, 2017, it cannot be altered by way of a retrospective amendment[7]. Further, three-member Bench of the Supreme Court has held that the normal limitation under section 11A would apply for retrospective demands otherwise the retrospectively itself can be questioned as unreasonable[8]. In light of the above, the test of time will tell whether the retrospective amendment will survive or not. We must also not forget that the Supreme Court held in Safari supra that the government very well knew for 6 years about this difference in language and now cannot say it is a mistake as nothing prevented them from correcting it.

Nonetheless, it is also important to note that the Hon'ble Supreme Court interpretation of the scope of the phrase "other than own account" is wide enough to include availability of ITC on inputs and input services used in construction of immovable property, if it is intended to be given on lease or license, whether or not it satisfies the criteria of plant and machinery.

To add an interesting dimension to the discussion is the inbuilt functionality test in the definition of "plant and machinery". It is undoubted that ITC on goods and services used in the construction of "plant and machinery" as defined in Explanation to Section 17 is not restricted. The definition terms a "plant and machinery" as an apparatus, equipment and machinery fixed to the earth by foundation or structural support that *are used for making an outward supply of goods or services or both* and includes such foundation or support structures but excludes (i) land, building or any other civil structures; (ii) telecommunication towers and (iii) pipeline laid outside the factory premise. On a cursory reading on the definition, the question which crops up is whether a building/immovable property be construed as an apparatus or equipment used for making an outward supply of goods or services?

The terms 'apparatus', 'equipment' and 'machinery' is not defined in the CGST Act. Courts have held that 'apparatus' means the compound instrument or chain, or series of instruments designed to carry out a specific function or for a particular use[9]. A tube well with equipment necessary for drawing water[10] and current transformer[11] have been held to be an apparatus. Similarly, 'equipment' has been observed to mean an article or implement used for a specific purpose or activity; an article used for gaining skill[12]. Ship has been held to be a part of equipment of business of shipowner whose ship carries ore and oil[13].

Nonetheless, it is also important to note that the Hon'ble Supreme Court interpretation of the scope of the phrase "other than own account" is wide enough to include availability of ITC on inputs and input services used in construction of immovable property, if it is intended to be given on lease or license, whether or not it satisfies the criteria of plant and machinery.

7. *Eicher Motors vs. UOI 1999 (106) ELT 3 (SC).*
8. *JK Cotton Spinning and Weaving Mills Ltd vs. CCE 1998 (99) ELT 8 (SC).*
9. *Commissioner of Customs vs. C-Net Communications India Pvt Ltd (2007) 216 ELT 337. (SC), ICB Pvt Ltd vs. Collector of Central Excise 1997 (95) ELT 239 (Tri-Del).*
10. *Tribeni Tissues Ltd vs. Commissioner of Income Tax (1991) 190 ITR 487 (Cal).*
11. *Tata Hydro-Electric Power Supply Co Ltd vs. Union of India AIR 2003 SC 1581.*
12. *OK Play India Ltd vs. Commissioner of Central Excise 2005 (180) ELT 300 (SC).*
13. *Coltman vs. Bibby Tankers Ltd [1987] 3 WLR 1181.*

'Machinery' have been defined to mean a combination of four factors, namely: (1) a complete and integrated collection of several objects or articles; (2) these objects and articles should interact in unison upon or with each other; (3) this interaction is prompted by application of force which may be manual or motive power; and (4) the movement should be with a view to do some specific activity or to obtain specific or definite result[14].

Further, in the context of Income Tax Act, various judicial precedents have interpreted the term 'plant'. It was held that 'plant' means something which is required for the purpose of carrying on business/enterprise[15] and without it the business cannot be carried on[16]. Sanitary and pipeline fittings in the bathrooms in a hotel[17], generating station building constructed as an integral part of its generating system[18], ponds specially designed for rearing/breeding of the prawns[19], factory building constructed solely for the manufacturing of medicine[20] *inter-alia* have all been construed as a plant. However, hotels and cinema theatres were held not be plant[21].

It was held that when the assessee with a definite purpose, considering the nature of business carried on by the assessee, constructs a building with specific required design keeping in view the specified technical requirement, without which the assessee's business cannot be carried on, the building in question would qualify to be treated as plant[22].

The principles which emerge from the decisions is that if a particular item can properly be called a tool of trade, then it is a 'plant'. On the contrary, a particular item will not be 'plant' if it is just a part of the setting in which the trade is conducted[23].



14. *Ambica Woodwork vs. State of Gujarat, (1979) 43 STC 338, 342 (Guj); K. B. Dani vs. State of Karnataka, (1979) 44 STC 276 (Karn).*
15. *Commissioner of Income Tax vs. Birla Jute & Industries Ltd (2003) 260 ITR 55 (Cal).*
16. *Harijan Nirbal Varg Avas Nigam Ltd. vs. CIT, (1998) 229 ITR 776 (All).*
17. *Commissioner of Income Tax vs. Taj Mahal Hotel (1971) 82 ITR 44 (SC).*
18. *CIT vs. Karnataka Power Corporation 2001 (247) ITR 268 (SC).*
19. *Assistant Commissioner of Income Tax vs. Victory Aqua Farm Ltd (2015) 379 ITR 335 (SC).*
20. *Cachet Pharmaceuticals Pvt Ltd vs. Commissioner of Income Tax (2017) 390 ITR 466 (Pat).*
21. *Commissioner of Income Tax vs. Anand Theatres (2000) 244 ITR 192 (SC).*
22. *Nowrangroy Metals Pvt Ltd vs. Joint Commissioner of Income Tax (2003) 262 ITR 231 (Gau).*
23. *Commissioner of Income Tax vs. Technico Enterprises Pvt Ltd (1994) 206 ITR 36 (Cal).*

The test is whether the subject matter involved, that is, a building or a structure or a part thereof, constitutes an apparatus or a tool of the trade of the taxpayer or it is merely a space where the taxpayer carries on his business. If the building, structure or a part thereof is something by means of which the business activities are carried on, it would amount to a plant but where the structure plays no part in the carrying on of those activities but merely constitutes a place within which they are carried on, it cannot be regarded as a plant[24].

Even after amendment, it is possible to take a view that building/immovable property which constitute an apparatus or tool for trade for carrying out business, qualify as "plant and machinery", thereby reinforcing the functionality test.

Therefore, even after amendment, it is possible to take a view that building/immovable property which constitute an apparatus or tool for trade for carrying out business, qualify as "plant and machinery", thereby reinforcing the functionality test.

However, the aforesaid view may sound to be loggerheads with the specific exclusion of land, building and other civil structures, from the definition of plant and machinery. It may be noted that while interpreting the exclusion clause one must adopt a harmonious construction[25], else the whole explanation defining plant and machinery would become redundant. Therefore, on harmonious interpretation, the reference to 'building' or "civil structure" in the exclusionary part of the definition of "plant and machinery" must be interpreted as meaning buildings or civil structures which are not tools of trade for the taxpayer. They must be interpreted as a mere "location of doing business" and not as "means of doing business".

Another aspect to be noted is the exclusion of telecommunication towers from the definition of "plant and machinery". It may be noted that the Apex Court while holding that telecommunication towers and prefabricated buildings are movable properties, laid down the principles to be kept in mind while determining whether a property would be treated as immovable or movable[26]. Following this decision, the Hon'ble Delhi High Court held that the mere specific exclusion of telecommunication towers from scope of phrase 'plant and machinery' would not lead one to conclude that statute contemplates or envisages telecommunication towers to be immovable property. It was held that telecommunication towers would have to qualify as immovable property as a pre-condition to fall within the ambit of clause (d) of Section 17(5)[27]. In view of the above, it can be inferred that ITC under Section 17(5)(c) & (d) of CGST Act, 2017 is restricted in respect of construction of immovable property only and the exclusion from the expression "plant and machinery" would not result in the article being concomitantly held as immoveable. Therefore, if an article qualifies as a movable property based on the tests enunciated by the Apex Court (supra), then ITC is available.

24. *Commissioner of Income-Tax vs. Kanodia Warehousing Corporation, 1979 SCC OnLine All 1020.*
25. *CIT vs. Hindustan Bulk Carriers 2003 (3) SCC 57.*
26 *Bharti Airtel Ltd vs. CCE, Pune 2024 (168) taxmann.com 489 (SC).*
27. *Bharti Airtel Ltd vs. Commissioner, CGST Appeals-1, Delhi 2024 (169) taxmann.com 390 (Delhi).*

Further, in this regard, Central Board of Indirect Taxes and Customs has also clarified that ducts and manholes are used as part of the optical fiber cable network for making outward supply of transmission of telecommunication signals from one point to another and therefore are covered under the definition of "plant and machinery"[28], thereby, reinstating the functionality test.

While amendments have been made in law, in our view, the definition of "plant and machinery" has an in-built functionality test. Though the review petition against the Court's decision is pending, the ambiguity in law is likely to open a pandora box of litigation and the authors are of the opinion that the retrospective amendment does not take away the functionality test inbuilt into the provisions of Section 17(5)(c) or (d) and therefore, the judgement of Safari would continue to be applicable even after the so called retrospective amendments in the following manner:

i. For those taking credit under Section 17(5)(c), they have to go by the functionality test prescribed in the said section and as discussed in the article.

j. For those taking credit under Section 17(5)(d), if it is used in for leasing or rental (whether it is plant and machinery or not), credit is available; in other cases, functionality test would continue to apply.

In short, avail the credit and go for the next round of litigation as the legislative changes are simply inadequate to block the credit in all cases. ■

28. *Circular No. 219/13/2024-GST dated 26.06.2024.*

Assisted by J. S. Bhanumurthy, Advocate.

"Education is the manifestation of perfection present already in man. Religion is the manifestation of the divinity already in man"

Swami Vivekananda

IMS - ALL ABOUT INVOICE MANAGEMENT SYSTEM IN GST



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Overview

The implementation of IMS represents a significant advancement in improving GST compliance and facilitating seamless reconciliation between suppliers and recipients. However, its complexity, especially in handling rejected invoices and credit notes, presents operational challenges that require careful navigation.

Without addressing these concerns, the IMS framework may inadvertently shift compliance burdens onto businesses, leading to unnecessary reconciliations, operational inefficiencies, and preventable litigation. Policymakers must consider practical refinements to create a system that fosters transparency while safeguarding revenue and taxpayer interests.

As we all know, the GST portal always has an inkling to introduce and implement new features on the Common Portal, often ahead of an established legal framework. As was with the GSTR2B, the GST Portal introduced a new feature called the Invoice Management System (IMS).

According to the FAQs issued by the GSTN, Invoice Management System (IMS) is a facility in GST system, where the invoices/records saved/filed by the supplier in GSTR-1/1A/IFF, can be accepted, rejected or kept pending by recipients in order to correctly avail ITC.

It aims to streamline invoice management between suppliers and recipient taxpayers by allowing recipients to review and act on incoming invoices based on their ITC claim requirements.

On 17th September 2024, a draft manual outlining the functionality and procedures of IMS was uploaded to the GST portal. Subsequently, this feature was implemented on the GST Portal on 14th October 2024 with an advisory stating that this feature would allow taxpayers to interact with invoices reflected in GSTR-2B, giving them the option to accept, reject, or keep invoices pending within the system.

As indicated earlier, there was no legal framework in place when these features were introduced on the GST portal. Therefore,

Invoice Management System (IMS) is a facility in GST system, where the invoices/records saved/filed by the supplier in GSTR-1/1A/IFF, can be accepted, rejected or kept pending by recipients in order to correctly avail ITC.

The 54th GST Council Meeting in its Press release dated 9th September 2024 (In Para C2) stated that IMS would be an optional facility for taxpayers to reduce errors in claiming input tax credit and improve reconciliation. Under the garb of ease of doing business, these features were sought to be implemented.

To give legitimacy to the IMS, The GST Council in its 55th GST Council Meeting recommended amendments in CGST Act, 2017 and CGST Rules, 2017 in respect of functionality of Invoice Management System (IMS).

The GST Council recommended *inter-alia*-

i. To amend section 38 of CGST Act, 2017 and rule 60 of CGST Rules, 2017 to provide a legal framework in respect of generation of FORM GSTR-2B based on the action taken by the taxpayers on the Invoice Management System (IMS).

ii. To amend section 34(2) of CGST Act, 2017, to specifically provide for requirement of reversal of input tax credit as is attributable to a credit note, by the recipient, to enable the reduction of output tax liability of the supplier.

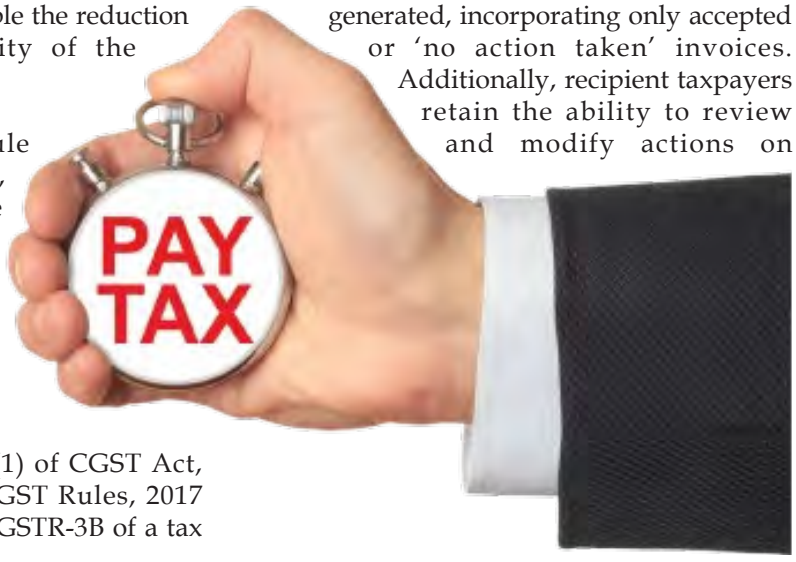
iii. To insert a new rule 67B in CGST Rules, 2017, to prescribe the manner in which the output tax liability of the supplier shall be adjusted against the credit note issued by him.

iv. To amend section 39 (1) of CGST Act, 2017 and rule 61 of CGST Rules, 2017 to provide that FORM GSTR-3B of a tax period shall be allowed to be filed only after FORM GSTR-2B of the said tax period is made available on the portal.

Based on the above recommendations, The Finance Act, 2025 vide Sec 126, Sec 127 and Sec 128 sought to amend Sec 34, 38 and 39 of the CGST Act, 2017. Even though the Finance Act 2025 is passed and received Presidential assent, the relevant sections (Sec 126, 127 and Sec 128) are yet to be notified in the CGST Act, 2017. Probably since the State Governments are yet to pass these amendments. Consequently, the corresponding amendments to Rule 60 and insertion of Rule 67B is yet to see the light of day.

As of now, the IMS facility remains **optional**, and taxpayers are not required to accept or reject invoices in the IMS dashboard for GSTR-2B generation. If no action is taken on received invoices, GSTR-2B will continue to be generated on the 14th of the month, following the original process.

Invoices on which the recipient takes no action will be considered 'deemed accepted' by the system, and a draft GSTR-2B will be generated, incorporating only accepted or 'no action taken' invoices. Additionally, recipient taxpayers retain the ability to review and modify actions on



Invoices on which the recipient takes no action will be considered '*deemed accepted*' by the system, and a draft GSTR-2B will be generated, incorporating only accepted or 'no action taken' invoices.

accepted invoices until they file Form GSTR-3B for the respective month.

The treatment of documents on the GST Portal will vary depending on the type of action taken, as outlined below:

a) Accept –Accepted records will become part of 'ITC Available' section of respective GSTR-2B. ITC of accepted records will auto-populate in GSTR-3B.

b) Reject –Rejected records will become part of 'ITC Rejected' section of respective GSTR-2B. ITC of rejected records will not auto-populate in GSTR-3B.

c) Pending –Pending records will not become part of GSTR-2B and GSTR-3B. Such records will remain on IMS dashboard till the time same is accepted or rejected or **till the time timeline prescribed in Section 16(4) of CGST Act.**

Pending action will not be allowed for:

i. An original credit note.

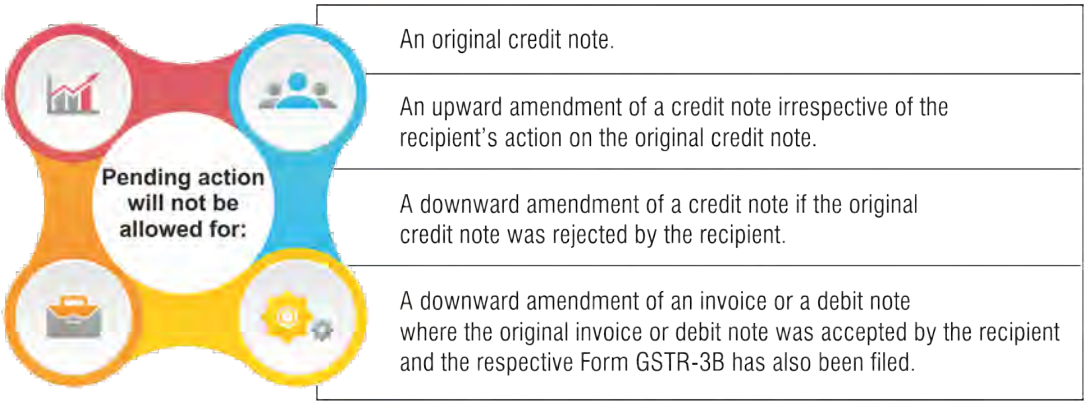
ii. An upward amendment of a credit note irrespective of the recipient's action on the original credit note.

iii. A downward amendment of a credit note if the original credit note was rejected by the recipient.

iv. A downward amendment of an invoice or a debit note where the original invoice or debit note was accepted by the recipient and the respective Form GSTR-3B has also been filed.

d) No Action - records with "No Action" status will be ***deemed accepted*** at the time of GSTR-2B generation.

Documents where ITC is not eligible either due to POS rule or Section 16(4) of the CGST Act and records attracting RCM Supplies will not form Part of the IMS Framework. Similarly IGST paid on Import will also directly flow to the GSTR-2B.



Documents where ITC is not eligible either due to POS rule or Section 16(4) of the CGST Act and records attracting RCM Supplies will not form Part of the IMS Framework. Similarly IGST paid on Import will also directly flow to the GSTR-2B.

Currently, action can be taken by the recipient only on the Portal and no other 'Offline Tool' is published by GSTN. Though ASPs do have APIs to help their customers to take action on the portal. The Recipient after taking action needs to 'Recompute' the GSTR-2B. This can be done multiple number of times prior to the filing of the GSTR-3B of the relevant month.

Actions taken by the recipient can be viewed in this tab and appropriate action may need to be taken in GSTR-1A of the current month or GSTR-1/IFF of subsequent month.

The FAQs released on 22nd September 2024 **clearly state that in case a recipient rejects the Credit note then the corresponding liability will be added to the supplier liability in the GSTR-3B i.e. the supplier will not be allowed to reduce the liability in his GSTR-3B.**

Therefore, when recipients do take action, it can have significant and far-reaching consequences for the suppliers. The following table forming part of the FAQs (cited above) by the GSTN as Annexure A shows the Impact on ITC and on liability of supplier under different scenarios. The same is reproduced here for ready reference.

<table>
<tr><th colspan="7">Other than Reverse Charge Records</th></tr>
<tr><th rowspan="2">Record Type</th><th colspan="4">Action taken on IMS and impact on R2B ITC credit</th><th colspan="2">Supplier 3B Liability</th></tr>
<tr><th>Action on Original Record</th><th>ITC Amount</th><th>Action on Amendment Record</th><th>ITC Amount</th><th>Liability of the Record</th><th>Incr liability on action taken</th></tr>
<tr><td rowspan="3">B2B/DN/ ECO [9/5] Invoice</td><td>Accept</td><td>+ Full Amount</td><td colspan="2" rowspan="3">NA</td><td rowspan="3">+ Full Amount</td><td rowspan="3">Nil</td></tr>
<tr><td>Reject</td><td>Nil</td></tr>
<tr><td>Pending</td><td>Nil</td></tr>
<tr><td rowspan="6">B2BA/DN Upward</td><td rowspan="3">Accept</td><td rowspan="3">+ Full Amount</td><td>Accept</td><td>+ Change in value</td><td rowspan="3">+ Change in value</td><td rowspan="3">Nil</td></tr>
<tr><td>Reject</td><td rowspan="2">Nil</td></tr>
<tr><td>Pending</td></tr>
<tr><td rowspan="3">Reject</td><td rowspan="3">Nil</td><td>Accept</td><td>+ Full Amount</td><td rowspan="3">+ Change in value</td><td rowspan="3">Nil</td></tr>
<tr><td>Reject</td><td rowspan="2">Nil</td></tr>
<tr><td>Pending</td></tr>
</table>

Other than Reverse Charge Records						
Record Type	*Action taken on IMS and impact on R2B ITC credit*				*Supplier 3B Liability*	
	Action on Original Record	*ITC Amount*	*Action on Amendment Record*	*ITC Amount*	*Liability of the Record*	*Incr liability on action taken*
	Pending	Nil	Accept	+ Full Amount	+ Change in value	Nil
			Reject	Nil		
			Pending			
B2BA/DN Downward	Accept	+ Full Amount	Accept	- Change in value	- Change in value	Nil
			Reject	Nil		+ Change in value
			Pending	Not Allowed		NA
	Reject	Nil	Accept	+ Full Amount	- Change in value	Nil
			Reject	Nil		
			Pending			
	Pending	Nil	Accept	+ Full Amount	- Change in value	Nil
			Reject	Nil		
			Pending			
CN	Accept	- Full Amount	NA		- Full Amount	Nil
	Reject	Nil				+ Full Amount
	Pending	Not Allowed				
CNA Upward	Accept	- Full Amount	Accept	- Change in value	- Change in value	Nil
			Reject	Nil		+ Change in value
			Pending	NA	NA	

Other than Reverse Charge Records						
Record Type	*Action taken on IMS and impact on R2B ITC credit*				*Supplier 3B Liability*	
	Action on Original Record	*ITC Amount*	*Action on Amendment Record*	*ITC Amount*	*Liability of the Record*	*Incr liability on action taken*
	Reject	Nil	Accept	- Full Amount	- Full Amount	Nil
			Reject	Nil		+ Full Amount
			Pending	NA	NA	
	Pending	Not Allowed			Not Allowed	
CNA Downward	Accept	- Full Amount	Accept	+ Change in value	+ Change in value	Nil
			Reject	Nil		
			Pending	Nil		
	Reject	Nil	Accept	- Full Amount	- Full Amount	Nil
			Reject	Nil		+ Full Amount
			Pending	NA	Not Allowed	
	Pending	Not Allowed			Not Allowed	

RCM to Forward charge and visa versa						
Record Type	*Action taken on IMS and impact on R2B ITC credit*				*Supplier 3B Liability*	
	Action on Original Record	*ITC Amount*	*Action on Amendment Record*	*ITC Amount*	*Liability of the Record*	*Incr liability on action taken*
RCM to FCM - Inv/ DN	NA		Accept	+ Full Amount	+ Full Amount	Nil
			Reject	Nil		
			Pending	Nil		

<table>
<tr><th colspan="7">RCM to Forward charge and visa versa</th></tr>
<tr><th rowspan="2">Record Type</th><th colspan="4">Action taken on IMS and impact on R2B ITC credit</th><th colspan="2">Supplier 3B Liability</th></tr>
<tr><th>Action on Original Record</th><th>ITC Amount</th><th>Action on Amendment Record</th><th>ITC Amount</th><th>Liability of the Record</th><th>Incr liability on action taken</th></tr>
<tr><td rowspan="3">RCM to FCM - CN</td><td colspan="2" rowspan="3">NA</td><td>Accept</td><td>- Full Amount</td><td rowspan="2">- Full Amount</td><td>Nil</td></tr>
<tr><td>Reject</td><td>Nil</td><td>+ Full Amount</td></tr>
<tr><td>Pending</td><td>Not Allowed</td><td colspan="2">Not Allowed</td></tr>
<tr><td rowspan="3">FCM to RCM - Inv/ DN</td><td>Accept</td><td>+ Full Amount</td><td rowspan="6">3.1d & 4A(3)</td><td>- Full Amount</td><td rowspan="3">- Full Amount</td><td></td></tr>
<tr><td>Reject</td><td>Nil</td><td></td><td></td></tr>
<tr><td>Pending</td><td>Nil</td><td></td><td></td></tr>
<tr><td rowspan="3">FCM to RCM - CN</td><td>Accept</td><td>- Full Amount</td><td>+ Full Amount</td><td rowspan="3">+ Full Amount</td><td></td></tr>
<tr><td>Reject</td><td>Nil</td><td></td><td></td></tr>
<tr><td>Pending</td><td>Not allowed</td><td></td><td></td></tr>
</table>

It is pertinent to note that the both the advisories issued by the GSTN (dated 12th and 13th November 2024) on the GST Portal clearly state that the taxpayers are advised avail ITC or pay correct tax liability based on the factual position as per the documents/records available with them even if wrong action is taken in IMS by the taxpayer.

It is pertinent to note that the both the advisories issued by the GSTN (dated 12th and 13th November 2024) on the GST Portal clearly state that the taxpayers are advised avail ITC or pay correct tax liability based on the factual position as per the documents/records available with them even if wrong action is taken in IMS by the taxpayer.

Issues in IMS

i. **Lack of Legal Framework** –As outlined earlier, the relevant provisions of the Finance Act 2025 are yet to be notified, leaving Invoice Management System without legal backing or an established framework. Any process flow or functionality that impacts the tax liability of the suppliers/credit eligibility of recipients requires implementation of statutory provisions.

Despite this, taxpayers appear to be subject to its implementation. Although IMS is currently touted as optional, actions taken by the recipient inevitably affect supplier reporting, making it less discretionary than it seems. The IMS functionality appears to overstep the jurisdiction of GST law by requiring a response on the approval or rejection of an entire transaction, even before the statutory time-limit to claim the credit is over. Furthermore, when no action is taken, the invoices are deemed to be accepted.

ii. **Time-Limit to avail ITC –** While the time-limit to avail ITC is governed by Sec 16(4) of the CGST Act. 2017 which allows for claiming input tax credit by 30th November of the Next Financial Year or date of furnishing of annual return, whichever is earlier. The Invoice Management System seems to extend far beyond Sec 16(4) by effectively mandating real-time responses to accept or reject transactions. The IMS assumes that parties involved will be able to take a definitive stance within a short window (between 14th to 20th of a month) of less than a week—despite the fact that recipients otherwise have time beyond the relevant financial year to claim ITC. The restriction in IMS is a procedural limitation stemming from system design rather than a legislative amendment, meaning it does not alter the statutory deadline prescribed under the law. However, it does create a discrepancy in the system leading to unnecessary litigation and cost to the taxpayer.

iii. Effect of erroneous action taken in IMS–

a. **Incorrect Rejection:** If a recipient rejects an invoice, the supplier's liability remains unchanged, as the tax has already been reported and paid in GSTR-3B. However, the corresponding ITC will not be reflected in the recipient's GSTR-2B. This may prevent the recipient from claiming ITC to which they are lawfully entitled.

Conversely, if the recipient rejects a credit note, the reduction in liability claimed is added back to the supplier's liability in the GSTR-3B for the following month.

Therefore, if the customer rejects both the original invoice and the corresponding credit note, only the liability related to the rejected credit note is reinstated. This seems to be arbitrary.

If in the case above, where a new revised invoice is issued, the GST liability for the same supply is reported twice—once under the original invoice (which remains valid due to the rejected credit note) and again under the revised invoice. Without an opportunity to review or dispute recipient actions, suppliers are forced into involuntary adjustments, increasing the likelihood of reporting discrepancies and potential disputes with tax authorities.

If the amendment option is undertaken by the taxpayer instead of issuance of a credit note, this

The restriction in IMS is a procedural limitation stemming from system design rather than a legislative amendment, meaning it does not alter the statutory deadline prescribed under the law.

would in-turn cause discrepancies with the Invoice Reference Number (IRN) data, rendering the document invalid under GST law.

b. **Incorrect Acceptance**: A recipient may inadvertently accept certain records within IMS. Without a mechanism for rectifying such errors, the recipient could face legal consequences for availing incorrect ITC.

c. **Issues during GST Departmental Audit/Assessment - Due to Incorrect Responses** - While any erroneous reflection in GSTR-2B can be corrected when filing GSTR-3B, tax authorities often place significant reliance on GSTR-2B during audits and assessments. This makes it difficult for taxpayers to justify actions that differ from what appears in GSTR-2B.

Currently, the system automatically adds the value of rejected credit notes without giving the supplier an opportunity to reconcile or counter the recipient's claim. This process feels arbitrary and unfair to the supplier.

For instance, if a recipient mistakenly accepts a credit note that does not belong to them, it will be reflected in their GSTR-2B. Even if this is corrected when filing GSTR-3B, the department may still require the taxpayer to reverse ITC corresponding to the accepted credit note. Such situations may result in unnecessary reconciliations and unwarranted compliance burdens, including avoidable notices from tax authorities.

d. **Lack of mechanism for rectification of inadvertent acceptance or rejection of records in IMS** - There is no established mechanism to rectify inadvertent acceptance or rejection of records in IMS. Rejected documents cannot be re-submitted in IMS, though they may be amended in GSTR-1 for subsequent periods. There is no Edit Option in IMS, once the GSTR3B is filed.

iv. **Credit Notes not allowed to be kept 'pending'** – There may be instances where a business may not have received a credit note from a supplier. The particular supplier's credit note may be under dispute and therefore, the business would want to keep a particular credit note pending. However, the option for keeping credit notes pending is absent in the system.

v. **Absence of Mechanism to intimate discrepancies to the supplier and/or recipient:** At the time of introduction of GST in July 2017, the GST law provided for a matching mechanism that involved filing of three returns: GSTR-1, GSTR-2, and GSTR-3. Under this erstwhile framework, ITC details were communicated by the supplier to the recipient, who could either accept the credit or report discrepancies, including modifications. Any reported discrepancies required rectification by the supplier; failing which, the disputed amount was added to the supplier's tax liability. This mechanism is absent in the current framework of IMS, and therefore, the Government should consider introducing a mechanism for the same.

vi. **Non-generation of Monthly GSTR-2B for Quarterly Filers** – Since the

introduction of the IMS framework, GSTN has ceased generating monthly GSTR-2B for quarterly taxpayers to facilitate IMS functionality. This change imposes unnecessary hardship on smaller taxpayers by depriving them of ITC clarity for the first two months of each quarter. The resulting delay complicates cash flow management and compliance, since QRMP taxpayers have to deposit tax in the cash ledger after doing a self-assessment of the sales and purchases for the particular month. In fact, even for normal taxpayers, the GSTR-2B is generated without rate of tax which was being generated prior to the implementation of IMS. While this may seem like a minor change, the limited timeframe for filing GSTR-3B adds significant time pressure, making reconciliation more challenging and potentially increasing compliance risks.

vii. **Invoice to ISD –** The framework is silent on the treatment of invoices/CN on which certain action was taken by the taxpayer but subsequently amended by the supplier and shown on the ISD number of the recipient. Since, ISD does not flow through the IMS, there seems to be a lack of clarity on the treatment of such invoices.

Conclusion

The implementation of IMS represents a significant advancement in improving GST compliance and facilitating seamless reconciliation between suppliers and recipients. However, its complexity, especially in handling rejected invoices and credit notes, presents operational challenges that require careful navigation.

With the inevitable imposition of IMS on taxpayers, the requirement to respond to transactions within IMS, coupled with the absence of a mechanism to rectify inadvertent errors, imposes unnecessary hardship on taxpayers. Currently, the system automatically adds the value of rejected credit notes without giving the supplier an opportunity to reconcile or counter the recipient's claim. This process feels arbitrary and unfair to the supplier.

Incorrect acceptance or rejection of records can lead to compliance challenges, loss of legitimate input tax credit, and unwarranted reconciliations. Moreover, during audits and assessments, authorities heavily rely on GSTR-2B, making it difficult for taxpayers to justify corrections made in GSTR-3B. Without a structured rectification process, taxpayers may face avoidable disputes and additional compliance burdens.

Without addressing these concerns, the IMS framework may inadvertently shift compliance burdens onto businesses, leading to unnecessary reconciliations, operational inefficiencies, and preventable litigation. Policymakers must consider practical refinements to create a system that fosters transparency while safeguarding revenue and taxpayer interests.

M&A DEALS – DEALING WITH THEIR GST IMPLICATIONS





Rohit Jain
Advocate

Palak Shah
Advocate

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Overview

This article explores the Goods and Services Tax (GST) implications of Mergers and Acquisitions (M&A) transactions of various nature. Key issues discussed include the taxability of mergers or business transfers, handling of Input Tax Credit (ITC) balances, inter-company transactions during the intervening period (appointed and effective date), and liabilities for past transactions. The article also addresses transitional issues such as ITC transfer as well as its reversal, and the impact of the Insolvency and Bankruptcy Code on GST dues, etc. arising in case of M&A deals. It emphasizes the importance of understanding these tax implications to optimize the financial and strategic outcomes of M&A deals, urging businesses to stay informed of regulatory changes to maximize transaction value of their M&A deals in India.

The dynamics of carrying out business across sectors have changed rapidly over the last few years. Be it the market forces, economic scenario, regulatory challenges or evolution of AI, fast-paced changes have been the new normal for businesses. With this external challenges, Mergers and Acquisitions ('M&A') have become common business tools employed to seek competitive benefits in terms of market share, access to new markets and technologies, enhanced operational efficiency, and so on. The enactment of Insolvency and Bankruptcy Code, 2016 ('IBC') has also paved the way for enhanced M&A activities in respect of companies facing financial distress.

Given the ever-changing modalities of M&A transactions and limited provisions under the law, determining GST implications arising out of such transactions has usually been far from a straight-jacket formula.

In this article, we are particularly focusing on the Goods and Services Tax ('GST') implications arising out of these corporate restructurings.

The Central Goods & Services Tax Act, 2017 ('CGST Act') read with the Central Goods and Services Tax Rules, 2017 ('CGST Rules') contain several specific provisions governing the process or implications of M&A. However, given the ever-changing modalities of M&A transactions and limited provisions under the law, determining GST implications arising out of such transactions has usually been far from a straight-jacket formula.

The GST implications and issues arising out of M&A may be analyzed from the following key perspectives:

A. Taxability of the transaction of merger or business transfer per se

B. Dealing with the Input Tax Credit ('ITC') balances

C. Inter-company transactions during the intervening period

D. Liabilities for past transactions

E. Other transitional issues

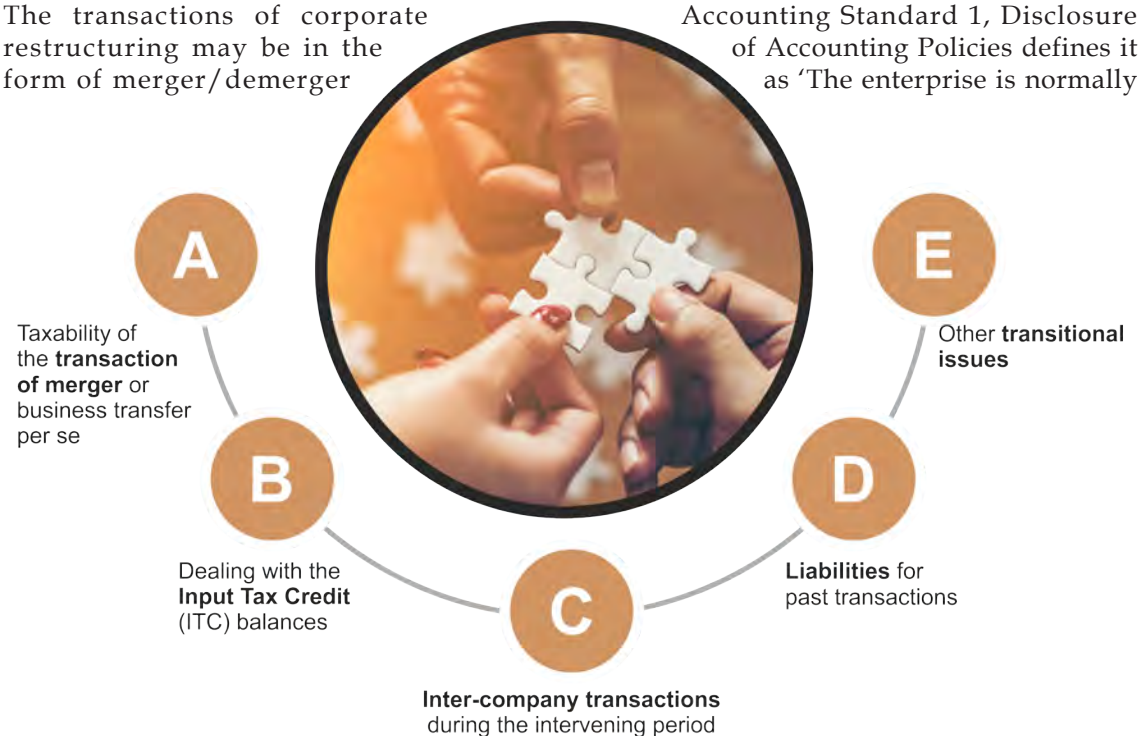
The following paragraphs contain the analysis on each of these four perspectives.

A. Taxability of the transaction of merger or business transfer

The transactions of corporate restructuring may be in the form of merger/demerger of an entire company or in the form of sale of one or more undertakings. A sale of undertaking may further be executed in different manners such as slump sale or going concern, itemized sale, etc. Of these, the CGST Act and Notifications issued thereunder contain specific provisions in respect of treatment of transfer of a going concern. As per Serial No. 2 of Notification No. 9 – Integrated Tax (Rate) dated 28.06.2017, services by way of transfer of a going concern, as a whole or an independent part thereof is considered as an exempt supply

Concept of slump sale and going concern

Slump Sale usually means sale of any undertaking as a going concern, for a lumpsum consideration without assigning consideration to individual assets getting transferred. The term going concern is not defined under the CGST Act. Going concern is a fundamental accounting assumption and Accounting Standard 1, Disclosure of Accounting Policies defines it as 'The enterprise is normally



viewed as a going concern, that is, as continuing in operation for the foreseeable future..'

Additionally, the following indicators highlighted in various judicial precedents are also noteworthy to determine if a transaction could constitute slump sale or transfer of going concern:

Slump Sale usually means sale of any undertaking as a going concern, for a lumpsum consideration without assigning consideration to individual assets getting transferred.

- When assets/liabilities being transferred constitute a business activity capable of being run independently for the foreseeable future, would constitute 'sale as a going concern'[1]

- Even if some assets/liabilities are retained by transferor, the sale would not lose character of slump sale[2]

Whether transfer of business on slump sale basis constitutes a 'supply'

GST is levied on 'supply' of goods or services. As per Section 7 of the CGST Act, 'Supply' includes all forms of supply of goods or services or both such as sale, transfer, etc. made or agreed to be made for a consideration by a person in the course or furtherance of business. Further, Schedule II of the CGST Act clarifies whether certain activities will be treated as supply of goods or supply of services.

As per Section 2(52) of the CGST Act, 'goods' means every kind of movable property other than money and securities. Further, 'service' is defined under Section 2(102) of the CGST Act as anything other than goods, money and securities. It is also pertinent to refer to the definition of the term "business" as per Section 2(17) of the CGST Act which includes supply or acquisition of goods including capital goods and services in connection with commencement or closure of business.

In terms of the settled position in law prior to the GST regime, it has been held that a business is not goods and therefore the proceeds of the sale of a business do not amount to turnover on which sales tax may be payable[3]. Further, in the context of definition of business under the VAT laws, Hon'ble Courts had held that transfer of business undertaking could not be regarded as sale in the course or furtherance of business as such sale is affected by transferring the business[4]. By inferring from the jurisprudence under the erstwhile laws, it could be argued that any activity related to closure of business cannot be treated in the course or furtherance of business. Even while definition of the term 'business' is wide, the pre-requisite for constitution of a supply transaction is carrying out the activity "in the course or furtherance of business". However, any stance as regards non-applicability of GST on business transfer by treating the same as not being in the course of business may be highly litigious.

1. *Indo Rama Textiles 2012 (8) TMI 79 - Delhi High Court.*
2. *Triune Projects Pvt. Ltd. vs. DCIT 2016 (12) TMI 408 - Delhi High Court, Authority for Advance Ruling, West Bengal in Re : Jayesh Popat 2023 (1) TMI 78.*
3. *Ram Sahai vs. Commissioner S.T. [AIR 1964 All 176]; Monsanto Chemicals of India (P) Limited vs. State of Tamil Nadu [1982] 51 STC 278 (Mad.).*
4. *Coromandal Fertilizers Ltd. vs. State of AP 1998(10) TMI 525 and Ors. M/s. Paradise Food vs. The State of Telangana & Ors. 2018 (16) G.S.T.L. 361 (A.P.).*

Schedule II of the CGST Act provides that transfer of business assets is an activity of supply of goods. In case a person ceases to become a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course of furtherance of business (and treated as supply of goods) unless the business is transferred as a going concern to another person. These provisions indicate the legislative intent to treat transfer of business as potentially covered within the scope of supply. Further, the term 'service' has been widely defined as including anything other than goods.



As discussed above, services by way of transfer of a going concern, as a whole or an independent part thereof is considered as an exempt supply. Accordingly, the transfer of business as a going concern may be treated as a supply which has been exempted from payment of GST.

Even while definition of the term 'business' is wide, the pre-requisite for constitution of a supply transaction is carrying out the activity "in the course or furtherance of business".

GST on Itemized sale

As opposed to transfer as a going concern, an itemized sale may involve sale of one or more assets of business between two entities to give effect to a scheme of business transfer.

In terms of Entry 4 of Schedule II of the CGST Act, transfer of business assets in a piecemeal manner will be construed as supply of goods amenable to GST.

In the recent case of ***Piramal Enterprises Ltd. vs. The State of Maharashtra & Ors.***[5], the Bombay High Court held that mere allocation of cash consideration to individual assets for the limited purpose of payment of Stamp duty would not lead to disentitlement of VAT exemption for a transaction otherwise qualifying to be slump sale.

Merger/demerger of entire company

As opposed to transfer of a segment/ undertaking of a business, merger of entire company involves all assets and liabilities of the merging company getting transferred to the merged company. While shareholders of the merging company may receive consideration in the form of shares of the merged company, such transactions may typically not involve any payment or consideration flowing in the hands of the merging company. In such a case, a possible view that can emerge is that such a transaction may not constitute supply per se, in the absence of any consideration and consequently, it may not even be treated as an exempt supply.

5. (2024 (6) TMI 489).

However, in cases where the merging company and merged company are related person, the above stance of no consideration may not be relevant as transactions without consideration between related persons are treated as supply. However, the exemption as applicable for transfer of a going concern could be available in such cases.

B. Dealing with ITC balances

Transfer of unutilized ITC

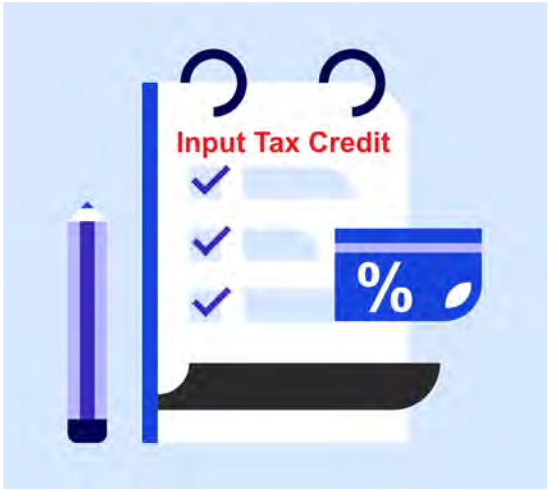
The treatment of a merger or business transfer transaction per se, as discussed above, also has significant bearing on the ITC related aspects. The key ITC related considerations arising in M&A transactions are eligibility to transfer unutilized ITC to the transferee and requirement of any reversal of ITC.

Transfer of ITC

Section 18(3) of the CGST Act read with Rule 41 of the CGST Rules provides for transfer of unutilized ITC to the resulting entity (by filing Form ITC-02) when there is a change in the constitution of a registered person inter-alia on account of a merger or demerger. In case of demerger, Rule 41 requires apportionment of ITC in the ratio of the value of assets of the new units as specified in the demerger scheme.

Section 18(3) of the CGST Act read with Rule 41 of the CGST Rules provides for transfer of unutilized ITC to the resulting entity (by filing Form ITC-02) when there is a change in the constitution of a registered person *inter-alia* on account of a merger or demerger.

Circular No. 133/03/2020-GST dated 23.03.2020 has been issued clarifying various aspects of transfer of ITC pursuant



to demerger, some of the key ones are as under:

a. **State Level/India Level** - For the purpose of apportionment of ITC, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level

b. **ITC Balance** - The ITC balance as on the date of filing of Form ITC-02 needs to be considered

c. **Value of Assets** - The ratio of the value of assets should be taken as on the "appointed date of demerger" as it is the date from which the scheme for demerger comes into force as per section 232(6) of the Companies Act, 2013

d. **ITC not availed** - The value of assets shall include all the assets whether or not ITC has been availed on such assets

e. **Total Amount (not head wise)** - The ratio of value of assets shall be applied to the total amount of unutilized ITC of the transferor. The transferor will be at liberty to determine the amount to be transferred under each tax head of

ITC (CGST/SGST/IGST, subject to the amount determined under Rule 41 and the balance of ITC available with the transferor

While several aspects of ITC transfer, not specifically provided for in the CGST Act or the CGST Rules stand clarified by the Circular, transfer of ITC using Form ITC 02 still continues to be a contentious issue. Some of the controversies faced by the industry include:

a. Eligibility to transfer ITC in cases of merger of two distinct persons and cases of business transfer with no change in constitution of business – Certain rulings[6] have held that transfer of business amongst units having same PAN does not constitute change in the constitution of business *per se*.

b. Filing of Form ITC 02 multiple times to transfer ITC which may have been missed at the time of initial filing – While the portal may allow multiple filing, there is no clarity under the provisions in this regard.

c. Timing of filing of Form ITC 02 – There is no prescribed time limit in the law thereby leading to different timelines being adopted in each case.

Reversal of ITC in the hands of the transferor

Exempt supplies entail reversal of ITC in terms of Section 17(2) of the CGST Act. Thus, on a strict reading, it can be said that reversal of ITC would be required in case of sale of business on a going concern basis, which may qualify to be an exempt supply.

In such a case, ITC on services which are exclusively used for such transfer can in any case not be availed. As regards the reversal of ITC on common input services, one can consider taking a position that requirement of reversal should be restricted to the services received in the month of the transfer of business, as opposed to the entire year or pool of ITC. There could in fact be very limited common services that may be attributable to normal business activities and the sale of the business as a going concern. Furthermore, one may potentially contend that the value at which the business was transferred would be the value of the exempt supply, in which case the amount of ITC reversal would be substantially excessive. However, in a case where the transaction is between related parties and the recipient is eligible for full ITC, the transferor may consider ascribing a nominal value of the supply for GST purposes which could potentially reduce the quantum of ITC reversal.

Alternatively, one could also argue that Section 18(3) of the CGST Act being a specific provision stipulating about transfer of ITC, the generic provision of reversal of ITC under Section 17 may not be attracted. The same could however be highly litigious in absence of any clarification from the Government in this regard.

Furthermore, reversal of ITC may be obviated in a case where there is itemized sale of business assets which would however be subject to payment of GST on outward supply.

To summarize, the implications of ITC on account of M&A transactions need to be examined on a case-to-case basis considering the relationship between the parties, quantum of ITC involved, eligibility of ITC to the transferee entity etc.

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6. In Re Shilpa Medicare Ltd 2020 (7) TMI 345; Crystal Crop Protection Limited 2022 (4) TMI 1087.

C. Inter-company transactions during the intervening period

Mergers are usually made effective from a date mentioned in the scheme of the merger, which is also known as 'appointed date'.

However, no merger is said to be complete, till the time scheme of such merger is approved by the National Company Law Tribunal ('NCLT'). Date of NCLT order approving the merger or any date thereafter as per the scheme or order requiring certain fulfilment of compliance requirements is usually known as the 'effective date'. Thus, usually there is a certain time lapse between the appointed date and effective date which may be termed as intervening period. There is a fair possibility that during such period, the transferor and the transferee company undertake certain transactions with each other for supplying goods and services and it is therefore pertinent to examine the taxability of such transactions.

Alternatively, one could also argue that Section 18(3) of the CGST Act being a specific provision stipulating about transfer of ITC, the generic provision of reversal of ITC under Section 17 may not be attracted.

Section 232(6) of Companies Act, 2013 provides that the scheme of merger shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

Also, the Hon'ble Supreme court in the case of ***Marshall Sons & Co. (India) Ltd. vs. ITO***[7] held that the merger of two companies shall be effective from the appointed date mentioned in the scheme of merger if the court approving it does not prescribe any specific date.

In view of the above, transferor and transferee companies become a single entity on the appointed date of merger.

However, in the erstwhile Service tax regime, certain judicial precedents in ***RSPL Limited vs. CCE, Delhi-I***[8]***; Technocraft Industries (I) Ltd. vs. CCE., Mumbai – III***[9] held that cessation of a corporate entity of the transferor company would occur not on the transfer or appointed date but on the effective date.

Under GST, the transferor and transferee entities are treated as distinct entities up to the date of the NCLT order. Section 87(2) of the CGST Act provides that where two or more companies are amalgamated or merged by an order of a court or tribunal then notwithstanding anything contained in such order, the said two or more companies shall be treated as distinct companies for the purposes of GST for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order. Thus, supplies made by transferor and transferee company during the intervening period to each other for consideration are taxable in view of the explicit provision. In case of merger between related parties, such supplies may be exigible to GST even in the absence of consideration (Schedule I of CGST Act). It is noteworthy that Section 87(2) is only making reference to the cases of merger, and other types of corporate restructuring arrangements such as demerger are not referred therein.

7. *[1997] 223 ITR 809.*
8. *2017 (3) GSTL 345 (Tri. – Del.).*
9. *[2000 (120) ELT 106 (Tribunal)].*

Further, the taxability of supplies made by merging entities to each other after the date of NCLT order (i.e., from issuance of order till effective date when conditions specified in the order are fulfilled or requisite forms with ROC are filed) is a question in itself.

While Section 87 provides that the companies shall be distinct persons till the date of the NCLT order and the registration certificates shall be cancelled with effect from the date of the said order, Section 22(4) of the CGST Act provides that transferee entity shall be liable to register from the date on which registrar of companies issues certificate of incorporation. These provisions seem to be not fully in consonance with each other thereby casting doubts on the taxability of inter-company transactions during the intervening period.

D. Liabilities for past transactions

Transfer of business also entails transfer of liabilities. To the extent of the transfer, Section 85 of the CGST Act makes the transferor and transferee jointly and severally liable to pay the tax, interest or any penalty due from the transferor up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.



Under GST, the transferor and transferee entities are treated as distinct entities up to the date of the NCLT order.

Settlement of dues in M&A transactions in terms of the IBC are governed as per the waterfall mechanism provided under Section 53 of the IBC. As per the said mechanism, dues to the Central or State Government are to be settled only after settlement of insolvency costs, workmen dues, secured creditors, etc. Section 82 of the CGST Act prescribing first charge on the property of a taxable person for recovery of GST dues provides saving for provisions of the IBC. Considering the same and in light of several decisions of the Supreme Court including in the case of ***Sundaresh Bhatt, liquidator of ABG Shipyard vs. CBIC***[10], provisions of IBC would have an overriding effect as regards recovery of GST dues. The position in this regard and associated aspects have also been clarified by the GST Council and Circular No. 187/19/2022 - GST dated 27.12.2022.

E. Other transitional issues

There may also arise certain transitional issues pursuant to transfer of business or merger between two companies. Some of the issues and probable risk mitigating factors are discussed here:

- ***ITC in relation to goods in transit, re-availment etc.***: In terms of Section 16(2)(aa) of the CGST Act, a registered person is entitled to take ITC in relation to the invoice or debit note appearing in its GSTR 2B. It is thus advisable that ITC be availed by transferor entity and then be transferred to transferee through Form

10. [CA No. 7667/2021].

ITC-02. Any direct availment of ITC by the transferee for invoices issued on the transferor may entail mismatch on the GSTN and be prone to litigation.

- ***Issuance of credit/debit notes against invoices raised by the transferor***: Transferee may issue debit notes for supplies made by the transferor and discharge appropriate GST thereon. For subsequent events leading to need to issue a credit note in terms of Section 34 of the CGST Act, issuance of a credit note by the transferee where original invoice was issued by the transferor may lead to significant scrutiny.

- ***Adjustment of advances received by the transferor:*** While there is no specific provision to this effect in the law, the transferee may pay tax after adjusting the advances on which tax was paid by the transferor.

- ***Goods sent by the transferor to the job-worker's premises which are sold eventually by the transferee:*** All licenses and permissions automatically vest with the transferee upon merger. Thus, for receipt of goods from job worker, transferee entity would make suitable disclosures under Form GST ITC-04. This would, however, result in a mismatch inasmuch as the goods were originally sent by the transferor. Alternatively, a constructive receipt and delivery approach may be adopted. However, it is likely to be litigious as the same may constitute a title transfer under various laws.

- ***Refund applications:*** There would also be circumstances wherein qua the transactions of the transferor entity, the refund eligibility arose subsequent to M&A, in which case the refund applications will need to be filed by the transferee entity. Considering that the refund mechanism on GSTN tends to compare details of an application with returns of the respective underlying tax period, this peculiar situation of merger may lead to apparent mismatch which may have to be explained to the authorities.

It is apparent from the above that most of the transition issues and disclosure difficulties arising out of the same are also associated with the constraints on the GSTN portal. To mitigate the risks associated with the transitional issues, it is therefore imperative that sufficient care is exercised by the entities such that a clear cut-off date is adopted, due intimations to the tax authorities are made, etc.

To conclude, while M&A transactions are a vital growth strategy for businesses, offering opportunities to expand, diversify, and enhance market presence, the tax implications of M&A transactions cannot be overlooked, as they can significantly influence the structure and success of a deal. By carefully navigating the tax issues, businesses can optimize the financial and strategic outcomes of their transactions. As the regulatory and tax landscape continues to evolve, staying informed of the latest reforms and leveraging tax-efficient structures will be crucial for businesses seeking to maximize the value of their M&A deals in India.

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Assisted by Ruchita Shah, Advocate.

WHO WILL POLICE THE GST OFFICER



Dr. Sujay Kantawala

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Overview

*This Article, titled **"Who Will Police the GST Officer"** is approximately 2700 words long. The primary objective of the Article is to highlight issues related to Investigation and Arrest, focusing on the complex legal ambiguities arising from actions taken by Officials under the Goods and Services Tax Act, 2017, while also emphasizing the importance of safeguarding individual liberty. The Article discusses the legal and constitutional protections granted by courts, which have rightly cautioned against the misuse of arrest powers and have issued necessary mandates to be followed by Officers before making any Arrest under the Act. It further covers:*

1. *Investigation Procedures*
2. *Issuance of Summons*
3. *Recording of Statements*
4. *Powers of Arrest and provisions for bail as envisaged under the CGST Act, along with relevant judicial precedents.*

Key takeaways include landmark judgments of the Supreme Court and various High Courts, along with pertinent Circulars issued by the Department. The Article also outlines the Fundamental Rights guaranteed to Individuals/Assessees under the Constitution of India, and other legal statutes in alignment with those rights.

In conclusion, the Article emphasizes the issue of illegal arrests by the concerned Authorities and examines how judicial review has addressed and curtailed such actions.

Since its implementation in July 2017, the Goods and Services Tax (GST) regime has significantly transformed the taxation landscape in India. While it has endeavoured to streamline Indirect Taxation, it has also brought with it a stringent compliance and enforcement mechanism, which keeps on changing without adequate notice. Most of the Assessees are twiddling their thumbs and

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having sleepless nights on what new decision, the GST Council may come up with. The provisions relating to Investigation, Arrest and Bail, though, are specific, the ground reality is completely different, as right from the Lowest Officer, apart from being unaware of various Constitutional Safeguards, the termites of corruption are crawling all over adding to the miseries of the Assessees.

The Powers of Investigation and Arrest under the Act appear to be designed to tackle complex tax evasion strategies, especially those involving fake invoicing, fraudulent Input Tax Credit (ITC) as a result of alleged Circular Trading. These powers grant the Directorate General of GST Intelligence (DGGI) Officers, the authority

The Power to Arrest is discretionary, as the word "May" is used in Section 69(1) of the Act. The Commissioner must be satisfied, based on material collected during investigation, that Arrest is essential either to prevent the person from fleeing, tampering with evidence, or continuing with the fraudulent activity.

to summon individuals, inspect premises, freeze bank accounts, seize documents and arrest suspects. The Courts have to time and again strike down illegal arrests and routine Remand Orders and the continual Judicial Custody, which is pursuant to a person being remanded, when flagrant violation is noticed of Article 21 and 22 of the Constitution of India.

The Legal Framework vesting these powers is rooted in Sections 67, 69, 70 and ultimately, after a trial under Section 132 of the Act. An Arrest made without following the proper procedure established by law is not just illegal but it is in violation of the cherished principles of liberty granted under our Constitution.

This article delves into the conceptual and procedural understanding of Investigation, Arrest and the Right to Bail with insights from grassroots, actual practice and judicial review by our Courts.

Understanding the Power of Arrest Under GST

Arrest under the GST Act is not merely procedural but it is a coercive measure with serious implications on personal liberty. However, the law does not grant blanket powers to arrest anyone suspected of a tax offence. But experience reveals that there is regular abuse of the powers by the Arresting Officers. Due to conservative approach of the lower courts, in many a cases, default bail after 60 days after custody normally awaits the arrested person.

"The handcuffs of GST Law cannot override the safeguards of the Constitution."

The Arrest is supposed to follow a well-defined thought process based on evidence collected by fair investigation and the nature of the offence and most essentially ***"Reasons to Believe"***. The Power to Arrest is discretionary, as the word **"May"** is used in Section 69(1) of the Act. The Commissioner must be satisfied, based on material collected during investigation, that Arrest is essential either to prevent the person from fleeing, tampering with evidence, or continuing with the fraudulent activity.

Mere suspicion cannot be a valid reason for Arrest of any Person. The arrests are not to be carried out arbitrarily based on assumptions and presumptions. The evidence used to

justify an Arrest must be legally admissible in Court, as the Officer must determine the guilt based on credible and verifiable material. Furthermore, the Officer must consider all relevant evidence, including those that may prove the individual's innocence. Non – Relied upon documents have to be returned to the Assesse. Ignoring such material or abusing legal provisions often leads to wrongful arrests and makes the entire act of Arrest, flawed and subject to judicial review. The condition to produce the Accused before the Magistrate within 24 hours is mandatory in nature. It has been held that if a person is under the complete control of the visiting officers, the time starts running from the time a person is under detention. Time and again, Courts have granted bail to the Accused upon finding the Arrest illegal on account of default in producing the Accused before the Magistrate.

For instance, in the case of ***Mahesh Devchand Gala vs. Union of India reported in 2024 (5) TMI 607 - BHC***, the Hon'ble Bombay High Court has held that *"Arrest is a serious matter and cannot be made in a routine manner on a mere allegation of commission of an offence, inasmuch as, an arrest can cause incalculable harm to the reputation and self-esteem of a person"*. The Petitioner's overnight detention by CGST Officials without being produced before a Magistrate within 24 hours was prima-facie illegal and violative of his Fundamental Rights. The Court criticized the Official's conduct as high-handed and granted the Petitioner interim bail citing serious procedural violations.

Additionally, authorities have the power under Section 70 of the CGST Act, 2017 to summon individuals for examination, requiring them to provide statements and produce documents. Statements recorded under Section 70 of the Act, can be used as evidence, but their admissibility is governed by Section 136 in the regular trial. In case of a retraction filed at the earliest available opportunity, the same has to be proved in accordance with law, by the prosecution. WhatsApp chats and other Electronic Media is subject to an appropriate Certificate under the provisions of Section 63 of the Bharatiya Sakshya Adhiniyam, 2023. This section sets conditions under which such Electronic Evidence can be used to drive home the case for conviction. The presumptions are rebuttable. The celebrated judgment on this aspect is the case of Anvar P.V. by a Three-Judge Bench of the Hon'ble Apex Court reported in (2014) 10 SCC 473. Courts have repeatedly emphasized that statements made under coercion or pressure lack credibility, as the onus to prove that they are voluntary and true is on the prosecution, thus, reinforcing the importance of procedural safeguards. Courts do not automatically treat recorded statements as Gospel Truth without following due legal process. The law requires an independent assessment to verify their reliability, ensuring that prosecution is based on properly admitted evidence rather than coerced confessions. Cross-Examination even during Adjudication is considered the right of every Assessee. The landmark judgment on this aspect is the case of ***Nishad K.U. reported in (2025) 27 Centax 48 (Ker.)***.

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Bail Under GST: Procedural and Judicial Aspects

Bail in GST-related offences follows the same legal principles as in Criminal Law. In recent years, judicial verdicts have played a significant role in ensuring a fair balance between the department's power to arrest and the protection of personal liberty of an individual. The Supreme Court and various High Courts have consistently emphasized that arrests should not be carried out mechanically or without sufficient justification. Simply having the authority to arrest does not mean it should be exercised indiscriminately, and law enforcement agencies must ensure that their actions align with constitutional safeguards and legal principles to prevent misuse of power. However, sadly, we see quite the opposite.

Our Courts have consistently emphasized that Arrest is not mandatory in all cases, particularly when the individual is cooperating with the investigation. Instead, Arrest should be considered only as a last resort in cases where it is necessary.

Judicial Trends and Evolving Safeguards

The presumption of innocence where an individual is deemed innocent until proven guilty is a fundamental principle of our jurisprudence. Various legal safeguards protecting the Citizen are embedded in the Constitution of India. Most particularly and significant is Article 20(3) of the Constitution, which ensures that *"No person accused of an Offence shall be compelled to be a witness against himself"*. Our Courts have consistently emphasized that Arrest is not mandatory in all cases, particularly when the individual is cooperating with the investigation. Instead, Arrest should be considered only as a last resort in cases where it is necessary. Additionally, for serious GST offenses, Courts have ruled that "reasons to believe" must be clearly recorded in the file, before proceeding with an Arrest, ensuring that decision to Arrest is not based for technical violations. Furthermore, seeking Anticipatory Bail is not prohibited, and has been granted in multiple cases where documentary evidence is already in possession of the Officers and the necessity for judicial custody would serve no purpose. In the case of ***Mishal Shah reported in 2025 (2) TMI 310***, Bail was granted, as the Magistrate came to the conclusion that Arrest was made in a hasty manner and that too early in the morning. There was no necessity to Arrest.

Summons and Statements

Summons under GST are systematically issued to obtain documents or record statements. Though not equivalent to police interrogation, the process can be intense and intimidating. The right to have an Advocate present at visible but not audible distance is now well-established. The judgment in the case of ***Manishbhai Narshibhai Talaviya reported in 2023 (385) E.L.T. 204 (Bom.)*** is a landmark judgment, wherein, the Bombay High Court has held that the Advocate for an Accused person, can remain present at visible, but not audible distance and has also held that this is an aspect of fair investigation. The right to silence and against self-incrimination is also one of the Constitutional Safeguards as held in the case of ***Arvind Kejriwal vs. CBI reported in 2024 (7) TMI 760 – (S.C.)***, wherein, the Apex Court has held that *"…. the protection is available to a person against whom a formal accusation has been*

made, though the actual trial may not have commenced and if such an accusation relates to the commission of an offence which in the normal course may result in prosecution".

The right to sleep has been recognized as a Fundamental Right and the Enforcement Directorate has come out with Guidelines pursuant to a High Court direction/Order in the case of ***Ram Kotumal Issrani 2024 (4) TMI 629 - BOMBAY HIGH COURT*** frowning on mid-night recording of statements. The principles would equally apply to investigation by GST Officials of the Investigative Wings.

The CBIC's Instruction No. 03/2022-23 (GST-Investigation) dated 17.08.2022 provides detailed guidelines for issuing summons under Section 70 of the CGST Act, 2017. It has recognized the mischief of field officers routinely summoning Senior Management Officials for submitting records that are already available online on the GST portal, which is discouraged. The instructions reiterate that summons should be issued judiciously and only when necessary, and officers should prefer using requisition letters for basic document collection. It emphasizes that the power to issue summons must be exercised with care, ideally by Superintendents with prior written approval from higher-ranking officers. The Officer must document the reason for issuing summons and the appearance or non-appearance of the summoned person. DIN (Document Identification Number) mentioning is mandatory.

Arrests and Bail

Courts have consistently emphasized that Arrest is not mandatory in all cases, particularly when the individual is cooperating with the investigation. In cases involving significant financial amounts, particularly when the alleged tax evasion exceeds ₹ 5 Crore, Courts may impose strict bail conditions to prevent a flight risk situation or the propensity of tampering with evidence. These conditions may include surrendering the passport, requiring regular appearances before investigators, submitting sureties, and disclosing assets and bank accounts to ensure transparency. Such measures aim to uphold judicial fairness while balancing legal enforcement with economic consequences.

In ***Radhika Agarwal vs. Union of India reported in 2025 (2) TMI 1162,*** the Apex Court examined the scope of Investigation, Arrest and Bail in cases relating to Indirect Taxation. The Court reiterated that arbitrary arrests cannot be permitted solely for recovery purposes. It emphasized the importance of judicial scrutiny at all stages. In the case of ***Arvind Kejriwal vs. CBI, reported in 2024 SCC Online SC 2550***, the legal principle laid down by the Court revolves around the balance between the power of arrest and the protection of personal liberty under Article 21 of the Constitution. The Court reaffirmed that arrest is not to be used as a tool of punishment or coercion but must be justified by necessity, such as preventing tampering of evidence,

In cases involving significant financial amounts, particularly when the alleged tax evasion exceeds ₹ 5 Crore, Courts may impose strict bail conditions to prevent a flight risk situation or the propensity of tampering with evidence.



ensuring the accused's presence at trial, or preventing the continuation of the alleged offence. It emphasized that mere allegations or the seriousness of the offence cannot automatically justify arrest unless backed by cogent material demonstrating the need for custodial interrogation or likelihood of interference with the investigation. The ruling underscored the requirement that Investigating Agencies must apply their mind and record reasons before arresting, and such reasons are subject to judicial scrutiny at all times. This judgment strengthens the principle that Bail is the Rule and Jail is the Exception, and reinforces the need for procedural fairness and proportionality in the exercise of arrest powers, especially in high-profile or politically sensitive cases. These principles equally apply to Arrest and grant of Bail for alleged violations of GST Laws.

To ensure that the enforcement of arrest and investigation powers under the GST framework is both just and effective, it is essential to promote a culture of Professionalism and Accountability among Tax Officers. This begins with comprehensive training focused not only on the legal provisions of the CGST Act but also on upholding constitutional values such as the right to liberty and protection against arbitrary detention. Officers must be sensitized to carry out investigations without coercion, intimidation, or misuse of power. Equipping them with a sound understanding of due process will prevent overreach and foster public confidence in the system. Unfortunately, the lack of accountability in the hierarchy of the Department and Courts being overburdened with matters sometimes allows errant officials to escape with only observations. It is high time to subject the decisions to Arrest to periodic Departmental Review for maintaining checks and balances within the system. Given the immense powers conferred on officers, including the ability to deprive liberty, safeguards are essential, or all these instructions screaming about lofty principles and ideals to be followed by the Officers would only remain on paper.

Another significant aspect is the critical relevance of furnishing written grounds of Arrest as well as written reasons for Arrest. These are critical fundamental rights and default in communication of "grounds of arrest" can result in immediate grant of Bail. Section 69 on this aspect is crystal clear. The Hon'ble Supreme Court in the case of ***Ashish Kakkar vs. U.T of Chandigarh dated 25.03.2025*** has set aside the Appellant's arrest and remand and noted that the Arrest Memo cannot be construed as "grounds of arrest". Also, in the case of Subhash Sharma dated 21.01.2025, the Apex Court observed that on a perusal of the Arrest Memo, it clearly showed that the typed order was kept ready and the date and time of Arrest were kept blank,

which appeared to be filled in by hand. This was a PMLA Case and the Apex Court further observed that "Once a Court, while dealing with a bail application, finds that fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail."

Noteworthy are the cases of ***Pankaj Bansal reported in 2023 (10) TMI 175 (SC)*** and ***Prabir Purvakayastha reported in 2024 (5) TMI 1104 (SC)***. The Hon'ble Supreme Court's ruling in ***Vihaan Kumar vs. State of Haryana reported in 2025 INSC 162*** reaffirms the fundamental right of an arrested person to be informed of the grounds of their arrest, as mandated by Article 22(1) of the Indian Constitution. The Court emphasized that failure to directly inform the Accused constitutes a flagrant constitutional violation, rejecting the Punjab & Haryana High Court's stance that informing the Accused's wife was sufficient. The judgment also condemned the inhumane treatment of the Accused, who was chained to a hospital bed post-arrest, committing a violation of human dignity which is guaranteed under Article 21. The ruling reinforced the safeguards outlined in Section 50 of the CrPC and Section 47 of the BNSS, 2023, ensuring due process to prevent arbitrary detention. Additionally, the Court directed the State of Haryana to implement clear procedural guidelines to uphold Arrest transparency and legal compliance. Aligning with past precedents like ***V. Senthil Balaji reported in 2024 (9) TMI 1497 (SC)***, these judgments strengthen the principles of personal liberty, due process and accountability in law enforcement as granted to all Citizens under the Constitution of India. By ensuring clear and immediate communication of Grounds and Reasons for Arrest, in writing, these landmark judgments serve as a critical safeguard against unlawful detention and reinforce the principles of legal



protection for Citizens within the Indian criminal justice system. Even a non-citizen can approach the Hon'ble Courts for justice.

The sum and substance is that unless, there is accountability in the system and strict action is not taken against errant Officers and there is zero tolerance to corruption and unflinching upholding of the Constitutional Guarantees, as well as improving the infrastructure of the Justice Delivery System alongside, the situation at the street level of this creaking system, which is already in a precarious condition will collapse, leading to anarchy and chaos.

■

PRINCIPLES OF CLASSIFICATION OF GOODS: BRINGING TIME-TESTED PRINCIPLES TO GST



Charanya Lakshmikumaran
Advocate

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Overview

At its core, the validity of a tax legislation rests on the four 'pillars of taxation'. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability[1].

GST is an entirely ad-valorem *levy i.e. tax is always calculated as a percentage of the value of goods or service supplied. It is in this context that determining the rate of tax becomes crucial. When taxes are applicable at different rates for different commodities/activities/transactions, a scientific scheme of classification of such commodities/activities/transactions into various categories, groups, and classes becomes a pre-requisite. Thus, classification of goods is critical for the taxman and taxpayer alike. For the taxman, it assumes importance as a robust system for classification ensures that each product or commodity is uniquely classified and hence there is no overlap in terms of applicable rates. In the absence of a clear mechanism of classification, the levy and collection of tax will inevitably be bogged down by disputes on the rate of tax and revenue collection will suffer as a result.*

The Levy and Rate of Tax

Section 9 of the CGST Act provides for the levy of CGST on all intra-State supplies of goods or services or both at such *ad valorem* rates, not exceeding 20%, as may be notified by the Central Government on the recommendations of the GST Council. In exercise of such powers, the Central Government has issued Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 under Section 9(1) of the CGST Act, containing

In exercise of such powers, the Central Government has issued Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 under Section 9(1) of the CGST Act, containing six schedules and fixes various rates of CGST for different commodities.

1. *Govind Saran Ganga Saran vs. Commissioner of Sales Tax, 1985 AIR 1041.*

six schedules and fixes various rates of CGST for different commodities. This notification is colloquially referred to by practitioners as the Rate Notification for Goods. The CGST Rate Notification consists of various schedules for different rates/slabs. An illustrative entry from Schedule I is used here to explain how one analyses and studies these entries.

Schedule I – 2.5%		
S. No	***Chapter/Heading/ Sub-heading/Tariff Item***	***Description of goods***
(1)	***(2)***	***(3)***
8	0402	Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies other than condensed milk.

It can be seen that the above entry comprises of a Serial Number under the relevant Rate Schedule, a reference to Chapter/Heading/ Sub-heading/Tariff Item, and a description of the goods. An Explanation is appended to the said Notification, of which clauses (iii) and (iv) are pertinent for the purposes of classification of goods.

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

Hence, wherever the terms "Tariff item", "sub-heading", "heading", and "Chapter" are used in the said Notification, they will have the same meaning as assigned to them in the First Schedule to the Customs Tariff Act, 1975. It is therefore pertinent to explore the meanings of these terms (as they appear in the First Schedule to the Customs Tariff Act) in greater detail.

The Customs Tariff

The First Schedule to the Customs Tariff Act (**"Customs Tariff"**) is the Import Tariff



which classifies goods sought to be imported into India and is based on an international standard known as the Harmonized System of Nomenclature (HSN). The Customs Tariff is divided into 21 Sections, containing 98 Chapters.

Once a product's tariff heading/code is identified by the aforesaid classification exercise as per the Customs Tariff, it is also necessary to subsequently identify which serial number of the Rate Notification the product will fall in.

Each Chapter is further divided into Headings, Sub-Headings and Tariff Items. A reading of the 'additional notes' to the First Schedule of the Customs Tariff is necessary and explains these terms thus:

1. The entire tariff is arranged by grouping goods of similar nature/characteristics together. It is broadly divided into 21 **Sections**, each of which contains ***Chapters***, identified by a ***two-digit code.*** For example, 'Chapter 04' deals with "Dairy produce; birds' eggs; natural honey; edible products of animal".

2. Each Chapter contains multiple ***Headings***, which are identified by a ***four-digit*** code and are more specific classifications of the goods under that Chapter. For example, 'Heading 0402' under Chapter 04 deals with "Milk and cream, concentrated or containing added sugar or other sweetening matter".

3. Each Heading contains ***Sub-Headings*** which are identified by a ***six-digit code***. For example, heading 0402 deals with milk and cream, concentrated or containing added sugar or other sweetening matter. 'Sub-Heading 040210' deals with goods under Heading 0402 "in powder, granules or other solid forms, of a fat content, by weight not exceeding 1.5%".

4. Each Sub-Heading contains ***'Tariff Items'*** which are identified by an ***eight-digit*** code and are the most specific description of a given item. Tariff Items are accompanied by the rate of tax chargeable on the said item. For example, Tariff Item 04021020 under Sub-Heading 040210 is "skimmed milk for babies".

The Rate Notification also states that the rules of interpretation for the First Schedule to the Customs Tariff Act, 1975 as well as the Section Notes, the Chapter Notes and the General Explanatory Notes are also applicable for the purposes of interpreting the said Notification and classifying goods into it. The First Schedule to the Customs Tariff Act, 1975 contains the General Rules of Interpretation of the said Schedule.

It is important to note that while the Rate Notification makes reference to Headings under the Customs Tariff, it also contains a description of the goods which will be taxed at that slab. Therefore, once a product's tariff heading/code is identified by the aforesaid classification exercise as per the Customs Tariff, it is also necessary to subsequently identify which serial number of the Rate Notification the product will fall in.

Exemption notification in GST

The Central Government has issued Notification No 02/2017 – Central Tax (Rate) dated 28.06.2017 under Section 11(1) of the CGST Act to exempt certain goods from payment of GST. This Notification is referred to as the Exemption Notification by practitioners.

Further, like in the case of the Rate Notification, even the Exemption Notification borrows the General Rules of Interpretation (GRIs), Section and Chapter Notes enunciated under the First Schedule to the Customs Tariff Act for the purpose of interpreting the said notification.

This now puts to rest an earlier controversy of interpreting exemption notifications. Courts were of divergent views with some judgments holding that the GRIs will only apply to classifying the goods in the Tariff and will not apply to determining the entry in the exemption notification, unless the entry in the tariff and the exemption notification are identically worded.

The Supreme Court, after noting that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN has held that in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act.

Harmonized System Nomenclature

On 1st January 1988, the International Convention on the Harmonised Commodity Description and Coding System (HS Convention) entered into force with the objectives of facilitating international trade, collection and analysis of statistics, and the standardisation of trade documentation. The Customs Tariff contained in the First Schedule to the Customs Tariff Act, 1975 follows the same structure as the HSN. In 1985, the Central Excise Tariff also adopted the same structure for classification of goods.

The Supreme Court, after noting that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN has held that in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act[2]. Similarly, there exist a plethora of decisions of the Supreme Court and CESTAT that have decided the classification of a commodity on the basis of classification opinions issued by the Harmonised System Committee[3].

An integral aid to the interpretation of the HSN are the 'General Rules of Interpretation' (GRIs), which (unlike the HSN Explanatory Notes and Classification Opinions) have formally been incorporated into Indian law in the First Schedule to the Customs Tariff Act, 1975. The GIRs are intended to be consulted and applied to classify goods under the Harmonized System.

Delving into GRIs

To discuss each and every GRI at length can be subject matter of a textbook by itself; however, an attempt will be made to discuss crucial aspects of relevant GRI which hold much importance for classification under the GST regime.

2. *Collector of Central Excise, Shillong vs. Wood Craft Products Limited, 1995 (77) E.L.T. 23 (S.C.); Collector of Customs, Bombay vs. Business Forms Ltd., 2002 (142) E.L.T. 18 (S.C.).*
3. *S.R. Foils & Tissues Ltd. vs. Commissioner of Central Excise, Jaipur, 2013 (294) E.L.T. 565 (Tri.-Del); Mangalore Chemicals & Fertilizers Co. Ltd. vs. Collector. of Customs, Bombay, 1997 (93) E.L.T. 548 (Tri); Jagson International Ltd. vs. Commissioner of Customs, Chennai, 2006 (199) E.L.T. 553 (Tri.-Del); Commissioner of Customs, Madras vs. Titanium Equipments & Anode Mfg. Co. Ltd., 1999 (107) E.L.T. 112 (Tri); Advani Oerlikon Ltd., Bombay vs. Collector of Customs, Bombay, 1986 (23) E.L.T. 179 (Tri).*

To begin with, **Rule 1** essentially states that classification is to be determined accordance to the terms of the Headings and any relative Section or Chapter Notes, and the titles of Sections, Chapters and Sub-chapters are only for ease of refence. Moreover, one can only seek recourse under succeeding GRIs after first applying Rule 1, as held by the Supreme Court in the case of ***Simplex Mills Co. Ltd.***[4] and followed in several judgments thereafter[5].

When Rule 1 doesn't solve the problem, one may approach Rule 2(a) which provides that an article that is incomplete or unfinished is to be classified as if it were complete or finished, provided that it has the essential character of the complete or finished article. For example, a bicycle that is presented without a saddle or without tyres would nevertheless be classifiable as a complete bicycle.

This rule also has a second leg which provides that a reference to a Heading for an article would include reference to its unassembled or disassembled version. In ***Salora International***[6], the manufacturer assembled the TVs, tested them and then disassembled the TVs and sought classification as parts of TV. The Supreme Court applied 2(a) to classify them as entire TVs. On the contrary, if all the components are not presented together, but only few parts are brought then the rule will not apply[7].

Rule 2(b) gives guidance of classification with reference to its constituents. It states that if a Heading refers to a specific material, the same will include mixtures or combinations of that material with other material. Further, goods of a particular material will include goods consisting wholly or partly of such material. However, it goes on to state that when the goods consist of more than one material, the same shall be classified according to the principles of Rule 3. Thus, essentially, this rule would not give an answer for classification but is only a means to arrive at the doorstep of Rule 3 for the classification. To take an example, if a utensil consists of both steel and plastic, as per Rule 2(b) the Heading of household items of plastics and that of household items of steel, both will be relevant as either entry has been extended to include a mix of plastic/steel with the other material. To determine classification under either of the two headings, one will need to go to Rule 3.

Rule 3 is an aid for classification of articles covered under two or more competing headings and gives three principles for such exercise, namely (i) specific description (ii) essential character and, (iii) headings which occur last in numerical order. The tests are chronological, i.e. only when one does not resolve the issue, the succeeding rule can be applied. Moreover, Rule 3 can only be invoked only when particular goods is classifiable under two or more Headings, either by application of Rule 2(b) or for any other reason, as reinforced by the Apex Court in ***Westinghouse Saxby Farmer Ltd***[8].

Therein, **Rule 3(a)** provides that a specific description of goods should be preferred over a general description for determining the classification. For instance, classification of a glucose meter, considering the function of the product, would be under the more specific

4. *(181) ELT 345 (SC)*
5. *Commissioner of Central Excise, Salem vs. Madhan Agro Industries (India) Private Ltd, (2025) 149 GSTR 352; Minwool Rock Fibres Ltd. vs. CCE, Bhopal, 2003 (153) E.L.T. 135 (Tri. - Del.), as affirmed in 2012 (278) E.L.T. 581 (S.C.)*
6. *(2012) 9 SCC 662*
7. *Sony India Ltd., 2008 (231) ELT 385 (SC)*
8. *2021 (376) ELT 14 SC*

heading of 'instruments and apparatus for physical or chemical analysis' as compared to 'instruments and appliances used in medical, surgical, dental or veterinary sciences'[9]. Moreover, Rule 3(a) also provides that in the event that two or more Headings each refer to only one of the materials or substances in mixed or composite goods, or only to a part of the articles included in a set put up for retail sale, those Headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. If this situation exists, resort must be made to Rule 3(b).

Thereby, **Rule 3(b)** applies to mixtures, composite goods consisting of different materials and components and goods put up in sets for retail sales, which are to be classified as if they consisted of the material or component which gives them their essential character. Here, as noted in the HSN Explanatory Notes, determination of essential character has to be undertaken on case-by-case basis and there is no set criterion for the same. For example, in case of floor tiles made of 13.3% PVC and 84.9% limestone, it was held that the essential character is conferred by limestone as plastic was only used as a binder, whereby the product is classifiable as an article of stone[10]. In another case, software loaded on a hard disk drive was classified as software, which was held to lend the essential character to the article considering that the price of software was hundred times that of the hard disk[11]. Lastly, as regards the condition of put up in sets for retail sales, the same covers goods which are intended to be sold to the end user where the individual goods are supposed to be used together. For example, charges and mobile phone in a single retail pack will hold the essential character of a mobile phone, and therefore, the pack will be clarified as such[12].

Lastly, **Rule 3(c)** of the GRI provides for a residuary classification approach, in the event of failure in determination of classification under the preceding rules, allowing classification under the Heading which occurs last numerically amongst the entries which are equally applicable.

The above is a simplistic summary of the main GRI which come into play when it comes to determination of classification under the Customs Tariff and are also followed by specific rules for containers, etc, which may perhaps be discussed at length in a more specific setting. The classification exercise will be an exercise in futility without the process outlined in the GRI and their importance cannot be underemphasized. However, their application and interplay has led to the growth of a dense and complex forest of jurisprudence, which can be both a boon and a bane to the taxpayers in their own case.

Common Parlance v. Scientific Meaning v. Dictionary Meaning

If any term or expression has been defined in the enactment, it is well-settled that the same must be understood in the sense in which it is defined. However, there would be terms used either in the GST Rate notification descriptions or in the Customs Tariff Headings which do not have statutory definitions in the said notification, or the section or chapter notes of

9. *Speedway Rubber Co., 2002 (143) ELT 8 (SC)*
10. *Inarco Ltd., 2015 (318) ELT 604 (SC)*
11. *Spring Rpg, 2000 (116) ELT 6 (SC)*
12. *Samsung India Electronics Ltd. 2016 (12) TMI 630 (All)*

the Customs Tariff. In such a case, the term can be interpreted according to their plain-language meaning as used in day-to-day life, i.e. by applying the 'common parlance test'. This is a test solely of judicial creation, not codified in the scheme of classification under the GST regime or the Customs Tariff, and has been held by the Supreme Court to be the primary test[13].

This test also enables classification of products, which are of regional/domestic origin and may not properly fit the terminology of the Customs Tariff, owing to its international HSN etymology. For instance, Heading 1905 provides the classification of 'Bread' and one may question whether 'Chappatis' or 'Parotta' (not defined in the Customs Tariff) will be covered therein.

This test is also of particular help when differentiating between medicaments and cosmetics. In this regard, an examination of how the product is commonly known and used by the customers is essential. For instance, in the case of ***Shree Baidyanath***[14], the Supreme Court applied the common parlance test stating that if the product falls in the category of medicament, it will not be an item of common use, and a user will stop its use after the ailment is cured. Thus, use of the product is very material.

In contrast, when the legislature has expressed a contrary intention, such as by employing a word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding, as held in successive Supreme Court judgments in the case of ***Ramavtar Budhaiprashad***[15], ***Council of Science & Technology***[16] and ***Sharma Chemicals Works***[17]. For instance, if an explosive is known in the trade as "kala sabun", it has been held that the manufacturer cannot classify that explosive as a soap and not as an explosive[18]. Similarly, in another case, the Supreme Court while examining the meaning of the term 'aerated' observed that common parlance is not the sole test for determining the classification of the products and scientific and technical meaning can be employed if the meaning of the word sought to be deciphered if of a technical nature[19].

Further, Courts of the country have also relied on the dictionary meaning of words and terms in order to interpret the Headings in the Customs Tariff. This path is to be tread with caution as dictionary meaning of a particular term may be different from how it is used in common parlance. In the past, Supreme Court has been inclined to give preference to the common parlance test over dictionary meaning, such as in the case of ***Yogesh Babulal Shah***[20], where the Bombay High Court held that it is not permissible to rely upon dictionary meaning or the meaning of the expression "clove" set out in pharmaceutical books to ascertain whether clove should be treated as 'drug or drug intermediates'. The proper test to be applied is to ascertain as to how the item is known in the market dealing in cloves. The Court added that it is impossible to imagine

13. *Craft Interiors, (2006) 12 SCC 250*
14. *2009 (237) E.L.T. 225 (SC)*
15. *(1986) 3 SCC 480*
16. *(1986) 2 SCC 23*
17. *(2003) 5 SCC 60*
18. *Uni Products, AIR 2020 SCC 2332*
19. *Parle Agro (P) Ltd. , 2017 (352) ELT 113 SC*
20. *1992 (57) ELT 41 (Bom.)*

that the person who wants to buy cloves would go to a drug store. This case was later affirmed by the Supreme Court.

However, this does not dilute the importance of dictionary meanings in the process of interpretation there are various other decisions wherein Courts have relied on dictionary meanings to arrive at the true intent and scope of a particular Heading/description especially when the words have been used in their technical sense. To put it simply, the dictionary meaning of a term cannot be relied upon in all circumstances. In other words, technical or dictionary meaning should not be mechanically adopted, as held in ***Alco Industries***[21], and resort should be made to the same only if the context so warrants.

To summarize, a chronological order can be perceived in the application of these tests as well. The terms of the Heading or the descriptive entry must be first understood with reference to the statutory definition in the Customs Tariff or the GST Rate Notification. In absence of such statutory definition, resort may be had to the popular meaning, i.e. the common parlance. However, if the term is used in a technical or scientific context, then it is the technical meaning or dictionary meaning which will be used and not common parlance.

Residuary Entry of the GST Rate Notification – Specific v. General Rule

A specific question that arises for consideration is with respect to interpretation and applicability of the residuary entry of the GST Rate Notification. As the residuary entry (Serial No. 453) features in Schedule III of the GST Rate Notification, articles classified thereunder attract GST at 18%. The rule of thumb is that where there is a specific entry, then the specific entry prevails over a residuary or general entry.

In ***Dunlop India Ltd vs. Union of India***[22], the Supreme Court held that when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. Similarly, in ***Bharat Forge and Press Industries (P) Ltd. vs. CCE***[23], the Supreme Court held that only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry[24].

Even under GST, the same principle should apply. Only when no conceivable process of reasoning allows an article to be classified under the description of specific serial numbers can the residuary entry be resorted to.

Rule of Strict Interpretation: Whether applicable to Rate Entries?

Under GST, the Rate Notification provides for different tax slabs which are applicable to different products. This notification has been issued in exercise of the power to prescribe the rate of tax under the charging section. Thus, the slab rates of 5%, 12%, 18% and 28% have all been prescribed under the charging section. This is not an exemption notification

21. *1991 (55) ELT 184 (Mad.)*
22. *Dunlop India Ltd v. Union of India, 1976 (2) SCC 241.*
23. *Bharat Forge and Press Industries (P) Ltd. vs. CCE, 1990 (1) SCC 532.*
24. *Santhosh Maize & Industries Limited vs. The State of Tamil Nadu, [2023] 10 SCR 101; Bella Premier Happy Hygiene Care Pvt. Ltd, 2018 (17) G.S.T.L. 603 (Kar.)*

and hence the rule of strict interpretation qua exemption notifications in ***Commr. Of Customs vs. Dilip Kumar & Co.***[25] should not apply while interpreting the various entries of the Rate Notification.

Conclusion

Classification of commodities is a complex exercise involving application of GIRs, HSN Notes, Headings, Section Notes and Chapter Notes. The tests of essential character, common parlance, scientific meaning, and dictionary meaning laid down by various courts in India add further dimensions to the already complex task.

In addition to these guiding factors, various judicial precedents and classification opinions provided by WCO also form reference material towards this end. Though classification of a product is required to be done on a case-to-case basis, the GIRs and judicial precedents provide substantial assistance in determining the most appropriate classification of a product.

A common thread that runs through all the factors involved in classifying goods is that goods are to be classified according to their nature/characteristics. Therefore, all the tests, precedents, and international resources are aids towards the determination of the true nature of a given commodity, while necessarily involving the examination of the commodity itself, in great detail. ■

25. *(2018) 9 SCC 1*

" Whatever you think that you will be.
if you think yourself weak, weak you will be;
if you think yourself strong,you will be "

Swami Vivekananda

SUPREME COURT



Keshav B. Bhujle
Advocate

1 WOODLAND (AERO CLUB) PVT. LTD. VS. ACIT [2025] 474 ITR 322 (SC): DATED 08-01-2025

Appeal to High Court — Substantial questions of law — Assessee proposing three questions of law but counsel erroneously submitting that two of them covered are against the assessee by the decision of Supreme Court — High Court disposing of appeal deciding third question alone in favour of assessee — Appeal by assessee seeking an opportunity to agitate two questions mistakenly not put before High Court — Supreme Court Held — Opportunity must be given to the assessee to make submissions on those two substantial questions of law and for reconsidering whether or not they were covered by decision of Supreme Court — Order of High Court set aside to enable restoration of appeal to High Court: Ss. 260A of ITA, 1961

Three questions of law were raised by the assessee before the High Court but counsel of the assessee having erroneously contended before the Delhi High Court that two substantial questions of law were covered by the judgment of the Supreme Court in ***Checkmate Services Pvt. Ltd. vs. CIT [2022] 448 ITR 518 (SC)***, against the assessee, although this was not so, the High Court considered the third question and disposed of the appeal in its favour.

Although the assessee and Department accepted the High Court's decision on that question, the assessee filed an appeal before the Supreme Court seeking an opportunity to make submissions before the High Court on the other two substantial questions of law, or in the alternative, that the Supreme Court hear the appeal on those two substantial questions of law.

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

"i) An opportunity must be given to the assessee to make submissions on those two substantial questions of law and for the purpose of reconsidering whether or not they were covered by the judgment of the court in ***Checkmate Services Pvt. Ltd. vs. CIT [2022] 448 ITR 518 (SC)***; against the assessee.

ii) Although there was no challenge to the order of the High Court on the ground of there being any error therein, the order had to be set aside as it was a final order of the High Court, so as to enable the appeal to be restored on the file of the High Court. [The court set aside the interim and final orders of the High Court.]"

2 PRINCIPAL CIT VS. NYA INTERNATIONAL [2025] 482 ITR 281 (SC): DATED 17-02-2025

Revision — Erroneous and prejudicial to revenue — Reassessment notice issued on two grounds but addition made on one count — Tribunal and High Court quashing Commissioner's notice of revision — Supreme Court Held — Not a case of "no inquiry and verification", but a case of wrong conclusion — Commissioner should have examined merits and only on finding reassessment order was erroneous and prejudicial to interests of revenue, made addition — High Court right in dismissing department's appeal: S. 263 of ITA, 1961: A.Y. 2012-13

The Gujarat High Court held that the Tribunal was justified in quashing the order of the Principal Commissioner passed u/s. 263 of the Income-tax Act, 1961, and holding that the decision of the Assessing Officer was not erroneous or prejudicial to the interests of the Revenue, (see ***Pr. CIT vs. NYA International [2024] 462 ITR 44 (Guj)***).

The Supreme Court dismissed the special leave petition filed by the Department and held as under:

"i) The notice u/s. 148 of the Act referred to two reasons. The first reason was with regard to non-declaration of the bank account and the second reason was with regard to the deduction claimed u/s. 10AA of the Act. In the reassessment, no addition was made for the first reason. To exercise jurisdiction u/s. 263 of the Act, the Commissioner should have examined the merits and only on reaching a finding that the reassessment order was erroneous and prejudicial to the interests of the Revenue, made an addition.

ii) This was not a case of "no inquiry and verification", but a case of wrong conclusion. The difference between the two situations is clear and has different consequences. The assertion by the Department that inquiry and verification regarding the bank account were not made was ex facie incorrect. The High Court was right in dismissing the appeal preferred by the Department."

3 K. KRISHNAMURTHY VS. DY. CIT [2025] 473 ITR 557 (SC): DATED 13-02-2025

Search and seizure — Undisclosed income — Penalty in search cases:

A. Not mandatory — AO has discretion — Discretion means sound discretion guided by law: S. 271AAA of ITA, 1961:

B. Exceptions — Conditions precedent for exclusion from liability — Condition that tax together with interest on undisclosed income is paid up to date of payment — No specific period prescribed for such payment — Assessee admitting income during search, substantiating manner in which undisclosed income derived and paying tax together with interest thereon, albeit belatedly — All conditions precedent satisfied —

Penalty not attracted on portion of income disclosed: S. 271AAA of ITA, 1961:

C. "Undisclosed income" – Onus on AO to demonstrate and prove that undisclosed income of specified previous year was found during the course of the search or as a result of the search: S. 271AAA, Expln. (A). of ITA, 1961:

D. "Found in the course of search" – Expression of wide amplitude – Not restricted to documents found in assessee's premises alone during search: S. 271AAA of ITA, 1961:

E. "Specified previous year" – Search conducted in November 2010 – Last date for filing returns for A. Y. 2010-11 expired on 31/07/2010 – A. Y. 2011-12 was specified previous year for purpose of s. 271AAA(1): S. 271AAA, Expln. (B). of ITA, 1961:

F. Exceptions – Conditions precedent for exclusion from liability – Assessee not offering income on account of land transactions at any time during the search but only during the course of assessment proceedings after AO called for copies of sale deeds collected as a result of search and in continuation of search – Held, documents found in course of search – Income constituted undisclosed income found during search – Exception not attracted to that portion of income and penalty leviable thereon: S. 271AAA(1), (2) of ITA, 1961: A. Y. 2011-12:

A search and seizure operation was carried out at the assessee's premises on November 25, 2010. The assessee disclosed an income of ₹ 2,27,65,580 as a consequence of the search and seizure. Pursuant to the notice the assessee filed his return of income on November 5, 2012, declaring a total income of ₹ 4,77,11,330 for the A. Y. 2011-12 for which the due date for filing the return of income expired on July 31, 2010, in terms of section 139(1) of the Act. The assessment was made accepting the returned income. Penalty u/s. 271AAA was imposed on the assessee for the A. Y. 2010-11 and 2011-12, considering the entire received income as the undisclosed income on the ground that the assessee did not make payment of tax and penalty in terms of section 271AAA(2) of the Act after receipt of the show-cause notice.

The Commissioner (Appeals) allowed the assessee's appeal against the penalty in respect of the A. Y. 2010-11 accepting the submission of the assessee that 2009-10 could not be the "specified previous year" for the purpose of section 271AAA of the Act. The appeal against the penalty in respect of the A. Y. 2011-12 was rejected relying on section 271AAA(2) of the Act. The Tribunal affirmed this, and the High Court dismissed the appeal of the assessee holding that the third condition in section 271AAA(2), namely, the payment of tax, together with interest, if any, had not been fulfilled by the assessee.

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

"i) Section 271AAA of the Income-tax Act, 1961 is a complete code in itself. It stipulates that the Assessing Officer may, notwithstanding anything contained in any other provisions of the Act, direct the assessee, in a case where a search has been carried out, to pay by way of a penalty, in addition to the

tax, a sum computed at the rate of 10 per cent of the undisclosed income of the specified previous year. However, the imposition of a penalty is not mandatory. Consequently, a penalty under this section may be levied if there is undisclosed income in the specified previous year. Though u/s. 271AAA(1) of the Act, the Assessing Officer has the discretion to levy a penalty, yet this discretionary power is not unfettered, unbridled and uncanalised. Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful.

ii) Section 271AAA(2) of the Act stipulates that section 271AAA(1) shall not be applicable if the assessee – (i) in a statement under sub-section (4) of section 132 in the course of the search, admits the undisclosed income and specifies the manner in which such income has been derived ; (ii) substantiates the manner in which the undisclosed income was derived; and (iii) pays the tax, together with interest, if any, in respect of the undisclosed income. Consequently, if conditions (i) and (ii) are satisfied and the tax together with interest on the undisclosed income is paid up to the date of payment, even with a delay, in the absence of a specific period for compliance, penalty at the rate of 10 per cent. u/s. 271AAA of the Act is normally not leviable.

iii) The expression "undisclosed income" has been defined in Explanation (a) appended to section 271AAA of the Act. As section 271AAA is a penalty provision, it has to be strictly construed. The fact that the assessee has surrendered some undisclosed income during the course of the search or that the surrender is emerging out of the statements recorded during the course of the search is not sufficient to fasten the levy of penalty. The onus is on the Assessing Officer to satisfy the condition precedent stipulated in the Explanation before the charge for levy of penalty is fastened on the assessee. Consequently, it is obligatory on the part of the Assessing Officer to demonstrate and prove that undisclosed income of the specified previous year was found during the course of the search or as a result of the search.

iv) The expression "found in the course of search" is of a wide amplitude. It does not mean documents found in the assessee's premises alone during the search. At times, a search of an assessee leads to a search of another individual or further investigation or interrogation of third parties. All these steps and recoveries therein would fall within the expression "found in the course of search".

v) Since the search was conducted on November 25, 2010, and as the last date for filing returns under section 139(1) of the Act for the year which ended prior to that date had expired on July 31, 2010, Explanation (b)(i) to section 271AAA was not applicable so as to make A. Y. 2010-11 the specified previous year. Consequently, by virtue of Explanation (b)(ii), which defines the expression "specified previous year", the A. Y. 2011-12 (the year in which the search was conducted) was the specified previous year for the purpose of section 271AAA(1) of the Act.

vi) The assessee admitted Rs. 2,27,65,580 as income for the A. Y. 2011-12 during the search, substantiated the manner in which the undisclosed income was derived, and paid tax together with interest thereon, albeit belatedly. Consequently, all the conditions precedent mentioned in section 271AAA(2) stood satisfied and, therefore, penalty u/s. 271AAA(1) was not attracted on the amount of ₹ 2,27,65,580.

vii) However, in the assessment order passed u/s. 143(3) of the Act, which had attained finality, it was an admitted position that the assessee had offered ₹ 2,49,90,000 under the head "Income from other sources" on account of the land transactions only during the course of assessment proceedings and that too, after the Assessing Officer had asked for copies of the sale deeds from the society, and not at any time during the search. The contention that these transactions had not been found in the search at the assessee's premises but had been found due to "copies of sale deeds collected from the society" was not tenable as the sale deeds had been collected as a result of the search and in continuation of the search. As the causation for collecting the sale deeds from the society was the search at the assessee's premises, the exception carved out in section 271AAA(2) was not attracted to that portion of the income. The income of ₹ 2,49,90,000 constituted undisclosed income found during the search and penalty u/s. 271AAA(1) of the Act was leviable on that amount. [Assessee was directed to pay a penalty at the rate of 10 per cent. on ₹ 2,49,90,000.]"

4 PRINCIPAL CIT VS. MD INDUSTRIES PVT. LTD. [2025] 473 ITR 751 (SC): DATED 17-02-2025

Settlement of case – Income-tax survey – Assessment order passed during pendency of application before Settlement Commission – Commissioner (Appeals) dismissing assessee's appeals as not maintainable in view of pendency of application – Settlement commission disposing of applications as abated in view of amendment of law but High Court remanded matter to Settlement Commission – Assessee filing appeal before Tribunal against order of Commissioner (Appeals) and Tribunal remanding matter to Commissioner (Appeals) – Miscellaneous applications by department for recall of order of Tribunal on ground jurisdiction lay with Settlement Commission – Tribunal dismissing miscellaneous applications – High Court holding department not raising ground with regard to jurisdiction of Tribunal – No infirmity in order of Tribunal in condoning delay in filing appeal and remitting matter to Commissioner (appeals) since issue not adjudicated on merits – Supreme Court dismissed the special leave petition filed by the Department – Held order of Tribunal justified – Department's contention that assessee must give up its right to contest assessment order on merits, if settlement application was rejected without providing for terms of settlement, Held misconceived

and not tenable: Ss. 245D(4), 245F(2) and 245HA of ITA, 1961: A.Ys. 1999-2000 to 2005-06:

Pursuant to survey action u/s. 133A of the Income-tax Act, 1961 carried out in the premises of a chartered accountant and a group of companies including the assessee, the assessee filed an application for settlement before the Settlement Commission.

Meanwhile, the Assessing Officer passed the assessment order in respect of the assessee. The Commissioner (Appeals) dismissed the appeals filed by the assessee against the assessment without entering into the merits on account of the pendency of the assessee's application u/s. 245C before the Settlement Commission.

The Settlement Commission disposed of all the settlement applications filed by the assessee as abated on account of the amendment in the Act. The order of the Settlement Commission was challenged before the Court which by an order involving 9 out of 20 applicants remanded the matter to the Settlement Commission for fresh consideration.

The assessee thereafter filed an appeal before the Tribunal challenging the order passed by the Commissioner (Appeals) with an application to condone the delay in filing the appeal. The Tribunal following its decision in the case of another assessee, condoned the delay and remitted the matter to the Commissioner (Appeals) for fresh consideration on the merits. The Department filed miscellaneous applications before the Tribunal for recall of its order on the ground that there was a mistake apparent on record as the jurisdiction over the matter would lie before the Settlement Commission alone in terms of section 245F(2) and the Tribunal had no jurisdiction to adjudicate the appeal. The Tribunal dismissed all the miscellaneous applications.

On writ petitions by the Department challenging the jurisdiction of the Tribunal, the High Court dismissed the petitions. (See ***Pr. CIT vs. MD Industries Pvt. Ltd. [2025] 473 ITR 744 (Guj)***).

The Supreme Court dismissed the special leave petition filed by the Department and held as under:

"i) If the application for settlement was rejected without providing for terms of the settlement, section 245HA of the Act would be applicable and the appellate proceedings stand revived. The Department's contention that the assessee must give up its right to contest the assessment order on the merits if the settlement application was rejected without providing for terms of settlement, was misconceived and not tenable.

ii) The Tribunal, on the facts, was justified in condoning the delay, as well as setting aside the order of the Commissioner (Appeals) and restoring the first appeal."

HIGH COURT



Jitendra Singh
Advocate



Radha Halbe
Advocate



Harsh Shah
Advocate

1 TPL - HGIEPL JOINT VENTURE VS. UNION OF INDIA [2025] 173 TAXMANN.COM 540 (BOMBAY)

Invalid return - section 139(9) of the Income Tax Act, 1961 - rejection of assessee's response without providing any reasons is violative of principals of natural justice - communication under section 139(9) of the Act can be revised under section 264 of the Act.

Facts

The Assessee has filed its income tax return on 27 July 2022 for AY 2022-23. The CPC issued a notice on 14 December 2022 stating that the Assessee's gross receipts or income under the head "Profits and Gains of Business or Profession" exceeded ₹ 10 crores. Accordingly, the assessee was required to file a tax audit report under section 44AB of the Act. However, no audit report was filed by the assessee. The assessee responded that its gross receipts were only ₹ 6.15 crores, which is below the ₹ 10 crore thresholds. Therefore, no tax audit report was required to be filed.. Despite the Assessee's response, the CPC declared the return invalid under section 139(9) for non-filing of the compulsory audit report

The assessee, being aggrieved by the action of the CPC, filed a writ petition challenging the CPC's order primarily on the ground that the order was computer-generated without considering the explanation given by the assessee and lacked reasons, thus violating principles of natural justice.

Ruling of the High Court

Hon'ble Bombay High Court was pleased to allow the writ petition of the assessee by observing that the CPC's order contained no reasons for rejecting the Assessee's response. Merely stating that the response was considered and found unacceptable, lacks reasoning and therefore violated principles of natural justice. Providing reasons for adverse orders is a fundamental aspect of natural justice and fair play. The court acknowledged the efficiency of AI-generated orders but stressed that they must evolve to include essential elements of the earlier system, such as minimal reasoning. Minimal compliance with the principle of natural justice cannot be dispensed with on the grounds of expediency or due to the machine's limitations. While no detailed judgment is expected when declaring a return invalid, the order must provide minimal reasoning so that the affected party can take corrective action or effectively challenge the reasoning. Hon'ble Court therefore, directed the assessee to avail the alternate remedy of revision under section 264 of the Income-tax Act.

2 PUNJAB NATIONAL BANK VS. INCOME-TAX OFFICER [2025] 173 TAXMANN.COM 539 (GUJARAT)

Reassessment - section 148 of the Income Tax Act, 1961 - amalgamation of the earlier entity with the assessee - request for cancellation of PAN of earlier entity was duly made - thus, the notice and subsequent reassessment order passed in the name of non-existing entity is bad in law and liable to be quashed

Facts

Punjab National Bank (PNB) was the successor entity of the erstwhile Oriental Bank of Commerce (OBC). OBC, a nationalized bank, was amalgamated with PNB effective from 1 April 2020. Consequently, OBC ceased to exist, and returns of income were filed by PNB under its PAN "AAACO7436M". OBC made an application and requested the department to cancel is PAN in the year 2013.

The Assessing Officer issued a reopening notice in the name of OBC for the assessment year 2017-18 under PAN "AAACO7436M". The notice stated that OBC had purchased time deposits aggregating to ₹ 393.97 crores during the year, which were not offered to tax. Subsequently, an assessment order was passed determining a taxable income of ₹ 393.97 crores in the name of the erstwhile OBC, resulting in a tax demand of ₹ 648.26 crores.

The assessee being aggrieved by the above notice issued under section 148 as well as reassessment order passed in pursuance to the above notice, challenged the same before the Hon'ble Gujarat High Court.

Ruling of High Court

Hon'ble High Court was pleased to allow the petition filed by the assessee by observing that the bank was amalgamated with assessee bank and ceased to exist and its PAN number was also requested to be cancelled. Therefore, impugned reopening notice issued in name of said non-existing bank for reason that it had purchased time deposits other than a time deposit made through renewal of another time deposits aggregating to certain amount which was not offered to tax, is bad in law and liable to be quashed.

3 ND'S ART WORLD (P.) LTD. VS. ACIT (OSD) (OT & WT) [2025] 172 TAXMANN.COM 383 (BOMBAY)

Instructions to subordinate authorities - section 119 of the Income Tax Act 1961 – power to condone the delay in filing return is vested with CBDT – application for condonation of delay decided by ACIT without any authorisation from CBDT or its members is bad in law

Facts

The assessee before the Hon'ble Bombay High Court had challenged the order passed by Additional Commissioner (OSD) (OT & WT) dismissing the application for condonation of a delay of approximately 10 months in filing the return of income for the assessment year 2020-21. The assessee contended that the impugned order had been issued by the Additional Commissioner (OSD) (OT & WT) 'with the approval of the competent authority.' Assessee further contended that the power to consider and dispose of an application for condonation of delay is vested with the Central Board of Direct Taxes (CBDT) under section 119(2)(b). Assessee further pointed out that the impugned order was

neither issued by the CBDT nor by any of its members. There had been no clarity as to which competent authority had approved the order. Therefore, on this ground alone, the impugned order was liable to be set aside.

Ruling of the Hon'ble High Court

Hon'ble High Court is pleased to allow the assessee's writ petition by observing that the impugned order had undisputedly been signed by the Additional CIT (OSD) (OT & WT), with the last line stating that it was passed 'with the approval of the competent authority.' Further, the affidavit of the department did not provide much clarity on the status of the competent authority approving the making of the impugned order by the Additional CIT (OSD) (OT & WT). In any case, Court thought it apt to intervene in similar cases where officers, who neither had authorization from the CBDT to make such orders nor any authorization from CBDT members, passed orders. It might be assumed that the CBDT or its members could have delegated such powers to officers like the Additional CIT (OSD) (OT & WT). There is a distinction between orders made by the CBDT or its authorized members and those made by other officers with the approval, even from a member of the CBDT.

4 GLAXO SMITHKLINE PHARMACEUTICALS LTD. VS. ACIT [2025] 172 TAXMANN.COM 574 (BOMBAY)

Income escaping assessment - Section 147 of the Income Tax Act 1961 – in the reasons recorded the AO admitted that the issue for which reopening was sought had already been disclosed – impugned reopening notice is bad in law and liable to be quashed

Facts

The assessee's return was selected for scrutiny, and an assessment order under section 143(3) was passed, disallowing a certain percentage of expenses on samples given to doctors on the grounds that they constituted sale promotion expenses incurred on the doctor. The assessment order was challenged in appeal and pending for adjudication. The AO after the lapse of four years issued the impugned notice under section 148 by forming a reason to believe that income had escaped assessment. The assessee filed a return in response to the notice under section 148 and requested the reasons for reopening the case, which were subsequently furnished to the assessee. The assessee objected to the reopening of its assessment which was rejected by the AO.

The assessee being aggrieved by the impugned notice as well as the order rejecting the objection, challenged the same before the Hon'ble Bombay High Court.

Ruling of the Hon'ble High Court

Hon'ble High Court is pleased to allow the assessee's writ petition by observing that from the perusal of reasons recorded, it could not be concluded that there is any failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment. Further, in the order rejecting the objection, the AO had not addressed the specific plea of the assessee that there had been no failure to disclose material facts necessary for the assessment. The order had merely reproduced the reasons recorded, certain provisions regarding reassessment, and decisions. In the absence of any rebuttal to the specific objection raised by the assessee, it can be presumed that the AO had accepted that there had been no failure to disclose material facts. Therefore, the impugned notice issued under section 148 and the order rejecting the objection for the assessment year 2013-14 is to be quashed and set aside. ■

TRIBUNAL





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

1 BALASAHEB POPATRAO PHADOL VS. ITO [ITA NO.891/PUN/2023 DATED 09-04-2025] [AY 2012-13]

Section 2(47)(v) – Development agreement - Mere permission to construct does not amount to transfer

Facts

The assessee, Balasaheb Popatrao Phadol, entered into a registered development agreement with Shree Yashree Construction Pvt. Ltd. On 18/05/2011 for the development of his land. Subsequently, a supplementary development agreement was executed on 23/07/2012. According to the agreement, the assessee received 22 flats during FY 2012-13 and the same were also sold by the assessee in the same year. Hence, the corresponding capital gains after claim of exemption under section 54F (not in dispute) was disclosed in return filed for AY 2013-14. The learned Assessing Officer ('Ld. AO') treated the transaction being liable to tax during AY 2012-13 and assessed capital gains of INR 1 crores, being difference between the value of constructed area of INR 2.23 crores and value of land of INR 1.23 crores. The assessee filed an appeal before the learned Commissioner of Income Tax (Appeals) ['Ld CIT(A)']. The Ld CIT(A) dismissed the appeal observing that:

(a) By the time supplementary agreement was entered, the project stood complete, which indicates that the same was completed during AY 2012-13.

(b) The application for commencement of construction was made on 24/11/2011 and the same was duly approved in the same year.

(c) The Builder/Developer has also shown income from the project during AY 2012-13.

Against the decision of the Ld CIT(A), the assessee filed an appeal before the Hon'ble ITAT.

Held

Having regard to facts of the case, the Hon'ble Tribunal relied on the decision of the Hon'ble Bombay High Court in the case of Bharat Jayantilal Patel (W. P No.1612 of 2022 dated 10/02/2023), wherein placing reliance on the decision of the Hon'ble SC in the case of Seshasayee Steels (P) Ltd (421 ITR 46), it has been held that provisions of section 53A of the Act shall not attract in case of 'license' given to another for the purpose of development of flats. Considering the same, the Hon'ble ITAT held that capital gains income does not arise to the assessee on transfer of development rights in its land, to a developer, since the assessee has merely granted license to permit construction on land and not possession as contemplated under the provisions of section 53A of the Transfer of Property Act. Thus, the Hon'ble ITAT allowed the appeal of the assessee deleting the addition of capital gains for AY 2012-13.

2 SCHOTT GLASS INDIA PRIVATE LTD. VS. DCIT (ITA NO. 6118/MUM/2024 DT. 25-04-2025) (AY 2022-23)

Section 36(1)(va) rws. 2(24)(x) [Sec. 143(1)] – late payment of EPF by a day – payment could not be made due to technical glitch and non-functioning of EPFO website – No penalty/interest charged by EPFO department – No disallowance can be made

Facts

Return of income was processed and the assessee received intimation under section 143(1), wherein tax demand of ₹ 7,42,690/- was determined by the Ld. AO. It was noticed that ₹ 25,23,571/- pertaining to payment of employees' contribution to the Provident Fund was disallowed on account of being paid beyond due date. CIT(A) dismissed the appeal on account that the said amount needs to be disallowed under section 36(1)(va) read with section 2(24)(x) of the Act as the said amount which is employees' contribution towards Provident Fund has not been deposited on due date as prescribed under the relevant Act. CIT(A) also relied upon the Judgement of Hon'ble Supreme Court in the case of ***Checkmate Services P. Ltd. vs. CIT-1 (Civil Appeal No. 2833 of 2016 and others judgement dated 12.10.2022)***. Being aggrieved with the order, appeal is filed before Hon. ITAT.

Held

Hon. ITAT that we have no hesitation in concluding that the appellant has made all best efforts on 14th and 15th June 2021, which were prescribed date for depositing employees' contribution of PF and ESI but due to technical glitch and non-functioning of EPFO website, the said amount could not be deposited and when site functioned properly on 16th June, the said amount was duly deposited. Hon. ITAT also held that there is force in the argument of Ld. AR that the said amount has been accepted by the EPFO on 16th June without any reservation and no penalty or interest for delayed payment has been charged. Such fact shows that EPFO was aware of the technical glitch on 14th and 15th June because of which amount could not be deposited. On said basis, Hon. ITAT allowed the appeal and deleted the addition.

3 NDTV NETWORKS LTD. VS. DCIT [ITA NO. 6647/DEL/2018 DATED 04-04-2025] [AY 2014-15]

Section 37(1) – Expenditure incurred by a Company acting as investment holding entity is tax deductible

Facts

The assessee, NDTV Networks Ltd., a wholly-owned subsidiary of NDTV, filed its return for AY 2014–15 claiming deduction of INR 3.62 crore as business expenditure under section 37(1) of the Act. The Ld. AO disallowed the same, contending that the assessee was merely a holding and investment company without any income assessable under the head "Profits and gains of business or profession." The Ld CIT(A) upheld this disallowance, observing that the assessee lacked fixed assets, did not generate business income during the year, and was not engaged in any tangible commercial activity as per its Memorandum of Association. The assessee preferred an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT allowed the assessee's appeal on the above issue. The Hon'ble ITAT observed that Revenue's case is that once the assessee was a company, holding investment in subsidiaries, it could not be held to be entitled for the expenditure claim in question. The Hon'ble ITAT further observed that the Assessing Officer during the course of regular proceedings in assessee's own case for preceding year (AY 2012-13) has accepted the claim. Relying on the judicial precedents cited before the Hon'ble Bench viz - Mazagaon Dock Ltd (34 ITR 368) (SC), Distributors (Baroda) (P) Ltd (83 ITR 377) (SC), Amalgamations (P) Ltd (108 ITR 895 (Madras HC) and Essar Investments Ltd (7 SOT 378) (Mum ITAT), the Hon'ble Tribunal allows the claim of the Appellant.

4 DCIT VS. RAMESH CHHEDA (ITA NO. 968/MUM/2025 DT. 23-04-2025) (AY 2018-19)

Section 45 – LTCG - Compensation in lieu of surrender of right to sue - Capital Receipt in Nature – Not Taxable

Facts

Assessee has received compensation in lieu of the 'right to sue' awarded by way of damage suit by order of the Hon'ble Bombay High Court vide order dated 10/07/2017. Ld. AO reopened the case by issuing notice u/s.148 and the ld. AO noted that assessee has not offered the compensation amount to tax, which according to him was liable to be taxed under the head 'capital gain' u/s.45 as it involves transfer as per Section 2(47) of the Act and the capital asset as defined u/s. 2(14). Before the ld. AO, it was submitted by the assessee that the compensation was received in lieu of surrender of 'right to sue' therefore, same is capital receipt. Ld. AO after noting the entire facts and background of the case and the judgment of the Hon'ble Bombay High Court had taxed the compensation as long term capital gain. CIT(A) deleted the said addition made by the ld.AO relying upon the decision of the Tribunal in the case of one of the individuals parting to the compensation in the case of ***Shri Virendra Bhavanji Gala vs. PCIT in ITA No.1654/Mum/2023 dated 30/08/2023*** who was one of the person covered by the consent order of the Hon'ble Bombay High Court. Being aggrieved with the order, department filed appeal before Hon. ITAT.

Held

Hon. ITAT upheld the CIT(A) order deleting the addition towards the compensation received by the Assessee in lieu of surrender of the 'right to sue', as long term capital gain. Hon. ITAT held that the said compensation received by the Assessee in lieu of surrender of the 'right to sue', as awarded by way of damage suit by the Jurisdictional HC vide order is a capital receipt and cannot be treated as long term capital gain as claimed by the Revenue. Hon. ITAT relied on co-ordinate bench order in Virendra Bhavanji Gala (who was one of the person covered by the consent order of the aforesaid Bombay HC) wherein it was held that the right to sue is not a transferable right as per the provisions of the Transfer of Property Act, thus, the compensation received is not liable to be taxed as per the provisions of Section 45 as long term capital gain. It has been held that the co-ordinate bench also observed that the Section 6 of the Transfer of Property Act clearly provides that "a mere right to sue cannot be transferred", even if it is to be treated as "property" under Section 5 of the Transfer Property Act 1882. Further it has held that the co-ordinate bench order underscored

that the asset referred to in Section 45 must be one in the acquisition whereof the Assessee had incurred a cost and if the Revenue fails to show that the Assessee had incurred a cost as in the present case, it would be impossible to compute the income chargeable to tax under the head 'capital gains' and what the Revenue would be charging would be the capital value of the asset and not any profit or gain. Thus on above basis, appeal filed by the department was dismissed.

5 MOHAMMED FAKHRE ALAM VS. ITO [ITA NO. 6513/MUM/2024 (MUMBAI TRIB.)] (AY 2016-17)

Section 56(2)(vii)(b) – Flat received as compensation on Redevelopment – compensation received as court settlement to remove the nuisance of illegal occupant – to be treated as capital receipt – not taxable

Facts

The assessee was occupying a portion of land which underwent development, wherein the appellant surrendered his rights of the said land to the developer in lieu of flat on ownership basis in the new building. Assessee submitted that since the gain is long term capital gain and section 54F is available for the new property given, there will be no capital gains and therefore no return of income was filed. AO noticed that assessee was an illegal occupant of the said plot and his name was not considered in the list of tenants certified by the MCGM or MHADA. According to AO, assessee was not able to prove existence of any asset, if any and that too long term in nature. AO also held since there was no asset, there was no question of claiming any section 54F exemption and therefore the value of new flat is to be taxed u/s. 56(2)(vii)(b). CIT(A) confirmed the order of AO and assessee filed appeal before the Tribunal.

Held

Before the Hon'ble Tribunal, assessee submitted that, assessee was illegally occupying the said land and since his name was not included in official list of tenants, he filed a suit against the builder claiming to be the lawful occupant. While the suit was pending, a court settlement was reached between the parties, wherein the assessee was to receive the flat as compensation for being occupant for so many years. Assessee submitted two-fold arguments – one that compensation received should be treated as long term capital asset and exemption should be allowed u/s. 54F. Alternatively, compensation received for clearing the nuisance shall constitute capital asset in the hands of assessee and hence not taxable. The assessee relied on the decision in case of ***Shri Kishre D.P. vs. Income Tax Officer in ITA No. 3796/Mum/2014,*** where similar rationale is held.

The Hon'ble Tribunal observed that the facts from the suit filed and court settlement arrived shows that the appellant had illegally occupied a portion of land and created a nuisance for the developer and the said flat was received by the appellant as compensation for removing nuisance created by him. Relying on the coordinate bench decision referred by the assessee, it was held the value of the new flat received by the appellant is compensation, the same to be considered as capital receipt and there would be no tax liability upon the appellant on account of these transactions. The addition made u/s. 56(2)(vii)(b) was accordingly deleted.

6 GLOBAL STAR REALTORS PVT. LTD. VS. DCIT [ITA NOS. 40 TO 44/BANG/2024 DATED 24-03-2025] [AY 2013-14 TO 2017-18]

Section 69B – Addition based on loose sheets found in third party premises without corroborative evidence is not sustainable

Facts

The assessee company is engaged in the business of real estate development. A search action was conducted on 01/02/2017 in the case of Mr. M.N. Rajendra Kumar, Managing Director of the assessee company. Mr. M. N. Rajendra Kumar is also chairman of South Canara District Co-operative Bank, Mangalore (SCDCB), which was also subject to survey proceedings under section 133A of the Act on 27/12/2016. During the course of search action, certain incriminating documents were found, in the form of loose sheets, pertaining to three developed projects. In the course of survey action, certain documentary evidences revealed consideration over and above the agreement value relating to the projects paid by assessee company. The Director Mr. M N Rajendra Kumar in his statement under section 132(4) of the Act accepted dealing in cash in relation to these projects and retracted the same later. The Ld AO brought to tax undisclosed cash receipts under section 69B r.w.s 115BBE of the Act. The Ld CIT(A) affirmed the action of the Ld AO. The assessee company thereafter preferred an appeal before the Hon'ble ITAT.

Held

The Hon'ble ITAT on facts observed that the documents found do not contain:

(a) Name of the person making the payment and details of recipient of the money

(b) Any heading to describe the nature/ purpose of the transaction

(c) No dates to suggest to which year the transaction relates to

(d) Details of amount paid - does not mention whether the figures noted are in Rs. or any other currency or whether they are in hundreds, thousands or crores

(e) No signature of the person who prepared it or the payer and recipient of the money or authentication by any competent person

Thus, the Hon'ble ITAT held that the seized material does not contain any concrete details of the transaction and based on such inchoate non-speaking documents, no liability can be fastened on a third party/ the assessee. The Hon'ble ITAT also held that the statement made by the Director, Mr. M N Rajendra Kumar cannot be relied upon since the same was retracted and the Hon'ble ITAT in his own case deleted the addition. The Hon'ble ITAT also observed that section 292C of the Act can only be invoked against person in whose premises/possession, the said incriminating material was found and not in case of a third person. Accordingly, the Hon'ble ITAT allowed the appeal of the assessee and deleted the addition made by the Ld AO. The Hon'ble Tribunal in arriving at its conclusion, besides referring to various rulings, relied upon the decisions in the case of Dremacity Buildwell (P) Ltd (2019) (110 Taxmann.com 28) (Delhi High Court), Singhad Technical Education Society (2017) (84 taxmann.com) 290 (SC) and ***Common Cause (A Registered Society) vs. Union of India (2017) (394 ITR 220) (SC).***

7 STC SECURITIES PVT. LTD. VS. ITO (ITA NO. 81 & 82/MUM/2025 DT. 16-04-2025) (AY 2015-16 & AY 2016-17)

Section 148/151 - Reassessment- - Following the ratio in *UOI vs. Rajeev Bansal [2024] 167 taxmann.com 70 (SC)* the time limit for issue of notice was extended only up to 30-6-2021.

For AY 2015-16 the notice was issued on 29-07-2022- Notices are barred by limitation- Reassessment is quashed

For AY 2016-17 the approval has been obtained from PCIT instead of PCCIT - Notice invalid as in violation of section 151 -Reassessment is quashed

[S. 147, 148, 148A(b), 148A(d) , 149(1), TOLA, S. 2, 3]

Facts

Assessee raised the legal ground and has challenged the impugned notice of reopening of assessment issued by AO being without jurisdiction.

For AY 15-16

Notice of reopening (second round) was issued by the AO dt. 29.07.2022 for the year under consideration.

For AY 16-17

Sanction u/s 151 for notice of reopening (second round) issued by the AO on 29.07.2022 has been obtained from the PCIT-8, Mumbai instead of PCCIT, Mumbai.

Held

For AY 15-16

Hon. ITAT held that original reopening notice u/s 148 of the Act was issued by the AO on 25.06.2021 and subsequent thereof the proceedings were initiated by the AO consequent to the decision of Hon'ble Supreme Court in Ashish Aggarwal case. The objections were filed by the assessee before AO vide dt. 03.06.2022 and 29.06.2022. However, the said objections were rejected by the AO while passing order u/s 148A(d) of the Act on 29.07.2022. Hon. ITAT relying in case of Manish Financials in CO No. 231/Mum/2024 in ITA No. 5055/Mum/2024 dt. 02.12.2024 held that for the year under consideration, period of limitation expires on 31.03.2022, therefore the notice dt. 29.07.2022 u/s 148 of the Act is invalid. On above basis notice u/s 148 was held has invalid as time barred.

For AY 16-17

Hon. ITAT held that impugned notice for reopening u/s 148 of the Act has been issued by the AO on 29.07.2022. However, the year under consideration is A.Y 2016-17 and more than three years have elapsed as on the date of issuance of notice, therefore sanction ought to have been obtained u/s 151(ii) and not u/s 151(i) of the Act. As per the decision of Hon'ble Supreme Court the approval for issuing notice should have been obtained from PCCIT, whereas in the present case the approval has been obtained from PCIT as cited in the notice u/s 148 of the Act itself. Thus it was held that notice u/s 148 of the Act for the year under consideration is issued without obtaining the prior approval of the 'appropriate authority'. On above basis notice u/s 148 was held has invalid as proper sanction as prescribed u/s 151 has not been followed.

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CASE LAW UPDATE



Dr. CA Sunil Moti Lala
Advocate

A. SUPREME COURT

1 ACIT VS. CUMMINS INDIA LTD. [2025] 173 TAXMANN.COM 354 (SC)

The Hon'ble SC on account of delay of 476 days, dismissed the condonation application and also dismissed the SLP against order of High Court, holding that where assessee had used TNMM to benchmark all its international transactions, it was not open to the TPO to subject only one element, i.e., payment of royalty for use of technology, to an entirely different CUP method as this would lead to chaos and be detrimental to interests of both the assessee and the Revenue.

2 PCIT VS. FUJITSU INDIA (P.) LTD. [2025] 173 TAXMANN.COM 652 (SC)

The Hon'ble SC, on account of delay of 434 days, dismissed the SLP against order of High Court holding, that RPM was MAM for determining ALP of international transaction in case of distribution and marketing activities, especially when goods were purchased from AEs and there were sales to unrelated parties without any processing and value addition.

B. HIGH COURT

1 CIT VS. BENETTON INDIA (P.) LTD. [2025] 171 TAXMANN.COM 536 (DELHI)

I. Where certain employees of foreign AEs were seconded to assessee and salaries and perquisite costs of such employees were reimbursed at costs by assessee to its AE and functions performed by said employees were directly for benefit of assessee, it was held that the TPO was not justified in determining ALP for transaction relating to reimbursement of expatriate costs at Nil on the ground that assessee had not derived any benefit from the expatriate employees.

II. Further, it was held that ALP in respect of royalty paid for acquiring technical know-how from assessee could not be determined as Nil on the ground that the assessee had incurred losses.

Facts

i. The assessee was engaged in the business of production and sale of ready-made garments under the brand name "B". During the year, certain employees of foreign AEs were seconded to the assessee to assist it in its day-to-day activities. The salaries and perquisite costs of such employees were credited directly by the AEs in the bank accounts of the said employees. However, since the functions performed by the said employees were directly for the benefit of the assessee, it had reimbursed the costs to its AE.

ii. The TPO determined the ALP for the transaction relating to reimbursement of expatriate costs at Nil as the TPO was of the view that the expatriate employees were performing the functions for the benefit of the AE and not for the benefit of the assessee. The TPO, thus held that the ALP of the international transactions regarding the reimbursement of expatriate costs was Nil. The TPO also noted that the assessee had not produced the break-up of the payments made to each of the employees.

iii. The CIT (A) deleted the TP adjustment and held that the assessee had established that the transactions were on an arm's length basis as it had adopted the cost-plus method as the most appropriate method and had also established that no markup was charged.

iv. The Hon'ble Tribunal concurred with the decision of the CIT(A) and thus, dismissed the Revenue's appeal.

v. Aggrieved, the Revenue filed appeal to the Hon'ble HC.

Decision W.R.T to Issue I.

i. The Hon'ble HC noted that the TPO determined the ALP of the international transaction relating to reimbursement of expatriate cost at Nil, by proceeding on the basis that the assessee had not derived any benefit from the employees that were seconded to it, and that the Assessee had not established that the employees were working for it in India.

ii. It held that there is a distinction between the functions of a TPO and an AO. The

TPO is required to conduct a transfer pricing analysis to determine the ALP, whereas the question as to whether any expenditure has been incurred by the Assessee for earning revenue is a matter, which is required to be determined by the AO.

iii. The AO had not doubted that the expenditure incurred by the assessee was wholly and exclusively for its business. The TPO did not hold that the ALP for the services derived by the assessee from the expatriate employees ought to be less than what it had paid. The TPO's view that the assessee had failed to establish that it had derived any benefit at all from the expatriate employees and that the payments made for the expatriate employees were essentially a method of siphoning off funds to the AE could not be sustained and was unfounded.

iv. The Hon'ble HC noted that the assessee had disclosed the role of each of the expatriate employees had also produced sufficient evidence to show that the employees had served in India. Further, since the assessee had only reimbursed the amounts paid by the AEs to the expatriate employees without any mark-up, the ALP could not be lower than the cost paid.

v. Indisputably, the TPO could not question the commercial wisdom in hiring expatriate employees for rendering assistance. The said decision fell within the scope of commercial expediency and the TPO could not supplant its opinion in place of the assessee in regard to need for such services.

vi. The Hon'ble HC noted that the TPO had concluded that since the assessee had incurred a loss, the ALP was required to be determined at Nil. It held that this reasoning was also fundamentally flawed. The question whether the activities conducted by the assessee ultimately resulted in a profit or loss, is not determinative of whether any international transaction of availing of services, is on arm's length basis and at ALP. Plainly, price of resources employed to carry on business cannot be treated as nil if the assessee makes a loss. Illustratively, an assessee may lease an office for its business purposes but incurs a loss. Clearly the ALP of the lease rentals would not be nil because the assessee does not make a profit in the given year. The price of a resource is not contingent on whether the assessee makes a loss or profit.

vii. Accordingly, the Hon'ble HC dismissed the Revenue's appeal & upheld the order of the Tribunal deleting the addition made by the TPO in respect of reimbursement of costs of expatriate employees.

2 DCIT VS. FLIPKART INTERNET (P.) LTD. [2025] 171 TAXMANN.COM 693 (KARNATAKA)

The assessee, an Indian company, had entered into Master Service Agreement (MSA) with a USA entity, for secondment of employees pursuant to which the latter had seconded employees to the assessee-company. There were all indicia of employer-employee relationship between assessee-company and seconded employees. The

Hon'ble HC following its earlier judgement in ***DIT (International Taxation) vs. Abbey Business Services India (P.) Ltd [2020] 122 taxmann.com 174 (Kar)*** held that the assessee-company was not required to deduct tax under section 195 on payment made to foreign entity towards reimbursement of salaries paid to seconded employees as the same did not constitute FTS under Article 12 of the India-US DTAA as no technology etc was made available to the assessee-company by the US entity.

3 CIT VS. URBAN LADDER HOME DÉCOR SOLUTIONS (P.) LTD. [2025] 171 TAXMANN.COM 549 (KARNATAKA)

I. The assessee-company made payments to non-resident companies such as Facebook, Amazon etc. towards advertisement charges. The Tribunal came to a conclusion that the facilities provided by the non-resident Companies were only enabling facilities which helped a person to place his advertisement contents on the platform of Facebook or to use MailChimp facility effectively. In case of Amazon, the payment was in the nature of rent payments for use of infrastructure facilities. The Tribunal came to the conclusion that the payments made to the above three non-resident Companies did not fall within the meaning of ''royalty'' as defined in the respective DTAAs. The Hon'ble HC upheld the order of the Tribunal by holding that since facilities provided by the said non-resident companies were only enabling facilities which helped assessee to place its advertisement contents on their platform, the said payments made by the assessee to the said non-resident companies could not be considered as 'royalty payments' and thus, there was no requirement to deduct tax at source from those payments under section 195.

II. The Hon'ble HC upheld the order of the Tribunal by following the judgement of the Hon'ble SC in ***Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 432 ITR 471 (SC)*** and held that the amount paid by assessee-company to foreign company for purchase of software, cloud computing, cloud space hiring involving transfer of right to use software was not royalty. Thus, there was no requirement to deduct tax at source from those payments under section 195.

4 CIT INTERNATIONAL TAXATION VS. NOKIA NETWORK OY [2025] 171 TAXMANN.COM757 (DELHI)

Assessee, a Finland based company, had established a liaison office in India which was followed by incorporation of a fully owned subsidiary in India. Since Revenue had abjectly failed to prove that said subsidiary stood conferred with authority to bind or conclude contracts on behalf of assessee, no DAPE could be said to have come into existence. Further, the Revenue had failed to bear in mind the negative covenant enshrined in Article 5(8) of the India-Finland DTAA. Also, on facts, it was held that the assessee could not be said to have a Fixed Place PE in India.

Facts

i. The assessee, a Finland based company, was engaged in manufacture of advanced telecommunication systems and equipment. It had established a liaison office in India in 1994 which was followed by incorporation of a fully owned subsidiary, NIPL, in India. ---

ii. Assessee filed its return of income taking a position that its offshore supplies were not exigible to tax in India.

iii. The AO held that NIPL was liable to be treated as Dependent Agent Permanent Establishment of the assessee - He further held that 70 per cent of total equipment revenue was attributed towards sale of hardware (and taxable in India as business profits) and 30 per cent of same was attributed towards supply of software (taxable as royalty). The CIT(A) upheld the view of the AO that NIPL constituted a PE of the assessee

iv. The Tribunal also held that NIPL would not constituted a PE.

v. Aggrieved, Revenue filed appeal before the Hon'ble HC.

Decision

i. The Hon'ble HC noted that the insofar as the offshore supply contracts was concerned, the same were on FOB basis from Finland as opposed to the onshore activities which NIPL undertook. Tribunal's reason for holding in favour of the assessee was that the revenue being earned by NIPL from installation activities undertaken did not constitute revenue or income of assessee. The income so generated from onshore activities undertaken by NIPL, had already been subjected to tax and assessed in its hands. The Tribunal thus, concluded that since no income had accrued to the assessee from the installation and contract work undertaken in India, it would be wholly incorrect to assume that a DAPE had come into existence. It further held that NIPL had not been shown to have been accorded the authority to conclude contracts in the name of assessee.

ii. The Hon'ble HC held that the Tribunal had correctly noted that NIPL had never been established on facts to be a dependent agent. The assessee was not undertaking any installation activity in India and those activities were being performed by NIPL on a principle to principle basis for the benefit of its own customers under independent contracts. The said independent source of income of NIPL had been duly offered and subjected to tax in India.

iii. The Hon'ble HC noted that the question of whether NIPL constituted a PE appeared to have been principally answered by the Revenue in light of it being the wholly owned subsidiary of the assessee. The Revenue had essentially approached the issue from this angle failing to bear in mind the incontrovertible negative covenant which stands enshrined in Article 5(8) of the DTAA which injuncts the Revenue from either readily presuming or harbouring a presumption that a subsidiary would ipso facto constitute a PE. It further held that, the question of PE is not liable to be answered on the basis of a perception of virtual projection. The exercise to ascertain whether a PE exists is thus founded on evidence-based standards rather than a theory of mere surmise.

iv. The Hon'ble HC further held that a parent or a holding company would

invariably be expected to have an interest and concern in the working of an overseas subsidiary which essentially represents its right of oversight, supervision and protection of shareholder interest. However, the exercise of those powers would not denude the subsidiary of its independent economic existence. Ultimately, it would have been imperative for the Revenue to have established that NIPL was an enterprise through which the assessee was operating and carrying on its own business and that the former was no more than an adjunct of the assessee itself.

v. It further held that, when tested on the standards consistently recognized by courts, it became apparent that the Revenue had woefully failed to establish that NIPL or its premises could be recognised to be a PE when tested on the mandated criterion of either a Fixed Place PE (or DAPE). Having gone through the copious material which was examined and evaluated by the Tribunal, the Hon'ble HC held that there was no hesitation in affirming the view of the Tribunal that the assessee did not have a Fixed Place PE.

vi. Thus, the Hon'ble HC held that the income derived by the assessee from sale of equipment could not be taxed in India in the absence of a PE.

vii. Insofar as the issue of taxability of software was concerned, in light of the judgment of the Hon'ble Supreme Court in ***Engineering Analysis Centre of Excellence (P.) Ltd. vs. Commissioner of Income-tax (2022) 432 ITR 471 (SC),*** the Hon'ble HC held that the revenue from supply of software could not be classified/taxed as royalty or fee for technical services under the Income Tax Act, 1961 read along with the India-Finland Double Taxation Treaty.

C. TRIBUNAL

1 MASHREQ BANK PSC VS. DCIT [2025] 171 TAXMANN.COM 230 (MUMBAI- TRIB.)

The Hon'ble Tribunal held that prior to amendment of article 7(3) of India - UAE DTAA by way of protocol dated 28-11-2007, head office expenses allocated to PE in India was to be allowed in full without applying restricted rate of 5 per cent of average adjusted total income as mandated under section 44C - Expenditure incurred outside India exclusively for operations of Indian branches would not fall within ambit of section 44C and, hence, would be allowable in full.

Facts

i. The assessee, a non-resident banking company incorporated in UAE, was carrying on banking business in India through its branches. The assessee claimed deduction of head office expenses allocated to its PE in India in full. The assessee had also claimed certain expenditure incurred outside India, such as, swift expenses and Globus Accounting Software Maintenance expenses.

ii. The AO held that head office expenses were allowable in terms with restrictions imposed under section 44C and the assessee was entitled to get deduction at the restricted rate of 5 per cent of average adjusted total income. He also rejected deduction of swift expenses and Globus Accounting Software Maintenance expenses claimed by the assessee.

iii. The CIT(A) also upheld the order passed by the AO.

iv. Aggrieved, the assessee filed appeal to the Hon'ble Tribunal.

Decision

i. The Hon'ble Tribunal noted that Article 25 makes it clear that it is in two parts. First part of article 25(1) says that taxation of income and capital arising in respective Contracting States shall be governed by the domestic laws in force in the respective Contracting States. Whereas, the second part of article 25(1) carves out an exception by providing that where express provisions to the contrary are made in the Treaty, taxation of income and capital in respective Contracting States would be governed by such express provisions and not by the provisions of domestic laws in force in the respective Contracting States. It held that, in other words, if there is an express provision in the Treaty conferring benefit to the assessee, which is contrary to the domestic law, then the provision of the Treaty will override the domestic law and would be applicable. This line of interpretation is also in consonance with section 90(2).

ii. It further noted that Article 7 of the Treaty provides the mode and manner of taxability of business profit. Paragraph 3 of article 7 of the Treaty says that while determining the profit of a PE all expenses incurred for the purpose of business of the PE, including executive and general administrative expenses, whether incurred in the State in which the PE is situated or elsewhere, has to be allowed as deduction. The language used in article 7(3) makes it further clear that the deduction of expenditure allowable in respect of the PE is neither subject to any limitation nor restriction imposed under the domestic law as it does not refer to any domestic law provision, including, section 44C. Thus, in absence of any restriction imposed regarding the limit of expenditure to be allowed, the restriction imposed under the domestic law cannot be read into article 7(3). It further held that, on a careful reading of article 7(3) of the Treaty, as it existed prior to its amendment, it becomes very much clear that while determining the profit of a PE, all deductions and expenses attributable to the PE have to be allowed. There are no restrictions/conditions imposed in article 7(3) of the Treaty to limit the expenditure to a particular percentage. Article 25(1) cannot be interpreted to impose restrictions on the manner of computing the tax which is beyond its scope of eliminating double taxation.

iii. The Hon'ble Tribunal noted that, the protocol amending article 7(3) was specifically made effective from 1-4-2008. Therefore, it is very much clear, treaty partners intended to apply the amendment prospectively. It observed that if Revenue's contention that even without the Protocol amending article 7(3), article 25(1) provided for computation of deduction under article 7(3) as per the provisions of domestic law is accepted, then there was no need for amending article 7(3) by the

Protocol. It held that the language used in article 7(3) of the treaty prior to and post amendment demonstrates that at the time of entering into the DTAA, the treaty partners, initially, never intended to put any restriction of the domestic laws on allowability of expenses in computing the business profits of the PE.

iv. Further, The Hon'ble Tribunal held that, a comparative analysis of Treaties entered by India with various countries such as UAE, France, Mauritius and Japan would make it clear, wherever the countries intended to apply the restrictions imposed in the domestic laws, it was specifically provided in the Treaty. Further, wherever the treaty partners intended to amend the provisions of the treaty retrospectively, they specifically provided for it.

v. Therefore, the Hon'ble Tribunal concluded that, going by the language used in article 7(3), as it existed prior to its amendment by protocol dated 28-11-2007, the deduction of expenses attributable to the PE has to be allowed fully without applying the restrictions imposed under section 44C.

vi. As regards the disputed expenses of (i) SWIFT expenses of certain amount and (ii) Globus Accounting Software expenses, the Hon'ble Tribunal noted that, there was no dispute that such expenses were incurred outside India exclusively for Indian branches. Looking at the nature of expenditure incurred. It held that, there could not be any doubt that they were exclusively related to the operations of Indian branches, whereas, section 44C which speaks of head office expenditure had no application to the aforesaid expenses. It relied on circular no. 649 dated 31.02.1993 wherein the CBDT has clarified that expenditure not covered under section 44C are to be allowed without any limit while computing the business profits of the branch office. It further relied on some judgements, the ratio of which is that the expenditure specifically incurred for the branches has to be allowed without the restrictions of section 44C.

vii. Thus, keeping in view the definition of head office expenditure under section 44C and the ratio laid down in the judicial precedents, the Hon'ble Tribunal held that the expenditure incurred outside India exclusively for the Indian branches did not fall within the ambit of section 44C and hence, would be allowable in full.

2 QUALCOMM ASIA PACIFIC PTE. LTD. VS. CIT(A) [2025] 173 TAXMANN.COM 839 (MUMBAI-TRIB.)

The Hon'ble Tribunal held that the LTCG earned by a Singapore based company, from sale of shares of Indian companies was exempt under article 13 India-Singapore DTAA, and thus, the question of setting off of LTCL against the said gain did not arise. The LTCG did not enter into computation of total income of the assessee and thus, the assessee apart from being entitled to claim treaty benefits for LTCG and was eligible to carry forward LTCL under provisions of the Act. Further, it was held that as the aforesaid issue was debatable, the carry forward of LTCL could not be denied by way of an adjustment u/s 143(1).

3 STANDARD AND POORS SOUTH ASIA SERVICES (P.) LTD. VS. ACIT [2025] 173 TAXMANN.COM 279 (DELHI-TRIB.)

The assessee-company was a debt free company and had recovered remittances from its AE's within terms agreed between them. There was no red flag of excessive delay in remittance which gave the impression that the AE was enjoying credit facility beyond reasonable period. The Hon'ble Tribunal held that interest on outstanding receivables from AE could not be treated as an international transaction.

4 DCIT VS. SHAPOORJI PALLONJI AND CO. (P.) LTD. [2025] 172 TAXMANN.COM 782 (MUMBAI-TRIB.)

I. The Hon'ble Tribunal held that a letter of comfort given by assessee on behalf of its AE did not come under purview of an international transaction as the said letter of comfort did not create any contractual financial obligation on assessee company.

II. Under a performance guarantee if associated enterprise fails to execute a contract, the performance guarantee issued by assessee gets invoked and assessee is obliged to execute contract on its own by using its own fund. The assessee did not charge any commission from its AE for providing said performance guarantee. The Hon'ble Tribunal held that since Revenue had not brought any material on record to controvert the fact that by invoking performance guarantee issued by assessee, assessee would be executing contract on its own by using its own fund, no adjustment was required in respect of performance guarantee.

" All power is within you; you can do anything and everything.
Believe in that, do not believe that you are weak;
do not believe that you are half-crazy lunatics, as most of us do nowadays.
You can do any thing and everything, without even the guidance of any one.
Stand up and express the divinity within you. "

Swami Vivekananda

GST





CA Naresh Sheth *CA Jinesh Shah*

A. WRIT PETITIONS

1 INDIAN MEDICAL ASSOCIATION VS. UNION OF INDIA – W.A.NO.1659 OF 2024 – KERALA HIGH COURT

Facts and issues involved

The Kerala State Branch of the Indian Medical Association (IMA) (hereinafter referred to as the '*petitioner*'), a nonprofit body representing registered medical professionals, challenged the imposition of GST on services rendered by the association to its own members. The main contention centered around the principle of mutuality, which, the IMA argued, makes such transactions non-taxable, since there is no supply between separate persons.

Another controversial issue was the retrospective insertion of the Section 7(1)(aa) into the CGST Act by the Finance Act, 2021, **effective July 1, 2017**, which deemed supplies between associations and their members as liable to GST.

The major issues deliberated upon are as under:

i. Whether the principle of mutuality would still hold true under the GST Regime?

ii. Whether the retrospective application of Section 7(1)(aa) is constitutionally valid?

Petitioner's Submissions

Petitioner contended that the services rendered by it to its own members are not liable to GST on account of the doctrine of mutuality i.e., the principle that a person cannot profit from themselves.

The petitioner made a compelling case with the argument that the phrase "supply of goods and services" under Article 246A logically applies only to transactions **between two distinct persons**. Moreover, Section 7(1)'s illustrative language ("such as") also reflects that supply implies two-party transactions, not unilateral or internal dealings.

It is settled legal principle that the association and its members form a single unified entity and therefore, it cannot be said that there is "supply" between two distinct persons as required under the CGST Act, 2017. Therefore, in the case of clubs and associations, transactions are in the nature of self-supply, which falls outside the scope of this taxing power.

CGST amendment, by including such transactions as taxable supplies, artificially

expands the definition of "supply." The very use of the phrase "notwithstanding any law in force" admits that existing law (mutuality) barred such treatment.

Article 246A refers only to "supply of goods and services." Section 7(1)(aa), however, stretches this to include "activities or transactions," which **goes beyond the constitutional mandate**. If "supply" naturally included such broad activities, the expansion would be unnecessary. This shows the artificial and unconstitutional nature of the amendment.

Any attempt to expand the legislative power conferred under Article 246A must come through a constitutional amendment, not statutory redefinition. A legislative fiction cannot override the Constitution or settled principles of constitutional interpretation. In other words, the long-standing legal principle of mutuality cannot be undone merely by a statutory amendment. Constitutional limits on legislative powers, especially those recognized in long standing jurisprudence, can only be altered by constitutional amendment—not by creative statutory drafting.

On the point of retrospective amendment, petitioner submitted that although legislatures can make laws that apply to past events, such laws must not be harsh, unreasonable, or confiscatory.

Based on earlier rulings like Calcutta Club, clubs and associations were not liable for GST due to the principle of "mutuality" (clubs and members being the same entity). A 2021 amendment (Section 7(1)(aa)) created a new levy overturning this settled position. Such a substantive change cannot be applied retrospectively.

The new levy, made effective from 2017, led to massive tax demands from clubs and associations. They had no idea such tax was due, and they had not collected it from their members, putting them in a financially impossible situation. This retrospective burden infringes the clubs' rights under Article 19(1) of the Constitution.

Furthermore, since clubs could not have known they owed GST before the amendment came into force in 2022, charging them interest or penalties for earlier years is unfair and contrary to legal principles that prohibit punishing the impossible.

In conclusion, the retrospective application is disproportionate, lacking a clear guiding principle, and violates the basic fairness expected in tax laws. Worse, the amendment tries to undo settled law through a simple statutory "clarification" instead of a constitutional amendment, making it a "colorable exercise".

Respondent's Submissions

The Calcutta Club ruling dealt with the West Bengal Sales Tax Act and service tax under the earlier constitutional framework. GST laws are now governed by Articles 246A and 366(12A), introduced by the 101st Constitutional Amendment, granting independent power to legislate GST without prior restrictions.

Article 246A empowers legislatures to make laws on GST broadly, including on supplies between associations and their members. Common law doctrines like mutuality cannot limit legislative powers under Article 246A.

The IMA Kerala unit engages in various commercial ventures, including operating a bar-attached hotel, biomedical waste management (IMAGE project with ₹ 50 crore turnover), brand endorsements for major corporations, and insurance schemes. These extensive profit-making activities undermine any claim of pure mutuality. IMA is a separate

legal entity capable of suing and being sued. Its assets are not distributable to members, even upon dissolution, further defeating the claim that members and the association are indistinguishable under law.

The Legislature has full authority to enact laws both prospectively and retrospectively, as long as they do not violate fundamental rights or constitutional prohibitions. In matters of taxation especially, retrospective legislation is a well-recognized and accepted practice. Here, the amendment to Section 7(1) merely clarifies the law rather than changing its substance and does not unjustly extinguish any vested right.

Discussions by and Observations of High Court

The court examined the constitutionality of amendments made to the CGST and KGST Acts, which introduced new definitions of "supply" and its scope, including transactions between clubs and their members.

The central issue raised was whether the legislature could levy taxes on transactions that do not involve two separate parties, as required by the Constitution. The central argument was that, under GST law, "supply" and "service" concepts necessitate the involvement of at least two entities (a provider and a recipient).

The court noted that previous Supreme Court decisions, particularly Calcutta Club Ltd., upheld the principle of mutuality, which excludes transactions where a club or association provides services to its own members from GST. The amendments did not change the constitutional understanding of "service," and the concept of mutuality remained intact. The court found that the amendments introduced a definition of "supply" that was inconsistent with the Constitution's interpretation of "service" and "supply."

The court rejected arguments that the legislature could alter the meaning of constitutional terms for taxation purposes, pointing out that the concept of mutuality, as affirmed by the Supreme Court, could not be overridden by a statutory amendment. As such, the amendments to the CGST and KGST Acts were deemed unconstitutional and void because they were ultra vires the Constitution's provisions.

The court addressed the retrospective/ retroactive operation of the impugned amendments, ultimately deeming it unnecessary to evaluate further, given the unconstitutionality of the provisions.

The court emphasized that fairness is a fundamental principle under the Rule of Law, which is central to the Constitution. Retrospective amendments that impose taxes for past periods, when taxpayers had no opportunity to collect the tax, violate this principle. The State failed to provide valid justification for such legislative actions, further highlighting the importance of governmental accountability in safeguarding citizens' constitutional rights.

In conclusion, the court declared Sections 2(17)(e) and 7(1)(aa) of both the CGST and KGST Acts as unconstitutional, as they contravened Articles 246A, 366(12A), and 265 of the Constitution.

Decision of High Court

Appeal was allowed with consequential reliefs to the appellant.

2 SOLVI ENTERPRISES VS. ADDITIONAL COMMISSIONER GRADE 2 [2025] 173 TAXMANN.COM 25 – ALLAHABAD HIGH COURT

Facts and issues involved

Petitioner is engaged in the business of sale and purchase of scraps. The petitioner purchased goods from a registered dealer (M/s. Radhey International) vide tax invoice dated 06.12.2018, which was generated by the seller from the GST Portal. The selling dealer's registration was cancelled w.e.f. 29.01.2020.

Proceedings were initiated u/s 74 of the UPGST Act by the respondent no. 2 for the F.Y. 2018-19 vide notice DRC-01 dated 29.07.2022 to which a detailed reply was submitted by the petitioner. However, without considering the same, the impugned order dated 12.09.2022 was passed in violation of Section 75(4) of the UPGST/CGST Act. Being aggrieved by the said order, an appeal was filed by the petitioner, which was dismissed vide impugned order dated 20.10.2023.

Petitioners submissions

The transaction in question is fully covered by the statutory documents prescribed under the Act. Merely at the subsequent stage, if the selling dealer was not found in a disclosed place of business, or registration has been cancelled, the petitioner cannot be held responsible for the same. The selling dealer filed its return therefore, GSTR-2A was auto generated, showing the transaction are genuine.

Discussion by and observations of High Court

It is not in dispute that the purchase was made by the petitioner from the firm, which was duly registered under the GST Act at the time when the transaction was made.

From perusal of Sections 16 & 74 of the GST Act, 2017 as well as Rule 36 of the GST Rules, 2017, it is clear that the provisions as provided, certain benefit of input tax credit to the registered person should be provided on the fulfilment of conditions as well as documents required to be provided therein.

Furthermore, Section 74 of the GST Act, 2017 provides the power to the GST authorities to proceed against the registered dealer if ITC has wrongly availed or utilized by reason of fraud or wilful misstatement of fact or by means of fraud, and upon the adjudication, can recover the same. In the case in hand, the proceedings were initiated against the petitioner u/s 74 of the GST Act, 2017 as the registration of the seller dealer has been cancelled on subsequent date i.e., with effect from 29.01.2020, thus, the date of transaction admittedly took place prior to it i.e., on 06.12.2018.

Further, the record shows that the GST authorities are empowered to cancel the registration from the date of inception of proceedings, but the authorities in their wisdom cancelled the registration of the seller on a subsequent date i.e., with effect from 29.01.2020. It is not the case of the Revenue that at the time when the transaction took place, the selling dealer was not registered and did not have valid registration under the GST Act.

The record shows that the supplier has filed its returns i.e., GSTR-01 and GSTR-3B. It is a matter of common knowledge that after filing of GSTR-01, an auto populated window would be open for filling the GSTR-3B for payment of tax and GSTR-2A can be viewed by the purchaser of the goods in question. Once the said form was generated and the said fact has not been disputed by the authorities

below while passing the impugned order, the authorities have failed to consider the fact that GSTR-3B & GSTR-2A, as prescribed under the Act, which was auto populated to which not a single word has been whispered in the impugned orders. On the contrary, an observation has been made against the petitioner that he had failed to bring on record any cogent material that the seller has deposited the tax.

Once the seller was registered at the time of the transaction in question, no adverse inference can be drawn against the petitioner. Further, the record shows that the registration of the selling dealer was cancelled retrospectively i.e., w.e.f. 29.01.2020 and not from its inception which goes to show that the transaction between petitioner and seller was registered and having valid registration in his favor.

Decision of High Court

The impugned orders cannot be sustained in the eyes of law and the same are hereby quashed. The writ petitions are allowed. The matter is remanded to the authority concerned for deciding afresh by passing a reasoned and speaking order.

3 SHALENDER KUMAR VS COMMISSIONER DELHI WEST CGST COMMISSIONERATE AND ORS [2025-TIOL-573-HC-DEL-GST] – DELHI HIGH COURT

Facts and issues involved

Petitioner, engaged in the wholesale trade and export of FMCG items, filed a refund claim under the CGST Act, 2017. The refund was not processed in favor of petitioner and a Show Cause Notice (SCN) was issued due to cancellation of licenses of the petitioner's suppliers. Despite submissions, the Adjudicating Authority rejected the refund, leading to an appeal. The Appellate Authority held in favor of the Petitioner and allowed the refund. The department filed a review application of the said Appellate Authority's order and also gave an opinion u/s 54(11) of the CGST Act, 2017, that processing the refund now would be contrary to the interest of the revenue.

Petitioners submissions

Petitioner submits that the Appellate Authority's order has not been challenged or set aside by any forum and thus, it still stands. No order has also been passed in the Review. The opinion under Section 54(11) of the CGST Act, 2017, is invalid and the refund ought to be processed in accordance with the Order passed by Appellate Authority. Reliance was placed on decision of the ***Coordinate Bench of Delhi High Court in W.P.(C) 14719/2022 titled G.S. Industries vs. Commissioner CGST, Delhi West & Ors.*** to argue that the processing of refund cannot be held back.

Discussions by and Observations of High Court

A perusal of Section 54(11) of the Act shows that the refund can be held back on the satisfaction of the following two conditions namely (i) when an order directing a refund is subject matter of a proceeding which is pending either in appeal or any other proceeding under the Act; and (ii) thereafter the Commissioner gives an opinion that the grant of refund is likely to adversely affect the revenue.

The department's opinion u/s 54(11) of the CGST Act cannot be relied upon on a standalone basis. In the absence of an appeal or any other proceeding pending, challenging

the order of the Appellate Authority, the opinion u/s 54(11) of CGST Act cannot result in holding back the refund. The refund having been permitted by the Appellate Authority and no order in review having been passed, the Department cannot hold back the refund.

It is, however, made clear that if in law the Department can still challenge the said Appellate Authority's order, the processing of refund in terms of the order of this Court shall be subject to the decision in any appeal. The refund shall be processed along with interest in terms of Section 56 of the CGST Act, 2017, within a period of two months.

Decision of High Court
Petition is disposed of in above terms.

4 ABN INDUSTRIES VS. UOI AND ORS [2025-TIOL-566-HC-AHM-GST] – GUJARAT HIGH COURT

Facts and issues involved
Petitioner is a partnership firm engaged in the business of trading in chemicals. In May 2022, the Petitioner supplied goods to Special Economic Zone (SEZ) Units without paying taxes. On 04.08.2022, the Petitioner filed a Refund Application which was duly approved. However, 5 purchase bills were unintentionally omitted during the refund calculation. As a result, the Petitioner made an error in claiming the Input Tax Credit (ITC) of IGST amounting to ₹ 12,62,088/-. Subsequently, the petitioner submitted a refund application dated 19.10.2022 under the category "Any Other (Specify)", since the refund application under the category "Supply to SEZ Unit without payment of Taxes" can only be claimed once. The subsequent refund claim was denied on the grounds that it was not permissible under Circular No. 125/44/2019-GST dated 18.11.2019. Petitioner, thereafter, filed an appeal which was also rejected.

Petitioners submissions
Petitioner submitted that once the statute provides for the refund of tax, then the circular cannot prevail over the statute. Further, it is not in dispute that the petitioner's claim to the refund is genuine. Merely because the portal does not permit the further claim to be lodged under one head, the petitioner should not be left remediless and the department be permitted to be unjustly enriched.

Discussions by and Observations of High Court
The respondents have not disputed the petitioner's entitlement to the quantum of refund but insist on strict adherence to the Circular's procedural guidelines. Court citing previous decisions, including Shree Renuka Sugars Ltd. and Pee Gee Fabrics Private Limited, highlighted that a procedural lapse, such as an error in filing or the unavailability of a specific category on the GST portal, should not result in the denial of a legitimate refund claim where substantive eligibility is not in question. The rigorous implementation of a certain Circular would defeat the substantive rights of the Assessee, thereby causing injustice.

Once the respondents admit the entitlement of the petitioner to the quantum of refund, then this Court has ample powers and the jurisdiction to direct the respondents to grant the petitioner, the said refund. The failure so to do would be tantamount to a stamp of approval by this Court to the unjust enrichment on the part of the Department

to the excess tax collected by it from the petitioner, which it did not have authority to collect under Article 265 of the Constitution of India.

Department is right in contending that when the procedure has been laid down, the same has to be followed in the manner prescribed, or not at all. However, in certain cases, owing to situations beyond the control of the parties, the performance of the duties of the assessee often become impossible. This is the point of inflection where insistence on the procedure or the rigorous implementation of a certain Circular would defeat the substantive rights of the assessee, thereby causing miscarriage of justice.

Decision of High Court
The present petition succeeds and impugned order rejecting the petitioner's appeal are hereby quashed and set aside.

5 NEELGIRI MACHINERY VS. COMMISSIONER DELHI GST [2025] 172 TAXMANN.COM 847 – DELHI HIGH COURT

Facts and issues involved
The petitioner has filed W.P.(C) 13727/2024 with respect to SCN and Order issued for FY 2018-19 and W.P.(C) 13752/2024 with respect to SCN and Order issued for FY 2017-18 on the grounds that same were never served upon it. The case of the petitioner is that although the SCNs were uploaded on the portal, they were placed under the category of "Additional Notices and Orders," rendering them not directly visible.

Discussions by and observations of High Court
A short status report was handed across by department, as per which the SCNs and the hearing notices were uploaded under the "Notices" tab. However, respondent fairly submitted that the manner in which the notices appear on the Department's side and on the taxpayer's side is different. Thus, department concedes that the portal works differently from the Department's side and the taxpayer's side.

Insofar as the Petitioner is concerned, the petitioner was not being able to view them on the Notices tab and has placed printout of the same which shows that it was viewable on Additional Notices and Order tab.

Petitioner is given an opportunity to file its reply and is heard on merits and that orders are not passed in default. Since there is no clarity on behalf of the Department, this Court follows the order dated 9th September 2024 in ***Satish Chand Mittal (Trade Name National Rubber Products) vs. Sales Tax Officer SGST, Ward 25-Zone 1 (W.P.(C) 12589/2024; DHC) as also order dated 23rd December 2024 in Anant Wire Industries vs. Sales Tax Officers Class II/Avato, Ward 83 & Anr. (W.P.(C) 17867/2024; DHC)*** where the Court under similar circumstances remanded back the matter to ensure the Noticee/Petitioners get a fair opportunity to be heard.

Decision of High Court
The present petition is allowed and the impugned order is set aside.

■

SERVICE TAX



CA Rajiv Luthia



Keval Shah
Advocate

1 M/S SUPER CONSTRUCTION VS. COMMISSIONER OF CENTRAL EXCISE & CGST, LUCKNOW 2025 (4) TMI 1392 - CESTAT ALLAHABAD

Backgrounds and facts of the case

- During the period FY 2015-16, 2016-17 and 2017-18 (Up to June 2017) the appellants provided/executed "Works Contract Services" to Governmental bodies (Rajya Krishi Utpadan Mandi Parishad) and also to Educational Institutions and Hospitals and discharged the VAT Liability on "Transfer of Property in Goods" involved in execution of Works Contract.

- As the Works Contract Services provided to above mentioned entities were exempted under Clause 13 of Notification No. 25/2012 dated 20th June, 2012 and remaining receipts, if any were below the threshold limit taxable under the Finance Act, 1994, the appellants did not charge any service tax during the said period. Show cause notice dated 30th December, 2020 issued alleging non-payment of service tax of ₹ 1,97,68,324/- was issued merely on the basis of information received from Income Tax Department, as the Department formed an opinion that the payments received by the Appellant during the period is consideration against provision of taxable service.

- Impugned Appeal is filed against the demand upheld on account of denial of the benefit of Exemption in Clause 13 of the Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012 on account of Works Contract Services provided by appellants to buildings owned by entities registered under 12AA of the Income Tax Act, 1961.

Arguments by Appellant Assessee

- The Ld. Counsel for the Appellant submitted that the impugned order fails to appreciate that contracts were executed with entities registered under Section 12AA of the ITA, 1961 for construction of buildings, such contracts were work contracts as held in the impugned order, the buildings constructed for such entities were meant predominantly for religious use by general public and therefore the Appellant is entitled for benefit of clause 13 of Notification No. 25/2012-ST dated 20th June, 2012.

- They further, stated that they have paid VAT/Sales Tax on the entire consideration received and therefore Service Tax shall not be demanded on the same.

Arguments by Department

- The Ld. Authorized Representative for the revenue stated that entities to whom the works contract services are provided are Educational Institutions (Schools) and Hospitals and the same are not predominately for religious use by general public.

Decision of the Hon'ble Tribunal

- The Hon'ble CESTAT held that there is no dispute about buildings constructed are owned by the Entities registered under Section 12AA of the Income Tax Act, 1961. The dispute pertains to the purpose for which the buildings were used.

- The Tribunal found that identical issue was settled in the ***M/s S. Kumar Builders vs. Commissioner of CGST& CEx Service Tax Appeal No. 50770 Final Order No. 51031/2022 dated 31st October, 2022 (SM)*** wherein it was held that Educational and Medical purpose is a "Charitable Purpose" and therefore the benefit of clause 13 of the Notification No. 25/2012-ST dated 20th June, 2012 as amended, cannot be denied, if the buildings owned by entities registered under Section 12AA are used for educational and medical purposes.

- The Ld. Authorized Representative could not produce any decision to the contrary and therefore the Appellant is entitled to relief.

- The Hon'ble Tribunal further stated that clause (i) of Rule 2A of Service Tax (Determination of Value) Rules, 2006 clearly shows that value of service portion in the execution of works contract shall be determined in the manner provided thereunder. Clause (i) provides that value of "service portion" shall be equivalent to the gross amount charged for the contract less the value of property in goods transferred in the execution of works contract. The explanation provides a deeming provision that where VAT or sales tax is paid or payable, then such value adopted for the payment of VAT or sales tax, shall be taken as the value of property in goods transferred in the execution of works contract.

- In the present case, since the Appellant has discharged VAT on the consideration received against works contract, hence the said value on which VAT has been paid, is deemed to the value of property in goods transferred in the execution of works contract. Consequently, the amount so arrived at is clearly liable to be deducted from the total consideration. Once this is done and the benefit of Notification No. 30/2012-ST dated 20th June, 2012 is extended. The submissions are therefore accepted.

- The entire proceedings were initiated against the appellants on the basis of ITR, Form 26AS, hence the Tribunal further held that demand based on Income Tax Records cannot be sustained.

2 M/S POWER SPECTRUM VS. UOI, THE ASSISTANT COMMISSIONER, CGST & CEX (CX), DIVISION -BHAGALPUR 2025 (4) TMI 1468 - PATNA HIGH COURT

Backgrounds and facts of the case

- The appellants are registered under the Service Tax Laws as "Maintenance or Repair Service Provider". Vide Show cause notice dated 5th September, 2018 the appellants were called to show cause

as to why the amount of Service Tax of ₹ 14,10,900/- on the amounts received during the period FY 2012-13 & FY 2013-14 amounting to total of ₹ 1,14,15,052/- is not payable by them.

- After about 6 years, the Petitioner received several notices dated 21st November, 2023, 7th March, 2024 and 15th May, 2024 calling upon the Petitioner to appear for a personal hearing for completing adjudication of aforesaid Show Cause Notice. Aggrieved by inordinate delay in adjudicating process of the Show Cause Notices, the Petition was filed with prayer to quash the SCN.

Arguments by Appellant Assessee

- The Petitioner submitted that the 'SCN' as well as 'Order-in-Original' were issued by the Ld. CEO beyond the period of Limitation prescribed by the Act/Statute. The Adjudicating Authority (Respondent No. 2) has issued the impugned Order after a substantive delay of approximately 5 years and 10 months which is hit by Section 73(4B) of the Finance Act, 1994. As the SCN was issued invoking larger period or extended period, the Ld. CEO would have determined the amount of Service Tax within a period of "1 year".

- The petitioners relied on various judicial precedents, wherein the Courts have held that the huge delay in passing the order when there was no explanation to satisfy the Courts with the reasons for not passing the orders in due time. The Judicial Precedents relied upon were:

  - ***M/s Kanak Automobiles Private Limited vs. the Union of India and Others***
  - ***L.R. Sharma & Co. vs. Union of India reported in 2024 SCC Online Del 9031***

Arguments by the Department

- Despite giving the Opportunity to the Petitioners, they did not file any reply and failed to avail the Opportunity of Personal Hearing.

- Further, the Ld. Senior Standing Counsel arguing in favour of the Department stated that delay took place due to the COVID-19 Pandemic.

Decision of the Hon'ble High Court

- The Court after hearing both the parties and after relying on Section 73(1) and its proviso, Section 73(4B) of the Finance Act, 1994, finds that Section 73 clearly stipulates the legislature's intention in providing the time frame to determine the amount of Service Tax due under Section 73(2) of the Finance Act, 1994. Further, the Department had no explanation as to why the Order has not been passed within the time limit prescribed under Section 73(4B) of the Finance Act, 1994.

- Further, the Court observed that there is a consistent view on this point by various Courts that the time limit of 6 months/1 year as mentioned in Section 73(4B) of the Finance Act, 1994 cannot be extended for an inordinate period. In the present case, there is a delay of approximately 6 years and the Department has failed to explain the reason why.

- On facts, this Court finds no ambiguity in the present case. There is a huge delay of five and half years from the date of 'SCN' in passing of the Order-in-Original. No explanation is given in

the counter affidavit. Coupled with this fact, the views expressed by the learned co-ordinate Bench of this Court in the case of this petitioner in CWJC No. 17171 of 2024 persuades this Court to take an identical view. Therefore O-I-O was quashed with consequential relief.

3 M/S. HINDUSTAN ZINC LTD. VERSUS THE COMMISSIONER, CEX & CGST, UDAIPUR -(RAJASTHAN) 2025 (4) TMI 1394 - CESTAT NEW DELHI

Backgrounds and facts of the case

- SCN was issued to the Appellants for the period FY 2014-16, alleging that the amounts collected by the Appellants as Fines/Penalties, Liquidated Damages, Forfeiture of Earnest Money/Security Deposits, from the Contractors who failed to provide the services within agreed stipulated time was in lieu of "Tolerating the Act" of the Contractors like poor performance or not meeting the obligations demanding the Service Tax of ₹ 79,95,367/-.

- Further, the Adjudicating Authority vide an Order confirmed the demand of ₹ 50,35,481/- and dropped the remaining amount of ₹ 29,59,886/-.

- Issues involved: Whether the amounts collected by the Appellants in the nature of "Forfeiture of Security Deposit/ Earnest Money" and Fines/Penalties, etc. against delayed completion of Works is chargeable to Service Tax u/s 66(E) of the Finance Act, 1994.

Arguments by Appellant Assessee

- The Ld. Counsel for the Appellant submitted that the issue under the said SCN is already settled in the case of the Appellant by the Tribunal in the following 2 cases:

  - ***Hindustan Zinc Limited vs. Commissioner of CGST, ST and Central Excise, Customs, Udaipur. Final Order No. 50025/2025 in ST Appeal No. 52267 of 2019 –CESTAT, New Delhi.***

  - ***Hindustan Zinc Limited vs. Commissioner of CGST, Central Excise, Customs, Udaipur. Final Order No. 59733/2024 in S.T. No. 51462 of 2019 –CESTAT-New Delhi***

Decision of the Hon'ble CESTAT New Delhi

- The Court held that the above judicial precedents relied upon by the appellants were issued by CESTAT NEW DELHI by relying on the case of ***South Eastern Coalfields Ltd vs. CCE & ST, Raipur 2020 (12) TMI 912 - CESTAT NEW DELHI, Other Citation 2021 (55) GSTL 549 (Tri-Delhi)***. Further, the Department did not further challenge the said decision of the Tribunal and the same was withdrawn. Therefore, the decision of CESTAT NEW DELHI is the said case is the law having binding effects.

- Consistent view has been taken by various decisions that the amount charged shall be "CONSIDERATION FOR TAXABLE SERVICE" and the amount having no nexus with the taxable service is NOT a Consideration and thus it does not form a part of Taxable Value.

- The amounts collected by the appellants in the instant case, are in the nature of Penal Charges on account of BREACH or

NON-PERFORMANCE of the Contract are recovered with the intention to 'make good for the loss' and to ensure that there is no violation of terms of the Contract. These amounts cannot be termed as 'Consideration' in lieu of any Service under Section 65B (44) of the Finance Act, 1994. Further, any activity to be covered as "DECLARED SERVICE" under Section 60E of the Act, there must be an INDEPENDENT AGREEMENT to refrain or tolerate the act between the Parties to the Contract.

- The Court also mentioned the Circular No.214/1/2023-ST dated 28th February, 2023 issued by the Department wherein it is clarified that 'when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are the activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity'.

- The present case is clearly covered by the decision in the earlier two cases of the appellant themselves as well as other line of decisions and therefore, the amount collected by the appellant is not towards rendering declared service. The impugned order is unsustainable and is hereby set aside. The appeal is, accordingly, allowed. ■

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CASE LAW UPDATE



CS Makarand Joshi

IBC

EPC CONSTRUCTIONS INDIA LIMITED - APPELLANT VS. MATIX FERTILISERS AND CHEMICALS LIMITED – RESPONDENT

In the matter of *EPC Constructions India Limited - Appellant vs. Matix Fertilisers and Chemicals Limited – Respondent* at National Company Law Appellate Tribunal – New Delhi- dated 9 April 2025

Facts of the case

- EPC Constructions India Limited - the Appellant executed an EPC contract with Matix Fertilisers and Chemicals - Respondent/Corporate Debtor (CD) for setting up a fertilizer complex on 11 December 2009.

- A resolution dated 30 July 2015 was passed by the appellant giving consent to make investments up to ₹ 400 Crores into 8% Cumulative Redeemable Preference Shares (CRPS) of ₹ 10/- each of CD in one or more tranches.

- CD in consequence allotted 25,00,00,000 8% CRP Shares of ₹ 10/- each to the appellant and Essar Projects (India) Limited (earlier name of the Appellant) in terms and conditions mentioned therein. The CRPS were renewable within three years.

- National Company Law Tribunal (NCLT) initiated a 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 CD asking for redemption of CRPS including dividend, aggregating to ₹ 310 Crore.

- The CD sent a reply dated 24 August 2018 informing that liability towards redemption of CRPS along with cumulative dividend, aggregating to ₹ 310 Crores had been adjusted against the claim which CD had against the appellant.

- CD submitted a claim in the CIRP of Appellant of ₹ 377.87 Crores, information of which was also sent on 5 June 2018 for adjustment of total liability of CRPS against the aforesaid claim.

- The Resolution Professional of the appellant also wrote a letter on 27 October 2018 to the CD claiming the debt which included the amount of ₹ 250 Crores towards investment in CRPS with a dividend of ₹ 60 Crores totalling to ₹ 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 proceeding 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 CD claiming a default amount of ₹ 250 Crores + ₹ 60 Crores totalling to ₹ 310 Crores.

- NCLT rejected the application and observed that:

  – The CRPS were not due and payable, hence, no default could be established.

  – That CRPS were not a financial debt under IBC unless and until they become due for redemption.

  – In the absence of any debt due to the appellant and non-existence of default on the part of the respondent, the application filed u/s 7 of the IBC was held to be not maintainable.

- An appeal was filed with the National Company Law Appellate Tribunal (NCLAT) challenging the above order of the NCLT.

Arguments of the Appellant

- The CRPS were allotted by the respondent in lieu of the existing debt which was owed to the appellant. The respondent had acknowledged the liability to the extent of ₹ 310 Crores and sought to adjust this amount against the outstanding dues payable to the respondent.

- The transaction under which the CRPS were allotted was a commercial transaction and was considered as financial debt having a commercial effect of borrowing, The NCLT committed an error in rejecting the application filed by the appellant u/s 7 of IBC.

- It was submitted that the conversion of the outstanding amount into subordinated debt was undertaken at the request of the respondent. The CD had expressly communicated to the appellant that it had raised equity funds, which would be specifically earmarked for the repayment of the appellant's subordinated debt.

- The nature of the transaction serves as the basis for determining the classification of the debt. In the present case, it is evident that the transaction involved financial debt, as demonstrated by the allotment of CRPS. These shares carried an 8% dividend obligation and were redeemable, indicating a debt-like feature. The time value of money was also clearly reflected in the transaction. Under the IBC, this transaction fully meets the criteria for the commercial effect of borrowing, thereby qualifying as financial debt.

- In the Audited Financial Statement for the financial year 2016-17 of the CD - CRPS were shown as its liability which proves that the respondent owed a financial debt.

- The appellant, after three years from the issuance of CRPS, was entitled to redeem them. Having written to the respondent requesting payment of the redemption amount along with the applicable dividend, the respondent incurred a financial debt. Therefore, the NCLT erred in rejecting the Section 7 application.

Arguments of the Respondent

- The appellant submitted that CRPS is capital and is not a financial debt owed by the CD to the appellant. The outstanding amount which was payable to the appellant under the contract by the CD having been converted into CRPS the debt extinguished. After debt is converted into shares, debt or liability losses the character of debt.

- Further, the terms 'preferential share' and 'investment' have been defined under the Companies Act, 2013 (Act), hence, relevant provisions of the Act, have to be looked into to find the nature of debt and claim under the CRPS.

- The CRPS can only be redeemed as per Section 55 of the Act - out of the profit of the Company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption.

- The CD did not earn any profit in the relevant year so as to preferential shares could not have been redeemed nor any amount was available towards the fresh issue of shares for redeeming the preferential shares. No payment could have been made in the preferential shares as no amount was due nor any default could said have been committed.

- The appellant filed a petition u/s 7 of the IBC based on CRPS worth ₹ 250 crores. The nature of debt has to be found out from the transaction which culminated in 25 Crore CRPS. The CRPS is not a financial debt. The legislature is fully conversant of the law which it enacts. The legislature was well aware with the concept of preferential shares, debentures and in Section 5(8)(c) expression 'debentures' has been used but there is no mention of preferential shares. The legislature was fully aware that a preferential shareholder is not a financial creditor.

- A written contract between the parties must be interpreted on its terms alone and any other evidence to interpret the same, must be excluded. There is no obligation to redeem preference shares when the company has not made any profit, and dividend has not been declared. IBC is a complete code; hence, the financial debt has to be proved as per the provisions of the IBC.

Held

- Section 2(37) of the IBC, 2016 provided that words and expressions used but not defined in IBC but defined in other statutes including the Act shall have meaning respectively assigned to them in those acts. Certain provisions of the Act, which are relevant to find out the nature of the preferential shares allotted to the Appellant need to be noticed. The Act defines 'shares' as well as 'debentures' in Section 2(84) and 2(30) of the Act.

- Section 43 of the Act deals with 'Kinds of Share Capital'. Share Capital is equity share capital or preference share capital. Section 55 on which reliance has been placed by learned counsel for the respondent deals with 'Issue and Redemption of Preferential Shares'. The proviso to Section 55 provides that no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption.

- In the present case, the respondent consistently argues that after the allotment of CRPS to the appellant, the respondent company neither declared any dividend nor earned enough profit to redeem the preference shares. If the CRPS allotted to the appellant could not be redeemed, no debt would have become due. The NCLT concluded that since the preference shares were not redeemable and the company had neither earned profit nor issued fresh shares to facilitate such redemption, there was no default on the part of the respondent. Therefore, the NCLAT fully concurs with the NCLT's finding that no default existed on the respondent's part, and thus, the Section 7 application could not be admitted.

- Placing reliance of the judgment passed by the Hon'ble Supreme Court *in* ***Global Credit Capital Ltd. and Anr. vs. Sach Marketing Private Limited and Anr.,*** *NCLAT observed held that for determining the nature of the debt, the real nature of the transaction has to be looked into.*

- In the present case, although CRPS were allotted to the appellant, there was no Share Subscription and Shareholders Agreement between the parties, nor were the CRPS subject to any conditions that would categorize the transaction as financial debt.

- The NCLAT was of the view that preferential shares being part of the preferential share capital of the Company should not transfer any debt to initiate any Section 7 proceeding.

- Further, the Company has not earned any profit nor any dividend having been declared, no redemption was permissible by the statutory provision, hence, no debt was due on the basis of which Section 7 application could be filed by the appellant. There was also no material that any proceeds of a fresh issue of shares made for the purpose of such redemption was available.

- The NCLAT, thus, fully endorses the finding of the Adjudicating Authority that there did not exist any default. It, thus, does not find any merit in this appeal. The appeal was dismissed.

SEBI

FOODS AND INNS LIMITED

In the matter of *Foods and Inns Limited* dated 13 March 2025

Facts of the Case

- Securities and Exchange Board of India (SEBI) invested in trading activities of Foods and Inns'(FIL/Company) of during the Investigation Period (IP) from 1 July 2022 to 30 November 2022, which revealed that FIL failed to have a properly documented Code of Conduct as mandated under Regulation 9(1) read with Schedule B of SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations).

- The following was alleged by SEBI that:

  i. The Code of Conduct submitted by FIL during the investigation, titled as 'Code of Ethics for Directors and Senior Management' (Code of Ethics) was formulated under SEBI Listing Obligations and Disclosure Requirements Regulations (LODR), 2015, rather than the PIT Regulations 2015.

  ii. FIL's Code of Ethics did not define 'Designated Persons', and the same was made applicable to 'Officers' which defined to include all directors of FIL; senior management of FIL; all employees serving in the roles of finance, tax, accounting, purchase, treasury, internal audit, financial analyst and investor relations; all disclosure committee members; and all members of the senior management of subsidiaries of FIL. As such, it was noted that the aforesaid code of ethics did not apply to promoters of the company.

  iii. The code of ethics included only certain aspects on insider trading; it drew reference to PIT Regulations. It stipulated that the officers and their relatives should not derive any benefit or assist others to derive any benefit from the access to and possession of insider information; that the officers shall abstain from trading in securities of FIL during the closure of the trading window; and that the officers should follow the pre-clearance procedure for trading. However, it did not prescribe the procedure or format for seeking pre-clearance or the thresholds above which requirement of seeking pre-clearance should apply or the timeframe within which trades that had been pre-cleared had to be executed. Further, any stipulation in respect of contra trades was also not contained in the Code of Ethics.

- As Mr. Milan Dalal, Managing Director (MD) of FIL (Noticee 1) and Mr. Moloy Saha, Chief Executive Officer (CEO) of FIL (Noticee 2), (collectively referred to as Noticees) were directly responsible for ensuring the code's formulation and compliance and a Show Cause Notice was issued by SEBI to them.

Charges Levied

- The code lacked essential elements such as the identification of designated persons, pre-clearance procedures, execution timelines, and contra-trade restrictions, all of which are crucial for preventing Insider trading. Consequently, the Noticees were alleged to have failed to formulate the Code of Conduct as required under Regulation 9(1) read with Schedule B of PIT Regulations.

Contentions by the Noticees

- **Acted in Good Faith**: Noticees have contended that the company acting in good faith, believed its existing 'Code of Ethics' and 'The code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information' were sufficient to ensure compliance with the PIT Regulations in spirit. However, upon receiving SEBI's query by SEBI about the Company Code not being compliant with PIT Regulations corrective actions were taken.

- Noticees acted in good faith belief, and believed they were in compliance with regulations. FIL contended that they proactively engaged with SEBI and took corrective actions before and after the issuance of the SCN.

- **Technical Lapses:** Order in the matter of SEBI Vs Cabot International Capital Corporation (Appeal No. 7 of 2001 in SEBI Appeal No. 24 of 2000) was quoted wherein it was stated that technical lapses without *mala fide* intent should not attract penalties.

- **SCN did not allege insider trading or misuse of UPSI**: The SCN did not allege insider trading or misuse of UPSI and that there was no fraudulent activity, investor harm, or unjust enrichment.

- **Selective Issuance SCN:** As per regulation 9(1) responsibility is on the Board of Directors but the SCN was issued to specific individuals -MD & CEO instead.

- **Remedial measures:** Noticee has sought for leniency by contending that SCN's objective is remedial, not punitive, and since the company has taken corrective actions, a penalty should not be levied.

Contentions of SEBI

- **Acted in Good Faith:** The argument of 'good faith' is not a valid defense, as the regulatory requirement in this regard is quite explicit and the non-compliance is objectively verifiable.

- **Technical Lapse:** Regulatory compliance is a legal obligation, not a discretionary practice. FIL only adopted a compliant Code of Conduct after SEBI's intervention in October 2024 and subsequently in January 2025. The delay in compliance reflected a failure in regulatory adherence rather than proactive governance, and could not be treated as a technical lapse. While corrective actions may be considered as mitigating factors under Section 15J of the SEBI Act, they do not negate past noncompliance. Moreover, the Cabot case does not grant blanket immunity for all regulatory breaches but applies only to violations which are technical, venial and bona fide mistakes. The violation by the Noticees was not merely technical or venial lapse but an ongoing violation leading to fundamental regulatory failure

that weakens the framework of Insider Trading prevention, making enforcement ineffective. The compliance was essential for preventive compliance to safeguard market integrity. The above referred judgment did apply to the said matter.

- **Regulation 9 (1) of PIT** -Code submitted by FIL during the investigation i.e., Code of Ethics for Directors and Senior Management did not fulfill the mandate of Regulation 9(1) of PIT Regulations which explicitly mandates a listed company to establish a Code of Conduct to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons. This code must adhere to the minimum standards set out in Schedule B of the Regulations to ensure compliance with the prescribed framework.

- No insider trading violation was alleged, Regulation 9(1) mandates preventive compliance irrespective of whether insider trading occurs- The absence of direct harm does not absolve a company of its regulatory obligations. Failure to implement a proper Code of Conduct creates systemic risks and undermines the regulatory framework. Therefore, the noticees contention in this context was not accepted.

- Regulation 9 (1) explicitly states that the Board of Directors shall ensure that the chief executive officer or managing director of the listed company must formulate the Code of Conduct- explicitly states the same.

- **Selective Issuance SCN**: The contention of selective issuance of SCN to the Noticees is untenable, as regulations place a direct statutory obligation on these executives to ensure that the Code of Conduct is formulated. Further, though the regulation also mandates that the Board of Directors shall ensure that these executives should have fulfilled their obligation; other board members are not part of the present proceedings, hence their role in the violation is outside the purview of these adjudication proceedings.

- **Remedial measures post SCN do not erase past violations** -Timely compliance of the provisions by the listed company is essential for the efficient working of the securities market.

- **Hon'ble Supreme Court Order, *SEBI vs. Shriram Mutual Fund*** was quoted by SEBI wherein the Hon'ble Supreme Court of India held that "In our considered opinion, the penalty is attracted as soon as the contravention of the statutory *obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of a civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not."*

Penalty

SEBI imposed a monetary penalty of ₹ 2,00,000/- each on the two Noticees with the amount payable within 45 days of the 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 Circulars

1. Limits for investment in debt and sale of Credit Default Swaps (CDS) by Foreign Portfolio Investors (FPIs)

a. The limits for FPI investment in Government securities (G-secs), State Government Securities (SGSs) and corporate bonds have remained unchanged at 6%, 2% and 15% respectively, of outstanding stocks of securities for FY 2025-26.

b. All investments by eligible investors in the 'specified securities' shall be reckoned under the Fully Accessible Route (FAR) in terms of Master Direction - Reserve Bank of India (Non-resident Investment in Debt Instruments) Directions, 2025 dated January 07, 2025.

c. The allocation of incremental changes in the G-sec limit (in absolute terms) over the two sub-categories – 'General' and 'Long-term' – shall be retained at 50:50 for FY 2025-26.

d. The entire increase in limits for SGSs (in absolute terms) has been added to the 'General' sub-category of SGSs.

e. The revised limits (in absolute terms) for the different categories are:

Table - 1: Investment limits for FY 2025-26

All figures in ₹ Crore

	G-Sec General	*G-Sec Long Term*	*SGS General*	*SGS Long Term*	*Corporate Bonds*	*Total Debt*
Current FPI limits	2,68,984	1,37,984	1,17,752	7,100	7,63,503	12,95,323
Revised limit for the HY Apr 2025 - Sept 2025	2,79,236	1,48,236	1,26,248	7,100	8,22,169	13,82,989

Table - 1: Investment limits for FY 2025-26						
						All figures in ₹ Crore
	G-Sec General	*G-Sec Long Term*	*SGS General*	*SGS Long Term*	*Corporate Bonds*	*Total Debt*
Revised limit for the HY Oct 2025 - Mar 2026	2,89,488	1,58,488	1,34,744	7,100	8,80,835	14,70,654

f. Also, the aggregate limit of the notional amount of Credit Default Swaps (CDS) sold by FPIs shall be 5% of the outstanding stock of corporate bonds. Accordingly, an additional limit of ₹ 2,93,612 crore is set out for FY 2025-26.

A.P. (DIR Series) Circular No. 01 (RBI/2025-26/20) dated 3rd April 2025

2. Exports through warehouses in 'Bharat Mart' in UAE – relaxations

During his visit to the UAE in February 2024, Prime Minister Narendra Modi launched the Bharat Mart, a warehouse to promote Indian exports. Bharat Mart intends to assist Indian exporters to showcase their goods under one roof in the UAE and provide Indian traders, exporters, and manufacturers access to the markets in UAE as well as worldwide. Bharat Mart is a multimodal logistics network-based marketplace in UAE.

In order to facilitate export through warehouses in Bharat Mart, it has been decided to provide the following relaxations:

a. AD banks may allow exporters to realise and repatriate full export value of goods exported to Bharat Mart within 9 months from the date of sale of the goods from the warehouse.

b. AD banks may allow the following without any pre-conditions, after verifying the reasonableness of the same:

i. Opening/hiring of a warehouse in Bharat Mart by an Indian exporter with a valid Importer Exporter Code.

ii. Remittances by the Indian exporter for initial as well as recurring expenses for setup and continuing business operations of its offices.

A.P. (DIR Series) Circular No. 03 (RBI/2025-26/30) dated 23rd April 2025

***(Comments:* The initiative of Bharat Mart relaxes the current applicable provisions for export of goods by extending the last date of realization from the date of sale of goods from Bharat Mart instead of from the date of shipment of goods from India. The initiative has further removed all applicable preconditions in relation to setting up warehouse and remittances to warehouse in Bharat Mart and further, passed on the responsibility to AD Banks to verify the *bona fide* nature and reasonableness.**

This initiative of the RBI will enhance flexibility and reduce compliance timelines for Indian entities looking to set up warehouses in Bharat Mart. This liberalization is expected to facilitate faster outbound investments, attract higher foreign inflows, and strengthen India's business presence in the UAE).

B. Amendments to Compounding of Contraventions under FEMA through Master Directions, Circular and Press Release

1. Processing of Regulatory Authorisations/Licenses/Approvals through PRAVAAH

With effect from 1 May 2025, all applicants, including Regulated Entities (REs) are advised to use PRAVAAH Platform of RBI for submitting applications for regulatory authorisations, licenses, and approvals to the RBI using the application forms already available in the portal. Applications for which a specific form is not available can be submitted using the general-purpose form.

In exceptional cases, where applicants are unable to submit applications through PRAVAAH system, they may submit their applications directly to the RBI. However, such applications also will be processed through the PRAVAAH system.

(Comments: **There are over 108 forms enabled on the PRAVAAH portal including forms for the compounding process. Although the portal was launched in May 2024, applications were being accepted in physical form as well as on the portal. By way of this press release (and below mentioned circular), RBI is now making it compulsory for all applications to be submitted online from 1st May 2025 onwards.)**

Press Release: 2025-2026/96 dated 11th April 2025

2. Compounding amount delinked from earlier compounding order

As per Paragraph 5.4.II.v of the A.P. (DIR Series) Circular No. 17/2024-25, dated October 1, 2024 (Directions - Compounding of Contraventions under FEMA, 1999), if an applicant against whom a compounding order had been passed earlier didn't pay the compounding amount as per such order and reapplies for compounding of contravention relating to the same transaction, the amount calculated as above may be enhanced by 50% of earlier compounding amount. This provision to link the sum for which contravention is compounded (compounding amount) payable to earlier compounding order, has been reviewed. In such cases, the applicant shall be deemed to have made a fresh application, and the compounding amount payable shall not be linked to the earlier compounding order.

Reporting of fees paid

When making payment through electronic mode, applicants are required to send an email communication to the concerned office of the RBI to reconcile the application fee/ compounding amount received against the compounding applications submitted. A format of the email is provided in Part B of Annexure I of the directions.

In some cases, applicants do not make payment to the correct office of the RBI and/or there is a delay in submitting the compounding application after making the application fee payment. These issues create delays in processing compounding applications. To address these challenges and improve turnaround time for processing compounding applications, RBI has added additional details in the format of the email, namely:

1. Mobile number of the applicant/ authorised representative

2. Office of the Reserve Bank (i.e., Central Office, Regional Office or FED CO Cell) to which the payment was made

3. Mode of submission of application (through PRAVAAH/Physical)

A.P. (DIR Series) Circular No. 02 (RBI/2025-26/29) dated 22nd April 2025

***(Comments:* The RBI' decision to not charge additional 50% extra compounding penalty in cases where a compounding order had been passed earlier but the applicant didn't pay the compounding amount, while a welcome liberalisation, may defeat the purpose to penalise those applicants that do not pay the penalty on time. This amendment may probably be the result of reconciliation issues of online payments. Genuine cases of payments made but showing as not paid or often refunded due to non-reconciliation would have triggered enhancement.**

On the same lines, the amendment of details required to be provided along with online payment would smoothen the overall process.)

3. Cap on compounding amount

RBI has amended the Computation Matrix for penalty to provide that subject to satisfaction of the compounding authority and based on the nature of contravention, exceptional circumstances/facts involved in case. In wider public interest, the maximum compounding amount imposed should be capped at INR 2,00,000/- for contravention of each regulation/rule (applied in a compounding application) with respect to residuary contraventions. (i.e. those pertaining to Sr.No.5 of Guidance Note on Computation Matrix under Master Directions - Compounding of Contraventions under FEMA, 1999 dated 22 April 2025 (updated as on 24 April 2025).

A.P. (DIR Series) Circular No. 04 (RBI/2025-26/32) dated 24th April 2025

***(Comments:* Often applicants would be averse/reluctant to approach for compounding due to possibility of high penalty. The cap of INR 2,00,000 (per contravention) in case of the 'residuary' contraventions as per the Compounding Matrix provided by RBI would attract contraveners to approach RBI for compounding. The cap however has been left to the discretion of RBI's compounding authority depending on the nature to ensure that the cap is not mis-used by contraveners to circumvent FEMA provisions.)**

4. Amendments to Master Directions - Compounding of Contraventions under FEMA, 1999

The above changes have been incorporated in Master Directions - Compounding of Contraventions under FEMA, 1999 dated 22 April 2025 (updated as on 24 April 2025) which now supersedes Master Direction-Compounding of Contraventions under FEMA, 1999, (Updated as on May 24, 2022). ■

THE CHAMBER NEWS



CA Mehul Sheth
Hon. Jt. Secretary



CA Neha Gada
Hon. Jt. Secretary

Important events and happenings that took place online/physical between **April 1, 2025 to April 30, 2025** are being reported as under:

I. ADMISSION OF NEW MEMBERS

The details of new members who were admitted in the Managing Council Meeting held on April 21, 2025 are as under:

Type of Membership

Life Member	Ordinary Member	Student Member	Associate Member	Total Members
20	**42**	**6**	**3**	**71**

II. PAST PROGRAMMES

DIRECT TAXES

Topic: **Webinar on A New Tax Frontier – Deep Dive into the New Income Tax Bill, 2025** (*contd.*)

2.4.2025

a Section 4,5,6, 9 and its impact on 90, DTAA, Special rates for non-residence
Speaker: ***Sr. Adv. Saurabh Soparkar***

9.4.2025

b Salary/House Property/IFOS, Exemption and Deduction
Speaker: ***CA Milin Mehta***

12.4.2025

c Charitable trust
Speaker: ***CA Gautam Nayak***

d Business Income including Set off relevant to business income
Speaker: ***CA Yogesh Thar***

19.4.2025

e Assessment/Reassessment/Time Limit
Speaker: ***Adv. Dharan Gandhi***

f Transfer Pricing
Speaker: ***CA Vispi Patel***

26.4.2025

g Search & Survey
Speaker: ***Sr. Adv. Tushar Hemani***

30.4.2025

h TDS, Penalty, Prosecution, Refund
Speaker: ***CA Jagdish Punjabi***

17.4.2025

Topic: **Full Day Seminar on "TDS and TCS Provisions – a 360° Perspective" Jointly with IMC Chamber of Commerce & Industry and Bombay Chartered Accountants Society**

a Key-note address for the programme
Speaker: ***Shri Raj Tandon (Pr.CCIT, Mumbai)***

b Session 1 - Issues under Domestic TDS & TCS provisions (Issues revolving around 194R, 194Q, TCS on goods, 194D, 194J etc.)
Moderator: CA Shikha Gupta, (Ex-Tax Head, Hindustan Unilever Ltd
Panelists: CA Shyam Nori, Head of Tax - Row & India, Mylan Laboratories,
CA Bhaumik Goda, Partner, BGSS & Associates LLP

c Session 2 - Issues pertaining to Penalty, Prosecution and Compounding procedures under TDS/TCS regime (Practical issues while dealing with penalty/prosecution matters as well as compounding of offence)
Keynote address & Chairman: Shri GM Doss (CCIT, TDS, Mumbai)
Moderator: CA Mahendra Sanghvi, Partner, Sanghvi Sanghvi & Sanghvi
Panelists: CA Rahul Verma, Vice President, Corporate Finance, Cipla Ltd, CA Jagdish Punjabi

d Session 3 - Issues related with TDS u/s. 195 from payments to non-residents (Including issues on SEP/MLI etc.)
Keynote address: Smt. Malathi Sridharan, Pr. CCIT(IT & TP), West Zone
Moderator: CA Sushil Lakhani,CEO and Founder at Sushil Lakhani and Associates LLP
Panelists: Mr. Vinod Tanwani, Pr. CIT, Mumbai,
CA Sunil Choudhary, Senior Vice President, International Tax, Reliance Industries Ltd,
CA Ganesh Rajgopalan, Partner, A. P. Rajgopalan & Co

e Procedural issues like - portal issues, Rectifications of returns filed; Excess deduction – refund, credit of TDS paid, non-filers checking, Lower deduction of tax; Mechanism for Clarifications; etc.
Moderator: CA Ameet Patel, Partner, Manohar Chaudhary & Associates LLP
Panelists: Mr. Mudit Nagpal, CIT (TDS) Mumbai,
CPC representative,
CA Prayag Kinariwala, Vice President, Corporate Taxation, Lupin Ltd

STUDENT

Topic: **Certificate course on GST Law and Litigation Jointly with Government Law College** (*contd.*)

5.4.2025

a Advance Rulings, Appeals, Revisions, Writ Petitions and Drafting of Pleadings
Speaker: ***Mr. Prakash Shah, Senior Advocate***

b Interplay of GST with Customs Law, Foreign Trade Policy and other Allied laws
Speaker: ***Mr. Harsh Shah, Advocate***

11.4.2025

c Assorted Case Studies
Speaker: ***Adv. K. Vaitheeswaran***

INDIRECT TAXES - STUDY CIRCLE

8.4.2025
Topic: **Issues related to GST Refunds**
Group Leader: CA Jinit Shah
Chairman: CA Rajiv Luthia

24.4.2025
Topic: **Issues in Logistics Sector**
Group Leader: CA Raj Khona
Chairman: CA Jayesh Gogri

INTERNATIONAL TAXATION

10.4.2025
Topic: **FEMA Study Circle - Cross-border Leveraged Buyouts – Intricacies in Acquisition Financing**
Speaker: ***CA Yog Bakshi***

ACCOUNTING & AUDITING

11.4.2025
Topic: **Interactive session on internal audit report writing**
Speaker: ***CA Anil Ajmera, CA Vineet Jajodia, CA Prashant Daftary***

STUDY GROUP – DIRECT TAXES

22.4.2025
Topic: **Recent Judgements on Bogus Purchases**
Chairman : Mr. Vipul Joshi, Advocate
Group Leader : Ms. Dinkle Hariya, Advocate

SELF AWARENESS SERIES

24.4.2025
Topic: **Juggle Less, Achieve More: Time & Priority Hacks That Work**
Speaker: ***CA Atul Bheda***

DELHI CHAPTER

24.4.2025
Topic: **US Tariff and Turbulence**
Panel Members: Mr. V. Lakshmikumaran, Mr. Devinder Bagia, Mr. Gautam Khattar. Mr. Othuke Ononeme, Nigeria/UK
Moderator: Mr Saurav Bhattacharya

PUNE STUDY GROUP

26.4.2025
Topic: **Immovable Property – Outside/In India – Residents/Non-residents**
Speaker: ***Mr. Shridhar Kulkarni***

Celebration function of the 50th Years of The Chamber's Journal held on 25th April, 2025 at Walchand Hirachand Hall, IMC, Mumbai





Talk by Past Editor - Sr. Adv. Dr. K. Shivaram

Talk by Guest Editor - Adv. Vipul Joshi







View of the Audience



Group Photo

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