E LEGAL NEWS LETTER

DELHI GST PROFESSIONALS GROUP

TENTH EDITION: DECEMBER 2025

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DELHI GST PROFESSIONALS GROUP

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PRAVEEN KHANDELWAL (M.P.)

MESSAGE FROM PATRON PATRON IN CHIEF

DEAR DGST FAMILY
NAMASKAR
Hope all of you are taking care of yourself and this Family seriously and cautiously.

Spoke to SV who informed that on your persistent demand another full GST Course called "GST RELIVED?" is beginning effectively from 20th December 2025. Of course, I shall be personally inaugurating the same for the younger generation. Indeed, a wonderful step for the profession and May I add that a lot of Hindi should be used so that the videos can be circulated all across trading community in India and abroad. I have advised SV that while delivering lectures, Hindi must not be forgotten.

E Newsletter publication is another milestone our Family has achieved and when many such associations tire themselves DGST Family is going great and what a wonderful document this is proving all over India. The news filtering to me is that thousands of people are reading and taking advantage of this document – keep it up friends.

Hundreds of professionals are informing me that the appeals uploaded on DGST -Website they read and use the same for their professional work and make good money too. Keep it up.

I read all the messages in the group – believe me those messages are heart touching and quite self -propelling and motivating. All seniors like H C Bhatia ji, K P Singh ji, Raj Mani Jindal, Rashmi Jain, Narender Ahuja, Dr Rakesh Kumar and host of youngsters are feeling encouraged and are loving this DGST Family immensely indeed.

Study of European VAT laws and their interplay with India's GST is quite fascinating exercise indeed and SV tells me that all the 10 Members are fully engrossed in this exercise. When we hold this full day session, I shall personally attend the entire session. A first time ever such a study has been attempted and as usual SV knows no limits.

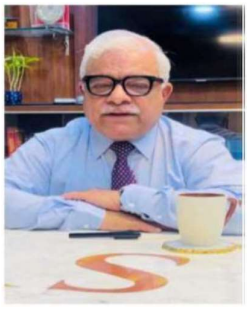
I also feel very happy when I read all the latest judgments being circulated on daily basis to the professionals and also a great summary of Supreme Court of India judgments in the last E News Letter – compiled by our senior Member Kumar Jee Bhat, Advocate. Really a great work done.

SV seems to be ready for the next Conference in May 2026 – ensure no religious ceremonies and I shall personally discuss the subjects too that are more important to trade and industry. Of course, all help that is required of me, take the same for granted.

Free legal aid, help to poor students – I am told this is on. Wonderful. And many new young speakers – that is the marvelous step DGST takes.

SV and his Team of young professionals (a few not too young) under the mentorship of seniors like H C Bhatia ji, is touching if not crossing the sky, in this professional world – you are being talked about every when and everywhere, I too proudly talk of all of you.

Praveen Khandelwal



ADV. SUSHIL VERMA

FROM THE DESK OF CHIEF EDITOR

Greeting to all DGST Members.

As we close 2025 in new few days, we shall proudly remember 2025 as a year where we "took off" and spread our "educational wings" to embrace a very large fraternity of professionals – advocates, chartered accountants and other financial and legal professionals. Well done DGST Core Team led by Narender Ahuja as the Convenor and his Team Members – Chandresh Gupta, CA, Rashmi Jain CA and Rajmani Jindal Advocate. My salute to you all.

We ended the first series of Moot Tribunal in NCR on a very positive note and embraced students of law as well in its fold. Fantastic as it was but the education spread it gave was immense. It took DGST to another level as a small informal group. We should be proud of our achievements. And hundreds of new members came into DGST Fold solely for the purpose of education, I am sure.

On the persistent demand of young professionals, we have embarked upon another session of GST Relived? In all ten sessions will be held and we shall try over 15 new young speakers from DGST Group – four are in the first session on 20th December 2025 which is being inaugurated by our Chairman PK Sir. First Session we had Chief Guest Rajesh Jain, Judicial Member GST Tribunal.

The Supreme Court judgment in Madras Bar Association v UOI was discursive indeed and it caused tremendous consternation amongst all of us. But let us wait and watch the developments and hope GST Tribunals start functioning sooner than later.

Your Core Team is quite rectitude in all respects – everything organized beautifully. Rajmani and Rashmi Jain organize everything with such exactitude that it defies logic – food perfect, infra facilities perfect and timings exquisite.

DGST Research Committee – a group of 12 members held their first meeting and a video was released for all the members. In all I expect around 50 hours work before we hold a full day session for the benefits of all the Members – may be towards the end of January or February. A lot of hard work indeed and enormous study required and all the Members are up to the mark.

Continue to razor focus your learnings and I assure you the world will be your oyster in times to come. You shall conquer all battles you fight in courts.

Wishing you a happy new year 2026.

SV

ADV. NARENDER AHUJA

MESSAGE FROM THE CONVENOR

What a wonderful session it was! The first session under the GST RELIEVED series, held on 22.11.2025, saw the participation of around 70 members, including both young professionals and senior members. The discussions on raw law, principles of interpretation of laws, notifications, circulars, definitions including grammar was indeed spell bound and not a soul moved during three hour session – conducted by SV Sir.

Icing on the cake was that our senior member and the newly appointed Judicial Member of GSTAT, Sh. Rajesh Jain Ji, graced the occasion with his presence for full session and he enlightened us with his valuable insights for the audience. We are eagerly looking forward to the second session scheduled for 20.12.2025 probably a last session of 2025 where our Patron-in-Chief, Sh. Praveen Khandelwal Ji, will grace the occasion as the Chief Guest.

We have also had several noteworthy activities in the recent past, including a meeting of the newly formed Research Committee, during which we discussed the provisions of the European VAT. Our mentor, SV Sir, has now envisioned a new direction for us, where we will delve into the newly introduced four labour codes. Believe me friends the first session of over 2 hours expanded our horizon by leaps and bound – indeed a session worth its weight in gold

The continued energetic presence of Sh. H.C. Bhatia Sir, our most senior member, is proving immensely beneficial for the entire group, especially the young professionals. His teachings offer tremendous value to everyone in the audience.

The DGST Group has become the talk of the town, with people everywhere inquiring about the latest developments within the group. Senior members of the fraternity feel proud of the knowledge this group is sharing with young professionals. Likewise, young professionals feel equally proud to be part of these study sessions.

The release of the monthly newsletter adds significant value for the audience. The articles, beautifully written by young professionals, offer immense knowledge. The hard work put in by SV Sir in bringing out the newsletter has been a key factor in its growing success. All the contributors put forth their best efforts, enhancing their writing skills while simultaneously providing readers with rich and meaningful insights.

The gist of important judgments of the Honourable Supreme Court and various Honourable High Courts, compiled by our esteemed senior member Kumar Jee Bhat, added tremendous value to the newsletter. The entire core team, including myself, holds him in the highest regard. He is a wonderful person, and his vast knowledge is always cherished by everyone.

Last but certainly not least, I wish to extend my sincere gratitude to the entire core team of the group, led by our mentor, for their dedicated efforts throughout the year. Every member of the core team—performed their responsibilities beautifully.

Looking ahead to the New Year with the same positive spirit, I conclude my thoughts by wishing you all a very Happy New Year 2026.

CA ANKIT MITTAL

GSTR-9/9C Is Changing Again — What Every Professional Must Know for FY 2024–25.

How GSTR-9 Is Viewed in Practice.

Over the years, GSTR-9 has almost earned an informal tag among taxpayers — *"the place where everything can finally be corrected."* And to be fair, this feeling is understandable. When you prepare the annual return, the books of accounts, GSTR-1, GSTR-3B and ITC records finally come together in one place. That is why this exercise often brings out mismatches and missed entries that may not have been visible during monthly filings.

But treating GSTR-9 as a "last resort" is only partly true.

If a taxpayer identifies any missed liability and **voluntarily communicates it to the department** before a notice under Section 73 or 74 is issued, the law does not stop them from paying the tax along with interest and closing the matter. This itself shows that GSTR-9 is not the only opportunity for correction. However, it still remains a **valid and legally recognised return** under Section 44 of the CGST Act.

Courts have reinforced this position as well. Several High Court judgments have held that disclosures made in **GSTR-9 carry legal weight**, even when those details were not reflected earlier in GSTR-3B. Especially in the context of ITC, courts have accepted that reporting the correct figures in the annual return validates transparency and intent.

This becomes extremely relevant when a Show Cause Notice is issued. One of the biggest disputes in GST litigation is whether a case falls under:

- **Section 73** or **Section 74**.

If an Assessee has **truthfully reported all transactions in GSTR-9**, even if they missed reporting them monthly, the allegation of suppression becomes much harder for the department to sustain. This often shifts the matter from Section 74 to Section 73 — and that shift alone is a huge relief.

Why this shift is critical.

The difference between Section 73 and 74 is not procedural — it is **financial and strategic**:

Aspect	**Section 73 (Non-Fraud)**	**Section 74 (**suppression, wilful misstatement, or fraud).
Limitation	3 years	5 years

Aspect	Section 73 (Non-Fraud)	Section 74 (suppression, wilful misstatement, or fraud).
Penalty	NIL (if paid before SCN) or 10%	100%
Burden of proof	On department	On department, but higher threshold

As we now approach FY 2024-25, While the new Section 74A replaces the traditional 73/74 framework, the core distinction between fraud and non-fraud continues to be relevant for determining penalty and intent.

1. How GSTR-9 Has Evolved — and Why FY 24–25 Matters.

The 2024–25 filing will be the eighth annual return under GST. In the early years, many tables were optional and the format was relaxed due to system limitations. But as e-invoicing, 2B stability, and data analytics matured, GSTR-9 became more structured.

This year, **Notification 13/2025** introduced:

- New ITC tables like **6A1, 7A1, and 8H1**
- Mandatory reporting in Tables **12 and 13**
- Clear segregation between current-year ITC and earlier-year ITC

2. Breaking Down GSTR-9: The Three-Part Reporting Structure

We can understand GSTR-9 better by dividing it into three parts: **(1)** turnover & tax tables (for Current year - 4, 5, 9, for subsequent year - 10, 11, 14), **(2)** ITC tables (for Current year 6, 7, for subsequent year 12, 13 & Table 8 for both the period), and **(3)** the remaining tables including HSN and other disclosures.

2.1 Lets discuss How Turnover & Tax liability under the Table 4, 5, 9, 10, 11 and 14 Work Together to Present the Correct Turnover and Tax Position.

In GSTR-9, the actual validation of outward tax liability does not happen in a single table. It is a **linked flow** across Tables **4, 5, 9, 10, 11 and 14**, and the starting point of the entire exercise is always **GSTR-3B**, because the tax paid during the year is frozen based on 3B.

Even though Tables 4 and 5 are auto-populated from GSTR-1, the values reported here ultimately determine the **"tax payable"** figure that flows into **Table 9**. Table 9 then compares this tax payable with the **"tax paid"** as per GSTR-3B for current year. Any difference has to be dealt with either through **additional payment (DRC-03)** or **refund**, depending on the situation.

Case 1 — Actual turnover (as per books) is MORE than what was reported in GSTR-1/GSTR-3B

If the books show that taxable turnover is higher than what was reported in GSTR-1 or what was considered in GSTR-3B, and the missing supplies were **not reported subsequent year within the prescribed time**, then:

1. **Increase the taxable value directly in Table 4** (because it belongs to current year and has not been reported subsequently)
2. This automatically increases the **tax payable** in Table 9
3. Table 9 then compares:

- **Payable (higher)** vs. **Paid (as per GSTR-3B)** → The difference appears in **Column 9 of Table 9**

4. This difference must be paid through **DRC-03**

➤ **Example – Turnover underreported in the year**

- Actual taxable turnover as per books: **₹1,20,00,000**
- Declared during the year: **₹1,00,00,000**
- Missed turnover not reported in next FY

Adjustment: Add ₹20,00,000 in Table 4.

- Tax payable increases (Under table 9 column no 2)
- 3B tax paid remains same (Under table 9 column no 3 to 8)
- Differential tax shown in Table 9 column 9→ payable through DRC-03

Case 2 — Tax paid during the year is MORE than actual liability (books show lower turnover)

If more tax was paid in GSTR-3B than what the books reflect as actual taxable turnover:

1. **Report the correct (lower) value in Table 4**
2. Table 9 now shows **Payable < Paid**
3. Column 9 of Table 9 will show **excess tax paid**
4. Refund can be claimed subject to **unjust enrichment**

➤ **Example – Excess tax paid**

- Actual taxable turnover: **₹1,00,00,000**
- Declared and tax paid on: **₹1,20,00,000**

Adjustment: Report ₹1,00,00,000 in Table 4.

- Payable becomes lower
- Paid remains high → excess of 20 lakhs turnover shown
- Table 9 shows excess tax → eligible for refund (subject to conditions)

Case 3 — When part of the tax was paid in the *subsequent year* (spillover within allowed period) then in such cases:

1. **Only the turnover actually reported in FY 24–25 through GSTR-1/GSTR-3B should be shown in Table 4.**

2. **The portion of turnover and corresponding tax that was reported in the next year (25–26) should not artificially inflate Table 4. It must instead be shown in Table 10, which is meant for current-year supplies reported in the next year.**
3. **In Table 9, the tax payable for FY 24–25 should match the tax paid through GSTR-3B of the same year.**
4. **The spillover tax paid in the next year will be captured through Table 10 (Value & Tax) and Table 14 (tax).**

If the spillover has been paid correctly in the next year, no DRC-03 is required, because the liability is already settled within the allowed time.

➤ **Example – Liability paid next year**

- Actual 24–25 tax liability: **₹18,00,000**
- Paid during 24–25: **₹15,00,000**
- Paid in April 2025 (within due date): **₹3,00,000**

Adjustment:

- Report 15L turnover in Table 4
- Table 9 payable = ₹15,00,000
- Paid = ₹15,00,000 as per GSTR3B
- Show spillover Value in **Table 10** and tax in Table 14

Result → No DRC-03 needed

Case 4 — When Excess Tax Paid in FY 24–25 is Reversed in FY 25–26 (Within Allowed Time)

1. Table 4 must only show the turnover actually reported in GSTR3B of FY 24–25. Even if the taxpayer realizes later that the turnover was overstated, the annual return should follow the figures as filed in GSTR-3B for that year.
2. Table 9 will therefore show a higher "tax payable", because it is based on the outward supplies declared during the year.
3. Tax paid during FY 24–25 (as per GSTR-3B) will also reflect this higher amount. So Table-9 will still match — payable = paid.
4. The correction made in FY 25–26 (i.e., the reversal of excess turnover and tax) must be shown in:

✓ **Table 11 → Reductions relating to FY 24–25 reported next year.**

✓ **Table 14 → Negative payable amount reporting.**

➤ **Example – Excess paid earlier, reversed next year**

- Actual 24–25 liability: **₹10,00,000**
- Paid during 24–25: **₹12,00,000**
- Excess reversed in next FY: **₹2,00,000**

Adjustment:

- Table 4 = turnover corresponding to ₹12,00,000
- Table 9 shows tax paid on ₹12L, tax payable on ₹12L → result zero
- Table 11 records the reduction -₹2,00,000/- along with the tax.
- Table 14 shows the negative entry of tax reversed in subsequent year.

2.2 Understanding ITC Reporting in Tables 6, 7, 12 & 13 (and How the New Row 6A1 Works)

Table 6 has undergone an important change this year with the introduction of **Row 6A1**, and this change directly addresses a long-standing reconciliation issue. As per the **Notification 79/**2019, the table no 6, 7 of the annual return should report only the ITC **pertaining to the financial year for which GSTR-9 is being filed**. That means Table 6 should therefore reflect only the ITC of FY 2024–25.

However, in practice, the figure auto-populated in Table 6 comes from **GSTR-3B**, and 3B often includes ITC relating to earlier years — because ITC of a Current year is allowed to be claimed in a later year.

To separate this, **Row 6A1 has now been introduced**, where the taxpayer must report **ITC relating to earlier years that was claimed during 2024–25**. Once this earlier-year ITC is isolated in Row 6A1, the remaining ITC in Table 6 represents **only the ITC truly belonging to FY 2024–25**, which can then be further broken down into inputs, input services, capital goods, RCM, etc.

A special clarification has also been issued this year for reversals and reclaims under **Rule 37** and **Rule 37A**. ITC under these rules is treated as belonging to **the year in which the condition of the rule is fulfilled**.
For example, if an invoice pertained to FY 2020–21 but payment to the vendor was made in FY 2024–25, and the ITC was reclaimed in 3B of 2024–25, then this ITC is considered **ITC of FY 2024–25**, not of 2020–21. Therefore, it will **not** be reported in Row 6A1 (Earlier-year ITC). Instead, it will be reported in **Row 6H**, which specifically deals with reclaimed ITC. This is a major change in how ITC timing is interpreted in GSTR-9.

On the reversal side, **Table 7** has now been made fully mandatory with item-wise reporting. Earlier, multiple reversals could be clubbed into one row, but from FY 2024–25 onwards, every reversal — Rule 42, Rule 43, Section 17(5), ineligible credits, year-end provisions, etc. — must be reported **separately** in its respective row whereas few new rows also being added through amendment (Such as 7A1- Rule 37A). This increased the clarity and reduces the scope for disputes during scrutiny.

For ITC movement across financial years, **Tables 12 and 13** continue to play an important role.

- **Table 12** captures ITC of the current year that was **reversed** in the next year within the specified time.
- **Table 13** captures ITC of the Current year that was **claimed** in the next year with in the specified time.

However, an exception remains for Rule 37 and Rule 37A credits — since these are treated as ITC of the year in which the condition is met, **they will not be reported in Table 12 or 13**, but instead in 6H as part of the current-year ITC cycle.

Finally, if any **excess ITC was claimed** during the year and **not reversed** in the next year within the allowed period, the taxpayer should voluntarily reverse such ITC through **DRC-03 with interest**. Failing

to do so may lead to future litigation, especially with system-based mismatch reporting becoming more stringent.

3.3 Table 8: The New System-Driven ITC Reconciliation (2B vs. Availment)

For FY 2024–25, **Table 8 has been completely redesigned**, and this version of the table is far more analytical than earlier years. The intention is clear: the department now wants a structured reconciliation **strictly based on GSTR-2B**, not on supplier statements or 2A. The table aims to answer one straightforward question:

"How much ITC of the current financial year appeared in 2B, and how much of that credit did you actually avail?"

Table 8A – ITC as per 2B for FY 2024–25 (April 2024 to November 2024)

Unlike earlier years, Table 8A now captures **only the ITC belonging to FY 2024–25**, and that too **only to the extent it appears in GSTR-2B from April 2024 to November 2024**.

This ensures that:

- Only FY 24–25 invoices are considered
- Only invoices reported by suppliers within the statutory time limit are included
- Unrestricted, clean 2B-based ITC data becomes the base for reconciliation

This is the number that the department considers as **"eligible system credit for the year."**

Table 8B – ITC Availed During the Year (Only from 6B)

The department wants to compare **invoice-based ITC as per 2B vs invoice-based ITC availed**, without the noise of RCM, imports, or recredit entries.

Table 8C = Current-year ITC (as per 2B) that got availed in the *next* year, but still within the permissible window.

8A (ITC in 2B) minus 8B (ITC availed during 2024-25 related to 2024-25) minus 8C (ITC availed during 2025-26 related to 2024-25) = the real gap the department wants to analyse.

3. Table 8D – The "Lapse or Excess" Indicator

This is the row that matters the most.

If 8D is POSITIVE:

This means **ITC appeared in 2B but was never availed**.

The system treats this as **lapsed credit**.

Professionally, we know from Circular 170 that ITC cannot truly lapse — but the department still wants this number to:

- Identify where taxpayers have left credits unavailed
- Flag possible cases of vendor non-compliance
- Understand sector-wise credit utilisation patterns

If 8D is NEGATIVE:

This is a **high-risk indicator**.

It implies that:

You availed more invoice-based ITC than what appeared in 2B.

This could arise due to:

- Supplier non-reporting
- Timing mismatches
- Errors in GSTR-1
- Legacy invoices being availed late
- Wrong claims in 3B

Negative 8D is one of the values most likely to trigger a **system-generated 74A intimation** in FY 24–25.

8H1 New Row – ITC on Imports (BOE Not Claimed During the Year)

Another new addition this year is a row for **import of goods**, specifically for cases where:

- The BOE pertains to FY 24–25,
- But the ITC was **not claimed during the year**,
- And was later availed within the permissible period.

3.4 Reclaimed ITC (Rule 37 / 37A / Reversal Reclaims) Should NOT Appear in Table 8

A very important point:

Reclaimed ITC does not form part of the Table 8 reconciliation.

Why?

Because adding reclaimed ITC here will distort the purpose of Table 8, which is strictly a **2B vs invoice-based availment** comparison.

Reclaims belong in **Table 6H** and the Rule-based sections, not in Table 8.

3.5 Closing the GSTR-9 Structure (Remaining Tables)

With the introduction of the revised format for FY 2024–25, it is important to note that **most of the remaining tables in GSTR-9 are optional** and do not materially impact the tax or ITC reconciliation. Tables relating to **demands, refunds, late fees, and inward-side HSN (Tables 15, 16, 18, 19)** continue to remain optional for regular taxpayers.

The only table that professionals should pay attention to at this stage is:

Table 17 – HSN Summary of Outward Supplies

This table remains **mandatory**, and the correctness of HSN reporting is crucial because this dataset feeds into departmental analytics

3. GSTR-9C — A Practical Note on the Changes for FY 2024–25

Unlike GSTR-9, there aren't many changes in the format of GSTR-9C this year. But a few updates and clarifications are important for professionals to keep in mind while preparing the reconciliation.

4.1. Separate Reporting for E-Commerce Supplies.

This year, a separate row has been added to report turnover and tax relating to **supplies made through e-commerce operators**.

The idea is simple:
Whatever is reported under Section 52 in terms of TCS and whatever the operator has disclosed should now clearly match with the data in 9C.

It brings better visibility and avoids confusion later during scrutiny.

4.2. Table 12B is Now Practically Irrelevant

A very helpful clarification came through the FAQs — **Table 12B has become redundant**.

Earlier, this table was used to match ITC of earlier years claimed in the current year. But now, with **Table 6A1 in GSTR-9**, the earlier-year ITC is already carved out.

Because of this:

- Table 7J of GSTR-9 no longer includes earlier-year credits
- And when we compare ITC between books and GSTR-9C, we should only compare **current year ITC**

If we again add earlier-year ITC in Table 12B of 9C, the numbers will unnecessarily mismatch.

So practically, **Table 12B doesn't serve a purpose anymore** for FY 24–25.

4.3. Payment of Additional Liability — ITC Can Be Used

There has always been confusion on this point. The form earlier indicated that any additional liability found during the preparation of 9C had to be paid **in cash**. But the Act never imposed such a restriction.

This year, the wording has finally been corrected:

Additional liability arising from GSTR-9C can now be paid through ITC as well, not only cash.

This makes the process more practical and avoids needless cash outflow for the taxpayer.

Closing Note

That's all for GSTR-9C this year — no big structural changes, but a few tweaks that make reconciliation clearer and preparation easier.

If you want to discuss any particular issue or working, feel free to reach out on the **DGST group** — happy to help any time.

Regards,
CA Ankit Mittal

ADV. SUSHIL VERMA

"TAX TRIBNUNALS IN INDIA – WHAT DOES SUPREME COURT SAY ABOUT THESE TRIBUNALS, ITS POWERS AND ITS OBLIGATIONS TO TAXPAYERS AND TO THE LAW?"

A LONG ARTICLE – SORRY BUT I THOUGHT IN ONE GO WE SHOULD FINISH THIS….

THE INDIAN JUDICIAL SYSTEM

The judicial system of India is divided into three tiers. The subordinate courts are vested with the original jurisdiction in all matters except those, which are barred either expressly or impliedly. The High courts in general have appellate and revisional jurisdiction in the respective States along with the jurisdiction to issue prerogative writs. Some of the High Courts have original jurisdiction. The High Courts also entertain appeals/writs against the judgments rendered by some of the Tribunals. The Supreme Court has been conferred with original jurisdiction under Article 131, " (disputes between two or more States, or between the Government of India and one or more States, or disputes arising out of the election of the President and Vice-President of India) and advisory jurisdiction under Article 143, where the President of India may seek the opinion of the Court on a particular issue of fact or law of general public importance. It can issue the prerogative writs under Article 32 of the Constitution and has appellate jurisdiction against the orders passed by the High Courts, Tribunals or the Appellate Tribunals established under various Statutes. The Court also has discretion to entertain Special Leave Petitions under Article 136 on substantial question of law or issues of general public importance.

The delay in justice administration, is one of the biggest obstacles which have been tackled with the establishment of Tribunals. According to H.W.R Wade,

"The social legislation of the twentieth century demanded tribunals for purely administrative reasons; they could offer speedier, cheaper and more accessible justice, essential for the administration of welfare schemes involving large number of small claims. The process of Courts of law is elaborate, slow and costly….Commissioners of customs and excise were given judicial powers more than three centuries ago. Tax tribunals were in fact established as far back as the 18th century…"

The Law Commission of India in its 14th Report (1958) titled "Reform of Judicial Administration" recommended the establishment of an appellate Tribunal or Tribunals at the Centre and in the States. Later, in its 58th Report (1974) titled 'Structure and Jurisdiction of the Higher Judiciary', the Law Commission urged that separate high powered Tribunal or Commission should be set up to deal with the service matters and that approaching the Courts should be the last resort.

The Supreme Court is the final appellate body for specific tribunals, while the Income-Tax Appellate Tribunal (ITAT) and others are subject to appeal to the High Courts, and then potentially the Supreme Court. The Supreme Court has also been involved in establishing the legal framework for tribunals and

their independence, including striking down the National Tax Tribunal (NTT) and advocating for administrative reforms to ensure fairness. The Supreme Court is the final appellate body for specific tribunals, while the Income-Tax Appellate Tribunal (ITAT) and others are subject to appeal to the High Courts, and then potentially the Supreme Court. The Supreme Court has also been involved in establishing the legal framework for tribunals and their independence, including striking down the National Tax Tribunal (NTT) and advocating for administrative reforms to ensure fairness.

Tribunal is a specialized, quasi-judicial body established to resolve specific disputes, such as administrative or tax-related issues. It adjudicates disputes, determines rights, and reviews administrative decisions. They serve as alternatives to traditional courts and specialize in providing faster, cost-effective, and expert resolutions for particular kinds of cases. Tribunals reduce the burden on regular courts and provide specialized dispute resolution that is swift, efficient, and accessible. IN GST regime in India, the GST TRIBUNALS are still to start functioning and over 7 lakhs appeals are pending to be filed all over INDIA, as per rough estimates.

2. The original Constitution did not include provisions related to tribunals. However, the 42nd Amendment Act of 1976 introduced Part XIV-A, titled "Tribunals," which consists of two articles:

Article 323A – Pertains to administrative tribunals.
Article 323B – Covers tribunals for other specific matters

Article 323A Grants Parliament the power to establish administrative tribunals for resolving disputes related to recruitment and service conditions of individuals employed in the Central and state governments, local bodies, public corporations, and other public authorities.

Article 323B Authorizes both Parliament and state legislatures to create tribunals for various matters, including industrial and labor disputes, foreign exchange, land reforms, elections, rent and tenancy rights, and more.

3. The leading SC judgments about role of Tribunals in India are as follows, to mention only a few;

S.P. Sampath Kumar v. Union of India (1987 Recognized tribunals as substitutes for High Courts and upheld their constitutional validity.

L. Chandra Kumar v. Union of India (1997)- Declared that tribunals cannot act as substitutes for High Courts and must be subject to judicial review under Article 226 and 227.

Madras Bar Association v. Union of India 2014- Administrative support for all tribunals should come under the Ministry of Law and Justice.

Rojer Mathew versus South Indian Bank Limited & ors, 2019- The impact of amalgamation of tribunals should be analysed with judicial impact assessment.

Madras Bar Association versus Union of India, 2020 National Tribunals Commission should be set up to supervise appointments, as well as functioning and administration of tribunals.

Madras Bar Association versus Union of India, 2021- Struck down various provisions in tribunal reforms that undermined judicial independence. AND STILL IN SUPREME COURT AS OF TODAY. Madras Bar Association versus Union of India, 2021[25] The Court struck down provisions related to the four-year tenure and minimum age requirement of 50 years for members

LEGISLATIVE FUNCTIONS OF TRIBUNALS.

- The Tribunal has to exercise its powers in a judicious manner by observing the principles of natural justice or in accordance with the statutory provisions under which the Tribunal is established. There may be a lis between the contending parties before a statutory authority, which has to act judiciously to determine the same. There may not be a lis between the contending parties, the tribunal/authority may have to determine the rights and liabilities of the subject. In both the situations, it will be known as a quasi-judicial function. The word 'quasi' means 'not exactly'.

"**Where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act**.

- The Law Commission in 215th Report (2008) titled "L. Chandra Kumar be revisited by Larger bench of Supreme Court of India", pointed out that the Administrative Tribunals were conceived and constituted as an effective and real substitute for the High Courts as regards service matters are concerned. The power of judicial review of the High Courts cannot be called as inviolable as that of the Supreme Court. **The very objective behind the establishment of the Administrative Tribunals will stand defeated if all the cases adjudicated by them have to go before the concerned High Court**. However, the Commission did not record any explanation/reason as to how the power of judicial review of the High Court could be less inviolable than the Supreme Court, particularly after the seven-Judge Bench judgment in L. Chandra Kumar v. Union of India.

- Though the term 'tribunal' has not been defined, but there are cases wherein Courts have laid down the requisites of tribunals. In Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand, it was held that to determine whether an authority acting judicially was a Tribunal or not, the principal test was whether it was vested with the trappings of a Court, ***such as having the authority to determine matters, authority to compel the attendance of witnesses, the duty to follow the essential rules of evidence and the power to impose sanctions.***

- In Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi, 53 the Supreme Court held that the award of a Tribunal can be challenged under Article 136 of the Constitution if the Tribunal is the creature of Statute and observes the provisions of special Act and when it is vested with the functions of the Court or necessary trappings of the Court. Whereas, in Associated Cement Co. Ltd. v. P.N. Sharma,54 it was held that the Courts alone have no monopoly to exercise judicial power and thus, the vesting of trappings of the Court is not an essential attribute of a Tribunal.

- The difference between a Court and a Tribunal is the manner of deciding a dispute. However, the Supreme Court in Virindar Kumar Satyawadi v. The State of Punjab,57 observed that:

- 'What distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasijudicial tribunal, what has

to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.'

- Tribunals basically deal with the cases under special laws and therefore they provide special adjudication, outside Courts. In State of Gujarat v. Gujarat Revenue Tribunal Bar Association, 58 it was observed that:

- '…..a particular Act/set of Rules will determine whether the functions of a particular Tribunal are akin to those of the courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority, i.e., a situation where, (a) a statutory authority is empowered under a statute to do any act (b) the order of such authority would adversely affect the subject and (c) although there is no lis or two contending parties, and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi-judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a 'court', but not all. In case certain powers under C.P.C. or Cr.P.C. have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a court.'

- As the Tribunals are vested with the judicial powers which had been hitherto vested in or exercised by Courts, the Tribunals should possess the same independence, security and capacity which are possessed by the judges. However, if the Tribunals are intended to serve an area which requires specialised knowledge or expertise, the appointment of Technical members in addition to judicial members must always be welcomed, as they can provide an input which may not be available with the judicial members. When any jurisdiction is shifted from Courts to Tribunals on the ground of pendency and delayed Court proceedings and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only the judicial members. But when the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, the presence of Technical members would be useful and necessary. The indiscriminate appointment of technical members in all the Tribunals will have weakening and adverse effect on its working.

- Judgments of the Supreme Court (SC) are binding on all courts and tribunals in India due to Article 141 of the Constitution. Similarly, a High Court's decisions are binding on tribunals under its superintendence, a principle reiterated by the Supreme Court. **Tribunals cannot ignore higher court judgments and may be held in contempt for doing so, although the Supreme Court itself can review and overturn its own prior decisions.** This question directly arose before the Supreme Court in **East India Commercial Co. Ltd v. Collector of Customs (1962).** The Court observed that under Article 227 the HC has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Court therefore held that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence and they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such proceeding.

- In 2014, the Supreme Court while reviewing the National Tax Tribunal Act, 2005 stated that when a tribunal is vested with jurisdiction of High Courts, the tribunal must be free from executive interference. Any involvement of the central government in administrative activities of tribunals (such as sanctioning leave for members) would affect their independence. The components which determine the independence of tribunals include: (i) selection process of the members, (ii) composition of the tribunals, and (iii) terms of office and service conditions of the members.

Binding Nature of Orders of Tribunal :

1) The first Appellate Authority or the Assessing Officer are bound by the orders of the Tribunal. Even where the Assessee or the department has pursued the matter in reference proceedings, it does not act as a kind of stay of operation of the order of the Tribunal.

2) The Assessing Officer cannot ignore the decision taken by the Tribunal in favour of the Assessee and take a contrary view – *ITO vs. Siemens India Ltd. & Anr. 156 ITR 11 (Bom.), 28 STC 483 Sree Rajendra Mills Ltd. vs. CIT; 109 ITR 229 (Cal.), Russell Properties Pvt. Ltd. vs. A. Chowdhury, Addl. CIT, West Bengal & Others.*

3) The Assessing Officer cannot refuse to follow the order passed by the Commissioner against the application u/s. 132(11) on the ground that the Commissioner had no jurisdiction over the matter –***Union of India vs. Pradip Kumar Saraf & Ors. 207 ITR 679 (Cal).***

4) *Union of India & Ors. vs. Kamlakashi Finanace Corporation Ltd. – AIR (1992) 711 (SC)*
It cannot be too vehemently emphasized that it is of utmost importance that in disposing of the quasi-judicial issues before them, revenue officers are bound by the decision of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal.

The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department – in itself an objectionable phrase – and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to Assessee and chaos in administration of tax laws.

CIT vs. Ralson Industries Ltd. – (2007) 288 ITR 322(SC)

5). When an order is passed by a higher authority, the lower authority is bound thereby
Keeping in view the principles of judicial discipline. This aspect of the matter has been highlighted by this Court in *Bhopal Sugar Industries vs. Income Tax Officer, Bhopal [AIR 1961 SC 182]* in the following terms (Page 622):

(a) "If a subordinate tribunal refuses to carry out directions given to it by a superior tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice and we have indeed found it very difficult to appreciate the process of reasoning by which the learned Judicial Commissioner while roundly condemning the respondent for refusing to carry out the directions of the superior Tribunal, yet held that no manifest injustice resulted from such refusal.

(b) It must be remembered that the order of the Tribunal dated April 22, 1954, was not under challenge before the Judicial Commissioner. That order had become final and binding on the parties, and the respondent could not question it in any way. As a matter of fact the Commissioner of Income-tax had made an application for a reference, which application was subsequently withdrawn. The Judicial Commissioner was not sitting in appeal over the Tribunal and we do not think that, in the circumstances of this case, it was open to him to say that the order of the Tribunal was wrong and, therefore there was no injustice in disregarding that order. As we have said earlier such a view is destructive of one of the basic principles of the administration of justice."

SUPREME COURT - TRIBNUNAL DIRECTIONS ARE BINDING.

The Supreme Court in *Bhopal Sugar Industries Ltd. vs. ITO (1960) 40 ITR 618 (SC)* observed that an assessing authority is bound to carry out the directions given by the superior tribunal. It stated as under: *Refusal by a subordinate court is in effect a denial of justice, and "is further more destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of courts".*

- The Supreme Court in *UOI vs. Kamlakshi Finance Corporation Ltd. AIR 1992 SC 711* at 712 emphasised: *The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not 'acceptable' to the Department – in itself an objectionable phrase – and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court.*

- The principle of judicial discipline as expounded in the case of *Kamlakshi Finance Corporation Ltd.(supra)* has been followed in the case of *Nicco Corporation Ltd. vs. CIT (2001) 251 ITR 791 (Cal.) (HC)*.

- Judgment delivered by the Income-tax Appellate Tribunal is binding on the Assessing Officer. The Assessing Officer is bound to follow the judgment in its 'letter and spirit'. This is necessary for judicial unity and discipline as the Assessing Officer is an inferior officer vis-à-vis the Tribunal. Hence, the Assessing Officer should not attempt to distinguish the same on untenable grounds. In this context, it will not be out of place to mention that "in the hierarchical system of courts" which exists in our country, "it is necessary for each lower tier" including the High Court, "to accept loyally the decisions of the higher tiers".

- Hence, I.T.O. cannot refuse to follow orders of Tribunal and such order would be without jurisdiction as held in *Voest-Apline Ind. GmbH vs. ITO. (2000) 246 ITR 745 (Cal.) (HC)*.

- In *Assistant Collector of Central Excise vs. Dunlop India Ltd. (1985) 154 ITR 172* at 173 (SC): *"It is inevitable in a hierarchical system of courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. But the judicial system works only if someone is allowed to have the last word and that last word, once spoken, is loyally accepted"*. Also refer *Bank of Baroda vs. H.C. Shrivastava (2002) 256 272 385 Bom H.C*.

- In *Cassell and Co. Ltd. vs. Broome (1972) AC 1027 (HL)*, the House of Lords observed we hope it will never be necessary for us to say so again that : "in the hierarchical system of courts" which exists in our country, it is necessary for each lower tier, including the High Court "to accept loyally the decisions of the higher tiers". `The better wisdom of the court below must yield to the higher wisdom of the court above'. That is the strength of the hierarchical judicial system.

- In *Cassell vs. Broome (1972) AC 1027*, commenting on the Court of Appeal's comment that *Rookes vs. Barnard (1964) AC 1129*, was rendered *per incuriam*, Lord Diplock observed (p. 1131): *"The Court of Appeal found themselves able to disregard the decision of this House of Rookes v. Barnard by applying to it the label per incuriam. That label is relevant only to the right of an appellate court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate court or to the right of a judge of the High Court to disregard a decision of the Court of Appeal".*

- In this connection reliance is also placed on the observations of the Supreme Court in the case of *East India Commercial Co. Ltd. vs. Collector of Customs AIR 1962 SC 1893* at page 1905. *"Where there is a decision of a higher appellate authority, the subordinate authority is bound to follow such decision. Hence, an order passed by the Income Tax Officer following the decision of the Appellate Tribunal cannot be held to be erroneous and such an order cannot be revised u/s. 263". Russell Properties Pvt. Ltd. vs. A. Chowdhury, Addl. CIT (1977) 109 ITR 229 (Cal.) (HC)*

- Ours is a unified judiciary. According to Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The expression "all courts means courts other than the Supreme Court". The decision of the Supreme Court is binding on all the High Courts. In other words, the High Courts cannot hold the law laid down by the Apex Court is not binding on the ground that relevant provisions were not brought to the notice of the Supreme Court, or the Supreme Court laid down the legal position without considering all points. The decision of the Apex Court binds both the pending cases and the future ones. Even the directions of the Apex Court in a decision constitute binding law under Article 141 *Vishaka vs. State of Rajasthan AIR 1997 SC 3011*.

- It is pertinent to state that : the Supreme Court is not bound by its own decisions and may also overrule its previous decisions either by expressly saying so or impliedly by not following them in a subsequent case. *Dwarka Das Shrinivas vs. Sholapur Spinning and Weaving Company Ltd.,- AIR 1954 SC 119)* and *C N Rudramurthy vs. K Barkathulla Khan (1998) 8 SCC 275*.

- Thus, in view of Article 141 of the Constitution of India, when there is a decision of the Apex Court directly applicable with all the force to the case on hand, the learned Single Judge could have decided the Writ Petitions following the decision of the Apex Court, holding that the decision of the Division Bench is contrary to the law laid down under Article 141 of the Constitution of India. *Sidramappa & Others vs. State of Karnataka and others AIR 2014 (Karn.)100*, at 103 (Full Bench).

- Two member bench not agreeing with opinion of earlier three member bench, may refer to the President for a larger bench as held in *Union of India vs. Paras Laminates Pvt. Ltd. (1990) 186 ITR 722 (SC)*. Judicial discipline and propriety demands that a Bench of two judges of the Supreme Court should follow a decision of a Bench of three judges. If the Bench of two judges concludes that an earlier judgment of a Bench of three judges is so very incorrect that in no circumstances can it be followed, the proper course for the Bench of two judges to adopt is to refer the matter before it to a Bench of three judges, setting out the reasons why it could not agree with the earlier judgment. If, then, the Bench of three judges also comes to the conclusion that the earlier judgment of a Bench of three judges is incorrect, a reference to a Bench of five judges is justified *Pradip C. Parija vs. Pramod C. Patnaik (2002) 254 ITR 99 (SC)*.

- No co-ordinate Bench of Supreme Court can even comment upon, let alone sit in judgment over the discretion exercised or judgment rendered in a case or matter before another co-ordinate Bench. *Sub-Committee of Judicial Accountability vs. UOI (1992) 4 SCC 97*.

- On 18.01.2018 a Division Bench of the Supreme Court in *National Travel Services vs. CIT (2018) 401 ITR 154 (SC)*, directed, after giving detailed reasons to place the matter before the Hon'ble Chief Justice for reconsideration of decision in *CIT vs. Madhur Housing and Development Co. (2018) 401 ITR 152 (SC)*. Incidentally it is noticed that Hon'ble Mr. Justice Rohinton Fali Nariman is common in both the cases. Matter stands referred to the larger bench.

- Further if the order of an appellate authority is the subject-matter of further appeal that cannot be the ground for not following it, unless its operation has been suspended by a competent court. If this rule is not followed, the result will not only be undue harassment to assesses but also chaos in the administration of tax laws. The State is bound to be fair to those with whom it has to deal, and to the extent possible, it must avoid any harassment to the Assessee public without causing any loss to the exchequer. *Nokia Corporation vs. DIT (2007) 292 ITR 22 (Delhi) (HC)*.

- In case for any reason the Executive / Department does not agree with the decision of the Supreme Court it can seek review of the decision. However, the experience has been that the executive has sought to amend the law.

IMPACT OF DECISION OF NON-JURISDICTIONAL HIGH COURT OVER APPELLATE AUTHORITIES AND THE TRIBUNAL

- In *CIT vs. Sarabhai Sons Ltd 147 ITR 473* the Gujarat High Court has observed that one High Court should follow the other High Court with a view to maintain uniformity in tax matters.

- The Bombay High Court in *Godavari Das Saraf 113 ITR 589* has held that decision of another High Court should have more than persuasive value for another High Court and would generally be binding on the Tribunal.

- In *Arvind Boards & Paper Products Ltd. vs. CIT (1982) 137 ITR 635* the Gujarat High Court observed: *"If one High Court has interpreted the provision or section of a taxing statute, which is an All India statute, and there is no other view in the field, another High Court should ordinarily accept that view in the interest of comity of judicial decisions and consistency in matters of application of a taxing statute".* Also refer *CIT vs. Virajlal Manilal 127 ITR 512 MP.*

- Hence as Income-tax Act is a Central legislation and applies on all the tax payers and tax administration alike, a decision of a non-jurisdictional High Court is of persuasive value and must be followed unless and until any contrary decision is available of any other High Court. In case of conflict between High Courts or debatable issue between different High Courts, the appellate authority or the Tribunal would be justified to follow one which convinces its conscience and ignore the other. In *C.I.T. vs. Alcock Ashdown & Co. Ltd. (1979) 119 ITR 164 (Bom.) (HC)* High court observed at 170: *"if any High Court has construed any section or rule and come to a particular interpretation thereof, that interpretation should be followed by this court unless there are compelling reasons brought to our notice for departing from the view taken by another High Court."*

- If different High Courts have expressed different view and it is a debatable issue, the view taken by the jurisdictional High Court would prevail and need to be followed. Refer *Taylor Instrument Co. (India) Ltd. vs. CIT (1998) 232 ITR 771 (Delhi) (HC), CGT vs. J.K. Jain (1998) 230 ITR 839 (P&H) (HC), CIT vs. Sunil Kumar (1995) 212 ITR 238 (Raj.) (HC), CIT vs. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bom.) (HC), Indian Tube Company Ltd. vs. CIT (1993) 203 ITR 54 (Cal.) (HC), CIT vs. P.C. Joshi and B.C. Joshi (1993) 202 ITR 1017 (Bom.)* (HC), *and CIT vs. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466 (SC). Same view expressed in DCIT vs. Raghuvir Synthetics Ltd. (2017) 394 ITR 1 (SC).*

- It is pertinent to note that if a decision of a particular High Court is cited and the other High Court does not agree with the same – the differing High Court would issue what in legal parlance is termed a 'speaking order'.

CONTEMPT

The law of contempt comes down heavily on judicial or quasi-judicial authority who fails to follow a binding judicial precedent of the jurisdictional High Court or the Supreme Court. Such a contempt would amount to civil contempt and the Assessing Officer, first Appellate Authority and Tribunal would be guilty of civil contempt if it chooses not to follow a binding precedent of the jurisdictional High Court or the Supreme Court. A question of bonafide or unintended violation of the principle of binding judicial precedent may result in the court taking a lenient view but if the authority on flimsy ground fails to follow a binding decision of the High Court or the Supreme Court, such authority will be guilty of civil contempt. The power to punish the civil contempt is conferred by the Contempt of Courts Act, 1952 and such powers are also conferred on High Courts under Article 215 of the Constitution of India. Reference to the contempt in this Article is limited to not following a binding precedent of a jurisdictional High Court or the Supreme Court. Non compliance with the decision of any court or the High Court or the Supreme Court by violating any interim order or final order of the court is not required to be dealt with in this Article. It may also be noted that the Tribunals do not have any power to commit any officer for contempt and application for contempt has to be made to the High Court in such a case.

In Palitana Sugar Mills (P) Ltd. vs. State of Gujarat – AIR 2007 SC 1701

"It is well settled that the judgments of this Court are binding on all the authorities under Article 141 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this Court in the earlier proceedings had only collaterally or incidentally decided the issues raised in the show cause notices. Such an attempt to belittle the judgments and the orders of this Court to say the least is plainly perverse and amounts to gross contempt of this Court… Courts have held in a catena of decisions that where in violation of an order of this Court, something has been done in disobedience, it will be the duty of this Court as a policy to set the wrong right and not to allow the perpetuation of the wrong doing. In our opinion, the inherent power will not be available under section 151, CPC as available to us in such a case but it is bound to be exercised in that manner in the interest of justice and public interest."

As we move into GSTAT ERA, let us understand the above law and always keep in mind your constitutional rights to defend the case you have and enforce the decisions of High Courts and of the Supreme Court if applicable to the given facts of your case.

CAN TRIBUNAL RECALL ITS ORDER BASED ON A SUBSEQUENT JURISDICITONAL HC OR THE SC OF INDIA RULING?

Most of us jump and file applications for rectifications or recall of the orders passed by the Tribunal when a subsequent judgment on the same issue decides the order of the tribunal to be wrong. My view is that Tribunal has no jurisdiction to recall its orders based on such subsequent developments and if it does it will exceed the jurisdiction conferred on it by the special statute.

CAN TRIBUNAL REVIEW ITS OWN ORDER AND DENY BENEFITS GIVEN IN THE ORIGINAL ORDER:

The Review by the Tribunal in exercise of the power under CGST Act is maintainable, since important facts has come to light after verification of the files and it was not been brought to the notice of the Tribunal when the earlier order dated came to be passed.

TRIBUNAL ORDER REMANDED THE MATTER. REMAND ORDER PASSED BY THE PROPER OFFICER. ASSESSEE FEELS REMAND DIRECTIONS NOT COMPLIED WITH. WHERE DOES THE APPEAL LIKE – BEFORE THE FIRST APPELALTE AUTHORITY OR DIRECT BEFORE THE TRIBUNAL?

Assessee's right to challenge the perverse, vague and wayward findings of the assessing officer is governed by its statutory right to contest the same in appeal. MOST OF US FEEL that order passed by the assessing officer giving effect to the findings of Tribunal on remand is appealable before the fir appellate authority, say Commissioner (Appeals) under section 107 of the CGST Act and not before the GST Tribunal. But one must not run-away from the sight of the fact order giving effect to the observations of the Tribunal is appealable before the Tribunal and not before the Commissioner (Appeals). Respectfully order of assessing officer to the extent it distinguishes/negates/controverts the observations of Tribunal on remand must travel by way of appeal to the Tribunal since in the instant case under reference, it usurps and unseats the authority of the Tribunal in having passed any observations on the lis which constructively binds both the parties i.e. the revenue and the Assessee. In this connection, it will be most appropriate to refer to pronouncement of the Hon'ble Visakhapatnam Income Tax Appellate Tribunal in *Cargo Handling (P.) Workers Pool* v. *Dy. CIT* [2012] 18 taxmann.com 101/50 SOT 116 (Visakhapatnam) (URO)wherein it was settled that orders passed by the Tribunal are binding on all the tax authorities functioning under the jurisdiction of the said Tribunal.

The operational part of the pronouncement in *Cargo Handling (P.) Workers Pool* (*supra*) reads:-

5.2 Since the Income tax Appellate Tribunal is exercising judicial functions, it is now settled that it has all powers of Court, i.e. it can issue summons and exercise all the powers vested in the Income tax authorities under section 131 of the Income tax Act. Hence any proceeding before the Income tax Appellate Tribunal shall be deemed to be judicial proceedings.

6.`Next we shall dwell upon the judicial rulings about the binding nature of orders passed by the Income tax Appellate Tribunal. The Hon'ble MP High Court in the case *Agarwal Warehousing and Leasing Ltd.* v. *CIT* [2002] 257 ITR 235/124 Taxman 440 has held that the orders passed by the tribunal are binding on all the tax authorities functioning under the jurisdiction of the tribunal. While so holding, it followed the decision of the Hon'ble Supreme Court in the case of *UOI* v. *Kamlakshi Finance Corporation Ltd.* AIR 1992 SC 711 which has ruled as under:'

"It cannot be too vehemently emphasized that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of appellate authorities. The order of the Appellate collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not

"acceptable" to the Department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to the Assessees and chaos in administration of tax laws".

In light of what has been settled per pronouncement of the Hon'ble Supreme Court being the final arbiter on the issue, it can safely be vouched that as per principles of judicial discipline, orders of higher authorities must be unreservedly followed by the subordinate authorities. The revenue authorities in exercise of the powers conferred upon them cannot pass phrase the expression that the order passed is not acceptable to them which as per pronouncement of the Hon'ble Supreme Court is in itself objectionable and the order passed by the superior authority will continue to have sanctity unless its operation is stayed by the higher court. It is always expected for the revenue authorities to follow the pronouncement of the higher courts in letter & spirit without ditching holes or gazing for gaps in the pronouncement. Since, in light of the divergent, contrary and antithetical views of the Hon'ble Bombay High Court and Hon'ble Punjab & Haryana High Court, issue needs to be resolved by either placing the matter before the larger benches of the respective courts or it merits consideration by the Hon'ble Supreme Court in exercise of powers conferred upon it being the court of last resort.

In a number of cases, factual or legal contentions raised by the parties are not dealt with at all resulting in applications for rectification being made subsequently to the Tribunal for considering the points omitted to be dealt with in the original order of the Tribunal. To give satisfaction to the large number of Assessees, a decision of an independent and good appellate authority is an undoubted necessity, if justice is to be done to them. There is considerable delay in disposing of the appeals and very often it is said that they, the Tribunals, spare very little time for the appellate work with which alone they are concerned. Very often the Members of the Tribunals attend the sittings at any time they choose, therefore by not conforming to regular office hours, for the disposal of the work. A Bench of two members of the Tribunal hears the appeals, but in practice the contribution to the decision of the case by one of the members is often not appreciable.

HAS TRIBUNALIZATION IN INDIA REALLY COME UP TO THE MARK?

The following extracts from the decisions of courts will show how unsatisfactorily the Appellate Tribunals have been functioning: -

Hanumantram Ramnath v. C.I.T., Bombay, (1945) 13 ITR 203 (206).

"This reference must go back to the Appellate Tribunal for the finding of further facts. As this is the second reference we have been constrained to send back out of the last ten which have come before us, and as in these cases not only is public time and money wasted, but there is also obviously a hardship cast upon the Assessee, it is in my opinion necessary that certain matters should be stated for the guidance of the Appellate Tribunal in preparing further cases.

Hira Mills Ltd. Cawnpore v. I.T.O., Cawnpore, (1946) 14 ITR 417 (427).

"Those, as we understand them, are the facts to be gathered from the statement of the case and the accompanying judgments and orders. Perhaps we may properly observe that it would be a practice more in conformity with section 66(1) of the Act and with general convenience, if the statement of the case itself had contained all the relevant facts, rather than that they should have had to be sought for in the judgments".

Badar Shoe Stores (in re:):(1946) 14 ITR 431 (433).

"We deprecate the practice, which is becoming too common, of omitting a sufficient statement of facts from the statement of the case and of referring this Court to a miscellany of other documents for the collection of the full facts necessary for determination of the question of law submitted, and we shall take the opportunity of referring to the unfortunate consequences of this practice at a later stage.

P.M. Huthee Singh & Sons Ltd v. C.I.T., (1946) 14 IOTR 653 (659).

"I must point out here that both in the statement of case and in the judgment there are certain inaccuracies. When a fact-finding authority is in the position of the Tribunal (whose findings of fact are considered conclusive), it is always very desirable for them to be accurate in their statement of facts. I would like to join the learned Chief Justice in emphasizing the duty cast upon the Appellate Tribunal with regard to findings of facts. Under the Act it is the final fact-finding authority and I think it is the duty of the Tribunal when they submit a statement of case to the High Court to state the facts clearly, carefully and precisely. After all the High Court only exercises an advisory jurisdiction.

Its jurisdiction is to advise the Tribunal on questions of law submitted to it and that advisory jurisdiction cannot be exercised usefully unless the fact-finding authority submits the facts carefully, clearly and accurately. I am sorry to say that in the reference with which we are dealing both in the statement of case and in the judgment - there are several inaccuracies which in some cases are patent. A little more care would have been sufficient to make the Tribunal realise that the statement of facts prepared by them was not as correct and as satisfactory as it should have been. I hope that in future the Tribunal will bear this in mind when preparing the statement of case".

Messrs Gobindaram Bros. Ltd. v. C.I.T., (1946) 14 ITR 764 (770).

"The supplemental case returned to us by the Tribunal, and which is now before us is highly unsatisfactory. The Tribunal appears to be far more concerned with excusing the statements of fact in the first case, which are unquestionably contradictory, than with complying with the directions of this Court given under Section 66(4) of the Income-tax Act.

"The matter was referred back to the Tribunal to record its finding of fact more clearly, and implicit in that direction is the taking of further evidence, if there is no other way of determining facts in order that the Tribunal may make its finding clear. For the Tribunal to say that because a fact was not before it when they disposed of the Assessee's appeal "we are unable to include it in the case at this stage of the proceedings", is a most surprising statement and is one which indicates that the Tribunal does not appreciate the duties cast upon it when this Court refers a matter back under section 66(4).

The reference back to the Tribunal was to record its finding more clearly and after a lapse of one year and ten months the matter now comes back with nothing new except the affidavit of Mr. Pralhadrai Brijlal, which is annexed to the supplemental case".

Bikaner Trading Company, Calcutta v. C.I.T., (1953) 24 ITR 419 (422).

"We have so far endured with patience the type of statements of cases which have been submitted to this Court in connection with the references that have come up this session, but we think that the limit has been passed and we ought to make some observations. One common feature of these

statements of cases is that the appeal was heard by two members, whereas the statement of the case in almost every case was drawn up by different members. In drawing up the statement, they do not seem to have always considered it necessary to refer to the appellate order, nor necessary to be exact in the statements they made, nor necessary to make a full statement of the relevant facts.

Most of the statements of cases are sketchy in the extreme and, were one to rely upon them alone, it would be impossible to answer any question at all. It has been a frequent experience this session to find two members of a Tribunal deciding a particular case in a particular manner and one of those members, acting with a third member, stating a case for this Court which differed materially from the case made and found at the hearing of the appeal. We shall not say, out of respect for the Tribunal, that the members have acted in a careless manner, but we feel bound to say that the manner in which they have discharged their duty of drawing up statements of cases for this Court can only be called carefree".

Calcutta Co. Ltd. v. C.I.T., (1953) 24 IR 454 (459).

"Unfortunately, the treatment of the question by the authorities below has been of a somewhat summary character presumably because it was raised and argued before them in a superficial form. But even if such was the case, there is hardly any justification for the Tribunal failing to realise at least what facts were required to be found and stated. The statement of the case is sketchy and bare and like most of the statements we have had to deal with during this session has hardly any appearance of a case seriously stated".

C.I.T. West Bengal v. Hanuman Prasad Bagria, (1953) 24 ITR 495 (497, 498).

"In our opinion, the statement in the case referred are clearly insufficient to enable us to determine the question raised. The appellate order passed in the case is a striking example of what appellate orders should not be and the statement of the case itself is an example of the consequences that must sometimes follow when the appeal is heard by two particular members of the Tribunal and the reference is made by two other members".

"This finding of the Income-tax Officer and the Appellate Assistant Commissioner was reversed by the Appellate Tribunal by an order which reads like an order passed by Honorary Magistrates at summary trials".

(Italics are ours).

Dhirajilal Giridharilal v. C.I.T., Bombay, (1954) 26 ITR 736(739) (SC).

"It is apparent from the following quotation from the judgment of the Tribunal that not only was its approach to the question raised before it tainted with suspicion, but it took into consideration a number of circumstances based purely on conjectures and surmises and for which there was not a scintilla of evidence on the record".

Shantikumar Narotham Morarji v. C.I.T., (1955) 27 ITR 69 (80) (Bom HC).

"There is a finding given by the Accountant Member in the following words: "We understand that no part of the borrowings were utilised in the agency firm business and therefore the interest paid was not incurred for the purposes of the business". Mr. Palkhivala has rightly quarrelled with the nature

of this finding. With respect to the learned Accountant Member, it is difficult to understand how a Judicial Tribunal can record a finding in the language in which this so-called finding has been recorded. The duty of a fact-finding Tribunal is to find facts, and not to understand that certain facts may exist or may have been established".

Indian Steel and Wire Product Ltd. v. C.I.T., (1955) 27 ITR 436 (445, 446) (Cal HC).

"Before parting with this case, I find necessary, to repeat once again what I had occasion to say during the last sittings of this Bench. If this Court cannot depend on the Tribunal even for the accuracy of the summary of the orders passed by itself, it becomes difficult to deal with these references, particularly as this Court is bound by the statements contained in the statement of the case and should not be put to the necessity of verifying and if necessary correcting the summaries given of the various orders. What makes the inaccuracy strange in the present case is that one of the members who was responsible for the statement of the case was himself a member of the Bench which had passed the appellate order relating to the first of the two chargeable accounting periods".

The Bhopal Trading Co., Kanpur v. C.I.T., (1955) 28 ITR 478 (485) (All HC).

"We are not undertaking the responsibility of framing the questions ourselves as the statement of the case as also the appellate orders are, as is too frequently the case, wholly unsatisfactory".

C.I.T. v. Malchand Surana, (1955) 28 ITR 684 (687, 690, 696) Cal HC).

"I confess I do not feel altogether happy the way in which the facts have been found in this case or the manner in which the case has been stated".

"Before I take up the question on the merits, I would say a word in passing as regards the appellate order of the Tribunal. The whole of it appears to be based upon a misconception of both facts and law.....

"It is perfectly clear that the Tribunal failed to apply themselves to the real question before them and indeed their order, one regrets to find, does not indicate that they had any appreciation of what the real question was I/

Further, the Court added that when Constitutional Courts take up challenges to orders passed by a specialised Tribunal, such Courts must tread with extreme care and caution. A body that deals with a particular type of matters on an everyday basis is expected to have greater command over the law applicable in the field and thus, a Constitutional Court would not interfere with a view expressed on interpretation unless it appears to be grossly inappropriate and almost OUTLANDISH.

@ SV

ADV. NARNDER AHUJA

TDS UNDER INCOME TAX ACT AND GST ACT

The Indian Income Tax Act provides for chargeability of tax on the total income of a person on an annual basis. The quantum of tax determined as per the statutory provisions is payable as:

a) Advance Tax and Self-Assessment Tax

b) Tax Deducted at Source (TDS)

c) Tax Collected at Source (TCS)

Tax Deducted at Source (TDS) as it is known for its short name is a very useful resource of colleting the tax by the Central Govt. Both Income Tax and GST Act have the provisions of deducting TDS on certain payments by the recipient of goods or services. The Concept was introduced to check tax evasion and to collect tax wherein the person (deductor) is made responsible for deducting and depositing tax to the Govt. on behalf of the other persons (deductee) on making payments of specific natures. The person on whose payment the tax is deducted can get the credit of the same by filing his income tax or GST return. The sole purpose of the deducting tax at source on specific payments is to bring each and every person in the tax net.

Why TDS is important under Income Tax Act

Tax Deducted at Source (TDS) serves as an important mechanism to curb tax evasion. The deductor is required to file quarterly TDS returns, which contain complete details of the payments made to the deductee. Based on this information, the Government can ascertain the probable income of the deductee. Consequently, if the deductee fails to file their income tax return, the Government may issue a notice under Section 280 of the New Income Tax Act, 2025 directing the Assessee to file their return.

Apart from the tax deducted at source (TDS) on specific payments, certain transactions required tax to be collected at source (TCS) by the seller. For instance, when a car is purchased for more than ₹10 lakh, the seller must collect TCS. Even when a person travels abroad, makes payments above a specified limit for a package tour or airfare, or remits more than ₹7 lakh overseas, the seller or service provider is required to collect TCS on the amount utilized.

Similarly there are TDS and TCS provisions under section 51 and section 52 respectively of Good and Services Tax Act, 2017 wherein certain category of recipient are required to deduct TDS or collect TCS on specific invoices and deposit the same with Govt. on behalf of that person. At present generally the department or establishment of Central or State Govt. or Local Authority or Govt. Agencies are required to deduct tax on payment made to the supplier.

PROVISIONS OF TDS UNDER NEW INCOME TAX ACT, 2025

We are all aware that the Income Tax Act, 1961 will be discontinued from 01.04.2026, and the new Income Tax Act, 2025 will take effect on that date. Starting from the financial year 2026–27, the provisions of the new Act will apply. Therefore, my focus will be on explaining and familiarizing you with the provisions of the New Income Tax Act.

The New Income Tax Act, 2025 contains only 11 sections—Section 392 to Section 402—covered under Chapter XIX: Collection and Recovery of Tax, compared to 72 sections (including sub-sections) under the Income Tax Act, 1961. These provisions have been organized in a highly structured and streamlined manner in the new Act to enhance clarity and ease of understanding. In addition, the New Act presents TDS provisions in a tabular format, making them simpler and more user-friendly.

PERSONS RESPONSIBLE FOR DEDUCTING TDS

TDS on payment of Salary

Any person responsible for paying any income chargeable under the head "Salaries" shall deduct income-tax on the amount payable and this deduction shall be made at the time of such payment at the average rate of income-tax computed on the basis of the rates in force for the tax year in which the payment is made, on the estimated income of the Assessee under this head for such year. [Section 392(1)]

The person responsible for making payment under sub-section (1), shall take into account the following particulars furnished by the Assessee, at his option, in such form and verified in such manner as may be prescribed, for the purpose of making deduction under the said sub-section and such particulars shall have an effect of increasing or decreasing the tax to be deducted:—

(i) any income under the head "Salaries" due or received by the Assessee , from any other employer or employers during the tax year;

(ii) any relief allowable under section 157, where the Assessee being a Government servant, or an employee in a company, co-operative society, local authority, university, institution, association or body is entitled for such relief;

(iii) any loss under the head "Income from house property" for the same tax year;

(iv) any income chargeable under any other head of income, not being a loss under any such head other than the loss specified in sub-clause (iii) for the same tax year;

(v) any tax deducted or collected at source under this Chapter for the same tax year;

TDS on payment other than salary

Any person, not being an individual or a Hindu undivided family, who is responsible for paying to payment specified under Section 393 to a resident shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

Section 393 is a comprehensive, consolidated section introduced in the new Income Tax Act, 2025. It replaces and rationalizes almost all existing TDS provisions from Sections 194A to 194T of the 1961 Act into a single, structured clause.

All the provisions previously covered under Sections 193 (interest on securities) to 194T (payment of remuneration, commission, bonus, incentives, etc. to partners in a partnership firm) have now been consolidated into a single Section 393 of the new Act. All other provisions—such as TDS rates and monetary exemption limits below which TDS is not deducted—remain unchanged, as there has been no revision to these rates or limits.

TDS ON PURCHASE OF PROPERTY

Buying a property other than agricultural land in India valued at more than ₹50 lakh attracts TDS under Section 393. When a buyer purchases a property exceeding this threshold, they must deduct TDS at 1% of the total transaction value.

Prior to the amendment introduced through the Finance Bill 2024, effective from 01.10.2024, TDS was not required if a property had multiple sellers and the individual share of each seller was below ₹50 lakh. However, after the amendment, TDS becomes applicable whenever the overall property value exceeds ₹50 lakh, even if there are multiple sellers and each seller's individual share is less than ₹50 lakh. The same provisions have been retained in the new Act.

TDS PROVISIONS APPLICABLE TO NRI

Section 195 which deals with the TDS deduction on payment made to Non Resident Persons have so been merged in above quoted section 393 of the New Act. of the chapter XVII deals with the provisions of Tax Deducted at Source on specific payments made to Non-Resident Person (NRI). The provisions are more or less same.

Moreover most of the payments made to the NRI are subject to tax deducted at source. Even interest payable to the NRI on Non-Resident Ordinary (NRO) Account is subject to the tax deduction at source. These provisions have been retained in the New Act.

RATES OF TDS AND OTHER ISSUES

As we earlier mentioned that section 393 is in tabular form and all the provisions regarding TDS have been drafted in those tables. Each table has four column where namely:

Column A	-	Sr. No.
Column B	-	Nature of Income or Sum on which the TDS is to be deducted.
Column C	-	Specify the payer means who is responsible for deducting TDS.
Column D	-	Rates at which the TDS is to be deducted and the Threshold limits after which the TDS/ is to be deducted.

The deductor shall deduct the TDS at the rates specified in column D subject to the threshold limits and other provisions wherever applicable.

The tables showing the TDS provisions have five column in which one extra column has been inserted for payer (who is responsible for making payment)

However, in case of payment to non-resident persons, the withholding tax rates specified under the Double Taxation Avoidance Agreements shall also be considered. In the case of foreign cos. rates of tax deduction cannot exceeds DTAA. In a recent judgement the Honourable Supreme Court made it clear that Indian Cos. like MPHSIS, WIPRO etc. cannot be forced to deduct TDS more than the 10% if the India has a treaty with that country. The Court rejects the Income Tax Department's argument

that international tax treaties override the domestic tax rules. This ruling uphold the earlier ruling by Karnataka High Court and Delhi High Court.

TDS at Higher Rates

A deductee must provide their PAN to the deductor to ensure proper deduction and deposit of TDS. If the deductee fails to furnish their PAN, the deductor is required to deduct TDS at the higher rate of 20%. Similarly, if the deductee's PAN is not linked with Aadhaar, the deductor is again obligated to apply the higher rate of TDS.

In a recent development, the Government has clarified that for TDS deducted between 01.04.2024 and 31.08.2025, no penalty will be imposed on the deductor for not applying the higher rate, provided the deductee completes the Aadhaar–PAN linkage by 30.09.2025.

TDS AT LOWER RATES – Section 395

Is it possible to deduct tax at the rates lower than the specified rates mentioned in column D or E as the case may be. The answer is yes and section 395 of the Act provides for the same.

Where the tax is required to be deducted on any income or sum under any provisions of this Chapter, then subject to the rules made under this Act,-

(a) the payee may make an application before the Assessing Officer for deduction of income-tax at a lower rate or no deduction of income-tax, as the case may be; and

(b) the Assessing Officer on being satisfied that the total income of the payee justifies deduction of income-tax at a lower rate or no deduction of income-tax, as the case may be, shall issue to him a certificate as appropriate; and

(c) when a certificate is issued under clause (b), the person responsible for paying the income or sum shall deduct the tax at the rate specified in such certificate, or deduct no income-tax, as the case may be, till its validity

Likewise the where the person responsible for making payment to the NRI may make an application to the Assessing Officer that the whole of the sum payable to the recipient shall not be chargeable to tax and if the assessing officer is satisfied he may grant relief and the responsible person shall deduct tax on the amount mentioned in the certificate issued by the assessing officer.

TIME OF DEPOSIT OF TAX AND CREDIT TO THE ASSESSEE

The Tax deducted by the deductor must be deposited within the period of seven days from the end of the month in which the TDS is deducted by him. In the case of the TDS deducted for the month of March, the deductor has a leverage of depositing the tax within the period of 30 days from the end of the month.

Every person responsible for deducting tax is required to file quarterly statements of TDS for the quarter ending on 30th June, 30th September, 31st December, and 31st March in each Financial Year. This statement is to be prepared in

a) Form No.26 Q for TDS other than salaries.

b) Form No.27 EQ for Tax collection at source.

c) Form 27Q in respect of a deductee who is non-resident not being a company or a foreign company or resident but not ordinarily resident.

d) Form 27 EQ for tax collection at source.

e) 24Q (deduction of tax u/s 392 for salaries)

These quarterly returns must be filed on or before the due dates prescribed under the Income Tax. The Assessee who's TDS is deducted gets the input tax credit as and when the TDS returns have been filed by the deductor and processed by the Income Tax Department. The Assessee can adjust the TDS so deducted from his tax liability.

A deductor may file a correction statement if, at a later stage, any errors are discovered in the originally filed quarterly statement. Such statements can be revised multiple times; however, under the recent amendment introduced by the Finance Act (2), 2024, the government has clarified that no correction statement may be filed after six years from the end of the financial year in which the original statement was submitted by the deductor.

Section 397(3) (f) every person referred to in clause (b) or (e) may correct any discrepancy or update the information furnished, in the statement delivered under the said clauses, by delivering a correction statement in such form and verified in such manner as may be prescribed, to the prescribed authority under the said clauses, within two years from the end of the tax year in which such statement is required to be delivered under the said clauses or under section 200 of the Income-tax Act, 1961;

Clarification from CBDT

To alert taxpayers about the transition, the Central Board of Direct Taxes (CBDT) has issued a statement. Correction statements for FY 2018-19 (Q4), FY 2019-20 to FY 2022-23 (all quarters), and FY 2023-24 (Q1 to Q3) will be accepted only until 31st March 2026. After this date, such statements will be time-barred and will not be entertained from 1st April 2026 onwards. This clarification underscores the importance of timely compliance and serves as a final opportunity for taxpayers to regularize pending corrections.

PERSONS EXEMPTED FROM DEDUCTING TDS

An Individual or HUF whose Gross Total Turnover during the preceding financial year does not exceeds Rupees One Crore has been made exempted by the Act from deduction of TDS as these provisions do not apply to him.

CONSEQUENCES OF NOT DEDUCTING TDS

Failure to deduct TDS and deposit the same with the Govt. can lead to the serious consequences. Apart from the Interest payment by the deductor, he may be prosecuted under section 273B. Let's find out the detailed consequences

A. **Interest Payment –Section 398**
   The deductor is under obligation to deduct TDS within the stipulated time i.e, at the time of making payment or at the time of amount credit to the account of the deductee and deposit it to the Govt. within the period of seven days from the end of the month in which the TDS is deducted failing which there are the provisions of interest u/s 201(A) of the Act which is as under:

i) If the deductor fails to deduct the tax in whole or in part, interest @ 1% shall be charged for the month of part of the month from the date on which the TDS was required to be deducted.

ii) If the deductor fails to deposit the tax in whole or in part the interest @ 1.5% shall be levied for the month of for part of the month from the date on which the tax has to be deposited.

B. Penalty for not Deduction of TDS –Section 412

When a person who is required to deduct TDS fails to do so, they become an *Assessee in default*. In addition to interest under Section 398, they may also be liable for a penalty under Section 412 of the

Income Tax Act, which can be up to the amount of tax in arrears. However, this penalty cannot be imposed if,-

(a) Unless the Assessee has been given a reasonable opportunity of being heard;

(b) Where the Assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons.

This is to note that the Assessee cannot be ceased to be liable to pay the penalty merely by the reason that before levying the penalty he has deposited the tax.

The Honorable Supreme Court in the *M/s US Technologies International Pvt. Ltd. vs. The Commissioner of Income Tax*, clarified that Section 271C penalizes the failure to deduct tax, not the delay in remitting the deducted tax. Provisions of section 201(IA) & section 276B of the Income Tax Act will be applicable.

C. Disallowance of Expenses u/s 40(a)(i)

If TDS is not deducted, or after deduction, not paid to the Central Government by the due date of filing the income tax return, 30% of such expenditure is disallowed from the business's taxable income.

For Payments to Non-Residents (Section 40(a)(i)): If TDS is not deducted, or after deduction, not paid to the Central Government by the due date of filing the income tax return, 100% of such expenditure is disallowed.

D. Prosecution under Section 477

In severe cases of wilful failure to deposit TDS/TCS with the government after deduction/collection, the deductor can face rigorous imprisonment ranging from 3 months to 7 years, along with a fine.

The provisions of section 477 i.e. provisions of prosecution shall not apply if the payment of the tax collected at source has been made to the Central Government on or before the time prescribed for filing the statement under section 397(3)(b) in respect of such payment.

TDS UNDR GST

Just as the Income Tax Act includes TDS provisions, the Goods and Service Tax (GST) law also provides for the deduction of Tax Deducted at Source (TDS) by specified recipients of goods or services from specified suppliers and the Tax Collection at Source (TCS) by the E- Commerce Operator for providing their platform for making sales by the supplier. The objective of deducting TDS or collecting TCS under GST is similar to that under the Income Tax Act—preventing tax evasion.

Under GST, the provisions for TDS and TCS are governed by two sections: Section 51 of the GST Act, 2017 deals with TDS, while Section 52 pertains to TCS.

TDS UNDER GOODS AND SERVICE TAX (GST)

Person Responsible for Deducting TDS under GST

According to section 51 of the Goods and Service Tax Act 2017, the following categories are required to deduct Tax namely:

1. Department or establishment of the Central Government or State Government; or
2. Local authority; or
3. Governmental agencies; or
4. Such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Exemption from deducting TDS

No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Value of Goods on which the Tax is to be deducted

For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice. [Explanation to Section 52(1)]

Time for Depositing TDS by the Deductor

The amount of tax so deducted by the responsible person (deductor) shall be paid to the Govt. within the period of 10 days from the end of the month in which the deduction is made. After making payment the deductor shall file a statement of TDS and will issue a Certificate to that effect. The amount so deposited by the deductor shall be reflected in the electronic cash ledger of the deductee and the deductee shall adjust his output tax liabilities with that amount reflected in the cash ledger.

Consequences of not deducting TDS or Not depositing TDS to the Govt.

There are serious consequences under the Income Tax Act if a deductor fails to deduct TDS or fails to deposit the deducted TDS amount with the government. Similarly, under the Goods and Services Tax Act, the consequences are equally severe if the deductor does not deduct or fails to remit the TDS amount to the government. Following consequences exists under section 51 of the Goods and Service Tax namely:-

1. If the deductor fails to deduct TDS or fails to make payment of the TDS to the Government, he shall pay the interest under sub section 1 of section 50, in addition to the tax deducted.
2. The determination of tax in default shall be made according to section 73 or 74 of the Act or 74A (from tax year 2024-25) of the Act.
3. The refund to the deductor or the deductee for erroneously depositing excess TDS shall be made available u/s 54 of the Act. The deductor shall get no refund if the amount so deducted is reflected in the cash ledger of the deductee.

TAX COLLECTED AT SOURCE (TCS) SECTION 52 OF THE ACT

TCS is another form of tax collection by the Govt. wherein the specific persons are under obligation to collect tax on behalf of the Govt. from the certain categories of the suppliers. The TCS Provisions are defined under section 52 of the Goods and Services Tax Act, 2017.

TCS is mainly collected by E-Commerce Operator on the payment made to the suppliers for making sales through their platform.

Electronic Commerce and Electronic Operator as these two word generally known by their short names E-Commerce and E=Commerce Operator are defined in clause 44 and 45 of Section 2 of the Act as

Electronic Commerce – Section 2(44)

Electronic Commerce means the supply of goods or services or both, including digital products over digital or electronic network.

Electronic Commerce – Section 2(45)

Electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Section 9(5) of the Act clarifies that The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

TCS COLLECTION BY ELECTRONIC-COMMERCE OPERATOR

every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

NET VALUE OF TAXABLE SUPPLY

Section 52(1) refers to the *net value of taxable supplies*, which means that if a supplier provides exempt goods through an e-commerce platform, the platform is not required to collect TCS on such exempt supplies.

Further, the *net value of taxable supplies* is calculated as the total value of supplies made minus the value of goods returned by customers.

Time for Depositing Tax Collected at Source

An e-commerce operator that collects TCS must deposit the amount with the Government within 10 days from the end of the month in which the tax was collected.

Registration Requirement

Every e-commerce operator is required to obtain compulsory registration certificate under Section 24(x) of the Act, regardless of turnover. This means the basic exemption limit of ₹40 lakh does not apply to e-commerce operators for registration purposes.

Credit of Tax by the Supplier

Every supply who makes supply through E commerce operator and a tax is collected by the E-commerce operator on the supply made through his platform shall get the input tax credit of the tax so collected once the tax is reflected in his electronic cash ledger.

Consequences of Non-Collecting of TCS

1. Every E-commerce operator who fails to collect tax or fails to deposit tax so collected by it during the month shall pay the interest as per section 50 of the Act.
2. Notice can be served to the Electronic Commerce operator by an officer not below the rank of Dy. Commissioner requiring him to provide the following information

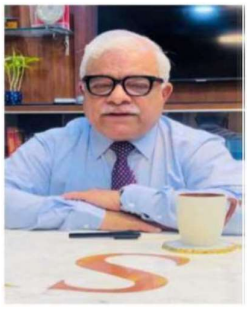
   a) supplies of goods or services or both effected through such operator during any period; or

   (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

3. Every E commerce Operator who has been served with the notice is required to furnish the required information within the period of 15 days failing which the adverse order under section 73 or section 74 can be passed

4. Penalty proceedings under section 122 can be started against the E-commerce operator who fails to comply with the provisions of section 52.

Narender Ahuja
Advocate



ADV. SUSHIL VERMA

Question-Answers

SV SIR

We have a matter regarding indirect tax and we have a judgment of the Supreme Court of India, for the time being against us; but the matter has been referred to a larger bench. Our assessing officer, who is an IAS Officer, is insisting to complete the assessment based on the judgment notwithstanding the reference to a larger bench? What is hour opinion?

Dear Sravan Mukka ji,

Of late SC has said in a few cases High Courts should wait for the final adjudication by the Supreme Court (being a constitutional Court)but as such no law has been laid down. For the purpose of Article 141 of the COI, in my view, the laid down in the judgment which is final should be applied and this is the correct spirit for administration of justice in the country. What you should do is file a misc. application before the assessing officer to this effect, pray for adjournment in writing and also pray that he should be pass the assessment order subject to final decision of the Supreme Court. Also try to pray that recovery should not be made or kept suspended till final decision of the Supreme Court, say for a period of 6 months subject to filing of security equivalent to mandatory pre-deposit as per AP VAT Act. This is a good legal strategy.

Sushil Verma Sir,

We are big fans of your videos and moot tribunals. Your role as a Govt Counsel is seen to be believed and we hope all government counsels are not like you when our cases are

We have a query. A matter of suo moto revision is admittedly time barred under the provisions of MVAT Act. The Government amended the limitation period and now the revisional authority has issued the show cause notice within the extended limitation period. Is he justified?

Had you given dates also it would have been better. But the legal principle which is settled says that if the proceedings become time barred before the amendment, the extended limitation may not be applicable. Your local lawyers should put in a detailed petition before the revisional authority and if he does not agree than proceed further to High Court under article 226 – a writ that should be maintained.

Editor Sir

We hold bitcoins, duly declared in income tax returns, and we have traded in the same for the last few years. But we did not pay any GST? Our local consultants advised us that such currencies are

money or securities and hence not covered by the definition of goods. Now we have been served with a show cause notice under Section 74? What is the advice for us?

Yes, for the purposes of Goods and Services Tax (GST) in India, **cryptocurrencies (Virtual Digital Assets or VDAs) are treated as "goods"**. They do not fall under the definition of "money" or "securities" which are excluded from the scope of GST.

GST is primarily levied on the *services* provided by cryptocurrency exchanges and trading platforms, not on the value of the VDA itself when bought or sold by an individual investor for their own account. Cryptocurrency exchanges charge an 18% GST on their service fees, commissions, and other charges (e.g., trading fees, withdrawal fees, etc.). For businesses dealing in cryptocurrencies, the sale or transfer of VDAs is considered a taxable supply under GST. Such businesses can also claim Input Tax Credit (ITC) on the GST paid for related business expenses.

SV Sir,

This is Nikhil Aggarwal from Rajasthan.

We have a show cause notice under section 74 of the RGST Act which as per my calculation is time barred by three days. Dates are given in the annexed sheet. My client has filed replies to this show cause notice and now an order has been passed creating a demand of over 9 crores. He does not have money to deposit 10 percent of tax amount and recovery can be pressed any time. What is the way out sir?

A show cause notice (SCN) issued under **Section 74 of the GST Act that is time-barred is invalid and legally unsustainable, nullifying the entire demand and all related proceedings**. The time limits under the Act are mandatory, and even a delay of one day renders the proceedings void. The proper officer lacks the jurisdiction to issue an SCN or pass an order after the expiry of the limitation period. No tax, interest, or penalty can be recovered based on a time-barred notice. These timelines are mandatory procedural safeguards for taxpayers, and any deviation or "bunching" of multiple time-barred periods is impermissible. You can challenge the validity of the notice and subsequent proceedings on the ground that it is time-barred. In your formal reply to the SCN, you should explicitly state that the notice is time-barred and may reference relevant judicial precedents or CBIC Circular No. 185/17/2022-GST. Seeking professional legal advice is recommended to effectively utilize this defence.

Your participation in without jurisdiction proceedings will not confer jurisdiction – though some time it is a debatable issue. File a detailed petition before him with copy to head of the department and threaten him with HC proceedings if he does not withdraw the order. RESEARCH and quote judgments.

SUSHIL VERMA JI

Our directors and our company is involved in PMLA proceedings. PMLA has sent detailed reports to DGGGI who in turn has searched our companies and directors and issued an over 100 page show cause notice to us as a verbatim copy of PMLA information, a copy of which has been given to us. Our local CA advises us to go to High Court and challenge as in his opinion PMLA information cannot be the basis for GST proceedings? Should we go ahead or not?

Not at all, there is no purpose in approaching High Court. Yes, information from a Prevention of Money Laundering Act (PMLA) investigation **can significantly affect Goods and Services Tax (GST) proceedings**. While standalone GST offenses are not directly PMLA "scheduled offenses", the two laws are interconnected through formal information-sharing mechanisms designed to combat financial crime and tax evasion. The only precaution I would advise is that you should stick to the line of action

that you have taken in your PMLA proceedings and no deviate from these – you are dealing with cases of fraud and circular trading. Be careful.

And both the proceedings can be concurrent and so could be prosecutions and imprisonment.

Reg your another query, the PMLA arrest might be quashed if the specific PMLA legal requirements (e.g., linkage to "proceeds of crime" from a valid predicate offence) were not met, but the underlying facts can still be used for a valid arrest and prosecution under the GST Act, provided the GST authorities follow their own distinct legal procedures and evidentiary standards.

DGST Editor

We are a partnership firm dealing in trading and exports of tabaco products. A show cause notice was issued to us under section 74 for the year 21-22 and adjudicated upon and this show cause notice was dropped. The show cause notice was primarily on misclassification of products that we explained. Now another show cause notice has been served upon us – to verify our input tax credit that they claim is fraudulent and purchases are from non -existing suppliers who are fake. We hold a view that second show cause notice is not permissible in law? The officer says we can challenge but he would proceed with the proceedings. What is your opinion?

In my view a second show cause notice (SCN) can be issued under Section 74 of the CGST Act if the first one is quashed, but it depends on the **specific reasons** why the first notice was quashed and whether the re-issued notice remains within the applicable time limits.

Calculate the limitation period for issuing the show cause notice, in any case challenge. But the grounds for issuing the second show casue notice are difference and in my view there is no specific bar for issuance of such a second show cause notice.

In the case **CCE vs Prince Gutka Ltd. (2017) 52 STR 83 (SC) / 2017 TaxPub(ST) 1023 (SC)** , CESTAT has held that there could not have been second show cause notice on the same cause of action on which adjudicating authority had dropped the earlier demand . Supreme court has held that issue of second SCN on same cause of action is not permissible and that there was no error on Tribunal‘s order setting aside demand under second SCN.

SV Sir,
Amit Anand from Delhi – CFO
Indeed a big fan of DGST Group and your role as a Govt Counsel in Moot Tribunals is to be seen to be believed. Great teachings for all of us.

During search operations in our organisation GST Officers forced us to deposit a sum of Rs 75 lakhs that we had to under protest through DRC 03 challan. After a few days on the advice of our counsel (he is your friend) we filed a petition clearly stating that this is not the admitted tax we have deposited but we deposited the money to buy piece and to avoid crimination that the officers unleashed on our directors. Now show cause notice has been issued proposing a demand of only Rs 24 lakhs in total? Our directors want 75 lakhs refunded to us by the department? Is there any way out to recover this money from GST Department?

Money recovered under coercion during an investigation under Section 67 of the CGST Act can be **refunded** by filing a writ petition with the High Court. Such amounts are not considered voluntary payments and are therefore not treated as "self-ascertained liability" or a proper "deposit" for appeal proceedings unless specific court directions are obtained. High Courts across India have consistently

held that the forceful recovery of tax amounts during search/investigation proceedings, without a formal adjudication order or show cause notice, is illegal and a violation of Article 265 of the Constitution (which mandates that no tax can be collected without the authority of law). Payments made under duress, threat, or coercion are not considered voluntary, a key requirement for payments under Section 74(5) of the CGST Act. Indicators of coercion include payments made at odd hours (midnight/early morning) or failure to issue a proper acknowledgement in Form GST DRC-04.

First move an application before the proper officer putting him to notice that you would be approaching High Court and in the meantime through a local lawyer prepare a brief to the point writ petition and hopefully your money would be given back. Do not forget to press for interest as the money was illegally collected and used by the Government.

S Verma Sir

We have a case relating to VAT Period which is coming up for hearing before. Karnataka VAT Tribunal in January 2026. The facts are we got registered as a composition dealer and agreed to pay lump sum tax. Under advice of our council for the last quarter of 2016-17 we reported NIL turnover on the ground that we did not receive any money for the works contract transaction. We had received some payment for port services etc on which the contractee deducted TDS. We filed NIL return and claimed refund. And claimed refund of TDS DEDUCTED. We also paid service tax on the services rendered. The officer rejected the refund on various ground including that tax was payable being a composition dealer. In appeal the whole assessment was declared as time barred and department accepted the order. While passing the consequential order the officer went into other details and rejected the refund on the ground that on receipt of money tax was payable in terms of law. What is your stand on this issue?

Dear Newton G
My opinion is as follows in sort:

When an appellate authority declares an assessment time-barred, and the Income Tax Department does not challenge that decision within the statutory time limit for appeals, the **appellate order becomes final and binding**, and the **assessment order is rendered null and void (void *ab initio*)**. **The Assessee's return is effectively considered as accepted for that assessment year. Since you declared NIL turnover, no further inquiry could be made as Department accepted the order of the first appellate authority that has gone unchallenged and no further legal proceedings were initiated including suo moto revision.** Because the core assessment order itself has been invalidated due to the time limitation, any discussion or decision on the *merits* of the case (e.g., whether the nil return was correct or the reasons for the notice were valid) becomes academic and has no legal consequence.

SUSHIL SIR

I am attaching a provisional attachment order under section 83 of the CGST Act – no search no notice just straight away attachment. My client is indeed worried as it has substantial amount in his bank account and his business will come to stand still. Could you advise me on this issue?

Dear Kundan,
Normally in such magazines detailed opinion are not given, But you being a young lawyer, I am attempting to give my opinion to you and you should draft a strong reply using my inputs, if you approve the same.

The "Provisional Attachment Under Section 83 - Radha Krishan Industries" refers to a landmark Supreme Court judgment (in re: *Radha Krishan Industries v. State of Himachal Pradesh*) that

established strict guidelines for using the provisional attachment power under GST law. The court held that this power is "draconian" and can only be exercised when the tax commissioner forms a clear, justified opinion that it is necessary to protect government revenue, supported by tangible evidence. The ruling emphasized that the power must not be used arbitrarily and requires strict adherence to statutory conditions.

Despite the language of Section 83 undergoing an amendment, the principles laid down by the Supreme Court in *Radha Krishan* are still valid, in as much as the power of provisional attachment continues to be "draconian in nature". Read the judgment qua the notices to be given, reply to be obtained and personal hearings to be given as amust.

This power must be exercised with care and caution, and only after the tax authorities frame the exact allegations against the Assessees. This view is buttressed by Central Board of Excise and Customs Instruction No. 20/16/05/2021-GST dated February 23 2021, which clarified that because the remedy of attachment under Section 83 is extraordinary in nature, due diligence must be exercised, and it must not be resorted to in a routine/mechanical manner.

Furthermore, the Supreme Court in *Kesari Nandan Mobile v Office of Assistant Commissioner* (2025) reaffirmed the principles laid down in *Radha Krishan* and reiterated the "draconian" nature of provisional attachment and the need for strict compliance with the statutory language.

Against this background, it is apposite to refer to the law laid down in *Armour Security* regarding the term "initiation of any proceeding" and apply it in the context of Section 83. In so far as the phraseology is concerned, Section 6(2)(b) and Section 83 refer to the initiation of proceedings, albeit in different contexts.

In *Armour Security*, the Supreme Court ruled that formal proceedings are only initiated after the tax authorities 'form their mind' regarding the exact allegations against the Assessee and commence formal adjudication proceedings by way of the issuance of an SCN. The court specifically noted that an SCN marks the commencement of a process that culminates in an order passed by the adjudicating authority and certainty of the subject matter arises only at the stage of issuance of the SCN.

To this extent, the law laid down in *Armour Security*, in so far as it defines 'initiation of proceedings', is applicable for attachment envisaged under Section 83. It can be contended that "initiation of any proceeding" under Section 83 would necessarily imply 'forming of mind' by the tax authorities and the subsequent issuance of an SCN to the Assessee. This interpretation balances the Department of Revenue's interests and taxpayers' rights.

Should you need any other information or guidance, please let us know on this platform only.

Reg professional handling, sorry, when you ask a question here, no member can charge you.

SV

Sushil Verma Sir

Q: An order has been passed under section 73 of the CGST on the interpretation of HSN Classification and a demand of over 2 crores has been raised in our case. We are in the process of challenging it. However, recently we came to know that jurisdictional High Court has given a favorable interpretation to the same entry as in our case and if this interpretation is applied, our demand may be substantially reduced to the extent of 80 percent. Our CA wants us to file application under section 161 of the CGST Act for rectification of the order and till it is disposed of

he has asked us to delay filing of the appeal. Just out of curiosity we want to know your opinion? We shall pay if we required to pay to your group.

Thanks Hoshing. At this platform all services are pro bono and we do not charge anything even though we give the best opinion.

The rectification is possible if there is any mistake apparent from records of the case. In my view a subsequent decision of even the SC may not be the basis for rectification on the ground that the same issue had changed the legal position established by the order of the proper officer earlier. I do not think GST proper officer can exercise his powers of rectification to amend the orders on ground of subsequent judicial decision. We may refer a Bombay High Court recent judgment in the case of Prakash D Koli v ITAT. Rectification is strictly for correcting obvious errors that are *prima facie* apparent without extensive legal analysis. It must not be used as a tool for challenging settled cases basis evolving case law and disregarding the finality of decisions. The original order was in accordance with the law at the time and there was no apparent mistake to warrant rectification jurisdiction under Section 161 of CGST Act.

Hence, it will not be a sound legal strategy to delay filing appeal as a time barred appeal may pose difficulty in getting the delay condoned on the ground that your company was pursuing an alternative remedy. In the appeal proceedings this can be considered OR alternatively you may approach High Court directly under Article 226 – this may be entertained.

SV

SUSHIL SIR,

YOUR COMMENTS.

When a SEZ unit or SEZ developer procures any goods or services from an unregistered supplier, whether the SEZ unit or SEZ developer needs to pay IGST under reverse charge or these will be zero rated supplies?

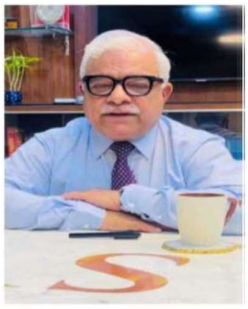
Supplies to SEZ unit or SEZ developer have been accorded the status of inter-State supplies under the IGST Act. Under the GST Law, any supplier making inter-State supplies has to compulsorily get registered under GST. Thus anyone making a supply to a SEZ unit or SEZ developer has to necessarily obtain GST registration.

Sushil Verma Sir

We are a private limited company engaged in garbage collection services for BMC in Maharashtra that qualifies to be a municipal corporation. We have won a tender for supply supply of "Water drainage automatic machines". The contract is all inclusive. Under legal advice we had taken this as exempt supply under NN 12/2017 being pure services. We want your expert opinion.

In my view, there is no exemption available whatsoever notwithstanding the legal status of BMC. The exemption under Notification No. 12/2017-CT(R) is available only for "pure services" or "composite supply of goods and services" where the value of goods does not exceed 25% of the total supply. Since, in the present case, the supply is solely of goods (machinery), the exemption provisions are not applicable - The supply of goods (machinery) to the BMC (local authority) attracts GST at the rate of 18% on the various machineries supplied. Since your rates are inclusive of taxes, this may become your cost and drain your profits unless there is something in the contract where you could negotiate with BMC – which I doubt.

SV



ADV. SUSHIL VERMA

SHORTNOTES ON HIGH COURT JUDGMENTS OF DELHI HIGH COURT DURING 2025

DEVENDER SINGH VS ADDITIONAL COMMISSIONER, CENTRAL GOODS AND SERVICES TAX, DELHI WEST

GST – Scope of term "taxable person" under Section 122(1) of the CGST Act, 2017 - Fraud, bogus firms, Circular trading - The investigation revealed that petitioner had created numerous non-existent or "bogus" firms to fraudulently avail of Input Tax Credit without any actual supply of goods or services. These firms were involved in circular trading and issuing of bogus invoices to enable the fraudulent availment and encashment of ITC - Whether the petitioner, as a Director or partner of the fraudulent firms, can be held liable as a "taxable person" under Section 122 of the CGST Act for the imposition of penalties –

HELD - The 'taxable person', so long as it is an identified real person/entity it would be the said person/entity itself. However, in the case of fake, non-existent and fraudulent firms, who do not have any real persons as partners or proprietors or even any incorporation, the 'taxable person' would be the person who has got such firms created and used the same for availment of ITC.

If the submissions of petitioner is accepted, then in the case of fake firms or non-existent firms, there would be no liability cast upon anybody despite fraudulently cheating the Exchequer, as is the position in the present case –

The submission that under Section 122 of the CGST Act, it is only the 'taxable person' against whom a penalty can be raised, would not give benefit to the Petitioner who is clearly alleged to be the mastermind of the entire maze of transactions resulting in fraudulent availment of crore of rupees of ITC - In the case of fake, non-existent, and fraudulent firms, the "taxable person" would be the person who has got such firms created and used them for the fraudulent availment of ITC, even if they are not officially listed as partners or proprietors.

The petitioner's active involvement in creating and operating these bogus firms, as evidenced by the investigation, makes him liable as a "taxable person" under the CGST Act - the writ petition is dismissed - Whether the petitioner's right to cross-examination of witnesses was violated by the denial of his request for the same

– HELD - The right to cross-examination is not an absolute or unfettered right, and its provision depends on the facts and circumstances of each case. The petitioner had ample opportunity to seek cross-examination during the earlier proceedings, which he did not avail of. Further, the adjudicating authority had provided detailed reasons for rejecting the request for cross-examination, considering the nature of the documentary evidence and the provisions of the CGST Act. The mere rejection of the request for cross-examination, without a showing of substantial prejudice, is not a sufficient ground to bypass the statutory appellate remedy.

VANEETA IMPEX PRIVATE LIMITED VS UNION OF INDIA AND ORS

Identical demand, Payment of pre-deposit

Whether the second demand by the CGST Department is barred under Section 6(2)(b) of the CGST Act, 2017 given the earlier demand by the DGST Department for the same transactions

While the transactions may be the same, the nature of the demands differs.

The DGST Department's demand was based on scrutiny of returns, whereas the CGST Department's demand is on the basis of fraudulent misrepresentation. Additionally, the penalties under Sections 73 and 74 of the CGST Act are also different for the same transactions

Where the proceedings concern distinct infractions, the same would not constitute a "same subject matter" even if the tax liability, deficiency, or obligation is the same or similar, and the bar under Section 6(2)(b) would not be attracted –

The Petitioner has also filed an appeal in respect of the demand raised by the DGST Dept. The Petitioner has also deposited the pre-deposit amount to the tune of 10% of disputed amount - the Petitioner is permitted to avail of the appellate remedy without any pre-deposit, as the same would become duplicated.

For the same amount pre-deposit cannot be charged twice – the petition is disposed of

M/s. MHJ METALTECHS PRIVATE LIMITED
Vs
CENTRAL GOODS AND SERVICES TAX DELHI SOUTH
The demand has been raised against the Petitioners on the ground of availment of fraudulent Input Tax Credit.

“14. Moreover, in the present case, it is seen that the total number of entities who have been investigated and to whom notices have been issued are 146 in number. Hearings may in fact have been granted by the Department on different dates to various entities. In the impugned order itself, it is recorded clearly that almost none of the firms filed any reply to the SCN.”

15. The impugned order is an appealable order under Section 107 of the CGST Act. The contentions that the Petitioners wish to raise can always be raised in appeal, in as much as this Court has already taken a view in ***W.P.(C) 5737/2025 titled Mukesh Kumar Garg vs. Union of India & Ors***.

Insofar as exercise of writ jurisdiction itself is concerned, it is the settled position that this jurisdiction ought not be exercised by the Court to support the unscrupulous litigants.

Accordingly, the Petitioners are permitted to avail of the appellate remedy under Section 107 of the CGST Act, by 15th July, 2025, along with the necessary pre-deposit mandated, in which case the appeal shall be adjudicated on merits and shall not be dismissed on the ground of limitation.

EBIX TECHNOLOGIES LIMITED VS DIRECTORATE GENERAL OF GST INTELLIGENCE, HEADQUARTERS & ORS.

Summon as a witness, Provisional attachment of bank accounts absence any investigation, alleging fraudulent availment of ITC – Whether the provisional attachment of the petitioner's bank accounts was justified and in accordance with the principles of natural justice –

HELD – The petitioner was only summoned as a witness and no investigation was initiated against it. The provisional attachment order was issued even before the petitioner's official could respond to the

summons. The impugned letter rejecting the petitioner's application for withdrawal of the attachment was also unreasoned and communicated to the petitioner with a substantial delay

The alleged GST evasion amount was around Rs. 3.1 crores, whereas the provisional attachment of 11 bank accounts with a total balance of over Rs. 15 crores is prima facie disproportionate –

Moreover, non-communication of the impugned letter dated 25th September, 2025 till 4th November, 2025 is also a completely irregular procedure and would be violative of the principles of natural justice as the same would disable the petitioner from availing its remedies in accordance with law - the provisional attachment of the bank accounts of the Petitioner cannot be continued.

Even if the case of the Department is taken at its highest for filing an appeal against any order that may be passed for fraudulent availment of ITC, the pre-deposit would only be 10% - the provisional attachment of the petitioner's bank accounts cannot be continued in the present case. The petitioner is directed to maintain a minimum balance of Rs. 1Crore in any of the attached accounts, and allowed to operate its bank accounts in the ordinary course of business – Ordered accordingly.

M/s. N.P. INDUSTRIES AND M/s. ARAV ENTERPRISES
Vs
UNION OF INDIA & ORS.
These petitions have been filed by the Petitioner Firms under Article 226 of the Constitution of India seeking release of the cash amounting to Rs. 25,30,000/-, allegedly seized by the GST Department in contravention of the Section 67 of the Central Goods and Services Tax Act, 2017

It is the case of the Petitioner Firms that the resumption of the cash took place during a search operation conducted by the Directorate General of Goods & Services Tax Intelligence (hereinafter "the DGGI") on 27 February, 2024, at the residential premises of the sole proprietors of the Petitioner Firms. The said discovery was allegedly communicated by the DGGI to the Income Tax Department on 29th February, 2024, on the ground that the same was unaccounted cash. Accordingly, the said cash was stated to have been resumed by the DGGI and handed over to the Income Tax Department one week later i.e., on 4th March, 2024.

Petitioners was that fake Input Tax Credits under the Act was being availed of by the Petitioner Firms through 13 non-existent firms. When the search was conducted at the residence of the proprietors of the Petitioner Firms on the basis of the said allegations, unaccounted cash was found and was handed over to the Income Tax Department.

NO INTERFERENCE….

C.H. ROBINSON WORLDWIDE FREIGHT INDIA PRIVATE LIMITED VS ADDITIONAL COMMISSIONER, CGST-DELHI-SOUTH & ORS.

GST - Scrutiny of returns, Challenge to Show cause notice on the ground of Limitation under Section 73(2) read with Section 73(10) CGST Act, 2017 - Petitioner challenged the show cause notice on the ground that it is barred by limitation under Sections 73(2) and 73(10) of the CGST Act - HELD - As per Section 73(2), the proper officer is required to issue the notice at least three months prior to the time limit specified in sub-section (10) for issuance of order. Section 73(10) prescribes a time limit of three years from the due date for furnishing of Annual return for the relevant Financial year. In the present case, the show cause notice was issued only on 12th August, 2024, which was beyond the time limit of 31st May, 2024 prescribed under Section 73(2) read with Section 73(10) - The purpose of Section 73(2) is to ensure that the Assessee gets at least three months to file a reply to the show cause notice, which was not adhered to in the present case. The Department's contention that the delay was due

to a technical glitch would not be tenable in law - The SCN dated 28th May, 2024 dispatched on 3rd June, 2024 cannot be held to be within time in terms of Section 73(2) of the CGST Act. Accordingly, the said SCN and any other order passed consequent thereto stand quashed – The writ petition is allowed

VARIAN MEDICAL SYSTEMS INTERNATIONAL INDIA PVT LTD VS UNION OF INDIA & ORS.

GST - Audit, Period of limitation period – Authorities commenced Audit for the financial years 2017-18 to 2022-23 and issued various notices seeking information. A draft audit report was prepared, and a pre-SCN was issued, to which the Petitioner replied. However, before the time for filing a reply to the pre-SCN lapsed, the authorities issued the SCN - Whether the issuance of the SCN before the time for filing a reply to the pre-SCN lapsed was valid and whether the finalization of the audit report was within the limitation period prescribed under the CGST Act - HELD - The issuance of the SCN before the time for filing a reply to the pre-SCN lapsed was in violation of the principles of natural justice. The SCN is set aside, and the proceedings were relegated to the pre-SCN stage, allowing the Petitioner to file its reply to the pre-SCN by the specified date - The provisions of Section 65 of the CGST Act, the registered person is to be informed by way of a notice period of at least 15 days prior to the conduct of the audit. The date from when the commencement of the audit takes place is the date from when the registered person makes available the records and other documents as called for by the authorities – The provisions prescribe a three-month period for the completion of the audit, extendable by further six months. The final reply was filed by the petitioner on October 11, 2024, and the audit report was communicated on February 13, 2025, which was within the permissible period. Therefore, the audit report was not issued beyond the period of limitation - The proceedings are relegated to the pre-SCN stage. The Petitioner is free to file its reply to the pre-SCN - The writ petitions are disposed of

GAMELOFT SOFTWARE PRIVATE LIMITED VS ASSISTANT COMMISSIONER OF CENTRAL TAX, RANGE 152 & ANR.

GST - Refund of IGST, Delayed issuance of deficiency memo, interest on delayed refunds - Whether the petitioner is entitled to interest on the delayed refund due to the deficiency memo not being issued within the prescribed 15-day timeline – HELD - As per the scheme of the CGST Act and Rules, the petitioner is entitled to interest at the rate of 6% per annum from the date immediately after the expiry of 60 days from the date of the first refund application until the date of sanction of refund. Further, if the second refund application is filed pursuant to the appellate orders upholding the petitioner's claim, the petitioner would be entitled to interest at the rate of 9% per annum from the date immediately after the expiry of 60 days from the date of the second refund application. The petitioner cannot be denied the benefit of interest for the delay caused due to the deficiency memo not having been issued within the stipulated period - the delay in processing and granting refunds has a cascading adverse effect on the business of the taxpayers. The respondents are directed to consider the refund applications expeditiously and granting the petitioner the benefit of interest as per the provisions of the CGST Act and Rules – The petition is disposed of

GMG TRADELINK PVT LTD VS DIRECTORATE GENERAL OF GST INTELLIGENCE HQ & ORS.

GST - Powers of Principal Additional Director General, Directorate General of GST Intelligence to order Provisional attachment of bank accounts, Competence of authority to order Provisional attachment - The impugned order was passed by the Principal Additional Director General, Directorate General of GST Intelligence, Headquarters, directing the provisional attachment of the petitioner's bank accounts. The petitioner contended that the said authority is not duly authorized under Section 83 of the CGST Act, 2017 to exercise such powers – HELD - The plea made by the petitioner is not sustainable in view of Notification No. 14/2017-CT dated 1st July, 2017, which states that the Principal, Additional

Director General, GST Intelligence is equivalent to Principal Commissioner, GST. This notification effectively empowered the Principal Additional Director General to exercise the powers under Section 83 of the CGST Act to order the provisional attachment of the petitioner's bank accounts. The petitioner is allowed to file fresh objections against the provisional attachment, and upon the communication of the reasons for the attachment, the petitioner is permitted to avail of all legal remedies in accordance with the law - The writ petition is disposed of

MR. GURDEV RAJ KUMAR VS COLLECTOR OF STAMPS, GOVERNMENT OF NCT OF DELHI

GST on Renting of residential dwelling for use as residence – Demand of deficient stamp duty along with penalty – HELD - Entry No. 12 of the Notification No. 12/2017-Central Tax (Rate) leaves no manner of doubt that renting/leasing of a residential dwelling for use as residence, is exempt from GST. As such, the view adopted by the respondent as regards deficit payment of stamp duty, is misconceived - The impugned order is quashed and the respondent is directed to refund the amount deposited by the petitioner – The writ petition is disposed of

M/S IMS MERCANTILES LTD VS UNION OF INDIA & ANR.

GST - Recovery of short-paid GST, Total Turnover of B2B and B2C sale - Department conducted a search at the petitioner's premises and issued a show cause notice alleging evasion of GST by way of mis-declaration of duty slab for HSN Code 8507 (18% instead of 28%) and short payment of GST - Whether the demand and recovery of short-paid GST can be made on the total turnover of the petitioner, instead of being limited to the turnover of the specific combo packs where the misdeclaration of the HSN Code was found - HELD – There is fundamental flaw in the approach of the Adjudicating Authority in demanding GST on the total turnover, when the actual sales of the entire combo packs, on both B2B and B2C sales, were available with the Adjudicating Authority. The tax evasion, if any, was in respect of B2B and B2C sales, and there was no reasoning given by the Adjudicating Authority as to why GST is being sought to be levied on the total turnover - The impugned order is an appealable order and the petitioner relegated to the appellate remedy. However, the pre-deposit shall be calculated and made in respect of the amounts falling under B2B and B2C sales of each of the financial years - The writ petition is disposed of

M/S MOMS CRADLE PRIVATE LIMITED VS UNION OF INDIA & ANR.

GST - IGST refund, Fraudulent ITC, Limitation period for appeal – Refund of IGST on export of readymade garments – The refund was withheld by the Department due to an order passed raising a demand for fraudulent availment of Input Tax Credit – Petitioner seeking permission to file a statutory appeal against the Order-in-Original raising the demand for fraudulent ITC – HELD - the Petitioner plea for condonation of delay in filing the appeal against the Order-in-Original cannot be accepted. The power to condone delay in filing an appeal under Section 107 of the CGST Act is limited and cannot exceed the jurisdictional powers under the statute. Since the Petitioner had participated in the proceedings before the Order-in-Original was passed and the order was duly communicated to it, the delay in filing the appeal cannot be condoned. The Court dismissed the Petitioner's writ petition seeking permission to file the statutory appeal - The refund order be passed and the same be adjusted against the demand raised against the petitioner under the Order-in-Original – The writ petition is dismissed

COMMISSIONER OF DELHI GOODS AND SERVICE TAX DGST DELHI VS GLOBAL OPPORTUNITIES PRIVATE LIMITED

GST - Export of services or Intermediary services, Place of supply of services – Respondent-Assessee is providing educational consultation to Indian students who intend to pursue higher education in foreign universities - Revenue petition challenging the orders of the Appellate Authority granting refund to the respondent treating export of services - Whether the respondent's services qualify as export of services under Section 2(6) of the IGST Act, 2017 or whether it is an 'intermediary' under the Section 2(13) of the IGST Act – HELD - the respondent is not an 'intermediary' under Section 2(13) of the IGST Act as it is not merely arranging or facilitating the supply of services between the foreign universities and the students, but is itself providing marketing and consultancy services to the foreign universities - the Respondent is engaged in educational consultancy services and does not act on behalf of any foreign universities. The Respondent is in fact, engaged by the said foreign universities for providing consultancy services to students in India and upon the said students obtaining education, the Respondent raises invoices in either Indian Rupees or foreign currency upon the said university and receives payment in foreign exchange from the university/Foreign Educational Institutions. This relationship between the Respondent and the university cannot be held to be an intermediary service as the Respondent is working as an educational consultant and may be rendering services which may further the cause of the Foreign Educational Institutions but is not an agent of the said FEI – Further, the recent recommendation of the GST Council to omit the clause relating to 'intermediary services' from Section 13(8) of the IGST Act, supporting the conclusion that the respondent's services are export of services - The refund in terms of the Appellate Authority's orders be processed and be granted to the Respondent along with the applicable statutory interest in accordance with law – The writ petition is dismissed

ORTHO CLINICAL DIAGNOSTICS INDIA PVT LTD VS UNION OF INDIA & ORS.

GST - Composite Supply or Mixed Supply, Tax Rate Facts - Petitioner supplies reagents to its customers, which include laboratories and hospitals, either only as reagents or along with laboratory equipment - Department categorized the petitioner's supplies as 'mixed supply' under Section 2(74) of the CGST Act, 2017, and imposed the highest rate of 18% GST. The petitioner challenged this categorization, arguing that the supplies should be considered as 'composite supply' - Whether the supply of reagents with equipment would constitute 'composite supply' or 'mixed supply' - HELD – The first category supply i.e. supply of only reagents, constitutes a substantial portion of the supplies and hence, they could not have been categorized as 'mixed supplies'. Even if the Department's case is taken at its best, the mixed supplies rate would only apply qua the second category of supplies, which is Reagents along with instruments - The question is whether the supply of reagent with equipment would constitute 'composite supply' or 'mixed supply' and what would be the rate of tax that would be attracted in such a case. Secondly, whether the demand in respect of the first category of supplies is even tenable - this issue would have to be decided by the Appellate Authority, as there would be a factual examination that would be required. In addition, the impugned order itself is an appealable order - The petitioner is relegated to avail of the appellate remedy and the petition is disposed of

MS RS TRADING CO VS PRINCIPAL COMMISSIONER OF CGST & ORS.

GST - Fraudulent availment of ITC, Tax Demand, Penalty - Petitioner availed fraudulent Input Tax Credit on the basis of fake and bogus invoices from non-existent suppliers. The Department had raised a demand along with interest and penalties - HELD - The Petitioner's GST registration was obtained in July 2019 and the suspicious transactions took place in FY 2019-20 and 2020-21, indicating that the Petitioner may have been incorporated solely to pass on fraudulent ITC. Further, upon the arrest of

the petitioner, the business operations of the petitioner were also discontinued. Thus, there is some basis for the GST Department to argue that the Petitioner itself was incorporated to pass on fraudulent ITC, in an illegal and unlawful manner as the Petitioner's GST registration was alive for less than two Financial years - In any case, since the impugned OIO is an appealable order, an appeal ought to be filed by the Petitioner, along with the requisite pre-deposit - The writ petition is disposed of

TRANSFORMATIVE LEARNING SOLUTIONS PVT LTD VS COMMISSIONER CENTRAL GOODS AND SERVICE TAX DELHI EAST & ANR.

GST – Refund of accumulated ITC, Denial of Input Tax Credit, Export Remittances, Failure to submit proof of foreign remittance - Department conducted an audit of the petitioner and raised certain objections, including the petitioner's failure to submit proof of foreign remittance such as BRC or FIRC. Based on these objections, the CGST Department issued an order confirming a demand along with interest and penalty of an equivalent amount, and appropriated the petitioner's input tax credit - Whether the impugned order is justified in rejecting the refund claimed by the petitioner and confirming the demand, interest, and penalty - HELD – The FIRCs need not match transaction by transaction and could be on a periodic basis, as long as the total benefit claimed is fully supported by the foreign exchange remitted to the petitioner. The matter deserves re-consideration - the impugned order is set aside and the Adjudicating Authority is directed to re-consider the matter after providing the petitioner an opportunity for personal hearing and considering the submissions made – The writ petition is disposed of

HYBON TECHNOLOGIES PRIVATE LIMITED VS SPECIAL COMMISSIONER, ZONE 11 & ORS.

GST – Refund – Impugned order questioning the admissibility of Input Tax Credit claims while examining a claim for refund – Petitioner contended that the statutory provisions governing refund do not authorize revenue to decide issues of ITC eligibility or admissibility during refund adjudication under Sections 16 of the IGST Act and 54 of the CGST Act, 2017 – HELD - the question of revenue's jurisdiction to decide ITC admissibility during refund adjudication strikes at the very foundation of the impugned orders and is substantial enough to warrant judicial examination - The preliminary objection raised by the revenue authorities on maintainability grounds is rejected and the writ petition is maintainable since the issue raised is not merely factual but legal and constitutional in nature - the preliminary objection is overruled

ERNST AND YOUNG LIMITED VS ASSISTANT COMMISSIONER, DIVISION-VASANT KUNJ & ANR.

GST - Interest on delayed Refund – Challenge of non-grant of interest – Applicable rate of interest - HELD - Matter remanded to the Adjudicating Authority to compute the interest by applying the principles laid down in the M/s G.S. Industries case, where the court had held that the interest at the rate of 6% per annum is payable for the period commencing from the date immediately after the expiry of sixty days from the date of the first application for refund, and if the refund claim attains finality through appellate proceedings, the interest at the rate of 9% per annum is payable from the date immediately after the expiry of sixty days from the date of the second application filed pursuant to the appellate orders – Ordered accordingly

SAMYAK JAIN VS SUPERINTENDENT (ADJUDICATION), CENTRAL GST DELHI & ORS.

GST - Fraud, misuse of GST registration, Jurisdiction for investigation - Whether the investigation into the alleged misuse of the petitioner's GST registration should be conducted by the Economic Offences Wing (EOW) of the Delhi Police or the GST department – HELD - The petitioner's allegation was that his GST registration had been misused by a third party, which amounted to impersonation. Under such

circumstances, the matter should be investigated by the EOW of the Delhi Police, rather than the GST department - The Delhi Police (EOW) is directed to investigate the petitioner's complaint and take action in accordance with the law. The GST department is directed to cooperate with the EOW and provide any relevant documents or information – Ordered accordingly

RAMAN ENTERPRISES VS COMMISSIONER OF SGST DELHI AND ANR

GST - Rectification of errors, Opportunity of hearing – Whether the opportunity of hearing is ought to be afforded while passing the rectification order under Section 161 of the CGST Act, 2017 – HELD - When a rectification order adversely affects the Assessee, the principles of natural justice must be followed, and the Assessee must be provided an opportunity of being heard. The said position would also prevail when the rectification application has been preferred by the Assessee and the same is being rejected without providing reasons for non-consideration/insufficiency of the grounds raised by the said Assessee. This practice would be in line with the intent of the third proviso to Section 161 of the Act which stipulates compliance with the principle of natural justice to protect the interest of the Assessee - In the present case, the rectification order was passed without providing reasons for the rejection of the petitioner's rectification application – The impugned order is set aside and the petitioner shall be provided a hearing on the rectification application, and a reasoned order shall be passed – The petition is disposed of

M/S MATHUR POLYMERS VS UNION OF INDIA & ORS.

GST - Service of Notice on e-mail, Consolidated orders - Whether the service of notice through email to the registered email address of the petitioner on the GST portal is valid and sufficient as per the provisions of the CGST Act – Validity of issuance of a consolidated order covering multiple Financial Years is permissible in cases involving allegations of fraudulent availment of ITC – HELD - As per Section 169(1)(c) of the CGST Act, service of any communication through the email address provided at the time of GST registration is a valid mode of service. The emails sent to the registered email address of the petitioner on the GST portal is presumed to be the email address of the petitioner. The case law relied upon by the petitioner, which dealt with the Income Tax Act, is distinguished as the language of the CGST Act is different from Income Tax – The service of notice through email to the registered email address is valid and in compliance with the statutory requirements - On the issue of a consolidated order covering multiple Financial Years, the Sections 73 and 74 of the CGST Act use the term "for any period" and "for such periods" in the context of fraudulent availment or utilization of ITC. The nature of ITC is such that fraudulent utilization and availment may involve a series of transactions spread over different Financial years, and a solitary transaction in one year may not be sufficient to establish the pattern of fraud. In cases involving allegation of fraudulent ITC, the issuance of a consolidated notice and order for multiple Financial Years is permissible and tenable under the CGST Act - There was no jurisdictional error or violation of principles of natural justice – The writ petition is dismissed with cost

DAWN EXPRESS COURIER DEL PRIVATE LIMITED VS UNION OF INDIA & ORS.

GST - Pre-notice consultation, Sufficient time to reply the notice - DGGI conducted investigation against the petitioner and other courier agents, finding discrepancies in the petitioner's records, such as the entire consideration not being shown, evasion of tax, and non-payment of GST on import of services - Whether the pre-notice consultation under Rule 142 of the CGST Rules, 2017 was mandatory, and its non-issuance deprived the petitioner of the opportunity to deposit the tax prior to the issuance of the SCN – HELD - The pre-notice consultation under Rule 142 of the CGST Rules was not mandatory, as it had become discretionary with effect from 9th October, 2019. Further, the petitioner could have availed the opportunity under Section 74(5) of the CGST Act to pay the tax along with interest and penalty before the issuance of the SCN. Since the petitioner had not provided its

stand on the contentions and allegations of the Department, the challenge to the SCN on the ground of non-compliance of Rule 142 and Section 74(5) is not tenable - The manner in which the Department issued the summons, providing just one day's notice for the hearing, is violate of the principles of natural justice. The Department is directed to grant the petitioner a reasonable 30 days' time to file a reply to the SCN and provide a proper personal hearing opportunity before passing a detailed and reasoned order – The writ petition is disposed

BENITO OPERATIONS AND TECHNOLOGIES PVT LTD VS DEPUTY EXCISE AND TAXATION COMMISSIONER ST GURGAON NORTH

GST - Provisional attachment of bank accounts – Pursuant to investigation and adjudication against another company (M/s Wings Operations and Technology India Pvt. Limited), the Deputy Excise & Taxation Commissioner (State Tax) Gurgaon North issued order for provisional attachment of the petitioner's bank accounts - The petitioner contended that since M/s Wings Operations and Technology India Pvt. Limited had filed an appeal under Section 107 of the CGST Act, 2017 along with the mandatory pre-deposit, the impugned orders attaching the petitioner's bank accounts could not be sustained – HELD - Once an appeal has been filed along with the mandatory pre-deposit under Section 107(6) of the CGST Act, 2017, the impugned order is automatically stayed under Section 107(7) of the Act. In view of the fact that the appeal has been filed, the orders of provisional attachment of bank accounts would not sustain and set aside. The Petitioner is free to operate its bank accounts – The petition is disposed of

UNIQUE SALES VS SUPERINTENDENT, CGST, RANGE 77, OKHLA, DELHI SOUTH & ANR.

GST – Cancellation of registration with retrospective effect, procedural irregularities - The impugned order dated 15th March 2024 cancelled the Petitioner's GST registration with effect from 12th November 2020, however, it did not provide any reasons for the cancellation - Whether the impugned order cancelling the Petitioner's GST registration retrospectively is sustainable in law – HELD - Firstly, the SCN did not mention the venue for the personal hearing nor the concerned authority before whom the Petitioner had to appear. Secondly, the impugned order did not provide any reasons for the cancellation of the GST registration - the impugned order, due to the lack of any reasons and the fact that the SCN did not contemplate retrospective registration cancellation, is not sustainable and accordingly, the same is quashed. The Petitioner is allowed to file its GST returns and no penalty shall be imposed upon the Petitioner for the delayed filing during the period in which its GST registration remained suspended. However, the GST Department was free to proceed with any other action against the Petitioner, except for the delay in filing of the returns – The petition is disposed of

ALKESH TACKER HUF VS UNION OF INDIA & ORS.

GST - Refund of IGST of export of goods – Rejection of refund on the ground that the LUT certificate was filed after the exports were made - Whether the rejection of the refund claim on the ground that the LUT certificate was filed after the exports were made is justified - HELD - The exports, which are zero-rated supplies, are meant as an incentive to exporters. In terms of Rule 89 of the CGST Rules, 2017 in cases where there are zero rated supplies, the documents which are filed along with the refund application shall, in effect, be sufficient for claiming such refunds and withholding of the refund in this manner would be completely contrary to the scheme, spirit and the letter of law - The LUT certificate was prior to the exports made thus, the reason given for rejecting the refund was completely untenable - the impugned order is set aside and the authorities are directed to process the refund of the petitioner along with the statutory interest – The petition is allowed

M/S BAWANA INFRA DEVELOPMENT PVT LTD VS UNION OF INDIA & ORS.

GST - Concessionaire, Public Private Partnership (PPP), Sovereign Functions – Petitioner is a concessionaire who entered into an agreement with the Delhi State Industrial and Infrastructure Development Corporation Ltd. (DSIIDC) for the re-development and management of the Bawana Industrial Estate in Delhi under a PPP model - Petitioner is entitled to be paid by DSIIDC for various services such as Common Effluent Treatment Plant (CETP) services, maintenance services, water charges, and annuities - Whether the petitioner, being a concessionaire under the PPP model, is discharging sovereign functions and is exempt from paying GST on the services provided to DSIIDC – HELD - The legal issues raised by the petitioner would require adjudication. The structure of the agreement is such that the amounts are collected from industries and consumers into a designated bank account, and DSIIDC then makes payments to the petitioner for the various services. The key question is whether the petitioner should be considered as having stepped into the shoes of DSIIDC or as a service provider to DSIIDC - The petitioner is directed to deposit a sum of Rs. 4 crores with the concerned department within six weeks, subject to which no coercive measures shall be taken pursuant to the impugned order – Ordered accordingly

DHRUV KRISHAN MAGGU VS UNION OF INDIA & ORS.

GST – Challenge to validity of Sections 69, 70 and 132 of the CGST Act, 2017 - Power to Arrest - Petitioners challenge the powers of arrest exercised by officers of the GST Department under Sections 69 and 70 of the CGST Act on the ground that these provisions are beyond the legislative competence of the Parliament and violate various constitutional rights - Whether Sections 69 and 70 of the CGST Act, which provide for the powers of arrest and summons, are within the legislative competence of the Parliament – HELD - The Supreme Court in Radhika Agarwal v. Union of India & Ors. has clearly held that the Parliament has the legislative competence to enact the provisions under Sections 69 and 70 of the CGST Act. The Article 246-A of the Constitution is a comprehensive provision that empowers the Parliament to make laws with respect to GST, including ancillary and subsidiary matters necessary for the effective levy and collection of GST, such as the power to summon, arrest and prosecute - the argument that the Parliament's power is limited to the entries in List I of the Seventh Schedule, is rejected. The doctrine of pith and substance applies and the ambit of Article 246-A extends to all matters that can fairly and reasonably be said to be comprehended within it - In light of the Supreme Court's judgment, the challenges raised in the present petitions regarding the legislative competence of Sections 69 and 70 of the CGST Act no longer require adjudication - The writ petitions are disposed of

XILINX INDIA TECHNOLOGY SERVICES PVT LTD VS ASSISTANT COMMISSIONER STATE TAX

GST - Interest on Delayed Refunds - During the pendency of the petition, the respondent authority sanctioned and credited the principal refund amounts but did not grant any interest for the delay - Whether an Assessee is statutorily entitled to interest on delayed GST refunds under Section 56 of the CGST Act, 2017, even if it was not specifically claimed in the refund application - HELD - In the case of Raghav Ventures v. Commissioner of Delhi Goods & Services Tax, the Court held that the payment of interest under Section 56 of the CGST Act, 2017, is a statutory obligation and becomes automatically payable without the need for a specific claim – The Section 56 unequivocally mandates that if any tax ordered to be refunded is not paid within sixty days from the date of receipt of the application, interest at 6% per annum is payable from the date immediately following the expiry of the sixty-day period until the date the refund is credited to the applicant's bank account. The payment of interest is not dependent on the discretion of the tax authority or a claim made by the Assessee in the refund form; it is a direct consequence of the delay by the department beyond the stipulated timeline - The

Respondent are directed to calculate the interest liable to be paid on the delayed refund amounts as per the provisions of Section 56 of the CGST Act, 2017, and to credit the said interest amount to the petitioner's account within a period of two months – The writ petition is disposed of

DHRUV MEDICOS PVT LTD VS DEPUTY COMMISSIONER, CENTRAL GST CIRCLE 5, AUDIT-I, DELHI & ORS.

GST - Rule 101(4) of CGST Rules, 2017 - Finalisation of Audit Report, Furnishing of Reply – Petitioner was subjected to an onsite audit from March 20, 2025 to March 25, 2025. An Audit memo was issued to the petitioner on March 28, 2025, which was received on April 5, 2025. The petitioner raised grievances before the Additional Commissioner on April 4, 2025, and the audit memo was dispatched in a back-dated manner - The petitioner submitted a detailed reply on June 19, 2025, but the audit report was finalized on April 29, 2025, prior to the petitioner's reply - Whether the finalization of the Audit report before the petitioner could furnish its reply, as required under Rule 101(4) of the CGST Rules, is a violation of said Rule - HELD - The Rule 101(4) of the CGST Rules uses the language "may inform the registered person" and "the said person may file his reply", indicating that the information and furnishing of the reply is not mandatory. However, the language "shall finalise the findings of the audit after due consideration of the reply furnished" makes it clear that if a reply is furnished, it must be considered before finalizing the audit findings - In the present case, the finalization of the audit report before the petitioner could furnish its reply is a violation of Rule 101(4) - The fact that the audit report was finalized on April 29, 2025, well before the entity submitted its reply on June 19, 2025, raises a prima facie issue of procedural violation. The further proceeding under the impugned SCN is stayed and the Department is directed to retain the amount paid by the petitioner under protest in a fixed deposit – Ordered accordingly

TATA STEEL LIMITED VS THE GOVERNMENT OF NCT OF DELHI

GST - Cancellation of GST Registration, Merger and Amalgamation - Petitioner company, following the amalgamation of another company with it, filed an application for cancellation of the amalgamated entity's GST registration – Authorities issued Show Cause Notice, which was only uploaded on the GST portal which never came to the Petitioner's knowledge - Whether an order rejecting an application for cancellation of GST registration, which is passed without providing any substantive reasons, is incorrectly titled, and is based solely on the non-filing of a reply to a Show Cause Notice that was only uploaded to the GST portal and not effectively served on the Assessee, is liable to be set aside for non-application of mind and violation of principles of natural justice - HELD – The impugned order is "bereft of any reasoning whatsoever" and demonstrated a "complete non-application of mind" by the authority. The fact that the order was wrongfully titled further supported this conclusion. The only reason cited for rejection—the failure to reply to the Show Cause Notice—is deemed insufficient, especially when the Petitioner contended that the notice, being merely uploaded on the portal, never came to its knowledge - Furthermore, the authority failed to apply its mind to the substantive ground for cancellation, which was the merger of the companies, and provided no reason as to why the registration could not be cancelled on this basis. Passing such an unreasoned order without ensuring the petitioner had a fair opportunity to be heard constitutes a violation of the principles of natural justice - the Petitioner is to be given access to the GST portal to file a reply to the Show Cause Notice within thirty days. Following the submission of the reply, the authority was directed to afford the Petitioner a personal hearing and thereafter decide the application for cancellation of GST registration afresh in accordance with the law - The petition is disposed of

AUGUST ATTORNEYS LLP VS UNION OF INDIA & ORS.

GST – Cancellation of Registration, Condonation of delay - Due to changes in the partnership structure, the petitioner-firm was unable to file returns - Show-cause notice was allegedly issued, which the petitioner claims it did not receive, and the GST registration was cancelled retrospectively - The petitioner filed an appeal against the cancellation order, which was rejected by the Appellate Authority on the ground of limitation – HELD – Since the limitation period would only start from the date of communication of the order, the Appellate Authority should have considered the question of whether the SCN and the cancellation order were duly served on the petitioner - Section 107(4) of the CGST Act provides for condonation of delay in filing the appeal if sufficient cause is shown. The cancellation of GST registration can have an adverse impact on the firm's ability to render professional services, therefore, the delay in filing the appeal should be condoned - The Appellate Authority is directed to adjudicate the appeal on merits, subject to the petitioner depositing Rs. 25,000/- as costs with the Department - Petitioner is permitted to file all the outstanding returns as per the law and rules, and the Appellate Authority was directed to consider the same while deciding the issue of cancellation of the Registration - the delay in filing the appeal is condoned and the appeal is restored to Appellate Authority for adjudication on merits

M/S SISLA LABORATORIES VS THE DEPUTY COMMISSIONER OF CGST

GST - Refund application, Issue of refund rejection order – Petitioner filed two refund applications under Section 54(3) of the CGST Act, 2017 on 17th May, 2019 for the period from July 2017 to March 2018, and another dated 12th June, 2019 for the period from June 2018 to March 2019 – Petitioner grievance that the respondent has not processed these applications despite the lapse of several years – HELD - The Department had issued a Show Cause Notice dated 5th July, 2019 and a rejection order dated 19th September, 2019 in relation to the first refund application. However, the petitioner claimed that these documents were not uploaded on the portal and it had no knowledge of the same – The Assessee's remedies cannot be shut out when the knowledge of the adverse order, which provides the cause of action for an appeal, is delayed - the petitioner became aware of the rejection order of 19th September, 2019, only on 11th February, 2025. Given these circumstances, the principles of fairness demand that the Petitioner be given an opportunity to exercise their statutory right of appeal. The delay in filing the appeal is directly attributable to the lack of knowledge of the order, and therefore, the Petitioner cannot be penalized by dismissing the appeal on grounds of limitation - The Petitioner was permitted to file an appeal under Section 107 of the CGST Act, 2017, challenging the rejection order – The petition is disposed of - Whether the department was justified in withholding the second refund application dated 12th June, 2019 on the ground that the deficiency memo could not be traced – HELD - The Department's own affidavit stated that the deficiency memo issued in relation to the second refund application could not be traced. In such circumstances, there is no valid ground to hold back the refund. Accordingly, the Department is directed to process the second refund application dated 12th June, 2019 and refund the amount along with statutory interest within two months.

HYT ENGINEERING COMPANY PRIVATE LIMITED VS UNION OF INDIA & ORS.

GST - Special Audit - Procedural Compliance, Natural Justice – Petitioner was subjected to special Audit by the GST Department. The Audit Repor was communicated to the petitioner via email, granting seven days for reply. The petitioner failed to file any reply within the stipulated time, resulting in issuance of ADT-04 notice demanding payment of GST - Whether a petitioner who has missed the deadline for responding to a special audit report under Section 66 of the CGST Act, 2017 can be granted another opportunity to file reply and be heard – HELD - While the petitioner had clearly missed

the deadline for submitting reply to the special audit report, the scheme of Section 66 of the CGST Act contemplates an opportunity of being heard after filing of reply in respect of Special Audit Reports - The statutory framework under Section 66 CGST Act inherently provides for procedural safeguards that include the right to be heard after filing appropriate response to audit findings - Considering the substantial quantum of demand, it is deemed appropriate to permit the petitioner to withdraw the present petition with liberty to file a reply and seek an opportunity of being heard - The petition was dismissed as withdrawn

DIRECTORATE GENERAL OF GST INTELLIGENCE VS RAKESH KUMAR GOYAL

GST – Bail, Input Tax Credit Fraud – DGGI petition seeking recall of bail granted to the Respondent, who was accused of GST evasion amounting to crores through fraudulent availment of Input Tax Credit on invoices of non-existing firms and claiming IGST refunds on exports - The petitioner contended that bail was improperly granted on a third application within a month of previous rejections without change in circumstances, the respondent remained uncooperative in investigations, there was no parity with co-accused, and the respondent was a direct beneficiary of tax evasion – HELD - The filing of a charge sheet against the respondent on 04.12.2020 constituted a substantial change in circumstances that justified reconsideration of bail - While considerations during investigation focus on whether an accused would cooperate and not hamper investigations, once a charge sheet is filed, these concerns fade into the background and the court must instead consider the gravity of offense along with the Triple Test of flight risk, witness influence, and evidence tampering – The evidence in this case was primarily documentary with no likelihood of tampering, no demonstration that the respondent was a flight risk or would influence witnesses, and no allegations of bail misuse since it was granted on 23.12.2020 - The Chief Metropolitan Magistrate had exercised discretion judiciously in granting bail, and there was no evidence that the trial had been hampered as a result of the bail order – The petition is dismissed

M/S S R ENTERPRISES VS PR. COMMISSIONER OF GOODS AND SERVICE TAX, EAST DELHI

GST – Fraud, Forged Documents, Fabricated SCNs, and Cancellation of GST Registration – Petitioners challenged the Show Cause Notices and orders for cancellation of their GST registrations - Based on the documents provided, the Court initially set aside the cancellation orders, but subsequently discovered that the SCNs, affidavits, and Aadhaar cards were all forged and fabricated. The individuals who were claimed to be the petitioners were untraceable and the Aadhaar cards were found to be either fraudulent or belonging to unrelated persons - Whether the writ petitions filed by the petitioners are liable to be dismissed due to the forged and fabricated nature of the documents submitted – HELD - The petitions were filed by persons who did not have any authority on behalf of the firms, the affidavits were signed by fictitious persons, the Aadhaar cards relied upon were clearly forged and fabricated, and the SCNs filed with the writ petitions were also forged and fabricated - the individuals claimed to be the proprietors of the firms were either untraceable or had no connection with the firms. The extent of knowledge of the counsel regarding the forged and fabricated nature of the documents was also unclear. Given the seriousness of the matter, the DGGI is directed to conduct a thorough investigation and file a complaint with the Crime Branch of the Delhi Police, leading to the registration of a FIR - The court recalled the previous orders passed in the writ petitions and dismissed the petitions due to the forged and fabricated nature of the documents submitted. The Registrar General is directed to lodge a complaint against all the petitioners for offences related to forgery, fabrication, and other relevant provisions of the law - the present order be communicated to the relevant authorities to consider measures to ensure the physical presence of deponents when affidavits are attested by Oath Commissioners and Notaries – The petitions are dismissed

M S G S INDUSTRIES VS COMMISSIONER OF CENTRAL TAX AND GST DELHI WEST

GST - Refund, Delay in issue of Deficiency Memo, Interest on delayed Refund - Whether the petitioner is entitled to interest for the entire period from the date of filing the refund applications till the date of sanction of refund, or whether the interest can be denied for the period taken by the petitioner to respond to the deficiency memo - HELD - The petitioner cannot be denied the benefit of interest for the delay caused due to the deficiency memo not having been issued within the stipulated period of 15 days under Rule 90(2) of the CGST Rules. However, the petitioner took about 74 days to respond to the deficiency memo - The main provision of Section 56 provides for interest at the rate of 6% per annum, while the proviso to Section 56 provides for a higher rate of 9% per annum in cases where the refund claim has attained finality through appellate proceedings - The petitioner would be entitled to interest at the rate of 6% per annum from 7th September, 2019 and 9th September, 2019 (i.e., 60 days from the date of refund applications) till 9th June, 2023 (i.e., date of sanction of refund). However, the period of 74 days between 29th November, 2019 and 11th February, 2020, which was the time taken by the petitioner to respond to the deficiency memo, would be deducted from this period. Further, for the period from 5th April, 2022 to 9th June, 2023, the petitioner would be entitled to interest at the rate of 9% per annum - The writ petition is disposed of

M/S KEI INDUSTRIES LIMITED VS UNION OF INDIA & ORS.

GST – Cross-charge, Internally Generated Services, Distinct Persons - Demand of IGST on expenses not cross-charged - Whether IGST was required to paid in respect of those expenses which were incurred by the petitioner but were not cross-charged with the other entities - HELD - The Adjudicating Authority needs to reconsider the matter in light of Circular No. 199/11/2023-GST dated 17th July, 2023 and the judgment in Metal One Corporation India Pvt. Ltd. & Ors. v. Union of India & Ors. – A perusal of the Order-in-Original clearly shows that there were no cross-charges of expenses with the other entities. Moreover, the second proviso to Rule 28 of the CCGST Rules, 2017 has been applied without giving benefit of the Circular No. 199/11/2023-GST and consideration to the said circular - the Adjudicating Authority was directed to reconsider the matter in light of the Circular and the Metal One Corporation judgment - The writ petition is disposed of

ADITYA MADAAN VS COMMISSIONER CGST GST COMMISSIONERATE DELHI & ORS.

GST - Cancellation of Registration, Appeal, Valid Digital Signature - Petitioner filed an appeal against the cancellation order which was rejected by the Appellate Authority as being time-barred – Condonation of delay in filing of appeal against the cancellation order - Whether the cancellation order is valid despite the "Signature Not Verified" stamp on the order - HELD - The power to condone delay in pursuing a statutory remedy would depend on the statutory provision that governs. If the legislation incorporates a special period of limitation and proscribes the same being entertained after a terminal date, the general provisions of the Limitation Act would cease to apply. In the present case, the appeals were filed beyond the prescribed period of limitation provided under Sections 107(1) and 107(4) of the CGST Act, and hence, the delay could not be condoned – Further, the legitimacy of the order cannot be questioned as the name of the official, his designation, his ward number, range number along with the digitally signed stamp is appearing clearly in the said order. There may be some technical glitch with the wording in the Stamp “Signature Not Verified” but the same is digitally signed and the said expression would not render the order void or non est. The fact that the officer has digitally signed the order and the order is uploaded on the GST portal renders the same as a valid order - the delay in filing the appeal is not condonable and the cancellation order is valid despite the "Signature Not Verified" stamp on the order – The petition is dismissed

OM PRAKASH GUPTA VS PR. ADDITIONAL DIRECTOR GENERAL DGGI & ORS

GST - Provisional attachment under Section 83 of the CGST Act, 2017 – Lifting of Provisional attachment once the final order has been passed - HELD - During the pendency of the writ petition, the final order under Section 74 of the CGST Act was passed, and the petitioner had already availed the appellate remedy under Section 107. In view of the Supreme Court's observations in Radha Krishan Industries case that the provisional attachment comes to an end upon the passing of the final order, the Department is directed to lift the attachment on the petitioner's bank account and communicate the same to the bank – The petition is disposed of

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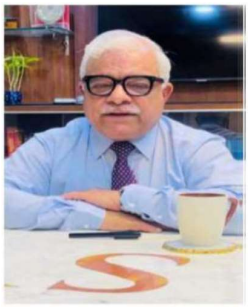

ADV. SUSHIL VERMA

LEGAL TRIVIA

Important legal trivia includes the fact that the Indian Constitution is the longest handwritten constitution in the world, drafted by a committee chaired by Dr. B.R. Amdekar. The original English and Hindi copies of the Indian Constitution are stored in special cases in the Parliament of India's library. The Constitution of India is the longest written constitution in the world, with 448 articles, 25 parts, and 12 schedules.

Legal trivia. 2

- **Legal age for voting:** The legal age to vote is 18 years old in India.
- **Directive Principles:** The Directive Principles of State Policy are not enforceable in courts of law.
- **Right to Education:** The 93rd amendment to the Indian Constitution introduced the right to education for children between 6 and 14 as a fundamental right.

LEGAL TRIVIA 3

How many Fundamental Duties are listed in Article 51-A of the Constitution of India?
11 Fundamental Duties

Dual Citizenship Prohibition
Unlike some countries, the Indian Constitution does not allow dual citizenship. Indian citizens cannot hold citizenship of another country simultaneously.

The Union and State Lists in the Indian Constitution divide legislative powers between the Union and State governments. The Union List covers subjects under the central government's jurisdiction, the State List covers subjects under the state governments' jurisdiction, and the Concurrent List includes subjects where both can legislat

LEGAL TRIVIA 4

Is cryptocurrency legal in India?
Cryptocurrency is not recognized as legal tender in India, but it is not illegal to buy, sell, or hold cryptocurrencies. The Supreme Court overturned the RBI's ban on banking services for cryptocurrency transactions in March 2020, allowing banks to provide services to cryptocurrency businesses and traders.

Do I need to report my cryptocurrency holdings in India?
Yes, individuals and businesses must disclose their cryptocurrency holdings and transactions in their income tax returns. Companies must also disclose cryptocurrency holdings in their financial statements as mandated by the Ministry of Corporate Affairs.

Can cryptocurrencies be used for payments in India?
Cryptocurrencies are not recognized as legal tender, meaning they cannot be used as a medium of exchange for goods and services like the Indian Rupee. However, individuals can still use cryptocurrencies for transactions between consenting parties.

LEGAL TRIVIA 5

Reference to Larger Bench does not render ineffective the precedential value of the referred matter. TILL IT IS OVERTURNED BY THE DECISION OF THE LARGER BENCH SO CONSTITUTED.

CA Renu Sharma

Notifications issued by CBIC from 01.011.2025 to 30.11.2025

Summarised by CA Renu Sharma

Central Tax

Date	Notification no	Matter

No Notification issued

Central Tax (Rate)

Date	Notification no	Matter

No Notification issued

Integrated Tax

Date	Notification no	Matter

No Notification issued

Integrated Tax (Rate)

Date	Notification no	Matter

No Notification issued

Union Territory Tax

Date	*Notification No.*	*Matter*

No Notification issued

Union Territory Tax (Rate)

Date	***Notification No.***	***Matter***

No Notification issued

Compensation Cess

Date	***Notification No.***	***Matter***

No Notification issued

Corrigendum

Date	***Corrigendum***	***Matter***

No issue

News, Updates and Advisories Issued by GSTN from 01.10.2025 to 30.11.2025–

Summarised by CA Renu Sharma

Serial no.	Date	Advisory
1	01.11.2025	**Advisory for Simplified GST Registration Scheme**
2	01.11.2025	**Gross and Net GST revenue collections for the month of Oct, 2025**
3	20.11.2025	**Advisory for Furnishing of Bank Account Details as per Rule 10A**