E LEGAL NEWS LETTER

DELHI GST PROFESSIONALS GROUP

THIRD EDITION: MARCH 2025

LEGAL NEWS LETTER

DELHI GST PROFESSIONALS GROUP

Table of contents

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MESSAGE FROM THE EDITOR

Hi Friends,

My sincere apologies for a delayed 3rd Legal E Newsletter of the GROUP. No defence but yes this is delayed.

Last few days have caused havoc in the world as economic and trade war instituted by the USA based on "America First", justified or not justified, and the world economies are crumbling and an atmosphere of uncertain economic realities face all of us. President Trump has threatened and imposed a variety of new tariffs for his second term in office, from universal baseline tariffs to country-specific tariffs. China, Canada, and the European Union have announced or imposed retaliatory tariffs. If imposed on a permanent basis, the tariffs would increase tax revenue for the federal government. Revenue is lower on a dynamic basis, a reflection of the negative effect tariffs have on US economic output, which reduces incomes and resulting tax revenues. Revenue would fall more if foreign countries retaliated, as retaliation would cause US output and incomes to shrink further. India's response can be at best defensive – as the Indian stock market has lost lakhs of crores of stock valuation and retail investors continue to lose. But the Government's response so far has been far from satisfactory – hinting further lowering of stocks in the next two months.

A few landmark Judgments since 1st February 2025

1. Supreme Court (SC) dealing with the constitutional validity of the provisions concerning power to arrest under the Customs and Goods and Services Tax (GST) law. Your group has debated RADHIKA AGGARWAL'S judgment. The power to levy and collect GST under Article 246A includes incidental and ancillary powers, which extend to summon, arrest, and prosecute. Therefore, challenge to the constitutional validity of Sections 69 and 70 of the CGST Act is rejected. The powers of judicial review may not be exercised unless there is manifest arbitrariness or gross violation, or non-compliance of the statutory safeguards provided under the special Acts.

So, Bail may be difficult now – as High Courts will have to follow this judgment in toto.

2. The Andhra Pradesh High Court stated that the supply of a solar generating power station is a composite supply and it would not amount to a works contract. Also, it is a moveable property and attracted 5% GST.

3. GST | Separate Notification Needed For Cross-Empowerment Of State Officials? Kerala High Court Refers To Division Bench. Waiting for a landmark judgment??

4. The Jammu and Kashmir and Ladakh High Court has held that the time limit for refund of GST is to be determined from the date the original application is filed by an assessee, and not from the date of follow-up application.

5. Tax Invoice, E-Way Bill, GR Or Payment Details Not Sufficient To Prove Physical Movement Of Goods: Allahabad High Court Upholds Penalty U/S 74 GST Act.

DGST AND CAIT CONFERENCE

It too is delayed and now is finally happening on 5th April 2025 – on the auspicious day of Ram Navmi. And at NDMC Convention Centre which was available on for this date as this conference hall is booked months before by various Government agencies and other associations. All preparations are done, your speakers are ready to roar and prove their mettle and our Patron Praveen Khandelwal is quite excited about this event, notwithstanding his hectic schedule in national policies and other events he has to face as a leading MP of India.

NEW INCOME TAX LAW.

Under the leadership of Narender Ahuja, your Convenor, your group, being the first in India, initiated debate on the new law and a two full day event was held on 07-08 March 2025. Fantastic discussions, new learnings and looking into the success of these two days event, your Convenor is encouraged and now wishes to hold Group study meetings on two full days instead of one day every month. One day for Income Tax and one day for GST and other laws. This is quite a commendable step and let us welcome with a round of applause.

And this event brought on many new professionals in the Group and the attendance touching 100 for a debate, which is not yet the law, showed how much trust professionals repose in your Group.

HOSTS FOR THE GROUP MEETINGS

I personally think this to be unimaginable that the Members are fighting to be the hosts. This is quite heartening and is highly welcome. And the food during the two days event that was served to all the participants, organised by star of the group Rajmani Jindal, was to say the least ecstatic and absolutely delicious. She and Rashimi Jain continue to improve this part of the Group.

B B Dewan and Narender Ahuja

True Givers for the group and let us all salute them.

Finally, your Group continues to avoid sponsorships for the monthly sessions even though many are coming as we do not wish this group to move towards money issues. What we need we are getting and that is more than sufficient

God Bless.
SV

Caveat – A caution registered with the public court to indicate to the officials that they are not to act in the matter mentioned in the caveat without first giving notice to the caveator.

MESSAGE FROM THE CONVENOR

Dear Readers

I hope this message finds you well. I wanted to personally extend my sincerest apologies for the delay in the release of our 3rd edition of the newsletter. We understand that you've been eagerly awaiting it, and we truly appreciate your patience.

Over the past month, our team has been heavily involved in organizing and participating in some significant events that we are excited to share with you. Notably, we hosted a two-day conference on 07 and 08 March focused on the **New Income Tax Bill 2025**, which provided valuable insights from the leading professionals including Chartered Accountants and Advocates. All the new speakers did a great job. The discussions were highly productive, and we will be summarizing key takeaways from this conference in upcoming editions of the newsletter. The opening Session on " Principles of Interpretations of a New ENACTMENT repealing the old law, on the same subject" was an eye opener for most of us.

Additionally, we discussed the **Radhika Aggarwal Judgement by the Supreme Court**, which has sparked important conversations around the legal landscape and its implications on business practices. Advocate Sushil Verma Ji, the Editor of this newsletter, provided the audience with a detailed briefing on the outcome of the judgment. We will be exploring the impact of this ruling in more detail in the next issue.

We are also thrilled to introduce new **speakers and attendees** who joined us at these events, adding diverse perspectives and enriching our discussions. Their insights will be featured in our upcoming editions, as we continue to provide you with the most relevant and up-to-date information.

We are excited to announce that we will be hosting another conference in collaboration with the Confederation of All India Trade Associations (CAIT) on the auspicious occasion of Ram Navami, on 05.04.2025. We are eagerly looking forward to this significant event. This conference will be another milestone for our growing group, which continues to gain recognition over time. We are proud to welcome new professionals who believe in our vision and are joining us on this journey.

And the food experience that our star of the Group Rajmani Jindal provided was indeed out of the box experience. Just fantastic food.

Once again, I apologize for the delay, and we promise that we will continue to bring you timely, informative, and engaging content moving forward. Thank you for your continued support and understanding.

Warm regards,
Narender Ahuja
Convenor

KUMAR JEE BHAT

REGISTRATION AND CANCELLATION UNDER GOODS AND SERVICES ACT,2017

Registration under the Goods and Services Tax Act,2017 is provided under sections 22 to 30 read with Rules 8 to 26.Different types of registrations has been provided for different set of people i.e., casual dealer , Non resident , Suo moto registration, E-Commerce and so on. The application for registration can be filed within 30 days from the date on which a person becomes liable to registration, where it is mandatory and 5 days prior to commencement of business for a casual dealer and like that other limitations have been provided in the Act and Rules.

Every supplier is liable to get himself registered under the Goods and Services Act, who is making a taxable supply of goods or services or both if his aggregate turnover is more than 20/40 lacks and 10, lacks in special category states. There is a general exemption from obtaining registration by any person, who is engaged in exclusive supply of goods and who's aggregate turnover in a financial year does not exceed40 lacks. Section 23 of CGST Act has specified the circumstances when a person is exempt from obtaining registration under the Act.

Notwithstanding anything contained in section 22(1) some categories of persons are mandatorily required to be registered even if their turnover is within exempted limits. Registration is PAN based, hence every person who supplies goods or services from different states has to get himself registered in each State, where from supply is made within 30 days from the date, he becomes liable to be registered in every State/union Territory.

Process of registration takes place as per Rule 8(4A).There is no fees payable for filing of application for registration. Approval for grant of Certificate Registration shall be under Rule 9 where it is found correct, within 7 days from the date of filing/submitting of application and registration shall be granted within 30 days after the physical verification of the premises conducted in the manner prescribed under Rule 25.

There is a set procedure of law, from the filing of application to the grant of registration under the Act and Rules whether Central, State and Union Territory. The expression procedure established by law means procedure laid down by statute or procedure prescribed by the law of the State. Accordingly, first, there must be a law justifying interference with the person 's life or personal liberty, and secondly, the law

should be a valid law, and thirdly, the procedure laid down by the law should have been strictly followed.

In our legal system, Acts of Parliament and the Ordinances and other laws made by the President and Governors in so far as they are authorized to do so under the Constitution are supreme legislation. Thus a power is granted to the proper Officer under the statute to exercise them for the proper use of the suppliers. This Rule is a statutory Rule. Since the dawn of GST Act, this power of grant of registration has either been misinterpreted or misutilised by the Officers of the Department.

The method and modality of grant of Registration is clearly delineated by the Legislature. It is well known principle that if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable.

In Babu Verghese & Ors vs Bar Council of Kerala &Ors(1999},it was held that the basic principle of law long settled is that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor vs. Taylor (1875) 1 Ch.D 426 which was followed by Lord Roche in Nazir Ahmad vs. King Emperor 63 Indian Appeals 372 = AIR 1936 PC 253 who stated as under :

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.

PRINCIPLE OF NATURAL JUSTICE.

It was held by Supreme Court in Siemens Eng & Mfg Co vs Union of India, AIR 1976 SC 1785, that If an Authority in the exercise of quasi-judicial function, makes an order, it must record reasons before initiation of any action. Non Speaking orders for Cancellation of Registration have been quashed by various High Courts of the country.

Keeping in view the above said fundamental principles of law the courts decided various cases which arose after the implementation of the Goods and Services Tax Act.2017. In most of the cases either registration was not granted on frivolous grounds or registration was cancelled without providing any opportunity to put forward his case. Controversies started over various issues raised by the Proper Officer during approval and final permission of grant of registration. Questions regarding authenticity of business premises, on filing of electrical bill of business premises, Aadhar, space and other issues were raised and people aggrieved took various forums and High Courts to challenge such orders. Some of the judgments pronounced have been highlighted in this article for the benefit of the readers.

There can be multiple issues/reasons for cancellation of application for registration and Revocation of cancellation of Registration.

1 .NON FILING OF ELECTRICITY BILL.

In many cases under Goods and Services tax , registrations were rejected for non submission of the documents which were not required at all or were there with some incompletion , registrations were not granted which resulted in litigations ,which went upto the High Court. In **RANJANA SING VS COMMISSIONER** , it was held; that although the required docs as specified in the Act were submitted but, Rule 8 requires the submission of electricity bill or house tax receipt which were not submitted

and therefore order of non compliance was passed .

Important Points given by Court were as under;

1) Authorities rejected the application without specifying the reasons for rejection.

2) after giving a choice in the SCN they cannot insist for submission of electricity bill without stating any defect in the submitted house tax receipt.

3)Once petitioner has satisfied the requirements of law it cannot be insisted to submit electricity bill.

4) in the absence of any shortcoming or defect in the reply submitted the petitioner has every right to carry on the business lawfully.

2. NON FILING OF NO OBJECTION CERTIFICTE REGARDING BUSINESS PREMISES.

PARVEZ AHMAD BABA VS UNION TERRITORY OF JK AND OTHERS,

On cancellation of registration and on application for revocation of the registration the High Court of Jammu and Kashmir and Ladak held as under;

The application pending before the Deputy Commissioner (Appeals) Sales Tax Department, Kashmir Division, Srinagar, shall also be considered and decided after affording an opportunity of hearing to the respondent no. 5 also. Till the time the license is granted in favour of the rightful party by the competent authority, the Samci Restaurant shall not be operated/ run by any of the party.

3. SHOW CAUSE NOTICE ISSUED BUT WITHOUT WAITING FOR THE REPLY, REGISTRATION CANCELLED.

a/ASHWANI AGGARWAL VS UNION OF INDIA , ALL HC AND

b/MAHADEV TRADING CO VS UNION OF INDIA,GUJ HC

a/ The court held that after hearing counsels for the parties and perusing the record, it is apparent that while giving the reason for cancellation of the registration, it is mentioned that no reply has been received from the petitioner, whereas in the same order in the very beginning there is a specific reference that the said order has taken into the reference, the reply dated 25.02.2020 of the petitioner which is in response to the notice to show cause dated 14.02.2020, is contrary in itself.
In view of the same, the order dated 14.04.2020 passed by the Superintendent, Kanpur Sector 12, Central Goods and Services Tax (Annexure 5 to the writ petition), is set aside with liberty to respondent no. 2 to pass a fresh order in accordance with law.

b/ It was held by the court that whereas on the basis of notices issued to the petitioner with the reasons that information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:
1 In case, Registration has been obtained by means of fraud, willful misstatement, or suppression of facts.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits and without fixing a date for hearing and without waiting for any reply to be filed by the petitioner, the cancellation order was passed on 30.07.2020 whereby registration of the petitioners with GST department was cancelled. Although the cancellation order refers to a reply submitted by the petitioner and also about personal hearing, but neither he had submitted any reply nor afforded any opportunity of hearing. The reply was filed but

some discrepancy occurred on account of some technical glitch in the system it was not available (on-line portal). The reply filed by the respondent is on record.

The Court did not go to merits but was convinced that the show cause notice itself cannot be sustained for the reasons already recorded above. Therefore, the cancellation of registration resulting from the said show-cause notice also cannot be sustained.

In **S M CIVIL LABOUR CONTRACTOR VS ASSTT.COMMISSIONER**

Notice was issued for public holiday and registration was cancelled for not attending the proceedings.

The order was set aside.

DEVINDER PRASAD VS ASSTT COMMISSIONER,STATE GST,DEHRADUN,

In this case the, the petitioner failed to furnish returns for a continuous period of six months and show cause notice was sent to him, it was directed that the petitioner shall file an application for revocation under Section 30 of the CGST Act in terms of Rule 23 of the CGST Rules. Though it was time barred, the court inclined to wave the limitation and directed the petitioner to file an application for reviving of G.S.T. registration before the Revenue within a period of 21 days, hence and shall also comply the other provisions of Section 30 of the U.K. GST Act, that is submission of returns for the defaulted six months and any further completed months after the revocation. In such case, if dues are found to be due from the petitioner and he pays the same, then his case shall be considered liberally by the revenue and shall be disposed of within a period of 30 days, Thus the order was passed accordingly.

4. NO REASON GIVEN IN THE SHOW CAUSE NOTICE STILL REGISTRATION CANCELLED.

Cancellation should not be on flimsy grounds and sufficient opportunity should be given to the applicants to explain the issues raised.

In **SHAKTI SHIVA MAGNATS PVT LTD**, the Delhi High Court, held that there was no reason given in the show cause notice for cancellation of registration, the order was quashed and ordered for restoration of registration certificate.

Raj Kishore Eng Construction P ltd vs Joint Commissioner Appeals II, Madras High Court held that without Cancellation of registration without any explanation and only reason that the returns were filed late is not sustainable.

Pitchiah VenkateshPrumal vs superintendent of CGST, was also decided on the same lines.

5. REGISTRATION AT CO-WORKING SPACE.

SPACELANCE OFFICE SALUTIONS PVT LTD,

The Goods and Services Tax Officers did not allow registration to two parties in the same premises and the cases went to High Court for grant of registration certificate.It was held that if the landlord permits sub-leasing as per the agreement, separate registration may be allowed to multiple companies to functioning in a ‘co-working ’space.

ASIA (CHENAI) ENGINEERING VS ASSTT.COMMESSIONER STATE TAX. The registration was rejected on the ground that the reply to show cause notice was not filed on line,the Madras High Court held that filing of reply to the Show Cause notice in form GST DRC-06 is not mandatory under section 73(9),74(9) and 76(3) of the CGST Act,2017, and the reply so filed through post to be treated as valid.

6. **NO NOTICE SERVED PRIOR TO INSPECTION OF THE PREMISES.**

MICRO FOCUS SOFTWARE SOLUTION INDIA PVT LTD VS UNION OF INDIA,

It was held by the Delhi High Court that when no notice is served for inspection of the premises as provided under Rule 25 ,the order of cancellation of registration on the ground of non-functioning is not justified.

CURIL TRADEX PVT LTDVS UNION OF INDIA

This aspect of the matter, that is, an inspection was carried out on 05.07.2021 was not put to the petitioner-consortium, when SCN dated 08.07.2021 was issued. Although the petitioner-consortium claims, that it had submitted a reply dated 23.11.2021; evidently, the same was not uploaded on the designated portal. It is Mr. Jain's contention though, that the reply was uploaded on the website of the respondent/revenue. That in the appeal preferred by the petitioner, information was submitted, which alluded to the fact that PIL had relocated itself. In the impugned order dated 22.02.2022 passed by the Joint Commissioner, CGST-I, Delhi there was no discussion regarding assertions made in that behalf by the petitioner-consortium. Given these facts, Court was in the view, that the impugned order cannot be sustained.

In sum, the entire proceedings, right up to the stage of passing of the order-in-appeal was legally flawed. Accordingly, the impugned order is set aside. Liberty is, however, given to the respondent /revenue, to issue a fresh SCN, if deemed necessary, about the registration certificate, issued under the Act. However, in the meanwhile, the registration of the petitioner shall be restored.

Aditya Narayan Ojha (Amit Associates) Vs Principal Commissioner, CGST, Delhi North &Anr.

The Hon'ble Delhi High Court has directed the Department to restore GST registration of the assessee within one week upon filing of pending returns along tax and other dues. Held that, notice is needed to be served to the assessee under Rule 25 of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") before physical inspection is carried out.

Drs Wood Products Lucknow Thru. ... vs State Of U.P. Thru. Prin. Secy. Tax ... on 5 August, 2022,.

The court had no hesitation in recording that the said authorities while passing the order impugned have miserably failed to act in the light of the spirit of the GST Act. The stand of the Central Government before this Court was equally not appreciable and finding the orders contrary to the mandate of Section 29 and 30 of the Act as well as the principles of adjudication by the quasi-judicial authorities, the orders impugned dated 18.01.2021 and 15.07.2020 could not be sustained and were set aside. The registration of the petitioner was ordered to be renewed forthwith.

It was further held that he the arbitrary exercise of power cancelling the registration in the way it has been done has not only adversely affected the petitioner, but has also adversely affected the revenues that could have flown to the coffers of GST in case the petitioner was permitted to carry out the commercial activities. The actions are clearly not in consonance with the ease of doing business, which is being promoted at all levels. The way the petitioner has been harassed since 20.05.2020, the State Government is liable to pay a cost of Rs.50,000/- to the petitioner. The said cost of Rs.50,000/- shall be paid to the petitioner within a period of two months, failing

which, the petitioner shall be entitled to file a contempt petition.

7. CANCELLATION FOR NON-FILING OF RETURNS

DEVENDER PRASED VS ASSTT COMMISSIONER OF STATE TAX, DEHRADUN,

It was held by the Uttaranchal High Court as under,

Since, the petitioner failed to furnish returns for a continuous period of six months and show cause notice has been sent to him, it is directed that the petitioner shall file an application for revocation under Section 30 of the CGST Act in terms of Rule 23 of the CGST Rules. Though it is time barred, we are inclined to wave the limitation and direct the petitioner to file an application for reviving of G.S.T. registration before the Revenue within a period of 21 days, hence. He shall also comply the other provisions of Section 30 of the U.K. GST Act that is submission of returns for the defaulted six months and any further completed months after the revocation. In such case, if dues are found to be due from the petitioner and he pays the same, then his case shall be considered liberally by the revenue and shall be disposed of within a period of 30 days. Accordingly, the writ petition is disposed of.

After going through all these judgments, I suggest that the readers should also read judgment of Madras High Court in SUGNA CUTPIECE CENTRE,2022-TOIL-261-MAD-GST.

Dictum – Statement of law made by the judge during the decision but not necessary to the decision itself.

Narender Ahuja

INPUT TAX CREDIT – DEMYSTIFIED?

Input Tax Credit is the soul of GST both for the Revenue and for the stake-holders and hence its understanding, execution and interpretation will continue to be a tug of war between the tax collectors and the tax payers – and unavoidable consequence as it is dealing with money.

2. The GST and its interplay with the ITC Mechanism is intertwined with the provisions of Section 2 (dealing with definitions of input, input service, input tax credit, input tax, supply etc.) and all such definitions a sine qua non of the appreciation and understanding of the GST ITC Mechanism – that the Government had promised as a seam less credit to all the stake-holders!

3. The GST and its interplay has to be understood from the combined reading of definitions, section 16 read with Section 17, Section 49 and Sections 73 and 74. All these deal with the conceptual framework of input tax credit mechanism. Penalties linked with input tax credit are omni present in the GST Law.

4. Section 16 (1) and Section 16(2) of the DGST Act and CGST act lays down the substantial conditions to be satisfied and Section 16(3) and 16(4) deal with limitations. But all the subsections are relevant for allowing or disallowing the input tax credit. Section 16 mainly deals with ELIGIBILITY to claim input tax credit subject to its availment in returns and utilization as per section 49 of the CGST ACT.

5. Section 16(1) mandates that before your claim input tax credit for receiving goods or services or both, you must prove, beyond doubt, that these are to be or intended to be used in the course of or in furtherance of business (Defined in section 2 of the CGST Act). If you fail here, there is no question of input tax credit notwithstanding that you had exported the goods or services. Further Section 16 (2) lays down, rather onerously, conditions that you must fulfill before you can avail the input

tax credit in your returns and set it off against your output tax liability. And this is further subject to Section 17, all the first sub sections, that deal with blocked input tax credit – especially the conditions that you must make taxable supplies (other than zero rated supplies where this condition be relaxed i.e. even for tax free sale of goods that are exported refund of unaccumulated input tax credit may be available subject to other conditions specified in Section 16 (1) AND (2). That if you make the outward supplies tax free or without consideration or gifts or your goods are lost, stolen or destroyed etc. etc. the input tax credit will not be available to be taken in your returns. You can read Section 17(5) that deals with blocked input tax credit, as we call it. Do read section 17(5) and 17(5)(d) that deal with blocking of input tax credit for real estate constructions including construction in the course and in furtherance of business where input tax credit may not be available except when plant and machinery are purchased or constructed.

6. Section 16(1) mandates that you could be eligible to take input tax credit only when you buy the goods from a registered tax payer (defined in section 25) and if the supplier was not registered at the time of supply then even if you have tax invoices duly signed and issued by the supplier, no input tax credit can be given to you as per provisions of the law. The issue of retrospective cancellation of registration certificates as per provisions contained in sub-section (2) of Section 29 of the CGST Act deal with this issue and this is the prime reason for retrospectively disallowing the input tax credit – because after invocation of provisions of Section 29(2), only those provisions mentioned therein, the registration certificate of the supplier may be cancelled from the back date and once that happens, revenue may claim that on the date of supply the supplier was not registered and hence no input tax credit. Of course, we are yet to get the final decision on this crucial issue from the apex court, but High Courts have been mixed in giving or not giving relief – especially the Calcutta High Court has been favoring giving of credit through Judgment of Gargo Traders – which you may read.

7. Before we go further remember ITC that you are eligible for is a concession given by the Legislature and it is not a fundamental right to claim and avail ITC. Supreme Court has been consistent with this issue now and it is more or less now settled that ITC can be claimed subject to the tax payer satisfying all the conditions, cumulatively, and if the conditions are not satisfied then ITC claim can be in jeopardy. And the onus to prove and satisfy these conditions are on the tax payer and Section 155 of the CGST Act clearly states so without any confusion.

The benefit is one conferred by the statute and if the conditions prescribed in the statute are not complied; no benefit flows to the claimant. [ALD. Automotive Pvt. Ltd. v. The Commercial Tax Officer &Ors. (Civil Appeal Nos. 10412-10413 of 2018)]

Burden of Proof of ITC lies with Claimant of ITC: The dealer who claims Input Tax Credit has to prove beyond doubt, the actual transaction by furnishing the name and address of the selling dealer, details of the vehicle delivering the goods, payment of freight charges, acknowledgment of taking delivery of goods, tax invoices and payment particulars etc. To sustain a claim of Input Tax Credit on purchases, the purchasing dealer would have to prove and establish the actual physical movement of the goods & genuineness of transactions, by furnishing the details referred to above and mere production of tax invoices would not be sufficient to claim ITC. [Hon'ble Supreme Court in The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited]

The conditions for enabling ITC benefit, are available in Clauses (a) (b) and (c) of Section 16(2) which are in seriatim; the existence of a tax invoice or debit note issued by the supplier, proof of receipt of goods or services or both and the tax charged in respect of such supply having been actually paid to the Government, either in cash or through utilization of Input Tax Credit admissible in respect of the said supply.

The said conditions for availing ITC are to be satisfied together and not separately or in isolation, and these are the conditions and restrictions which would regulate the availment of Input Tax Credit. Input Tax Credit by the very nomenclature contemplates a credit being available for the purchasing dealer in its credit ledger by way of payment of tax by the supplier to the Government.

Producing invoices, account details and the documents evidencing transportation of goods does not absolve the assessee from the rigor provided under sub-clause (c) of Section 16(2) of the BGST Act, which requires the credit of tax, collected from the purchasing dealer; either in cash or through utilization of admissible Input Tax Credit, being available in the context of the supplier having actually paid tax to the Government.

This in effect is a burden of proof cast on the purchasing dealer who claims Input Tax Credit, which is a right created under statute; sustained only under the specific terms of the statute.

The Recipient Purchaser cannot content for double taxation since the claim of ITC is denied only when the supplier who collected tax from the purchaser fails to pay it to the Government.

The word 'Input Tax Credit' itself postulates a situation where the purchasing dealer has a credit in the ledger account maintained by it with the Government. The said credit can only arise when the supplier pays up the tax collected from the purchaser. The mere production of a tax invoice, establishment of the movement of goods and receipt of the same and the consideration having been paid through bank accounts would not enable the Input Tax Credit; unless the credit is available in the ledger account of the purchasing dealer.

The seller and purchaser have an independent contract without the junction of the Government. The statute provides for a levy of tax on goods and services or both, supplied by one to the other which can be collected but the dealer who collects it has also the obligation to pay it up to the State. The statutory levy and the further benefit of Input Tax Credit conferred on the purchasing dealer depends not only upon the collection by the seller but also the due payment made by the seller to the Government. When the supplier fails to comply with the statutory requirement, the purchasing dealer cannot, without credit in his account claim Input Tax Credit and the remedy available to the purchasing dealer is only to proceed for recovery against the seller. Even if such recovery from the supplier is effected by the purchasing dealer; the State would be able to recover the tax amount collected and not paid to the exchequer, from the selling dealer since the rigor of the provisions for recovery on failure to pay up, after collecting tax, enables the Government so to do.

8. We have seen in the past the department is denying the input tax credit due the reason of it not appearing in GSTR-2A or GSTR-2B as the case may be. We will discuss these issues in details in the following article.

Now we will discuss the conditions laid down by Section 16 of the Act to claim the input tax credit.

Section 16. Eligibility and conditions for taking input tax credit.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this

Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both.

[1][Explanation.—for the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services:–

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) Where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

["(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

(c) subject to the provisions of [section 41 the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or installments', the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be [9][paid by him along with interest payable under section 50], in such manner as may be prescribed: [Rule 37]

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him [10][to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost

of capital goods and plant and machinery under the provisions the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the [8][thirtieth day of November] following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. [Rule 37(4)]

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

[(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.

(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—

(i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration,whichever is later.".]

So it is clear, that to claim the input tax credit, one has to fulfill all the conditions of this section simultaneously. The recipient won't get the input tax credit in the absence of any of these conditions rather the proceedings of the section 73 or 74 of the Act may also be conducted against him.

Burden of Proof Section -155

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person. Accordingly, it is the recipient of the goods or services or both who is under obligation to provide the genuinely of the transaction.

Other than SC Judgment in E Com Gill (supra), KERALA HIGH COURT. WP(C) NO. 31165 OF 2023 .

Ansil Ibrahim versus Assistant Commissioner Second Circle, In this case the Honorable court rejected the present petition, stating that the petitioner did not appear in pursuance of the show cause notice nor did he provide any document or evidence to discharge his burden under Section 155 of the GST Act, the Assessing Authority has no other material before them except for denying the input tax credit. The application was rejected by the honorable court.

CAN AN INPUT TAX CREDIT BE DENIED IF THE SUPPLIER FAILED TO FILE THE RETURN WELL WITHIN THE TIME PRESCRIBED UNDER SECTION 16(4) OF THE ACT?

Section 16(4) deals with the claiming of input tax credit by the recipient before the 30th day of November (20th October for financial year 2018-19 to 30.09.2022) vide Finance Act 2022 and Notification no. 18/2022 Central Tax. This clause is silent for the supplier to file his return on or before the time prescribed under this clause.

This issue was also dealt with, in the case of Unity Ooh Media Solutions Pvt. Ltd. vs Deputy State Tax Officer.

Kerala High Court WP(C) NO. 42429 OF 2023 Unity Ooh Media Solutions Pvt. Ltd.- Appellant vs Deputy State Tax Officer.

The writ was filed against the ex-party order passed by the proper officer rejecting certain amount of the input tax credit merely on the ground that certain suppliers of the goods did not file their GSTR-1 before the cutoff date of 30.04.2019 though the petitioner has filed his GSTR-1 and GSTR-3B well before the extended time.

Considering the aforesaid fact and the judgements passed in M/s Heena Medical and Diya Agencies, the court was of the view that the input tax credit should not be denied merely on this ground and the Assessing Officer must go through the other details of the case.

Hence the matter is remitted back to the file of the assessing authority to consider the issue afresh in the light of judgment in Diya Agencies (supra) and pass a fresh order after hearing the petitioner.

So, It is clear from the above case the Assessing Officer must go in details and check and verify other documentary evidences to allow the input tax credit.

The matter is pending in SC and we have to wait for the final verdict of the Supreme Court on the interpretation of section 16(4) and its impact on Section 16(2) – both non obstante clauses.

9. CAN INPUT TAX CREDIT BE DENIED IF THE SUPPLIER HAS NOT FILED THE RETURN OR THE REGISTRATION OF THE SUPPLIER IS CANCELLED WITH RETROSPECTIVE DATE?

Though the recipient has made bona fide transactions but still in most cases the input tax credit is denied due to either the input was not available in GSTR-2A or GST registration of the supplier was sue moto cancelled by the department. The different high courts have given variable judgments in these regards. We will discuss some favorable judgments of various high courts.

KERALA HIGH COURT WP(C) NO. 32070 OF 2023, Geetha Agencies Versus Deputy Commissioner of State Tax Kannur.

Held that-The writ petition challenging the assessment order and recovery notice that denied the petitioner's input tax credit due to a mismatch in GSTR 2A and GSTR 3B has been allowed. The court granted the petitioner an opportunity to prove their case with relevant documents before the Assessing authority. If the authority is satisfied, the petitioner's claim for input tax credit should be granted, and a revised order issued.

KERALA HIGH COURT WP(C) NO. 30660 OF 2023, Heena Medicals versus State Tax Officers, Deputy Commissioner

The writ petition contests Ext. P1 assessment order and Ext. P2 recovery notice, seeking input tax credit of Rs. 2,58,116/- with interest and penalty totaling around Rs. 4,58,156/-. The petitioner argues that denial of input tax credit solely based on the difference between GSTR 2A and GSTR 3B is unjust, citing precedents. Referring to Diya Agencies v. The State Tax Officer, the court remands the matter to the Assessing Authority, directing them to examine evidence beyond GSTR 2A and granting the petitioner an opportunity to prove their claim for input tax credit. As a result, the writ petition is allowed, with the petitioner instructed to appear before the Assessing Officer with evidence on 03.10.2023.

KERALA HIGH COURT WP(C) NO. 30670 OF 2023, Mina Bazar Versus State Tax Officer, Deputy Commissioner.

Held that-The writ petition challenges an assessment order and a recovery notice issued to the petitioner. The assessment order primarily disputes the input tax credit claimed by the petitioner based on the variance between GSTR 2A and GSTR 3B. However, a court precedent clarifies that such discrepancies alone cannot justify denial of input tax credit. Consequently, the petition is allowed, and the matter is remitted back to the Assessing Authority for reevaluation of the evidence regarding the petitioner's claim for input tax credit, disregarding the GSTR 2A variance. The petitioner is instructed to appear before the Assessing Officer with evidence supporting the claim on a specified date.

KERALA HIGH COURT WP(C) NO. 29769 OF 2023

Diya Agencies versus the State Tax Officer, Union of India

Held that-The writ petition challenges an assessment order denying the petitioner's input tax credit, emphasizing that the mere absence of the amount in GSTR 2A should not be sufficient grounds to deny the credit, and it is remanded back to the Assessing Officer for reconsideration with an opportunity for the petitioner to provide evidence supporting their claim.

MADRAS HIGH COURT

Writ Petition No. 3505 of 2024 And W.M.P.Nos. 3758 & 3759 of 2024

Engineering Tools Corporation, Represented by its Partner Versus

The Assistant Commissioner (ST) , Chennai-

The petitioner challenges an assessment order reversing their Input Tax Credit due to the retrospective cancellation of their supplier's GST registration. Despite providing evidence of genuine purchases, the reversal was based solely on the cancelled registration. The court deems the assessment unsustainable, quashing it and remanding for reconsideration, stressing the need to examine all relevant documents and prohibiting rejection based solely on registration cancellation. The writ petition is disposed of without costs.

Conclusion: -

Considering the section 16, section 155 and various judgments mentioned above, my view is that input tax credit should not be denied merely on the grounds that it is not reflecting in GSTR -2A or registration of the supplier is suo moto cancelled. The assessing officer must go in depth to check the genuinity of the transactions and the recipient must provide enough and sufficient evidences with documentary proof to

prove that the transaction is bona fide to claim the input tax credit.

The Honorable Supreme Court also held in the leading case of M/s Bharti Airtel that the GSTR-2A is just a facilitation and not the full proof to deposit the tax.

The input tax credit should not be denied on the grounds that the GST registration is cancelled suo moto. If the recipient has made bona fide purchases and have all the documentary evidences to prove his claim he should be allowed the input tax credit. Also if the purchases are made before the cancellation of GST registration of the supplier, the input tax credit should be allowed after due verification of the other documents.

@Narender Ahuja

Ex post facto – Out of the aftermath. Or after the fact.

According to Wikipedia, It is a law that retroactively changes the legal consequences (or status) of actions that were committed or relationships that existed before the enactment of the law. In criminal law, it may criminalise actions that were legal when committed; it may aggravate a crime by bringing it into a more severe category than it was in when it was committed; it may change the punishment prescribed for a crime, as by adding new penalties or extending sentences; or it may alter the rules of evidence in order to make conviction for a crime likelier than it would have been when the deed was committed.

C. K. Gupta

Proposed Amendments in CGST Act, 2017 in the Finance Bill 2025

1. Section 2(61) of CGST ACT.

Inter-state RCM transactions are included under ISD definition:

Definition of **Input Service Distributor** has been amended to include inter-state RCM transactions. ISD can pay the RCM on inter state transactions and take the credit. He Can distribute this credit among the distinct person having same PAN number. This amendment is effective from 01-04-2025. Earlier only the intra-state RCM transactions were included in the definition of ISD.

2. Section 2(116A) of CGST ACT.

Insertion of definition of **Unique Identification Marking**:

A new sub-section (116A) has been inserted in Section 2 of the CGST Act. Unique identification marking means a digital stamp, digital mark or any other similar marking, which is unique, secure and non-removable for implementation of **Track and Trace Mechanism**. The notification will be issued in due course of time.

3. Section 12(4) & 13(4) of CGST ACT.

Provisions relating to Time of Supply of Vouchers:

Time of supply provisions in respect of Vouchers is proposed to be deleted. Voucher is neither a supply of goods nor a supply of services. Voucher is a pre paid payment of instrument.

4. Section 17(5) of CGST ACT.

Section 17(5)(d) is being amended to substitute the words **"plant or machinery"** with words **"plant and machinery"**. This amendment is applicable retrospectively from dated 01-07-2017.

Goods or services or both received by a taxable person for construction of an immovable property (other than **plant and machinery**) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation 2. —For the purposes of clause 17(5)(d), it is hereby clarified that notwithstanding anything to the contrary contained in **any judgment, decree or order of any court, tribunal, or other authority**, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery.``

The above amendment is being introduced with an objective of overturning the recent judgment by Hon'ble Supreme Court in the case of **Safari**

Retreats. So now **Safari Retreat is done away** retrospectively.

5. Section 34(2) of CGST ACT.

This section is being amended to provide for the reversal of ITC in respect of post supply credit-note received from the supplier by the recipient for the purpose of reduction of tax liability of the supplier.

Benefit of reduction in output tax liability on the credit notes under Section 34 has been linked with reversal of ITC by the recipient. This would create an additional responsibility on the supplier to make sure that ITC in respect of the said credit note is reversed by the recipient. Invoice Management System will take care of it. Credit note will come on the IMS portal. Recipient will have to accept it or reject it. Very soon IMS is going to be mandatory.

6. Section 107(6) of CGST ACT.

Pre-deposit for filing appeal in case of penalty orders:

Section 107(6) is amended to provide for 10% pre-deposit of penalty amount for appeals before First Appellate Authority and again 10% pre-deposit for Appellate Tribunal in the cases involving only penalty without any tax demand. This proviso will not be applicable if the appeal is filled with disputed demand of tax.

7. Section 122B of CGST ACT.

Penalty for contravention of Track and Trace Mechanism:

This section is being inserted to provide penalty for contraventions of provisions related to the Track and Trace Mechanism under section 148A.

The taxpayer is liable to pay the penalty of Rs. 1 lakh or 10% of tax payable of such goods, whichever is higher, in addition to other existing penalties.

8. Section 148A of CGST ACT.

Track and Trace Mechanism:

This section is inserted first time in India to provide for Track and Trace Mechanism (computer readable) for specified commodities like tobacco, Pan masala, liquor, pharmaceuticals, scrap and luxury goods etc. The Government will notify the goods or class of persons, where the goods shall carry 'unique identification marking' so that they can be identified at the place of storage or during the transit. Track and Trace Mechanism is a system used to monitor the movement of goods, products throughout a supply chain or process to ensure transparency, regulatory compliance, and security. There may be live tracking via **GPS, blockchain, or enterprise software**.

The proposed system shall be based on **QR code, BAR code, RFID** or Serial number which shall be affixed on the said goods. This will help in implementation of mechanism for tracing specified commodities throughout the supply chain using high end technology. So that there is no tax evasion possible.

9. Schedule III of CGST ACT.

Supply of goods warehoused in SEZ or FTWZ:

Clause (aa) is inserted in Paragraph 8 of Schedule III, w.e.f. 01-07-2017, to provide that supply of goods warehoused in a Special Economic Zone or Free Trade Warehousing Zone to any person before clearance of such goods for exports or to the Domestic Tariff Area, shall be treated **neither as supply of goods nor as supply of services**. For example, SEZ to SEZ supply. Please note that no refund of tax already collected under the above heads shall be provided.

C. K. GUPTA

@SV

EDITOR'S PICK–10 IMPORTANT JUDGMENTS

(1) Union of India v/s Shantanu Sanjay Hundekari. Supreme Court of india.

A foreign shipping company (**Maersk**) had **GST registration in India** but **no employees or permanent establishment** in India. It appointed a **Taxation Manager from its group company in India** as its **Power of Attorney (PoA) holder** to represent it before tax authorities. The Department alleged that **Maersk had wrongfully availed Input Tax Credit (ITC) and evaded tax** through short levy. Since Maersk had **no employees in India**, the **Taxation Manager (PoA holder) of the Indian group company** was issued a **Demand cum Show Cause Notice** under **Section 74 read with Sections 122(1A) and 137(1) of the CGST Act, 2017**.The demand was for Rs.**3,731 crore** in penalties. The **employee (PoA holder) challenged the demand before the Bombay High Court**.

The **High Court quashed the demand** on the following grounds

Section 122(1A) applies only to a 'taxable person' as per Section 2(107). The employee was **not a taxable person**, so the penalty was **invalid**.

Section 74 (related to tax demand) is not a penal provision, whereas **Section 137 is penal in nature**. The two cannot be clubbed in the **same notice**.

No evidence existed to prove that the employee personally benefitted from the alleged tax evasion.

The **GST Department filed a Special Leave Petition (SLP)** against the Bombay High Court's decision. The case was heard by the **Supreme Court on 24.01.2025**

FALCON SYNERGY ENGINEERING PRIVATE LIMITED vs. ASSISTANT STATE TAX OFFICER ERNAKULAM. & OTHERS. Kerala High Court. 2025

Where the taxpayer did not respond to the notices served on him, he could not plead that no opportunity was granted to him. There is a distinction between the failure to avail and opportunity and failure to provide an opportunity. Writ was dismissed and the taxpayer relegated to avail statutory remedy**, in accordance with law. Does it mean that if the appeal as law was declared time barred, the taxpayer is left high and dry?**

D. JUSTIN KUMAR vs. THE ASSISTANT COMMISSIONER OF CGST AND C. EXCISE &..MADRAS HIGH COURT. 2025

According to Section 6(2)(b) of the Central Goods and Services Tax Act, 2017, if the jurisdictional State GST officers have already made decisions on a matter, subsequent orders on the same issue and period by other authorities contravene legislative intent and result in double taxation. Therefore, the petitioner argued that the impugned order should be nullified.

The Court acknowledged the availability of the appellate remedy and disposed of the writ petition. The petitioner was granted the freedom to appeal to the appellate authority, where they could present all arguments raised in the writ petition. The Court instructed that if the petitioner files an appeal within two weeks of receiving the Court's order, the appellate authority should entertain it without enforcing the limitation period and decide on the case within two months, following legal procedures.

MS LAXMI PERIYASAMI V SALES TAX OFFICER

RELYING UPON EARLIER JUDGMENT (R. Unnikrishnan v. Union of India) The Madras High Court has decided to cancel a tax order that was issued against a person who has passed away. The court ruled that the order was invalid and had no legal standing.

It was outlined by the order passed by Justice Mohammed Shaffiq that tax proceedings started under the name of a deceased person do not have jurisdiction and breach the norms of natural justice.

COMMISSIONER OF CUSTOMS V VEDANTA LIMITED (MADRAS HIGH COURT 2025)

Madras High Court (Division Bench) delivered a significant judgment in W.A.(MD) No. 701 of 2020, upholding Vedanta Limited's claim for a refund of additional IGST (Integrated Goods and Services Tax) paid on exports. The ruling, which directed the Commissioner of Customs, Tuticorin, to refund ₹2,02,94,956 to Vedanta, reinforces the principle that exporters should not be denied refunds due to system-related errors between GSTN and ICEGATE.

Madras High Court reaffirmed that exporters IGST refund cannot be denied by Customs department due to system errors between GSTN and ICEGATE

Assistant Commissioner of Customs Vs Modern India Products (Madras High Court)

The Hon'ble Madras High Court of Madurai Bench in the case of M/s Modern India Products v. The Assistant Commissioner of Customs House IGST Section & Ors. [Writ Appeal (MD) No. 1559 of 2021 dated February 21, 2025], allowed refund claim by the assessee of the Integrated Goods and Services Tax ("the IGST") refund for exports that would qualify as zero - rated supply. While Circular No. 37/2018-Customs dated October 09, 2018 ("the Circular") relied upon by Standing Counsel to state that if duty drawback is claimed, refund of IGST amount cannot be sought. The Court relied on the Hon'ble Gujarat High Court case wherein it was held that the Circular cannot prevail over Rule 96 of the CGST Rules.

Tvl. Chennais Pet Versus The State Tax Officer

The Madras High Court has held that the appeal should not be dismissed merely due to a procedural delay, especially when the petitioner has made an effort to comply with the statutory requirements, including the pre-deposit of 10% of the tax liability and additional payments towards the disputed tax amount.

The bench of **Justice Vivek Kumar Singh** has observed that the delay of 35 days in filing the appeal, while significant, could be condoned in the interests of justice, considering the circumstances surrounding the delay and the

actions already taken by the petitioner to discharge a substantial portion of the disputed tax liability.

The facts as presented by the Petitioner were that a notice was uploaded in the additional notices column of the common portal and the consultant engaged by the petitioner was unaware of the proceedings initiated by the first respondent. As a result, the petitioner was unable to submit a timely reply. The petitioner became aware of the impugned order when its bank account, maintained with the third respondent bank, was attached by the first respondent in recovery proceedings under Section 79 of the GST Act, 2017. Thereafter, the petitioner filed an appeal along with a petition for condonation of the delay of 35 days under Section 107(4) of the GST Act, 2017. A pre-deposit under Section 107(6) of the Act was also made, amounting to 10% of the tax liability.

MsGrainotch Industries Ltd Versus The Union Of India BOMBAY HIGH COURT

The petitioner/assessee was served with consolidated notice by respondent No.3 for paying GST from the year 2017 – 2021. After show-cause, the petitioner had explained the said notice. However, his explanation was not accepted and the impugned order was passed, holding the respondents liable to pay Rs.71,23,02,689 with fine of equal amount.

The department had raised an objection that since efficacious alternate remedy is available under Section 107 of the Central Goods and Service Tax Act, 2017, the Court may not exercise the writ jurisdiction under Article 227 of the Constitution of India.

The petitioner contended that issuing consolidated notice is impermissible and it goes to the hook of the jurisdiction. Taxing double for the same thing is prima facie unjustifiable and since the product for which the GST sought is industry base, it is not taxable.

The court said that since prima facie it was satisfied with the arguments advanced by the counsel for the petitioner, there shall be interim stay to the order till the next date.

The bench of Justice **S. G. Mehare** and **Justice Shailesh P. Brahme** has observed that there is a prima facie material to stay the demand as issuing consolidated notice is impermissible and it goes to the root of the jurisdiction. Taxing double for the same thing, is prima facie unjustifiable and since the product for which the GST sought is industry base, it is not taxable. DEMAND INVOLVED WAS 71 CRORES

Gujarat Chamber of Commerce and Industry &Ors VS UOI &Ors

The Gujarat Industrial Development Corporation (GIDC) provides industrial plots on a 99-year lease to support industrial growth. Recently, tax authorities tried to impose GST on the transfer of these leasehold rights, which raised concerns among MSMEs and business groups. They argued that this tax burden could harm industrial development. As a result, the Gujarat High Court, in the case of Suyog Dye Chemie Pvt. Ltd. vs. Union of India, issued a stay order, temporarily stopping the GST demand on such lease transfers until the matter is fully examined.

Held by court: The Gujarat High Court ruled that transferring or assigning leasehold rights along with land and buildings amounts to the transfer of immovable property. Permanently assigning leasehold rights to a third party does not qualify as a “lease” under Section 7, read with Entry 2(a) of Schedule II of the CGST Act, 2017. As a result, such transactions are not subject to GST. Additionally, land-related transactions are clearly excluded from GST under Entry 5 of Schedule III of the CGST Act, 2017.

Thus, on the Transfer of Lease hold rights in the land is not subject to GST.

Vedanta Limited VS Union of India

Valuation of corporate Bank Guarantee – Under Challenge before GUJARAT HIGH COURT.

Vedanta Ltd. filed a writ petition challenging the classification of corporate guarantees as a supply of service under Schedule I of the CGST Act, even without consideration. Vedanta argues that valuing such guarantees at 1% of the guaranteed amount is excessive and burdensome, discouraging companies from protecting their investments. The company contends that providing a corporate guarantee is merely safeguarding investments and does not constitute a supply under the CGST Act or Article 246A of the Constitution. Vedanta also challenges the circular and Rule 28(2) of the CGST Rules, 2017, as arbitrary, unconstitutional, and beyond legal authority.

Held by court : **The High Court stayed the enforcement of Item No. 2 in the circular, which clarifies the taxability of corporate guarantees as a supply of service. It also permitted Vedanta to amend its petition to challenge the retrospective amendment of Rule 28(2) and Circular No. 225/19/2024-GST.**

Panacea Biotec Ltd. vs.Union of India

Assessee transfered land and building to another party through a "Deed of Assignment". The GST authorities issued show cause notice dated 16-07-2024 to the assessee, claiming that GST was applicable on this transaction. subsequently they passed an order on 19-08-2024 confirming the GST liability.

The assessee argued that this type of transaction—transferring land and a building—is not considered a "supply of goods or services" under GST. Specifically, they referred to Item 5 of Schedule III of the CGST Act, 2017, which states that the "sale of land and, subject to certain conditions, sale of a building" is neither a supply of goods nor a supply of services. This means such transactions are outside the scope of GST. The assessee also clarified that the transaction does not fall under Item 2 of Schedule II, which treats certain transactions involving buildings (e.g., renting or leasing) as a supply of services.

Held by court : The court set aside the impugned order because it was flawed—specifically, it did not address the key arguments of the assessee.T he matter was remanded back for fresh adjudication, meaning the GST authorities were directed to reconsider the case and issue a new decision. This new decision must properly address the assessee's contention about whether the transaction falls under Item 5 of Schedule III (and thus is not taxable under GST).

Jus in rem – Right against the world at large. Read under section 43 of the Indian Evidence Act. Related: What Is Right in Rem and Right in Personam?

Jus naturale – Natural law. Or in other words, a system of law based on fundamental ideas of right and wrong that is natural law.

Jus Necessitatis – It means a person's right to do what is required, for which no threat of legal punishment is a dissuasion.

@SV

EDITORS' 10 QUERIES RECEIVED FROM VARIOUS PROFESSIONALS ETC.

Q: Our proper officer has been threatening to impose penalty under Section 74 of the CGST Act on the ground that we made a wrong HSN Classification of some items; even though our returns filed clearly showed our understanding of the classification. Especially when the authorities issued new notifications giving new classification from the prospective date.

Ans: In our view where returns which were furnished by your company were on basis of classification made by you and revenue knew all along about these returns and Tariff Head classification, same would not amount to deliberate and wilful suppression or non-disclosure of facts; penal provisions of section 74 would not be attracted. Hence even the basic ingredients of section 74, in my view, would not be qualified.

Pankaj Trivedi, Kolkatta

SV Sir, the proper officer is threatening with coercive measures of recovery, in view of the month of March, based on adjudication order by the fist AA, even though I have written to them an appeal shall be filed before Tribunal

Ans: Where assessee aggrieved by order passed by first appellate authority wanted to file appeal before Tribunal, however same had not yet been constituted, appellate order was to be stayed subject to deposit of 10 percent of disputed tax amount over and above 10 percent deposited for filing appeal.

It does not matter who files the appeal before the Tribunal but once the Tribunal is not in position it is more prudent not to approach Tribunal against some bad oders. Recent judgments ask the taxpayers to deposit 10 percent and not 20 percent. IF ITC IS AVAILABLE IT CAN BE REVERSED .

V J Carrasco ,Mumbai

A SCN was issued, proposing GST registration cancellation and the same was cancelled without personal hearing. In fact in our reply we even enclosed videos of our premises that was fully functional and when Inspector visited he too found functioning. But still our Registration Certificate has not been restored. And further allegations have been leveled that we are engaged in fraudulent passing of ITC. How do we defend?

Ans: File an appeal taking both the grounds. Since you were not heard at all in spite of seeking personal hearing, I am sure the matter would be decided in your favor. You can quote the judgment of Delhi High Court in RASHID v Union of India.

Dy Commissioner, Pune

My question is the interpretation of section 6(2)(b) of the MGST Act – can I independently decide the show cause notice issued pursuant to search and seizure by the State authorities notwithstanding the central authorities may also be dealing in the same matter.

A: IN MY VIEW search case stands totally as a distinct proceedings and much of the materials may not have been available to the other authorities. Hence, there should be no doubt that such search proceedings may not be hit by the above section and you have the jurisdiction.

S K VARSHNEY, DELHI

Q: Our consultant did not file appeal in time as per law in GST and the appeal was admittedly filed beyond the limitation and the delay was 84 days. The Appellate Officer has dismissed the appeal as time barred on two grounds that the appeal was not accompanied by an application for condonation of delay and secondly he has no power to condone the delay. The demand is more than 10 crores and it seems our company is in trouble:? What is your view on such issues and can we approach High Court under Article 226 of the Constitution of India as being advised by our consultant?

Ans: It is well settled that once a statute prescribes a specific period of limitation, the Appellate Authority does not inherently hold any power to condone the delay in filing the appeal by invoking the provisions of Section 5 or 29 of the Limitation Act, 1963, more so when the language of GST law as couched in Section 107 is very imperative in nature that delay of not more than one could be condoned.

Condonation application should have been filed in writing or even at the time of hearing such an application could be filed with permission of the appellate authority. However, I would concur with the view of the appellate officer that delay under section 107, sub section 4, could not be condoned beyond prescribed period of three months plus one month.

Article 226 can be invoked as there is no other choice. Though there are conflicting judgments of various High Courts on this issue, my personal view is that delay cannot be condoned as there are a series of SC judgments on this issue in para material laws and based on same language used as in Section 107(4) of the DGST Act.

In S.K. Chakraborty & Sons v. Union of India [2024] 159 taxmann.com 259 (Calcutta) observations were made and delay was condoned. But this HC judgment is in direct conflict with judgments of the SUPREME COURT.

A K KAUSHAL,DELHI

SV Sir, we have many cases where first appeals have been dismissed by the first appellate authorities. Now Department has started recovery proceedings but we intend filing appeals before the Tribunal which is not in operation at the moment. We are worried that our clients will suffer. We are being advised to challenge the orders in High Court but we do not wish to? What is your view?

Please read Circular No. 224/18/2024-GST, Dated 11-7-2024 regarding recovery of dues when the Tribunal is not in position. File a letter in writing to the proper officer and state that appeal will be immediately filed when Tribunal is in position. Various High Courts have given relief asking the Petitioners to pay 20 percent of the balance disputed tax in addition to 10 percent that was paid by the appellant at the time of first appeal, rely on these judgments and offer to deposit 10 percent. I am sure the authorities will accept your proposal. Obtain an order in writing that no further recovery proceedings shall be undertaken and all further

actions shall be deferred till the Tribunal is able to hear your matter.

Ms. Anita Bansal,Delhi

SV Sir, we have two orders from Central GST RK Puram where DIN number is not mentioned and the orders are perverse with heavy demand. We are still in appellate time possible as per law. Could we challenge these before the High Court or in appeal or do you suggest any other remedy too?

Ans". Apex court in Pradeep Goyal v. Union of India [2022] 141 taxmann.com 64 (SC) held that an order which does not contain a DIN number would be non-est and invalid

File rectification under section 161 saying the order is non est and hence should be recalled or alternatively file Writ before High Court as appeal would involve pre-deposit and you will get stuck with the authorities. The order has to go but fresh assessment may be directed – the orders may not get time barred if that is the relief one has thought of.

Assistant Commissioner, Haryana

We did not erroneously issue the SCN under Section 73 of the CGST Act and now High Court wants our response and the prayer of the taxpayer is that this order is illegal and without jurisdiction. We do not want such castigation against our officers. What is the way out and what is the law?

Ans: Such orders will be set aside as no order section 73 or 74 can be passed without proper SCN. It is better your counsel withdraws the order seeking liberty to reframe the assessment or could make a statement that the orders as passed may be taken as an SCN and the taxpayer may file reply for the officer to pass a legal and reasoned. It is a better legal strategy than asking the Court to decide and that will surely be against your Department.

Rekha GUPTA,DELHI

I am a professional. We have in some cases consolidated show cause notices and now adjudication orders. Four years show cause notices in one SCN and one order for all the years. Should we file four appeals or one appeal or is there any other remedy?

There is no mandate under section 73 or 74 for issuance of consolidated show cause notice covering various assessment years - Section 74(1) is to determine whether any of factors leading to tax evasion exist during any financial/assessment year and exercise of determination was to be conducted in relation of each years in which such pre-condition exist for invocation of power under section 74(1). Try filing application under section 161 stating that these orders are without jurisdiction in view of the settled law laid down by various high courts or alternatively approach High Court where such consolidated order will surely be quashed notwithstanding you have taken this issue in your show cause notice reply or not.

Rahul Bahl,Delhi

We have received a show cause notice under section 73 of the CGST Act for 20-21 on 1.2.2025 asking us to reply or deposit the amounts as mentioned therein and verbally they are even threatening search and seizure. The amount involved is very heavy. What is the course available to us?

Ans: As per my calculation the last day for issuing the show cause notice for the year 20-21 under section 73 was 28th November 2024 (unless extended, which in my opinion has not been extended) and time limit as set out in section 73(2) is sacrosanct or mandatory and any violation of that time period cannot be condoned, and would render show cause notice otiose.

File the strongest reply and say on the above lines. I am sure authorities would refrain from proceeding further. Regarding our professional help, I am sorry on this plat form no chargeable consultation is offered nor any petition drafting takes place.

Mutatis Mutandis – With the necessary changes having been made. Or with the respective differences having been considered.

@SV

Notifications issued by CBIC from 16.01.2025 to 15.02.2025

Summarised by CA Renu Sharma

Date	Notification no	Matter
23.01.2025	07/2025-Central Tax	Central Tax Notification to amend CGST Rules, Central Goods and Services Tax (Amendment) Rules, 2025
23.01.2025**30** | Page	08/2025-Central Tax	Central Tax Notification for waiver of the late fee
11.02.2025	09/2025-Central Tax	Seeks to bring rules 2, 8, 24, 27, 32, 37, 38 of the CGST (Amendment) Rules, 2024 in to force

Date	Notification no	Matter
16.01.2025	01/2025-Central Tax (Rate)	Seeks to amend Notification no. 01/2017- Central Tax (Rate)
16.01.2025	02/2025-Central Tax (Rate)	Seeks to amend Notification no. 02/2017- Central Tax (Rate
16.01.2025	03/2025-Central Tax (Rate)	Seeks to amend Notification no. 39/2017- Central Tax (Rate)
16.01.2025	05/2025-Central Tax (Rate)	Seeks to amend Notification No 11/2017 - Central Tax (Rate) dated 28th June, 2017 to implement the recommendations of the 55th GST Council.
16.01.2025	06/2025-Central Tax (Rate)	Seeks to amend Notification No 12/2017-Central Tax (Rate dated 28th June, 2017 to implement the recommendations of the 55th GST Council.
16.01.2025	07/2025-Central Tax (Rate)	Seeks to amend Notification No 13/2017-Central Tax (Rate), dated 28th June, 2017 to implement the recommendations of the 55th GST Council..
16.01.2025	08/2025-Central Tax (Rate)	Seeks to amend Notification No 17/2017- Central Tax

		(Rate), dated 28th June, 2017 to implement the recommendations of the 55th GST Council.
Date	**Notification no**	**Matter**
16.01.2025	01/2025-Integrated Tax (Rate)	Seeks to amend Notification no. 01/2017- Integrated Tax (Rate)
16.01.2025	02/2025-Integrated Tax (Rate)	Seeks to amend Notification no. 02/2017- Integrated Tax (Rate)
16.01.2025	03/2025-Integrated Tax (Rate)	Seeks to amend Notification no. 40/2017- Integrated Tax (Rate)
16.01.2025	04/2025-Integrated Tax (Rate)	Seeks to amend Notification no. 09/2018- Integrated Tax (Rate)
16.01.2025	05/2025-Integrated Tax (Rate)	Seeks to amend Notification No 8/2017- Integrated Tax (Rate), dated 28th June, 2017 to implement the recommendations of the 55th GST Council.
16.01.2025	06/2025-Integrated Tax (Rate)	Seeks to amend Notification No 9/2017-Integrated Tax (Rate), dated 28th June, 2017 to implement the recommendations of the 55th GST Council.
16.01.2025	07/2025-Integrated Tax (Rate)	Seeks to amend Notification No 10/2017-Integrated Tax (Rate), dated 28th June, 2017 to implement the recommendations of the 55th GST Council..
16.01.2025	08/2025-Integrated Tax (Rate)	Seeks to amend Notification No 14/2017-Integrated Tax (Rate), dated 28th June, 2017 to implement the recommendations of the 55th GST Council.

Date	**Corrigendum**	**Matter**
31.01.2025	Corrigendum	Seeks to replace the bullet '(ii)' with '(i)'; To replace "(See para 4(xxxvi))" with "(See para 5(xxxvi))" in the Annexures VII, VIII and IX
31.01.2025	Corrigendum	Seeks to replace the entry in the column 3 of the table with the entry as stated in the

		notification of 06/2025 - Central Tax (Rate) [Hindi]
31.01.2025	Corrigendum	Seeks to replace "पैराग्राफ 4" with "पैराग्राफ 5"

Circulars from 16.01.2025 to 15.02.2025

Summarised by CA Renu Sharma

Date	Circular no.	Matter
28.01.2025	244/01/2025-GST	Regularizing payment of GST on co-insurance premium apportioned by the lead insurer to the co-insurer and on ceding /re-insurance commission deducted from the reinsurance premium paid by the insurer to the reinsurer.
28.01.2025	245/02/2025-GST	Clarifications regarding applicability of GST on certain services.
30.01.2025	246/03/2025-GST	Clarification on applicability of late fee for delay in furnishing of FORM GSTR-9C
14.02.2025	247/04/2025-GST	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 55th meeting held on 21st December, 2024, at Jaisalmer.

Instruction from 16.01.2025 to 15.02.2025

Date	Instruction No.	Matter
Instruction No. 02/2025-GST	31-Jan-2025	Information received from Ministry of Civil Aviation (MoCA) with respect to Gazette notification No. 08/2024 - Integrated Tax (Rate) dated 08.10.2024 notified by Department of Revenue.
	07-Feb-2025	Procedure to be followed in department appeal filed against interest and/or penalty only, related to Section 128A of the CGST Act, 2017

Advisories Issued by GSTN from 16.01.2025 to 15.02.2025–

Summarised by CA Renu Sharma

Serial no.	Date	Advisory
1	22.01.2025	Implementation of mandatory mentioning of HSN codes in GSTR-1 & GSTR 1A
2	24.01.2025	Advisory on Business Continuity for e-Invoice and e-Waybill Systems
3	27.01.2025	Advisory on the Introduction of E-Way Bill (EWB) for Gold in Kerala State
4	27.01.2025	Attention – Hard - Locking of auto-populated liability in GSTR-3B
5	28.01.2025	Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Tamil Nadu and Himachal Pradesh
6	01.02.2025	Gross and Net GST revenue collections for the month of Jan, 2025
7	06.02.2025	ADVISORY ON E-WAY BILL GENERATION FOR GOODS UNDER CHAPTER 71
8	08.02.2025	Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Maharashtra and Lakshadweep
9	12.02.2025	Advisory for GST Registration Process (Rule 8 of CGST Rules, 2017)
10	15.02.2025	Subject: Advisory on Introduction of Form ENR-03 for Enrolment of Unregistered Dealers/Persons in e-Way Bill Portal for generating e-way Bill.

GLIMPSE OF TWO DAYS CONFERENCE ON NEW INCOME TAX BILL 2025 HELD ON 07-08 MARCH 2025

LADIES MEMBERS HONOURED BY DGPG ON WOMEN'S DAY

YOUNG LAWYER HONOURED BY SV ON WOMEN'S DAY. LADY MEMBER HONOURED AS A SPEAKER

SENIOR MEMBER HONOURED AS A SPEAKER. LADIES HONOURED BY LADIES A NEW TREND BY DGPG

@SV

DOCTRINE OF MERGER IN LAW AND ITS IMPORTANCE FOR LITIGATION STRATEGIES.

There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the Tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. **As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority, the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement**…."...

In Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat[5], where the Supreme Court while reiterating an earlier decision[6] laid down three conditions that would serve to make the doctrine applicable. These conditions were that the jurisdiction exercised should have been appellate or revisional jurisdiction, that such jurisdiction must necessarily have been exercised after issuance of notice, and that it must have followed a full hearing in presence of both parties....

In State of Madras v. Madurai Mills Co. Ltd.[9] wherein it was held that: "5. … doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior tribunal and the other by a superior tribunal, passed in an appeal on revision, there is a fusion of merger of two orders irrespective of the subject-matter of the appellate or revisional order and the scope of the appeal or revision contemplated by the particular statute. In our opinion, the application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction." In A.V. Papayya Sastry v. Govt. of A.P.[10] discussed above, the Court laid down an important exception to the doctrine of merger. It observed that where it was established that the order obtained by the successful party was a consequence of fraud such order stood vitiated and could not be held legal, valid or in consonance with law. Such order was necessarily "non-existent", "non est" and could not be allowed to stand....

SPECIAL LEAVE PETITIONS UNDER ART 136 AND DOCTRINE OF MERGER

The power vested in the Supreme Court by virtue of Article 136 is a special power inasmuch as it broadens the scope for invocation of the appellate jurisdiction of the Supreme Court. However, exercise of such extraordinary power is subject to the discretion of the Supreme Court itself. In simpler terms, Article 136 allows bypassing of the fixed hierarchy of appeals subject to the satisfaction of the discretion of the Supreme Court. ...

Supreme Court in V.M. Salgaocar & Bros. (P) Ltd. v. CIT[12] held that in dismissing a special leave petition the Court does not express any opinion on the order from which such appeal is itself sought....

The Supreme Court's decision in Kunhayammed v. State of Kerala. IS THE MOST IMPORANT DECISION OF THE SUPREME COURT ON THIS ISSUE WHICH SHOULD BE READ CAREFULLY TO APPRECIATE THIS DOCTRINE OF MERGER A BIT MORE
@SV