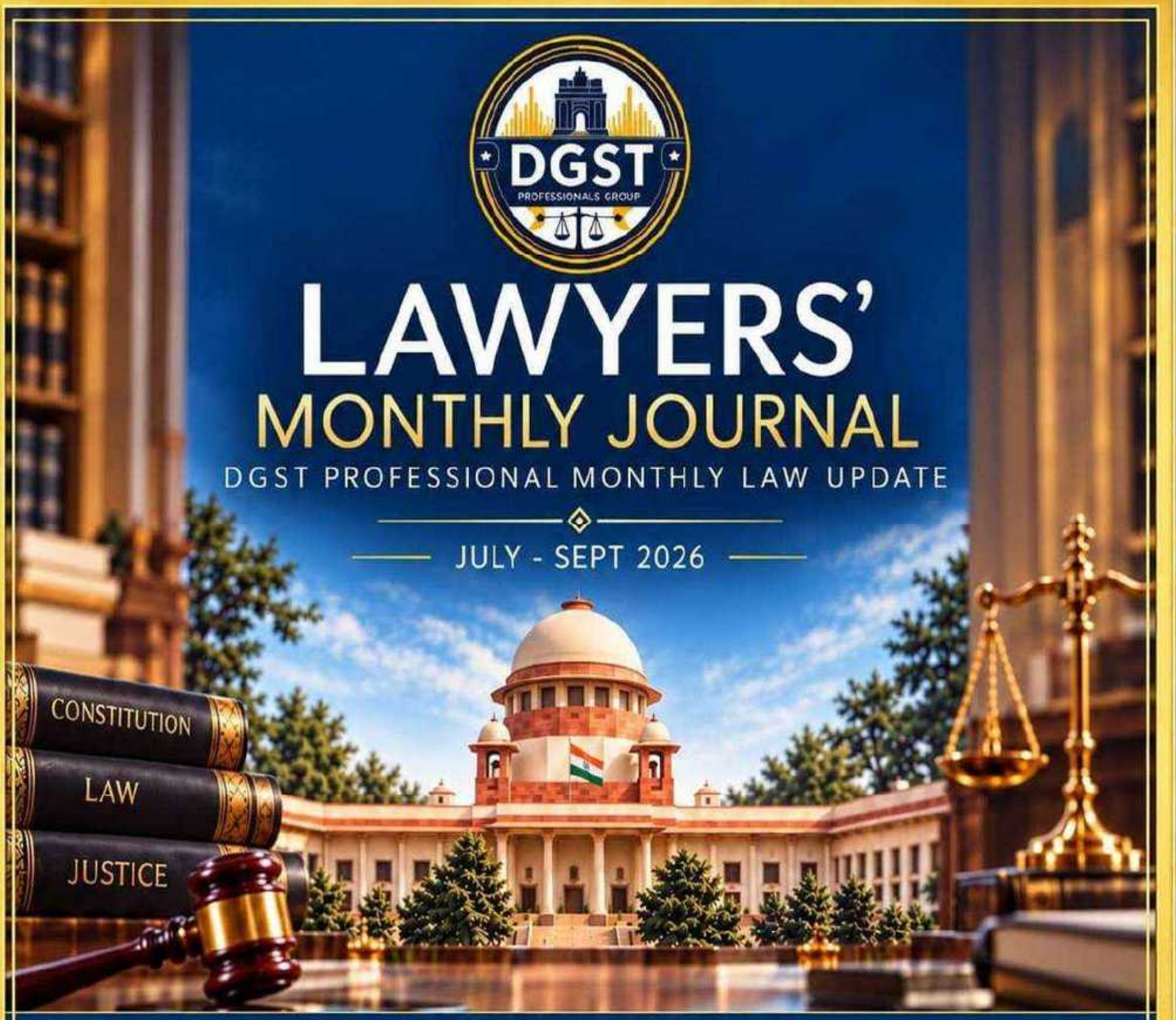
DGST
PROFESSIONALS GROUP

LAWYERS' MONTHLY JOURNAL

DGST PROFESSIONAL MONTHLY LAW UPDATE

JULY - SEPT 2026



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Message from the Patron-in-Chief

Shri Praveen Khandelwal

Dear Members of the DGST Family,

Namaskaar.

It is a matter of great pride and privilege for me to address you through this newly conceptualised Lawyers Monthly Journal. It looks very good.

We are witnessing a defining moment in the journey of DGST. For the first time in the history of any professional association, the leadership of our activities has been entrusted to a capable and committed team of three women professionals — **Rajmani Jindal, Rashmi Jain and Renu Sharma**. This is a landmark step that truly reflects the progressive and inclusive spirit of DGST.

The successful conclusion of our **109th Study Session** and the **14th GST Moot Tribunal** has once again demonstrated the strength of our collective endeavour. The tremendous response received from professionals across India, coupled with the excellent viewership on our YouTube Channel and website, fills us with encouragement and responsibility.

I am equally happy to note the release of the **Lawyer's Monthly Journal** in a refreshed design and professional format. It is another step forward in our commitment to quality and excellence.

Looking ahead, the International Conference scheduled for January 2027 will be conceptualised and executed entirely by our younger professionals and CAIT will co-sponsor the same as usual. It is heartening to see a large number of young members already coming forward with enthusiasm — ready to contribute as writers and speakers. This is the true measure of DGST's success: creating opportunities and nurturing talent.

Even after four years, DGST continues to function entirely on a **pro bono** basis. There is no commercial interest, no politics, and no compromise on values. The connection with our members remains pure, strong and purposeful — and that is our greatest strength.

I am grateful that **Sushil Verma Sir** and **H.C. Bhatia Sir** continue to guide and mentor this family with their wisdom and quiet dedication. Their presence remains the bedrock of everything we do.

I am more than confident the new Team will instill more energy, creativity, and commitment among the younger professionals and take DGST to other parts of India.

Let us move forward together with the same sincerity, humility and collective spirit that have brought us this far.

With warm regards and best wishes,

Praveen Khandelwal

Message from the Mentor

Adv. Sushil Verma

Dear Members of the DGST Family,

It gives me immense pleasure to connect with all of you once again.

I am delighted to share that DGST has entered a truly historic phase. For the first time in the history of any professional association, our activities are being led by a dedicated team of three dynamic women professionals — **Rajmani Jindal, Rashmi Jain and Renu Sharma**. This is not merely a change in leadership; it is a proud statement of the values DGST has always stood for — inclusivity, merit and quiet determination.

We have just concluded our **109th Study Session** and the **14th GST Moot Tribunal**. The response from professionals across the length and breadth of India has been overwhelming. The viewership on our YouTube Channel and website has been truly gratifying, reflecting the growing trust and engagement of our community.

Alongside, we are happy to present the **Lawyer's Monthly Journal** in a completely new design and format — more refined, more readable and more professional. And the team is led by our senior most member Kumarjee Bhatt as Editor and Dr Rahul Kakkar and CA Yugul Goel as Joint Editors with Rajmani Jindal and myself as Advisors. A new format and original writings by younger professionals.

Looking ahead, the next International Conference in January 2027 will be handled entirely by our younger professionals. It is heartening to see tens of young professionals already coming forward — eager to write articles and take the stage as speakers. This is the real spirit of DGST: creating space, opportunity and confidence for the next generation.

Even after four years, every activity of DGST continues to remain completely **pro bono**. There is no commercial motive, no hidden agenda. Our connection with members has grown stronger than ever, and I am proud to say that DGST remains free from any politics. It continues to be a pure platform of learning, sharing and mutual respect.

Our Chairman, **Shri Praveen Khandelwal Ji**, and our guiding light, **H.C. Bhatia Sir**, continue to mentor and bless all DGST activities with their wisdom and quiet strength.

A new team.
A new culture.
A new beginning.
And a new vigour.

Together, let us keep this journey pure, purposeful and progressive.

With warm regards and best wishes,

Sushil Verma

Message from the Editor

Adv. Kumar Jee Bhat

Arise, awake and stop not until the goal is achieved.

स्वामी विवेकानंद.

Editor's Message

Our E-newsletter has been reformatted and given a new shape for the betterment of its contents to be more attractive and informative. Due to some unavoidable circumstances we could not release the earlier parts, which we have combined in this issue –

We have included some new topics for discussion and more articles have been included discussing crucial matters of GST.

We were fortunate enough to be part of CAIT who organised Bharat Mahotsav at Bharat Mandapam, where our role was lauded and certificates of appreciation were given to members who participated in the Mahotsav.

Birthdays of our senior core committee were celebrated in the SV's Office and the members of Core Committee enjoyed every moment of the celebration.

The core team was given a new shape and the leadership of the team was transferred to the ladies, who shall be the convener, Deputy and Joint Conveners.

The DGST Professional Group is organising an annual Conference in the month of January 2027 for which every member of the group is trying his best to make the conference a grand success.

The DGST Professional Group is receiving invitations from NCR and outside the state for conducting Moot Court and lecture series.

The group has received invitations from Tax Advocates Association of Bengal for a half-day GST session.

Wait and watch some more events are coming in the near future and hope you are liking the content and material published in the journal

I shall be obliged if you also start writing on the GST Act and send the writeups for publication after the team approves it. I shall be thankful to all of you for registering your name for the annual conference which is our next mega event with Bhatia sir and SV sir as the centre of attraction.

Yours

Kumar jee Bhat

Message from the Joint Editor

Adv. (Dr.) Rahul Kakkar

Dear Members of the DGST Family,

It is always a pleasure and a privilege to connect with the esteemed members of our ever-growing DGST family.

As DGST continues its journey of professional excellence, knowledge-sharing and collective growth, I am delighted to share that we have entered another historic and inspiring phase.

For the first time in DGST's history, responsibility for guiding its activities has been entrusted to an accomplished team of three dynamic women professionals—Rajmani Jindal, Rashmi Jain and Renu Sharma. This is not merely a transition in leadership; it is a celebration of the principles that DGST has consistently upheld: inclusivity, meritocracy, dedication and selfless service. Their leadership brings fresh perspectives, renewed energy and a compelling vision for the future.

We have recently marked two significant milestones with the successful conclusion of our 109th Study Session and 14th GST Moot Tribunal. The enthusiastic participation and overwhelming response from professionals across the country have been deeply encouraging. The steadily increasing viewership of our programmes on DGST's YouTube channel and website reflects the trust, credibility and goodwill that this platform has earned within the professional fraternity.

Another noteworthy development is the launch of our Lawyers' Monthly Journal in a completely refreshed design and format, reaffirming our commitment to quality, originality and professional excellence. The Journal is privileged to have our senior member, Shri Kumar Jee Bhat, as its Editor, ably supported by CA Yugal Goyal and Shri Sushil Verma, Advocate Sir, as Joint Editor and Deputy Editor, respectively. Mrs. Rajmani Jindal, Advocate, and our Chief Mentor, Shri Sushil Verma, Advocate Sir, serve as Advisors. The renewed publication aims to provide a meaningful platform for original research, insightful legal commentary and, most importantly, the emerging voices of young professionals.

Looking ahead, our forthcoming International Conference, scheduled for January 2027, promises to be another defining milestone. As part of a conscious and progressive initiative, the entire responsibility for organising and conducting the conference will rest with our younger professionals. It is immensely heartening to see numerous young members already stepping forward to contribute scholarly articles, participate as speakers and assume leadership responsibilities. The true strength of DGST lies not merely in the knowledge we share today, but in the opportunities we create for the professionals of tomorrow.

What makes this journey particularly meaningful is that, even after four years of sustained activity, DGST continues to function entirely on a pro bono basis, without commercial considerations or vested interests. Our foundation remains firmly rooted in professional integrity, mutual respect, intellectual independence and an unwavering

commitment to learning. DGST has consciously remained above organisational politics, preserving its identity as an open, inclusive and apolitical platform where knowledge takes precedence over all else.

We remain deeply indebted to our esteemed Chairman, Shri Praveen Khandelwal Ji, and our respected mentor and guiding force, Shri H. C. Bhatia Sir, whose wisdom, encouragement and unwavering support continue to inspire and strengthen every initiative undertaken by DGST.

As we embrace this new phase, I firmly believe that DGST is not merely growing as a professional association; it is evolving into a vibrant institution that nurtures talent, encourages independent thought and connects generations of professionals through a shared pursuit of excellence.

New leadership. New perspectives. New opportunities. Renewed vigour.

Yet, the same unwavering values and the same spirit of selfless service remain at the heart of our journey.

Let us continue this remarkable journey together—preserving the purity of our purpose, strengthening the bonds of our professional fraternity and building a legacy of knowledge, integrity and excellence for generations to come.

With warm regards and best wishes,

Dr. Rahul Kakkar, Advocate
Core Committee Member & Joint Editor
DGST – Delhi GST Professionals Group

Message from the Convener

Adv. Rajmani Jindal

Dear Family,

NAMASKAR,

I am writing this message on the occasion of the release of our monthly professional newsletter (covering three months this time) on 17th October 2026, and to mark our 109th Study Session.

Writing my first message after I was crowned as Convenor of DGST, makes it more difficult.

It is never easy to put into words the infinite emotions that fill the heart on such a momentous occasion. Since its inception, DGST has stood tall—steadfast, unwavering, and undistracted—quietly writing its own remarkable story. We now stand ready to celebrate our 109th Study Session on Works Contract Services and GST Ramifications and an important 14th GST Moot Tribunal. Achieving such a milestone in just four short years is truly a Herculean task. It has been possible only because our visionary, idealistic, and far-sighted mentors lived this dream day and night, turning a monumental idea into reality through titanic effort and unwavering commitment. And the exemplary work done by the team.

Today, DGST and its mentor, SV Sir, have become a respected brand name in the legal fraternity. Lakhs of professionals from every corner of India turn to this platform—whether on WhatsApp, Facebook, or Instagram—seeking reliable, swift, and undisputed resolution of their queries. This is a true pro-bono service of the highest order. Professionals from Uttar Pradesh, Haryana, Punjab, Karnataka, and beyond have been drawn to DGST's unique learning style and have joined our family. SV Sir is not only the originator of the Moot Court concept in our circle but also an all-round master speaker. The DGST website is being regularly visited by tens of thousands of professionals for free download of ready-to-use appeals, duly vetted by seniors in the Group.

It is no exaggeration to say that DGST organised two highly successful international conferences in 2025: the first on 5th April 2025 on "7 Years of India's GST – Stakeholders' Experiences and the Way Ahead," and the second on 13th October 2025 on "Towards a New Professional Journey and Beyond," both held at the NDMC Convention Hall, Connaught Place, New Delhi. We also celebrated our landmark 100th Study Session—"100th Session of Legal Evolution: Mapping the Road Ahead"—at the Constitution Club of India, New Delhi. These milestones stand as proud testimony to the DGST family's deep commitment to spreading education pro bono, with humility and dedication.

One of the most exceptional achievements of this incredible journey was the conferment of the Lifetime Achievement Award upon our beloved mentor HCB Sir—the guru of our guru. This was a truly once-in-a-lifetime moment, one that DGST created and that will be remembered for years to come.

DGST has always sought to remain deeply connected with people in need and distress. We have tried to touch hearts by extending a helping hand whenever possible—whether through Punjab Flood Relief, regular financial assistance of ₹5,000 per month to many students, or the installation of water tanks and RO systems in schools affected by the Punjab floods.

DGST has been, is, and will always remain a nurturing platform for young professionals. Countless young minds have grown into successful speakers and writers through this series. We are now preparing for our next mega event/conference in the second week of January 2027—a trusted, tested, and time-honoured platform that continues to offer young professionals invaluable opportunities for article writing and national-level speaking under the guidance, supervision, and training of our mentor. This is a living example of the Guru-Shishya Parampara in its purest form, marked by unwavering commitment and dedication.

DGST is not merely a preacher of feminism; it is a sincere practitioner. Time and again we have witnessed this—whether through the presence of a woman judge on the Moot Tribunal or in various other group activities. The DGST Group has once again demonstrated this commitment: the current initiative is being led by a team of professional women—the three RRRs, myself, Renu Sharma and Rashmi Jain, both Chartered Accountants. This also shows that at DGST there is no discrimination – all professionals have equal opportunities to grow and steal the limelight. Our Patron-in-Chief and Member of Parliament, Shri Praveen Khandelwal Ji, will also grace this historic occasion as Chief Guest.

I shall always remain indebted to the Almighty for blessing me with the privilege of being part of this heavenly family. Truly, it is an honour.

Long live DGST!

@Rajmani Jindal
Convener, DGST

Message from the Joint Convener

CA Rashmi Jain

Greetings!

We are delighted to present the Newsletter of Delhi GST Professionals Group under the Convenership of Adv. Rajmani Jindal our new Convener.

This newsletter carries forward the core mission of Delhi GST Professionals Group - to create a platform for learning, sharing and handholding.

Our group is Pioneer and first in the professional world to be lead by the three women.

We are proud to share that Delhi GST Professionals Group in collaboration with CAIT is organizing its GST Mega Conference in the second week of January, 2027. A unique new year gift from our team that will enrich your professional life.

This conference is built on our Unique Leadership Model.

Chief Patron: Sh. Praveen Khandelwal Ji, Political Leader & Voice of Traders

Our Mentors & Teachers: SV Sir, HC Bhatia Sir

Department Representative: Sh. Sudhir Cheke Sir

Strength of Associations: Leaders of various Traders & Manufacturers Associations

Academic Connect: Various Law Colleges & Law School Students, whom we regularly mentor and handhold.

All these stakeholders together create a different world altogether - a complete ecosystem of Professionals, Trade, Department and Academia.

We have been circulating the topics on social media for quite some time.

You can visit our Facebook, Instagram and YouTube.

We invite you all to contribute articles for the Newsletter & Conference Souvenir and to come forward as speakers.

The best article will be published in the souvenir which reaches crores of traders and professionals all over the country.

You will be guided by the team under the mentorship of SV sir how to do research and write.

You will be trained to speak on the podium.

It's your field come and play.

Let's make this mission a grand success together.

Rashmi Jain

Co-Convener

Message from the Joint Convener

CA Renu Sharma

A warm regard to all members of the DGST and CAIT family,

It is my privilege to connect with you through this platform. Our newsletter helps us stay in touch and share the latest updates in GST and other laws, along with their practical implications.

Preparing an article for the DGST newsletter is a serious responsibility. Every article is first reviewed by SV Sir and other senior members of the Team. The content you receive is therefore carefully researched and refined before publication.

DGST believes in original work. Whether it is an article or a speaker's presentation, the subject must be properly researched. Nothing is approved without review by our esteemed Editors.

I am also delighted to share that, following the grand success of our previous conference, which was attended by professionals from Delhi and other cities, DGST is organising its next conference in the second week of January 2027.

A special feature of this conference is the opportunity it will provide to young professionals to develop their writing and speaking skills on one of the most prestigious platforms: their own DGST. This reflects the spirit of DGST. We are committed to encouraging young professionals and preparing them to shape the future, with the guidance of our respected mentors, including SV Sir and HC Bhatia Sir.

I invite young professionals to participate wholeheartedly, learn from their peers, and seek guidance from senior mentors on building their professional skills, work and value.

This conference is equally relevant to CAIT members. Businesspeople face many practical challenges and often ask where the promise of ease of doing business is. Genuine businesses can face difficulties simply because they are unfamiliar with the law and how it applies to them.

I encourage young business owners to attend, understand the relevant legal provisions and seek guidance from professionals. Knowing the law helps us make informed decisions and respond confidently when questions arise about our businesses. The law can seem harsh when we do not know how it applies; awareness gives us the confidence to deal with it.

My mentor often gives me one piece of advice, and I would like to share it with you:

Read, read and read.

Thank you very much.

Your own

CA Renu S

Joint Convener

Message from the Deputy Editor

CA Yugal Goyal

DGST MEGA CONFERENCE 2027

Delhi GST Professionals Group (DGST), in collaboration with CAIT, is proud to announce the DGST Mega Conference 2027, to be held in January 2027 at the prestigious NDMC Convention Centre, New Delhi.

The Conference is envisioned as a platform that brings together the GST fraternity, leading professionals, practitioners, academicians and emerging voices to deliberate upon contemporary issues, evolving jurisprudence and the future of indirect taxation.

WE INVITE YOU TO BE MORE THAN A PARTICIPANT.

1. CALL FOR RESEARCH ARTICLES

We invite professionals to submit original, well-researched and insightful articles on contemporary and emerging issues relating to GST, Customs, Indirect Tax and allied laws.

2. CALLING YOUNG PROFESSIONALS TO SPEAK

Are you a young professional below 40 years of age with a passion for GST and taxation?

Here is your opportunity to take the stage and share your knowledge, research and perspective before an audience of approximately 300 professionals at the NDMC Convention Centre, New Delhi.

DGST invites young professionals who aspire to contribute to the profession not merely as participants, but as future voices of the GST fraternity.

Your age should not define your platform.

Your knowledge should.

THIS IS YOUR OPPORTUNITY

To write an idea worth reading.

To speak on a subject worth discussing.

To place your perspective before the profession.

Whether you choose to write or speak—or both—DGST Mega Conference 2027 invites you to be a part of the conversation.

COME FORWARD.

Interested professionals may share their details and indicate their interest. Our conference team will be in touch with you for further details.

Regards

CA Yugal Goyal

Deputy Editor

GSTAT Operationalization: Taxpayers' Challenges in the New Era

CA Prateek Singh

GSTAT Operationalization: Taxpayers' Challenges in the New Era

Introduction

The Goods and Services Tax (GST) regime was introduced with the objective of creating a unified indirect tax system and simplifying tax compliance across India. While the GST law brought significant reforms, one of the major concerns since its implementation in July 2017 was the absence of a dedicated appellate tribunal. For several years, taxpayers had to approach High Courts directly after exhausting the first appellate remedy, resulting in increased litigation costs, delays, and inconsistent judicial interpretations across different states.

This article discusses the significance of **GSTAT**, its expected impact on the GST litigation framework, and the challenges taxpayers may encounter in this new era.

Background of GSTAT

The GST Appellate Tribunal has been constituted under **Section 109** of the Central Goods and Services Tax Act, 2017. It serves as the second appellate authority under the GST framework. Any person aggrieved by an order passed by the Appellate Authority under **Section 107** can prefer an appeal before **GSTAT** under **Section 112** of the CGST Act.

Although the statutory provisions existed since the introduction of GST, the Tribunal remained non-functional for several years due to issues relating to its constitution, composition, judicial independence, and infrastructure. Consequently, taxpayers had no option but to file writ petitions before various High Courts, leading to increased pendency and varied interpretations of identical provisions.

Following legislative amendments and judicial directions, the Government has initiated the operationalization of **GSTAT** by establishing the Principal Bench and multiple State Benches across the country.

The commencement of **GSTAT** marks a significant milestone in India's GST ecosystem and is expected to streamline tax dispute resolution.

Why GSTAT is a Welcome Development

1. Specialized Forum for GST Disputes

Unlike High Courts, **GSTAT** is a specialized tribunal exclusively dealing with GST matters. Members possess expertise in indirect taxation, enabling technically sound decisions based on commercial realities.

This specialization is expected to improve the quality and consistency of appellate decisions.

2. Faster Disposal of Appeals

One of the primary objectives behind establishing **GSTAT** is expeditious disposal of tax disputes. A dedicated tribunal can significantly reduce the backlog of GST litigation pending before High Courts.

Timely disposal also benefits businesses by reducing uncertainty in tax positions and allowing better financial planning.

3. Reduction in Litigation Cost

Approaching High Courts involves substantial legal expenses and procedural complexities. **GSTAT** offers taxpayers a comparatively accessible appellate forum, potentially reducing litigation costs.

4. Uniform Interpretation of GST Law

Since GST is a destination-based national tax, consistency in interpretation is essential. **GSTAT** can help develop uniform jurisprudence across different states, reducing conflicting views on similar legal issues.

5. Improved Ease of Doing Business

A robust appellate mechanism enhances taxpayer confidence and strengthens the overall GST ecosystem by ensuring fair and efficient dispute resolution.

Taxpayers' Challenges in the New Era

Despite the positive aspects, operationalization of **GSTAT** also presents several practical challenges.

1. Huge Backlog of Pending Appeals

Perhaps the biggest challenge is the enormous volume of appeals accumulated over the past several years.

Thousands of taxpayers whose appeals could not be filed earlier due to the absence of **GSTAT** are now expected to approach the Tribunal simultaneously.

This sudden influx may initially lead to:

Heavy case backlog

Delay in listing matters

Longer waiting periods for hearings

Administrative burden on newly established benches

The success of **GSTAT** will largely depend upon adequate staffing and infrastructure.

2. Compliance with Strict Limitation Periods

The operationalization of **GSTAT** revives appellate timelines under **Section 112**.

Taxpayers must carefully monitor:

Notification dates

Commencement of **limitation period**

Extended timelines granted by the Government

Filing requirements

Many businesses may inadvertently lose their right to appeal due to procedural lapses or misunderstanding of revised limitation periods.

Tax professionals must therefore remain vigilant regarding notifications issued by the Government.

3. Mandatory Pre-deposit Requirement

Appealing before **GSTAT** requires mandatory pre-deposit.

Under **Section 112**, taxpayers are generally required to deposit:

The full amount of admitted tax, interest, fine, fee and penalty, and

An additional prescribed percentage of the disputed tax, subject to the statutory monetary ceiling.

While intended to discourage frivolous litigation, the requirement can create financial strain, particularly for:

MSMEs

Start-ups

Businesses facing liquidity constraints

Companies involved in high-value tax disputes

Working capital blockage continues to remain one of the major concerns.

4. Increased Litigation Preparedness

Unlike departmental proceedings, Tribunal litigation requires comprehensive preparation.

Businesses need to maintain:

Complete documentation

Proper reconciliations

Electronic records

Purchase invoices

Tax payment records

Correspondence with vendors

Agreements and contracts

Weak documentation may significantly reduce the chances of success before **GSTAT**.

Many taxpayers who have historically maintained minimal records may face difficulties during appellate proceedings.

5. Quality of Orders Passed by Lower Authorities

A considerable number of GST disputes arise due to:

Summary orders

Non-speaking orders

Mechanical confirmations of demand

Inadequate consideration of taxpayer submissions

If such practices continue, **GSTAT** may witness an overwhelming number of remand cases, delaying final adjudication.

Improving the quality of adjudication at the original authority level remains equally important.

6. Digital Infrastructure and E-Filing Challenges

GST compliance is technology driven.

The Tribunal is also expected to operate through electronic filing systems.

Taxpayers may initially face challenges relating to:

Portal glitches

Digital signatures

Upload limitations

Document formatting

Technical errors during filing

Businesses located in smaller cities may particularly experience practical difficulties until the system stabilizes.

7. Multiple Benches and Jurisdictional Issues

Although State Benches have been notified, taxpayers may still face logistical issues such as:

Determining jurisdiction

Physical appearance before distant benches

Coordination with legal representatives

Additional travel costs

For businesses operating across multiple states, managing litigation before different benches may become administratively challenging.

8. Need for Greater Legal Awareness

GST litigation has become increasingly technical.

Several disputes involve complex legal principles relating to:

Classification

Place of supply

Input tax credit

Valuation

Composite and mixed supplies

Time of supply

Cross-charge

ISD mechanism

Many taxpayers, especially small businesses, may not possess adequate understanding of appellate procedures.

Professional guidance will therefore become increasingly important.

9. Consistency in Tribunal Decisions

Although **GSTAT** aims to ensure uniformity, consistency among different State Benches remains a practical challenge.

Different benches may initially adopt varying interpretations on issues such as:

Blocking of **Input Tax Credit**

Fake invoice allegations

Limitation

Refund eligibility

Export benefits

Place of supply disputes

Only over time will authoritative decisions from higher judicial forums establish settled principles.

10. Transition of Existing High Court Matters

Several GST disputes are presently pending before High Courts because **GSTAT** was non-functional.

Questions may arise regarding:

Whether certain matters should continue before High Courts

Whether fresh appeals should be filed before **GSTAT**

Transfer of pending matters

Applicability of limitation provisions

The transition phase requires careful legal evaluation on a case-to-case basis.

11. Capacity Building for Tax Professionals

The operationalization of **GSTAT** changes the nature of GST practice.

Chartered Accountants, Advocates, and Cost Accountants will need to strengthen expertise in:

Drafting appeal memoranda

Preparing written submissions

Presenting legal arguments

Citing judicial precedents

Cross-examining documentary evidence

Tribunal advocacy demands a higher level of litigation skills than routine compliance work.

Opportunities Alongside Challenges

While the operationalization of **GSTAT** introduces new compliance responsibilities, it also opens several opportunities.

Businesses now have access to a dedicated forum capable of delivering technically sound decisions within the GST framework.

Over time, **GSTAT** is expected to:

Reduce unnecessary writ petitions.

Develop a stable body of GST jurisprudence.

Increase certainty in tax positions.

Improve voluntary compliance.

Encourage consistency in departmental adjudication.

Enhance investor confidence by ensuring predictable tax outcomes.

Tax professionals can also expand their practice into specialized GST litigation and advisory services.

Practical Steps Taxpayers Should Take

To successfully navigate the new appellate landscape, taxpayers should adopt a proactive approach.

Some important measures include:

Conduct periodic GST health checks.

Strengthen documentation and record retention.

Reconcile GST returns regularly with books of accounts.

Respond comprehensively to departmental notices.

Preserve all evidence submitted during adjudication.

Monitor limitation periods carefully.

Evaluate the financial impact of mandatory pre-deposits before initiating appeals.

Seek professional advice at an early stage rather than after receiving adverse orders.

Maintain proper legal documentation, including agreements, invoices, and supporting records.

Early preparation significantly improves the chances of successful litigation.

The Road Ahead

The operationalization of **GSTAT** represents one of the most significant institutional developments in India's indirect tax regime since the introduction of GST itself.

However, the Tribunal's success will not depend merely upon its legal framework. Adequate infrastructure, appointment of qualified members, digital readiness, timely disposal of cases, and consistency in decision-making will determine whether **GSTAT** truly achieves its objective of providing effective and efficient tax justice.

For taxpayers, the new era demands greater compliance discipline, meticulous documentation, and informed litigation strategies. Businesses that proactively strengthen their GST governance systems will be better equipped to navigate disputes and safeguard their interests.

Conclusion

The establishment of **GSTAT** fills a critical gap in India's GST dispute resolution framework. It promises specialized adjudication, reduced litigation costs, quicker disposal of appeals, and greater consistency in interpreting GST laws. At the same time, taxpayers must prepare for stricter procedural requirements, mandatory pre-deposits, increased documentation standards, and evolving legal interpretations.

The coming years will be crucial in shaping GST jurisprudence through Tribunal decisions. While challenges are inevitable during the transition, **GSTAT** has the potential to transform the GST litigation landscape into a more transparent, efficient, and taxpayer-friendly system.

Ultimately, success in this new era will depend not only on the effectiveness of the Tribunal but also on the preparedness of taxpayers, the professionalism of tax advisors, and the commitment of tax authorities to uphold the principles of fairness, consistency, and **natural justice**.

Delay in Filing Appeal Can Only Be Condoned by Way of an Exception and Not by Way of a Rule

Adv. Sushil Verma

"Delay In Filing Appeal Can Only Be Condoned By Way Of An Exception And Not by way Of A Rule"

SUSHIL K VERMA

ADVOCATE

@ SV

The Courts are clear now that when a litigant applies to condone the delay in the filing of an appeal, then they should also explain why the appeal was not filed within the **limitation period** itself. In other words, explaining only the delay after the limitation period ended is not sufficient. They have to explain why the appeal was not filed before the expiry of the statutory period of limitation provided under the law and that is tough now

The laws of limitation are founded on public policy, in order to prevent the cruelty of long dormant claims. However, of the Limitation Act 1963 (Act) provides for a discretionary power to the courts to condone the delays, as a matter of concession, if a party provides a "sufficient cause" that hindered them from filing the appeal or application on time.

The law of limitation is founded on public policy. It is enshrined in the legal maxim "interest reipublicae ut sit finis litium" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.

Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in **Sections 4** to 24 (inclusive) of the Limitation Act.

The appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. **Section 3** of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation.

The exceptions are carved out under **Sections 4** to 24 (inclusive) of the Limitation Act **Section 5** which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. I

n other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. ***The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon a host of other factors such as negligence, failure to exercise due diligence etc.***

The **Supreme Court** has consistently held that It may also be important to point out that though on one hand, **Section 5** of the Limitation Act is to be construed liberally, but on the other hand, **Section 3** of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense.

The Courts have always held that it must be borne in mind that while construing 'sufficient cause' in deciding application under **Section 5** of the Limitation Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of revenue accrues and this right ought not to be lightly disturbed. The revenue treats the matter closed and can recover from the defaulting tax payer.

And we lawyers must remember that to condone the delay beyond the statutory limitation is discretionary power vested in the appellate courts or tribunals or authorities. The **Supreme Court**, way back in 1962, in the case of Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd (A.I.R. 1962 SC 361) has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. ***The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.***

Many of us take the hardship that may be caused to the tax payer if delay is not condoned notwithstanding the pre-deposit made, such an argument is also not sufficient for seeking condonation. In Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors., it had been held that the court cannot grant an exemption from limitation **on equitable consideration or on the ground of hardship**. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained**, it ought not to condone the delay on sympathetic grounds alone.**

Also one person's delay condoned on a particular ground does not mean that this would set as a precedent for this law of limitation. In this connection, a reference may be made to Brijesh Kumar and Ors. vs. State of Haryana and Ors.(A.I.R. 1935 PC 85 5 2014) the Supreme Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other

persons cannot take the benefit of the same by approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.

We must be careful to be not to be over enthusiastic even if the High Court allows the condonation of delay. Supreme Court can turn such delay condonation if the High Court did not exercise the discretion carefully keeping in view the strict law of limitation. In Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors. where the **High Court**, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, the Supreme Court held that the **High Court** failed to exercise its discretion in a reasonable and objective manner. **High Court** should have exercised the discretion in a systematic and an informed manner. **The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as 'liberal approach', 'justice-oriented approach' and 'substantial justice' cannot be employed to jettison the substantial law of limitation.**

We lawyers should also keep in mind that merits of the case have no connection with the applications for condonation of delay as the authority has not gone into the merits at all and higher courts cannot examine such issues that are not examined below. It has also been settled vide State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors.

(6 (2011) 4 SCC 363, that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.

In Basawaraj and Anr. vs. Special Land Acquisition Officer the Supreme Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in **Section 5** of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. **It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.**

Para 12 of the decision clearly informs us the harshness of any inaction on the part of the litigant or the professionals where the meritorious matter may be done with and equity will have not role to play whatsoever.

"Paragraph 12 reads as under: "12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

And in para 15 the law was crystallized and we lawyers must always remember this para while drafting applications for condonation of delay:

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. ***No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."***

The biggest violator of law of limitation is the Government and its agencies and the Courts are now taking a strict view about the callous attitude of such agencies when they take condonation as granted. In a recent judgement delivered in December 2024, (the **Supreme Court** (**SC**) refused to condone the delay of the state party citing its callous attitude.

SUPREME COURT AND GOVERNMENT MACHINERY – A CURIOUS CHROLONOLOGY

The lenient approach of the courts while dealing with state parties can be traced back to given by the SC. Taking a sympathetic view towards government entities, the court acknowledged the impersonal machinery and bureaucratic delays. While the SC justified its approach by emphasizing the collective cause of the community, it inadvertently opened the floodgates for future prayers for condonation based solely on the inefficiencies inherent in governmental machinery.

Relying on this, the Andhra **High Court**, in, attributing the entire delay *"institutional"*, went on to list down factors which the courts are "*bound*" to consider while adjudging such cases. Further, the SC's judgement in relying on the same, condoned the delay on grounds of "*impersonal machinery and inherited bureaucratic methodology.*"

WE ALL KNOW THAT condonation of delay being a discretionary power, the party has to explain *"sufficient cause"* while praying for the same. While there are no fixed criteria for granting it, **delays by gross negligence, deliberate inaction or lack of bona fides are generally not excused**. While drafting applications for such condonation of delays, we must keep these issues in mind and keep away from defending such matters that the Courts may not lend a considerate ear at all.

When there are delays on the part of the revenue – whether in filing applications or cross objections carefully read whether delay can be condoned as per law and if yes than examine the reasons given. Strongly challenge such impersonal machinery issues,

negligence, red-tapism in moving files up and down and vehemently argue before the Court that delay cannot be condoned on such grounds.

Now the apex court has almost taken a consistent approach of not allowing condonation of delays on such flimsy grounds and there are a number of judgments to support such an approach. And we as lawyers must carefully read these judgments and try to the cases of the Government dismissed on this ground alone.

In, delay of 264 days in filing the SLP was refused to be condoned, noting the limits to the argument of *"proverbial red tape."* The principle was further followed in wherein the SC, setting aside **High Court**'s order to condone a delay of 1,724 days, ruled that the law of limitation is the same for citizens and governmental authorities. Similarly, in, an application for the condonation of delay of 427 days in filing an SLP was dismissed, warning against the anticipated benefit for government departments.

In the 2020 case of he court strongly criticized bureaucratic inefficiency and refused to condone a 663-day delay going so far as to suggest that if government machinery is incapable of adhering to limitation periods, a separate extended timeline for filing might as well be established for government authorities

The Supreme Courts and High Courts now have explicitly rejected the argument of "special leeway to government entities," since it would result in setting a wrong precedent. In Ram Kumar,(referred to in second para of this article) the SC not only refused to condone a delay of 1,788 days on part of the Government but also imposed costs, citing the callous attitude of the state machinery.

In Postmaster General and others v. Living Media India Limited, (2012) 3 SCC 563, this Court, while dismissing the application for condonation of delay of 427 days in filing the Special Leave Petition, held that condonation of delay is not an exception and it should not be used as an anticipated benefit for the government departments. In that case, this Court held that unless the Department has reasonable and acceptable reason for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process cannot be accepted.

THE KEY PRINCIPLES WE MUST KEEP IN MIND AS LAWYERS.

In the case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Others, (2013) 12 SCC 649, the Supreme Court made the following observations:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

To be continued in part 2

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Challenges for Foreign Companies Entering India

CA Rashmi Jain

Challenges for Foreign Companies Entering India:

CA RASHIMI JAIN

@ core committee member, DGST Group.

Indeed it was a challenging topic to write on. I had to read a number of articles from the sites of IMF, discuss with SV Sir a number of times and with my friends to structure this article so that it is of some substance. Thank you everybody, finally this Article has approval from SV Sir. And I hope when you read, you will enrich your knowledge as I have.

Foreign companies (multinational corporations or MNCs) operating in developing economies face a range of legal challenges stemming from weak institutions, regulatory uncertainty, political risk, enforcement gaps, and tensions between host-country sovereignty and international investment protections. These issues arise from the "liability of foreignness," incomplete legal frameworks, corruption risks, and the frequent use of investor-state dispute settlement (ISDS). INDIA IS NO DIFFERENT IN THIS RESPECT.

Few of such economy related challenges could be:

Developing economies often have evolving, incomplete, or inconsistently enforced laws on foreign direct investment (FDI), company formation, contracts, insolvency, intellectual property, labour, environment, and taxation. They may have to face entry barriers include foreign equity ceilings, mandatory local partnerships/joint ventures, expatriate hiring limits, licensing requirements, and sector-specific restrictions (e.g., telecom, energy, natural resources, banking). Further regulatory changes (tax hikes, local-content rules, environmental standards, or nationalization drives) can occur with limited notice or transparency, creating "regulatory risk." On top of it insolvency and commercial laws may be untested, complex, or inadequate for complex multinational structures, leading some firms to forum-shop into a relatively developed economies like China, Vietnam etc. This syndrome is normally characterised as **Weak or Unpredictable Legal and Regulatory Frameworks**

Domestic courts may be slow, unpredictable, under-resourced, or perceived as biased. Enforcement of foreign judgments or arbitral awards can be difficult. Arbitration clauses are common but not always optimally drafted or enforceable. Parent-company liability claims in home-country courts (for subsidiary actions involving human rights, environment, or labor) add another layer of risk.

The foremost challenge to such MNCs in developing economies is their Intellectual Property, Rights and Labor, Tax, and Operational Compliance. And if IP rights are violated, that indeed are violated in a country like India, than they face weaker IP enforcement raises risks of technology leakage or counterfeiting. Labor laws may impose strong local protections, consultation requirements, or restrictions that differ

sharply from home-country norms. Tax regimes can change rapidly; profit repatriation often requires specific certificates or approvals and on top of it retrospective amendments in tax laws increasing tax liability is a common feature of indirect tax system in such countries. Further Immigration, employment contracts, data privacy, and sanctions/anti-corruption diligence add complexity, especially in acquisitions. Data Protection Acts, notwithstanding!

To seduce them into their developing economies many countries including India actively reform FDI laws, offer incentives, and sign investment treaties to attract capital, infrastructure, and technology. And still such companies may have to face a trade -off between stronger rule of law, regulatory quality, and transparent institutions correlate with fewer disputes. Companies mitigate risk through thorough due diligence, local partnerships, carefully drafted contracts and arbitration clauses, political-risk insurance, compliance programs, and structuring investments under favorable treaties. And, host governments increasingly review or terminate older BITs, push for more balanced agreements, and strengthen domestic grievance mechanisms.

Recent studies and reports (primarily 2024–2026) on developing economies highlight persistent challenges with foreign direct investment (FDI), institutional quality, regulatory risks, and investor-state disputes, while documenting uneven recovery in capital flows amid geopolitical tensions and policy shifts.

These build on longstanding themes of institutional weaknesses, political risk, and the "liability of foreignness" for multinational firms, but emphasize newer dynamics such as rising investment screening, more selective liberalization, fiscal credibility, and the paradoxical effects of investment treaties.

WHAT IS THE LATEST ON SUCH MNCs ENTERING ECONOMIES OF THE WORLD!

Key Recent Reports from Major Institutions

UNCTAD World Investment Report 2026 Global FDI rose 6% to $1.6 trillion in 2025 after two years of decline, but the recovery was narrow, fragile, and uneven. Developing economies saw only 2% growth (vs. 11% in developed ones) and still accounted for over half of inflows, though concentration is high (top 20 hosts took >80%). Least developed countries recorded stronger relative growth (+21%), but flows remain limited and resource-focused. Governments adopted a record 229 investment policy measures in 2025 (73% favourable, often targeted at clean energy, digital infrastructure, and critical minerals). Restrictive measures rose, especially operational requirements (local content, reduced incentives) in developing countries. About 80% of new ISDS cases targeted developing countries (56 known cases total; Latin America & Caribbean faced the most). Nearly all recent cases rely on pre-2010 treaties.

World Bank analyses (Global Economic Prospects and related papers, 2025–2026) FDI inflows to emerging market and developing economies (EMDEs) have weakened steadily as a share of GDP since the global financial crisis, settling around 2% (nominal inflows to EMDEs hit lows not seen since the mid-2000s in some years). Progress on institutions that support investment climates has stalled. New FDI policy measures in

EMDEs have become more restrictive in the 2020s. Global growth is projected to slow (e.g., to ~2.5% in 2026 in some forecasts), with EMDEs facing weaker per-capita income growth; a significant share of developing and low-income economies remain poorer than pre-COVID levels. Political risk (adverse/unclear regulations, conflict) ranks among top investor concerns.

IMF research (2026) Fiscal discipline and strong fiscal institutions (sustainable positions, better revenue administration, effective public financial management) are strongly associated with higher FDI inflows, especially in low-income countries and high-uncertainty environments. Stronger institutions also attract higher-quality (e.g., more R&D-intensive) projects. Low-income countries still receive less than 1% of global FDI.

FOREIGN COMPANIES AND INDIAN LEGAL SYSTEM

Challenges that foreign companies may have to face!

A foreign company is a body corporate incorporated outside India that either has a place of business in India — on its own or through an agent, physically or through electronic mode — or otherwise carries on any business activity in India. Under **Section 2(42) of the Companies Act, 2013**, this definition is deliberately wide: even a purely digital presence directed at Indian customers can bring an overseas entity within its net. **In practical terms, the moment a foreign business begins supplying goods or services to, or operating within, the Indian market, it steps into a dense web of corporate, exchange-control, and tax obligations that differ significantly from those in most home jurisdictions.**

India is one of the world's largest and fastest-growing consumer markets, and its foreign-investment regime has been progressively liberalised — over 90% of sectors now permit 100% foreign direct investment (FDI) under the automatic route. Yet the regulatory architecture remains multi-layered, with several authorities operating in parallel. Understanding the main legal requirements before entry is therefore not a formality but a strategic necessity.

The main legal requirements at a glance

A foreign company must navigate four broad pillars, each carrying its own registrations, filings, and pitfalls:

Choosing the right entry structure — corporate law (Companies Act, 2013).

Complying with FDI and exchange-control rules — FEMA / RBI.

Registering and complying under GST — indirect tax (CGST/IGST Acts, 2017).

Meeting income-tax and allied obligations — direct tax (Income-tax Act, 1961, now being replaced by the Income-tax Act, 2025).

The challenges below track these four pillars, followed by cross-cutting operational issues and the key **Supreme Court** principles that shape a foreign investor's position.

1. Choosing the entry structure — the most consequential decision

The first challenge is structural. A foreign company can enter India through several routes, and the choice determines ownership, permitted activities, tax treatment, and exit flexibility:

Wholly Owned Subsidiary (WOS) or Joint Venture (JV): an Indian company incorporated under the Companies Act, 2013. A WOS is treated for most purposes as a resident Indian company and can carry on full commercial operations. It is the most popular route for serious, long-term operations.

Liaison Office (LO): permitted only for representational and coordination activities (market research, and liaison between the parent and Indian parties). It **cannot earn income** in India.

Branch Office (BO): may undertake specified commercial activities such as import/export, consultancy, and research, but **cannot manufacture** directly. It is taxed at the higher rates applicable to foreign companies.

Project Office (PO): for executing a specific, time-bound contract, and must be wound up on completion.

Limited Liability Partnership (LLP): permitted only in sectors where 100% FDI is allowed under the automatic route with no FDI-linked performance conditions.

The LO, BO, and PO routes require **prior RBI approval** (routed through an Authorised Dealer Category-I bank) and registration as a foreign company under **Section 380 of the Companies Act, 2013, by filing Form FC-1** with the Registrar of Companies. The difficulty for newcomers is that these structures look similar on paper but differ sharply in what they may lawfully do and how they are taxed. Picking the wrong vehicle — for example, using a Liaison Office and then generating revenue through it — is a common and costly error.

A further practical hurdle concerns directors. Every Indian company **must have at least one director who is resident in India** (i.e. a person who stayed in India for 182 days or more in the previous financial year; the concept of residence is analogous to the residential-status test in **Section 6** of the income-tax law). Foreign directors must also obtain a **Director Identification Number (DIN)** and a **Digital Signature Certificate (DSC)**, which in turn require notarised and apostilled identity and address documents from the home country — a step that frequently causes delay.

2. FDI, sectoral caps, and FEMA compliance

Even where a structure is chosen correctly, the investment itself must fit within India's FDI policy, governed by the Foreign Exchange Management Act, 1999 (FEMA), the FDI Policy, the Non-Debt Instruments (NDI) Rules, 2019, and RBI directions, with sectoral policy set by the Department for Promotion of Industry and Internal Trade (DPIIT). The key challenges are:

Route and sectoral caps: investment under the **automatic route** needs no prior approval, but "sensitive" sectors (for example, multi-brand retail, broadcasting, and

print media) fall under the **government/approval route** via the Foreign Investment Facilitation Portal. Some activities — such as inventory-based e-commerce — are prohibited altogether. A foreign investor must verify the cap and route for its exact activity before committing capital.

Press Note 3 (2020) — the land-border rule: any investment from an entity, or whose beneficial owner is situated in or is a citizen of, a country sharing a land border with India (notably China) requires **prior government approval, regardless of sector**.

Pricing and valuation: shares issued to non-residents in an unlisted company must be priced at or above the fair value certified by a SEBI-registered Category-I Merchant Banker or a Chartered Accountant under the NDI Rules.

Reporting deadlines: inflows must be reported on the RBI's **FIRMS portal** via the Single Master Form — **Form FC-GPR within 30 days** of share allotment, and shares must be allotted within 60 days of receiving funds. Transfers between residents and non-residents require **Form FC-TRS**. An annual Foreign Liabilities and Assets (FLA) return is due by **15 July** each year.

FOCE framework: the Foreign-Owned and Controlled Entity rules require Indian entities under foreign control to apply FDI rules even to their **downstream** investments — a nuance many groups overlook.

FEMA breaches carry monetary penalties (and potential compounding proceedings) and can block capital flows, so these filings are not merely administrative.

3. GST registration and compliance — a distinct and strict regime

Indirect tax is where foreign companies most often underestimate the burden. Under the **CGST Act, 2017 and the IGST Act, 2017**, any foreign entity that makes a **taxable supply of goods or services in India must register under GST, irrespective of turnover** — the ₹40 lakh / ₹20 lakh thresholds available to residents **do not apply**. The applicable model depends on whether the entity has a fixed place of business in India:

Non-Resident Taxable Person (NRTP): a foreign entity that occasionally supplies goods or services in India without a fixed place of business. Governed by **Section 24 read with Section 27 of the CGST Act**, NRTP registration is obtained by filing **Form GST REG-09**, must be applied for at least **five days before commencing business**, and requires an **advance deposit of tax** equal to the estimated GST liability for the registration period. The registration is valid for a maximum of 90 days, extendable once by a further 90 days. NRTPs file **Form GSTR-5** monthly (including nil returns) and can claim **input tax credit only on imports**, not on local procurements.

Regular registration: a foreign company operating through a WOS or branch registers as an ordinary taxpayer, files **GSTR-1 and GSTR-3B** monthly plus the annual return, and follows the full compliance cycle.

Two structural features create real friction. First, a foreign applicant **must appoint an authorised signatory who is resident in India and holds a valid PAN** — the entity cannot self-file. Second, the compliance cadence is unforgiving: late filing attracts fees and interest, and returns cannot be revised, so errors propagate. The very case types

that dominate Indian GST litigation — mismatches between GSTR-3B, GSTR-2B/2A, and the annual return; input-tax-credit denials; and clerical mis-reporting attracting penalties — are precisely the traps a newly registered foreign entity is most likely to fall into. GST is therefore a continuing operational commitment, not a one-time registration.

4. Income tax, withholding, and transfer pricing

On the direct-tax side, the challenges include:

Higher tax rates for non-resident structures: a branch office is taxed at the foreign-company rate (broadly 35% plus surcharge and cess), whereas a domestic subsidiary can access the concessional corporate-tax regime (around 22%, or ~25.17% effective for eligible companies). This differential often tips the structural decision toward a subsidiary.

Permanent Establishment (PE) risk: a foreign company can inadvertently create a taxable PE in India through the activities of its employees, agents, or a fixed place of business, thereby exposing its business profits to tax in India. Managing PE exposure is a recurring advisory concern.

Withholding tax (TDS): payments to and from India — royalties, fees for technical services, and interest — attract withholding, subject to relief under the relevant Double Taxation Avoidance Agreement (DTAA), which itself requires a Tax Residency Certificate and Form 10F.

Transfer pricing: all transactions between the Indian entity and its overseas group companies must be at arm's length, supported by contemporaneous documentation and annual reporting — a significant compliance and litigation area.

PAN and TAN: the entity needs a Permanent Account Number and a Tax Deduction Account Number before it can transact or deduct tax. India's new **Income-tax Act, 2025** (replacing the Income-tax Act, 1961, with effect from 1 April 2026) also means foreign entrants must track a freshly recodified direct-tax framework, including the residential-status rules in **Section 6**.

5. Cross-cutting operational and compliance challenges

Beyond the four pillars, several practical difficulties recur:

Multiplicity of regulators: DPIIT, RBI, MCA, the GST authorities, the income-tax department, and sector regulators (SEBI, IRDAI, TRAI) each have distinct filings and timelines. Coordinating them is itself a challenge.

Banking and repatriation: opening bank accounts, and later repatriating profits or dividends, must follow FEMA pricing and lock-in norms.

Data localisation and data protection: the Digital Personal Data Protection Act, 2023 imposes obligations on how customer data is handled — increasingly relevant for digital and e-commerce entrants.

Labour and state-level laws: EPF, ESIC, professional tax, and shop-and-establishment registrations vary by State.

6. Key Supreme Court rulings and settled principles

A foreign investor's legal position in India is shaped as much by judicial doctrine as by statute. The following **Supreme Court** principles are directly relevant to structuring, taxation, and disputes:

(a) Offshore indirect transfers — Vodafone International Holdings B.V. v. Union of India

In *Vodafone International Holdings B.V. v. Union of India, (2012) 6 SCC 613*, the **Supreme Court** held that **Section 9(1)**(i) of the Income-tax Act, 1961 taxes only the transfer of a capital asset **situated in India**, and does not, as it then stood, reach an **indirect** transfer effected by the sale of shares of a foreign company between two non-residents. The Court laid down the *"look at"* principle (view the transaction as a whole) rather than a dissecting *"look through"* approach, and held that a bona fide, structured FDI investment is not a sham merely because it is tax-efficient; the corporate veil is pierced only where the arrangement is a sham or a device to evade tax. (Parliament amended **Section 9** retrospectively through the Finance Act, 2012; that retrospective effect was withdrawn by the Finance Act, 2021, restoring prospectivity from 1 April 2012.) The enduring takeaways are the primacy of **legal certainty in tax policy** and recognition of the separate legal personality of subsidiaries.

(b) Tax planning vs. tax avoidance — the McDowell / Azadi Bachao / Vodafone trilogy

The boundary between legitimate planning and impermissible avoidance was drawn in *McDowell & Co. Ltd. v. CTO, (1985) 3 SCC 230*, where the Court held that tax planning is legitimate provided it is **within the framework of law**, but that **colourable devices**, dubious methods, and subterfuges cannot be part of tax planning. This was reaffirmed and balanced in *Union of India v. Azadi Bachao Andolan, (2004) 10 SCC 1*, which upheld the legitimacy of tax planning and of treaty benefits (via a Tax Residency Certificate), clarifying that **not all tax planning is impermissible**; and *Vodafone* confirmed there is no conflict between the two. A foreign investor may therefore structure efficiently, but arrangements lacking commercial substance now risk challenge under the codified **General Anti-Avoidance Rules (GAAR), Chapter X-A** (from 1 April 2017) and the treaty Principal Purpose Test under the BEPS MLI.

(c) Treaty benefits, substance, and the shift to PPT — Principal Purpose Test / LOB — Limitation of Benefits

Following *Azadi Bachao*, India renegotiated key treaties (Mauritius, Singapore, and others) to insert Limitation of Benefits clauses and source-based taxation of shares acquired on or after 1 April 2017, with grandfathering for earlier investments. The practical message is that **commercial substance** — real offices, employees, and

decision-making — is now essential to sustain treaty benefits; a residency certificate alone is no longer a complete shield.

Conclusion

India rewards foreign entrants with scale, talent, and a liberalised investment regime — but it demands precision at the front end. The recurring theme across GST, FEMA, corporate law, and income tax is that **registrations are mandatory, deadlines are strict, and the choice of entry structure cascades into every downstream obligation**. A foreign company that gets the structure, the FDI route, and its GST and tax registrations right at the outset — ideally with experienced local advisers — will avoid the penalties, PE surprises, and compliance backlogs that catch the unprepared. In a market this large, the cost of doing the groundwork properly is modest against the cost of getting it wrong.

UNLESS INDIA MAJORILY MOVES INTO MANUFACTURING GROWTH, FDI INFLUX MAY NOT YIELD MUCH.

@ RASHIMI J, CCM, DGST GROUP

NOTE: TREMENDOUS HELP FROM VAROUS ARTICLES AND A LITTLE USE OF AI IN THIS ARTICLE.

Search and Seizure Cases and GST: Legal Contours and Possible Appellate Jurisprudence

Adv. Sushil Verma

SEARCH AND SEIZURE CASES AND GST – LEGAL CONTOURS AND POSSIBLE APPELLATE JURISPRUDENCE

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Search and Seizure under the GST Regime –

A Critical Introduction

Search and seizure constitute one of the most potent, intrusive, and frequently litigated powers available to tax authorities under the Central Goods and Services Tax Act, 2017. Contained primarily in **Section 67**, these powers enable officers to enter private and business premises, inspect records, seize goods, documents, electronic devices, and, in certain circumstances, restrict access to premises themselves. In the architecture of GST enforcement, search and seizure occupy a unique space: they are designed as tools of detection and evidence-gathering against tax evasion**, yet they simultaneously may trench upon fundamental rights of privacy, property, and personal liberty guaranteed under Articles 19 and 21 of the Constitution.**

The legislative design of **Section 67** is deliberately calibrated. It does not confer an unfettered or general power of search. Instead, it conditions the exercise of these powers on the existence **of "reasons to believe"** — a jurisdictional fact that must be formed by an officer not below the rank of Joint Commissioner. **The statute further distinguishes between inspection (Section 67(1)) and search and seizure (Section 67(2)),** requires authorisation in prescribed forms, and incorporates safeguards drawn from the Code of Criminal Procedure (now the Bharatiya Nagarik Suraksha Sanhita). Despite these statutory constraints, the practical operation of the provision has generated intense controversy. **Courts have repeatedly described the powers as "draconian" and insisted that they be exercised strictly according to the letter of the law.**

Several fault lines have emerged in judicial discourse. First, the threshold of "reasons to believe" itself remains contested **— whether it requires tangible material with a rational nexus, or whether mere suspicion or post-facto discoveries can suffice.** Second, the scope of what may be seized has become a flashpoint, particularly the question **whether cash, jewellery, or other valuable assets can be treated as "goods" or "things" under Section 67(2).** Third, the practice of sealing premises, prolonged retention of seized material, recording of statements under **Section 70** during or immediately after search, and coercive recovery of tax have all invited judicial scrutiny. Fourth, and of particular significance for adjudication, is the question

of how material gathered during search may later be used to initiate investigation and issue Show Cause Notices under **Sections 73** or 74 or 74A — **especially when the taxpayer has made full disclosure in returns and the dispute is essentially one of interpretation.**

The jurisprudence on this subject that has developed around these issues reflects a delicate balance. On one hand, courts recognise the legitimate interest of the State in detecting and preventing tax evasion in a self-assessment regime. On the other, they have consistently held that the existence of power does not justify its arbitrary or excessive exercise. Procedural lapses, absence of recorded reasons, seizure beyond statutory limits, and mechanical invocation of the extended limitation under **Section 74** have all been subjected to rigorous judicial examination. Landmark decisions — ranging from the **Supreme Court**'s affirmation of limits on cash seizure to its recent insistence that a **Section 74** notice must contain specific material particulars of fraud or suppression — have significantly shaped the contours of lawful enforcement.

For taxpayers, understanding the legal architecture of search and seizure is no longer optional. It is a critical component of risk management and defence strategy. For the Revenue, adherence to the statutory preconditions and constitutional limitations is essential not only for the sustainability of the action itself, but also for the subsequent investigation and adjudication that may follow. The subject, therefore, sits at the intersection of enforcement efficacy, procedural fairness, and constitutional accountability — making it one of the most significant and closely watched areas of contemporary GST jurisprudence.

Most Controversial Issues in GST Search & Seizure Cases (Section 67 CGST Act)

Search and seizure under **Section 67** are among the most litigated areas of GST enforcement. The powers are wide but strictly conditional. Courts repeatedly emphasise that these are "draconian" powers that must be exercised strictly according to the statute.

Below are the key controversies, their ramifications, typical taxpayer responses, and how judgments are used — especially when search material leads to investigation and Show Cause Notices (SCNs).

"Reasons to Believe" – The Jurisdictional Foundation

*Issue: Proper officer (not below Joint Commissioner) must have "reasons to believe" before authorising inspection (**Section 67(1)**) or search/seizure (**Section 67(2)**). The belief must be based on tangible material, not mere suspicion or borrowed satisfaction.*

Ramifications:

Absence or non-recording of reasons, or reasons that have no rational nexus with the material, can render the entire search illegal.

Subsequent investigation and SCN based on such a search become vulnerable.

Taxpayer Response:

Immediately demand inspection of the authorisation (Form GST INS-01) and the recorded reasons (often via RTI or under CrPC/BNSS provisions).

Challenge the search itself in writ petition if reasons are non-existent, mechanical, or post-facto.

Key Judgments to Use:

Courts interfere only if reasons have no rational connection or are non-existent (*RCI Industries*, Delhi HC; *Santosh Kumar Gupta*).

RCI Industries and Technologies Ltd. v. Commissioner DGST Delhi & Ors.
Delhi **High Court**
W.P. (C) 121/2021
Decided on: 7 January 2021

GST – Search and seizure under **Section 67** of DGST Act, 2017 – Challenge to search action – "Reasons to believe" – Scope of judicial review – Parallel proceedings – Statement recorded during search – Absence of independent witnesses.

Held:

Courts exercising writ jurisdiction under **Article 226** can interfere with a search authorised under **Section 67** of the CGST/DGST Act only if the grounds on which the "reasons to believe" are founded have no rational connection with the information or material on record, or are non-existent, or are such that no reasonable person could have arrived at that belief. The Court cannot examine the adequacy or sufficiency of the material.

Where the recorded reasons to believe demonstrate application of mind and satisfy the statutory requirement under **Section 67(2)**, the search action cannot be interfered with. Applying the test of a reasonable person, the Court found no absence of application of mind in the issuance of the search warrant.

No parallel investigation was established merely because both State and Central GST authorities had initiated action, when the periods under scrutiny were different.

The evidentiary value of a statement recorded during search (which was not retracted) and the question of whether payment of tax and interest was voluntary would be examined at the stage of adjudication and not in writ proceedings challenging the search itself.

Absence of independent witnesses, by itself, does not render the search illegal when the authorisation is otherwise valid and the officers who conducted the search were those named in the authorisation.

High Courts hasve quashed entire proceedings where INS-01 lacked proper reasons.

When used for SCN: Argue that the SCN is based on an illegal search and therefore lacks jurisdiction.

However always remember, that under *Pooran Mal* (SC), evidence from an illegal search is generally still admissible (relevance is the test).

Seizure of Cash, Jewellery & Valuable Assets

Issue: Can cash/silver/jewellery be seized under **Section 67(2)** as "goods" or "things"?

Ramifications:

Major controversy. Delhi HC (*Deepak Khandelwal*) held cash is not seizable under GST (it is not "goods"; "things" must be read *ejusdem generis* with documents/books — items of informational/evidentiary value). Unaccounted wealth falls under Income Tax, not GST.

Supreme Court has upheld this view by dismissing the Department's review petition.

Conflicting older view of Madhya Pradesh HC (*Kanishka Matta*) has been effectively overruled in practice.

Taxpayer Response:

Immediately apply for release of cash/valuables.

File writ for return + compensation for illegal detention.

Key Judgments:

***Deepak Khandelwal* (Delhi HC, affirmed by SC by dismissal of review) — strongest authority.**

Calcutta HC and others have followed the same line.

> **When used for SCN: Argue that seizure of cash was illegal; any demand based on "unaccounted cash = GST evasion" is misconceived. Demand for return of cash can be made independently of the SCN.**

Sealing of Premises / Prolonged Sealing

> **Issue: Power under Section 67(4) to seal or break open is available only when access is denied. Prolonged sealing after search is completed is illegal.**

Ramifications:

Business disruption, loss of goodwill, inability to access records.

High Courts have held sealing for months after search is unauthorised.

Taxpayer Response:

Immediately apply for de-sealing.

File writ if premises remain sealed beyond the search period.

power under 67(4) ceases once search is completed; prolonged sealing is illegal.

complete sealing of business premises is *per se* illegal in many situations.

Coerced / Forced Payments During Search

Officers pressuring payment of tax/interest/penalty on the spot or through DRC-03 during search.

Ramifications:

Payments made under coercion are not voluntary and are liable to be refunded.

Gujarat HC and Delhi HC have strongly deprecated this practice.

Taxpayer Response:

Never make payment during search. If pressured, record protest in panchnama.

File for refund of coerced amounts after search ends (*Vallabh Textiles*, Delhi HC; *Bhumi Associate*, Gujarat HC).

CBIC Instruction: Officers are directed not to force recovery during search; voluntary payments (if any) should be made only after officers leave.

5. Recording of Statements under Section 70 During/After Search

Spot summons, prolonged interrogation, statements recorded under coercion, and use of such statements in SCN.

Ramifications:

Statements under Section 70 are admissible (tax officers are not "police officers"), but coercion makes them vulnerable.

Retraction is possible but must be prompt and well-supported.

Taxpayer Response:

Insist on reasonable time, presence of counsel (where permitted), and right to read/correct statement before signing.

Retract promptly with reasons if statement was under duress.

Challenge reliance on coerced statements in the SCN reply.

6. Right to Copies of Seized Documents / Electronic Data (Section 67(5))

Taxpayer is entitled to copies/extracts unless the officer records that it would prejudicially affect the investigation.

Ramifications:

Denial of copies hampers defence preparation.

Courts have directed supply of copies.

Taxpayer Response:

Formally request copies immediately after seizure.

Approach High Court if refused without recording prejudice.

7. Use of Search Material for Investigation & SCN (Especially Section 74)

Whether material from search can form the basis of investigation and SCN under Section 73/74, and whether the SCN must independently establish fraud/suppression.

Ramifications:

Search material can be used even if search had procedural lapses

However, for Section 74, the SCN itself must contain specific material particulars of fraud/wilful misstatement/suppression (*G.R. Infra Projects*, SC – August 2026). Mere figures or bland allegations are insufficient.

Full disclosure in returns + pure interpretational dispute makes Section 74 almost impossible to sustain.

Taxpayer Response Strategy:

Challenge the search itself (reasons to believe, procedure, sealing, cash seizure) if strong grounds exist.

In the SCN reply (especially Section 74), rely on:

***G.R. Infra Projects* (SC) — SCN must spell out how fraud/suppression is made out.**

Complete disclosure in returns (negates suppression).

Pure question of interpretation (no mens rea).

Demand return of seized documents/cash/devices once their purpose is served (Section 67(3)/(5))

Seek provisional release of goods under Section 67(6) + Rules 140/141.

If payments were coerced, claim refund independently.

Practical Overall Strategy for Taxpayers

During Search	Cooperate, but insist on proper panchnama, no forced payment, record objections, demand reasons for search if possible
Immediately After	Apply for copies of seized material, de-sealing, return of cash/devices
Investigation Stage	Respond to summons carefully; retract any coerced statements promptly
SCN Stage	Challenge jurisdiction of Section 74 using G.R. Infra; contest merits using disclosure + interpretation; seek stay/quashing if search was illegal

Courts have held that search powers are drastic and must be exercised strictly. Procedural lapses can be challenged, evidence is generally still usable, but Section 74 has a high threshold that cannot be met by mechanical allegations or pure interpretational disputes when returns have been fully filed.

This framework, supported by the judgments cited (especially *Deepak Khandelwal*, *G.R. Infra Projects*, *Vallabh Textiles*, and various High Court rulings on sealing and reasons to believe), gives taxpayers strong defensive tools both at the search stage and when the material is later used for investigation and SCN.

A FEW JUDGMENTS FOR YOUR REFERENCE

Commissioner of CGST v. Deepak Khandelwal (2025): The **Supreme Court** upheld the Delhi **High Court**'s decision, cementing the principle that search and seizure powers under **Section 67** of the CGST Act do not allow for the confiscation of assets (such as cash, silver bars, or mobile phones) simply because they are "unaccounted for".

The Principle: Authorities must demonstrate a clear, rational nexus between the seized items and alleged GST offences (tax evasion).

Scope of "Things": The Court reinforced that "things" under **Section 67** must be interpreted in the context of documents and records relevant to an investigation. Cash and fungible valuables are generally not subject to seizure under these provisions unless they are explicitly linked to an evasion mechanism.

While the **Supreme Court** has clarified the nexus requirement, High Courts have further defined the procedural standards required for valid search and seizure actions.

"Reason to Believe" as a Jurisdictional Prerequisite:

Courts have held that the "reason to believe" a search is necessary is not a mere formality but a jurisdictional requirement that must be properly recorded. In *Smruti Waghdhare v. Joint Director, DGGI* (Bombay **High Court**, 2026), the court emphasized that any belief must have a rational basis in the material before the officer and cannot be based on mere suspicion

3. Distinction Between Inspection and Search:

In *Bhima Enterprises v. The Principal Chief Commissioner of GST* (Madras **High Court**, 2026), the court clarified that "inspection" (**Section 67(1)**) and "search and seizure" (**Section 67(2)**) are conceptually distinct. Authorities must ensure the authorization matches the nature of the action being taken.

4. Payment During Search:

The Madras **High Court** also established that a payment made during a search is only "voluntary" if the taxpayer makes an informed choice.

Authorities are obligated to inform the assessee of the statutory option for the provisional release of goods (upon furnishing a bond and security under **Section 67(6)**) rather than coercing payment to "buy peace

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Consolidated Show Cause Notice under GST Covering Multiple Financial Years: Divergent Judicial Views

CA Shweta Dubey

Consolidated Show Cause Notice under GST Covering Multiple Financial Years – Divergent Judicial Views

In recent years, a significant question that has arisen for judicial consideration before various High Courts under the Goods and Services Tax (GST) regime is whether a single Show Cause Notice (SCN) can validly be issued covering multiple financial years.

While the GST law does not contain any express provision or restriction regarding the issuance of a consolidated SCN for multiple financial years, the validity of such notices must be examined in light of the statutory scheme of the Central Goods and Services Tax Act, 2017 (CGST Act), the principles of **natural justice** and judicial precedents established for the same.

Statutory Framework –

It is necessary to analyse the scheme of the Central Goods and Services Tax Act, 2017.

Section 2(106) - "tax period" means the period for which the return is required to be furnished.

A conjoint reading of **Section 65**(Audit by tax authorities)/**Section 66**(Special Audit) with **Sections 73** and 74 of the Act also indicate that such proceedings are not to be confined to a tax period or a financial year.

Section 67 of the Act deals with inspection, search, seizure and arrest and such proceedings are also not confined to any specific tax period or financial year.

Section 73(1) (non -fraud cases) and Section 74(1) (fraud cases) of the CGST Act provide the machinery for recovery of tax not paid, short paid, erroneously refunded, or **input tax credit** wrongly availed or utilized.

Section 73(2) and **Section 74(2)** prescribe the time limits within which the notice should be issued by the proper officer which is as follows –

at least three months prior to the time limit specified in sub-section (10) for issuance of order.

at least six months prior to the time limit specified in sub-section (10) for issuance of order.

Section 73(10) and **Section 74(10)** prescribe the time limits within which the order should be issued by the proper officer which is as follows –

within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or **input tax credit** wrongly availed or utilised relates to or within three years from the date of erroneous refund.

within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or **input tax credit** wrongly availed or utilised relates to or within five years from the date of erroneous refund.

Further, **Section 75(10)** provides that the adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of sections 73/74.

A combined reading of the above provisions would indicate that wherever the legislature intended the proceedings to be confined to a specific tax period, be it a month or a financial year, it has expressly provided so. Conversely, whenever such confinement was not intended, the statute either employs the expression "such period" or does not refer to any period at all.

Judicial Pronouncements -

The issue has been considered by several High Courts, resulting in two divergent schools of judicial thought.

The judgments of the High Courts of Delhi, Allahabad, and Jammu & Kashmir, upon examining the statutory framework and interpreting the plain language of **Sections 73** and 74 have held that the language of the legislation itself does not prohibit the issuance of a composite SCN covering multiple financial years. The Courts observed that reading the expression "tax period not beyond the financial year" into **Sections 73** and 74 would amount to introducing an artificial restriction which finds no support either in the statutory language or in the legislative intent.

The **High Court** of Jammu & Kashmir and Ladakh held that a composite SCN cannot be held invalid if there is a year-wise breakup of tax, interest and penalty, the allegations are not vague, each period is within limitation and the notice is a speaking notice. Hence, it is only in the cases where the SCN suffers from vagueness or non-specificity and is in violation of principles of **natural justice** that bunching may be impermissible.

The Delhi **High Court** held that a detailed analysis of the overall scheme of the Act establishes that a solitary availment or utilisation of ITC in one financial year may actually not be capable of by itself establishing the pattern of fraudulent availment or utilisation. It is only when the series of transactions are analysed, investigated, and enquired into and a consistent pattern is established, that the fraudulent availment and utilisation of ITC may be revealed. The language in the above-mentioned provisions, i.e., the word "period" or "periods" as against "financial year" are therefore, significant. The Legislature is thus, conscious of the fact that insofar as wrongfully availed ITC is concerned, the notice can relate to a period and need not be for a specific financial year.

The Allahabad **High Court** further held that if the dispute sought to be adjudicated pertains to multiple financial years, the period of limitation to make a composite order would start running from the due date of furnishing of annual return for the earliest financial year, such that if that date is crossed, the adjudication proceedings with respect to that financial year would lapse but not the entire notice if segregation of the dispute exists, 'period' wise. The entire proceedings initiated by such notice may be

declared time barred only if the limitation to make the order from the due date of furnishing the annual return for the last financial year also lapses.

On the basis of the above reasoning, these High Courts concluded that SCN issued under **Sections 73** and 74 are neither tax period-specific nor financial year-specific. Any interpretation to the contrary would amount to rewriting the language of the Statute, which is impermissible.

A contrary view has, however, been adopted by the High Courts of Bombay, Kerala, Madras, Andhra Pradesh, and Himachal Pradesh respectively wherein it has been held that the issuance of consolidated Show Cause Notices covering multiple financial years is contrary to the statutory scheme under **Sections 73** and 74 of the CGST Act and is, therefore, legally unsustainable.

The **High Court**s of Madras and Kerala respectively, held that **Sections 73(10)** and 74(10) of the Act specifically provide a time limit of three/five years from the due date for furnishing of annual return for the financial year to which the tax due relates to. Hence the revenue should ideally issue separate show cause notices to cover the different financial years since the period available to the Department for adjudication of the show cause notices varies depending upon the due date for furnishing of annual return for that year.

The **High Court** of Kerala further held that consolidated show cause notices covering multiple financial years can be issued only in circumstances where the statutory provision provides for a common period for initiation and completion of the adjudication as was the case under erstwhile Central Excise Act and Customs Act respectively which differs from the scheme of adjudication under the CGST Act having a separate period of limitation and the limitation will start independently for different financial years.

The Kerala **High Court** observed yet another aspect of the matter. It was held that if a consolidated notice for various financial years is issued, the total amount of tax, penalty etc. determined as payable by the assessee may increase exponentially depending upon the number of financial years included in the consolidated notice and in the event of it being adverse to the assessee, the pre-deposit required for preferring a statutory appeal would also be higher. Such a consequence could not have been contemplated under a statutory scheme founded on principles of fairness in taxation.

The Court further held that the statutory period available for an assessee to put forth its contentions against the SCN in an effective manner cannot be curtailed by an unnecessary act on the part of the Department by issuing a consolidated SCN that includes therein a financial year in relation to which the period for passing a final order expires earlier.

Based on the above observation of the Hon'ble Courts and upon examining the statutory framework, particularly sub-sections (2) and (10) of Sections 73 and 74 which specifically refer to the "financial year", it appears that there is no scope for consolidating various financial years/tax periods while issuing SCN under the GST Act.

Conclusion –

At present, there is no authoritative pronouncement of the **Supreme Court** settling the controversy. Consequently, divergent views expressed by different High Courts continue to operate within their respective territorial jurisdictions.

Based on the above discussion, it appears that where a consolidated SCN covering multiple tax periods or financial years were to be issued, it would be unfair to taxpayers as they would be hit by the double trouble of increased pre-deposit and reduced time for adjudication of later financial years.

The Syndrome of Limitation under the CGST Act: A Critical Analysis

Adv. Sushil Verma

The Syndrome of Limitation under the CGST Act:

A Critical Analysis

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The **Limitation Act, 1963** intersects with the **Central Goods and Services Tax (CGST) Act, 2017** in a complex manner, often creating what can be termed the **"Syndrome of Limitation"** — a web of strict timelines, discretionary powers, procedural technicalities, and socio-economic realities that frequently determine the fate of tax disputes. **Section 107** of the CGST Act prescribes strict timelines for filing appeals (3 months + 1 month condonable), while **Section 5** of the Limitation Act provides relief through condonation of delay on "sufficient cause.

While Section 107 r/w Section 169 imposes a strict regime for computation of limitation, the discretionary power under Section 5 of the Limitation Act remains unfettered. Deeming service under Section 169 raises a rebuttable presumption. In genuine cases involving sufficient cause — particularly force majeure, incarceration, marginalised litigants, or bona fide mistakes — the appellate authorities must lean in favour of condonation to uphold the constitutional mandate of access to justice.

In this article I have attempted to examine the key challenges, statutory provisions, judicial principles, and practical issues that arise in GST limitation matters.

The limitation regime under the CGST Act is not merely procedural — it reflects a tension between strict tax administration and constitutional values of justice. While limitation bars are necessary for finality, the **Syndrome of Limitation** highlights the need for compassionate, fact-specific adjudication, especially for genuine hardships. A well-reasoned judgment by a Special Bench on these issues could provide much-needed clarity and uniformity in the GST appellate ecosystem.

Limitation is not an absolute bar but a rule of procedure. In deserving cases — particularly involving force majeure, marginalized litigants, or genuine incapacity — courts and tribunals are expected to lean towards substantial justice.

What is the Statutory Framework- impacting Syndrome of Limitation.

Section 107 CGST Act: Provides for appeals to the First Appellate Authority within 3 months (extendable by 1 month). The period is computed from the date of **communication** of the order.

Section 169 CGST Act: Governs service of orders/notices, including deeming provisions.

Section 112: Appeals to GSTAT (second appellate level).

Section 161: Rectification of errors.

Section 5, Limitation Act, 1963: Allows condonation of delay on sufficient cause (applicable via **Section 29(2)** unless excluded).

Section 14, Limitation Act: Exclusion of time spent in good faith in wrong forum (applicable in spirit, though not always directly).

Section 107(1) & (2) CGST Act Any person aggrieved by a decision or order may appeal within **three months** from the date on which the decision or order is **communicated** to such person. The Appellate Authority may allow a further period of one month if sufficient cause is shown.

Section 169 CGST Act Prescribes detailed modes of service (by registered post, speed post, email, uploading on GST portal, etc.) and contains **deeming provisions** — once served as per the section, the order is deemed to have been duly communicated.

2. What is the strongest revenue argument for delayed appeals?

Whether Revenue can invoke deemed communication as against appellant's argument of actual communication and receipt? Debatable issue pending before the Supreme Court in Bombino International case. Revenue would always argue that once the Department proves service through authorised modes (especially registered email, portal upload, or speed post with acknowledgment), the burden shifts heavily on the appellant to explain the delay – **Section 169** satisfied. Courts/Tribunals are generally reluctant to accept pleas of "non-receipt" when service is proved as per **Section 169**.

Why the courts do this? Perhaps in their view Section 169 is a complete code for service. Allowing routine challenges to service after long delays would render the **limitation period** under **Section 107** meaningless and lead to chaos in tax administration. My Take is that this stand is correct – **Section 169** is a specific section and **section 107** is an extension Harmoniously construed perhaps this possible conclusion by Courts or tribunals may be correct.

So how the appellants get ready to counter argue – to rebut the so called irrebuttable presumption of service?

Despite the strict language, the following points can be persuasively argued:

Supreme Court has held in several service-related cases that deeming provisions are not absolute when actual prejudice is shown).

Limitation should run from the date the appellant gains actual knowledge of the order, especially for small/rural taxpayers.

Section 5 Limitation Act overrides technicalities when sufficient cause is shown (e.g., genuine non-receipt due to technical glitches, change of address not updated, etc.).

Article 14 & Access to Justice: Rigid application without considering ground realities would be discriminatory

Core Issues – What is The "Syndrome"

I would place on top: Computation of Limitation & Service of Order Conflict between actual receipt vs. deemed service under **Section 169**. We can rebut Deeming fictions in genuine cases. The onus lies on you to prove that your contention is genuine and evidence based.

What could be the possible Sufficient Cause – A Mixed Question of Fact & Law, some common grounds include:

Serious illness or imprisonment/detention of the proprietor.

Force majeure (natural calamities, pandemics, strikes, lockdowns).

Death of the appellant and legal heirs' delays.

Dissolution of firms/LLPs with internal disputes.

Financial stress, business closure.

Bona fide mistakes by counsel/CA or wrong advice.

Rural/underprivileged/marginalized litigants' lack of awareness or resources.

Lack of knowledge of the order itself.

Doctrine of Clean Hands & Afterthoughts

Shifting stands (e.g., GST Portal glitches despite registered emails) can defeat condonation claims. This is the normal contention, though accepted as a valid defence in many High Courts, but in my view it is very risky business especially before Tribunals who can verify the facts in detail, cross examine the appellant or the revenue to winnow the truth from the falsehood.

What will two appellate authorities can do?

First Appellate Authority has wide discretion under **Section 107**.

GSTAT, as final fact-finding authority, can examine facts but faces limits on new grounds or re-adjudicating discretion already exercised. Introducing new facts for condonation before the **GSTAT** is a risky affair indeed.

Can appellate authorities exclude some time for computation of limitation:
Exclusion of Time:

Perhaps yes, time spent in rectification (**Section 161**) or writ petitions — applicability of **Section 14** principles in spirit.

What is the judicial approach in condonation of delay application?

Indian courts generally adopt a liberal yet cautious approach:

Sufficient cause is elastic but requires bona fides and diligence.

Leniency for weaker sections, genuine force majeure, and incarceration.

Strictness against negligence, lack of evidence, or afterthought pleas.

As professionals what practical challenges we face? What could be the best litigation strategy that can be recommended?

For Appellants:

File condonation applications with strong evidence at the earliest. Raise all grounds before the First Appellate Authority.

For Authorities:

Balance revenue protection with access to justice. Avoid mechanical rejections.

We should appreciate the key import and meaning of sufficient cause?

Meaning and Scope of "Sufficient Cause" Leading Judgment: *Collector, Land Acquisition v. Mst. Katiji* (1987) 2 SCC 107 The **Supreme Court** held that "sufficient cause" must be construed liberally to advance substantial justice. The expression is elastic. Short delays by the State were condoned, emphasizing that refusal of condonation should not defeat justice on technicalities.

2. Length of Delay vs. Acceptability of Explanation Leading Judgment: *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123 The Court clarified that the length of delay is not decisive. What matters is whether the explanation is plausible and shows absence of negligence. Even long delays can be condoned if the case is bona fide.

When Revenue Files appeals or cross objections:

Their limitation periods are also prescribed and they do not enjoy any special leverages; and if delay more than prescribed is proposed to be condoned, quote the following SC judgment and strongly objection condonation by the appellate authorities including **GSTAT**

Postmaster General v. Living Media India Ltd. (2012) 3 SCC 563 — Strict approach; bureaucratic delay not automatically condonable.

State of Nagaland v. Lipok Ao (2005) 3 SCC 752 — Some pragmatism for government machinery, but not a licence for inordinate delay.

The **Supreme Court**'s consistent message is balance: Limitation rules must be enforced, but not with such rigour as to defeat justice in genuine cases. The "Syndrome of Limitation" in GST reflects the larger tension between revenue finality and access to justice. Not necessarily true for CGST Act where limitation is being strictly construed.

Always conclude your application for condonation with the following quote:

"The courts exist for the common man. Technicalities should not be allowed to defeat justice where the party has a genuine case." —

***Collector, Land Acquisition v. Mst. Katiji* (1987)**

The Syndrome of Limitation in GST is not merely a procedural issue — it is a test of the justice delivery system's sensitivity to ground realities. The Supreme Court has time and again reminded us that courts are meant to dispense justice, not to

punish litigants for technical lapses. In a country as diverse as India, with millions of small taxpayers, a rigid application of limitation without regard to sufficient cause would defeat the very object of the GST regime — which promises simplicity and fairness."

What happens to economic realities for taxpayers who are marginalised or rural based or not educated?

A large number of GST taxpayers are small traders, rural businesses, proprietorships, and first-generation entrepreneurs.

Expecting them to have the same level of legal awareness as large corporations is unrealistic and contrary to the constitutional directive of equal justice.

In such cases, lack of knowledge of the order, illiteracy, or resource constraints should be given due weight as sufficient cause.

Can we invoke Force Majeure & Extraordinary Circumstances to support case for condonation of delay in terms of Section 107?

Events like pandemics, natural calamities, prolonged strikes, or complete business disruption due to external factors are classic examples of sufficient cause. The rigour of limitation must "melt down" in such situations. THIS COULD BE A VERY PERSUASIVE ARGUMENT. Courts have applied the doctrine of *impossibility* and *frustration* by analogy in limitation matters.

HOW DO WE GET READY SEEKING CONDONATION OF DELAY?

The **condonation application** (usually filed as an Interlocutory Application or along with the appeal memo) and the supporting **affidavit** are the **foundation** of your plea for delay condonation. Courts and tribunals (including **GSTAT** and High Courts) decide primarily on the strength of these documents.

A weak or vague application is one of the most common reasons for rejection.

Draft a very good condonation application. It must include the following:

Exact period of delay (day-wise calculation).

Clear prayer for condonation.

Reference to **Section 5** of Limitation Act r/w **Section 107** CGST Act.

Brief facts leading to delay.

If any exclusion of time is required in terms of **section 14** of the Limitation Act (say **section 161** issue) write with documents

Prepare a detailed affidavit and this must contain the following

Deponent's identity and authority.

Facts of the case and date of order.

Date of actual knowledge/receipt of order.

Detailed chronological explanation of delay.

Specific sufficient cause with evidence reference.

Section 14 issue explain in detail with dates and exact time you took pursuing an alternative remedy. Quote judgments.

Statement that no negligence or mala fides.

Verification clause.

Must be sworn by the appellant or a person with personal knowledge (e.g., proprietor, partner, authorised signatory).

Day-to-day explanation of the delay (especially from the date of order till filing).

Specific sufficient cause (illness, imprisonment, force majeure, dissolution disputes, counsel mistake, etc.).

Supporting documents annexed (medical certificates, jail records, dissolution deed, counsel letter, etc.).

Statement that the delay was not deliberate or due to negligence.

Assertion of clean hands and bona fides.

Explanation for any new grounds (if raised at higher stage).

What do the Courts expect from you when you pray for condonation:

The **Supreme Court** has held that the applicant must satisfy the court with **cogent reasons** and evidence. A mechanical or casual application is liable to be rejected (*Esha Bhattacharjee v. Managing Committee* and *Balwant Singh* cases).

CAN APPELLATE AUTHORITIES OR COURTS REJECT THE AFFIDAVIT WITHOUT ANY COUNTER AFFIDAVIT OR WITHOUT ANY CROSS EXAMINATION OF THE DEPONENT?

Courts and Tribunals (including **GSTAT**, High Courts, and even the **Supreme Court**) have the power to reject an affidavit/application for condonation of delay **without requiring a counter-affidavit or ordering cross-examination**, if:

The affidavit is vague, insufficient, or lacks plausible explanation.

It fails to disclose sufficient cause on the face of it.

There is no day-to-day explanation for the delay.

The explanation appears prima facie false, afterthought, or lacking bona fides.

Supporting documents are absent or inadequate.

Leading Supreme Court Position

N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 The **Supreme Court** held that the Court can reject the condonation application if the explanation is not satisfactory on the basis of the materials placed on record. There is no absolute requirement of counter-affidavit or evidence in every case.

When Cross-Examination or Counter May Be Required

Only in exceptional cases where:

The explanation appears prima facie plausible.

The Department raises serious disputed questions of fact.

The Court feels that oral evidence or cross-examination is necessary to test the veracity.

Even then, it is discretionary — not a right of the applicant.

WHAT HAPPENS WHEN YOU APPLICATION FOR CONDONATION IS DISMISSED BY FAA AND YOU HAVE TO MOVE TO TRIBUNAL? SUGGESTED COURSE OF ACTION.
File a fresh application for condonation of delay before the GSTAT seeking direction for the first AA for consideration of your request for delay waiver.

Make your affidavit detailed, specific, and well-documented.

Anticipate possible objections and address them proactively.

If rejected, you can challenge the order in higher forum on the ground that the explanation was sufficient and rejection was mechanical.

Filing a strong, self-contained affidavit is crucial because the Court can (and often does) decide the condonation application solely on your papers without waiting for a counter or ordering cross-examination.

CAN MERITS OF THE CASE BE AT ALL CONSIDERTED: Important Caution from Supreme Court

The Court should not conduct a mini-trial on the merits while deciding condonation.

Merits should be considered only prima facie and as a secondary factor.

The primary focus must remain on whether the applicant has explained the delay with sufficient cause and acted with reasonable diligence.

MY Best Argument Strategy

For Appellants: Emphasise strong sufficient cause first. Use merits only as an additional factor ("Even otherwise, the appeal has strong merits and refusal of condonation would cause grave injustice").

N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 The **Supreme Court** held:

"The question of limitation and condonation of delay is not dependent upon the merits of the case. The merits of the case can be considered only to a limited extent while considering the application for condonation of delay."

SO REMEMBER, Merits are not irrelevant, but they cannot be the main ground for deciding condonation.

Important Judgment

Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy (2013) 12 SCC 649 The **Supreme Court** laid down detailed guidelines for deciding delay

condonation applications and observed that while considering sufficient cause, the Court may keep in mind the conduct of the parties and the question whether substantial justice would be caused by condoning the delay. However, it should not amount to a mini-trial on merits.

REMEMBER TO APPRECAITE: Sufficient Cause & Corroboratory Evidence – Importance in Condonation Applications *(Critical for Success under **Section 5** of Limitation Act)*

1. What is "Sufficient Cause"?

"Sufficient cause" means a **plausible, bona fide, and adequate reason** that prevented the appellant from filing the appeal within the prescribed time. It is not a technical term but must satisfy the court that the delay was **not due to negligence or inaction**.

Supreme Court's consistent view: The expression "sufficient cause" is **elastic** and must be interpreted liberally to advance substantial justice (*Collector, Land Acquisition v. Mst. Katiji*, 1987).

2. Why Corroboratory Evidence is Extremely Important

An affidavit alone is often **not enough**. Courts repeatedly hold that **bare statements** in the affidavit carry little weight. Corroboratory evidence is crucial because:

It proves the bona fides of the explanation.

It shows the applicant acted with due diligence.

It helps the court distinguish between genuine hardship and afterthought pleas.

SUPREME COURT SO FAR:

DELAY BEYOND FOUR MONTHS IS NOT CONDONABLE- THE TUSSLE BETWEEN **SECTION 169** AND **SECTION 107** CONTINUES – MY TAKE **SECTION 169** OVERRIDES **SECTION 107**.

HOPE YOU FOUND THIS PIECE USEFUL.

SV

GST: My Take | Section 74A and Section 16(2)(c)

Adv. Sushil Verma

GST – MY TAKE

@ SV

HAS SECTION 74A ENDED ART 226 LITIGATION BEFORE HIGH COURTS?

The introduction of **Section 74A** is, in my opinion, **one of the most important structural changes to GST adjudication since 2017**. It changes the litigation landscape far beyond merely replacing **Sections 73** and 74 for future periods. **Section 74A** applies to demands relating to **FY 2024-25 onwards**, while **Sections 73** and 74 continue to govern earlier financial years.

For **legacy disputes up to FY 2023-24**, however, **Section 74A** changes nothing. In those cases, the Department must still comply with the statutory requirements of **Section 73** or **Section 74**, as applicable, including the jurisdictional prerequisites for invoking **Section 74**.

Before **Section 74A**, one of the most common grounds for writ petitions was:

the Department wrongly invoked Section 74 instead of Section 73;

there was no allegation of fraud, wilful misstatement or suppression;

the extended limitation was therefore unavailable;

the very assumption of jurisdiction under Section 74 was challenged.

Since **Section 74A** creates a **single demand and recovery framework** for FY 2024-25 onwards, that particular jurisdictional controversy is likely to diminish considerably.

However, High Court writ petitions will continue on many other grounds, including:

absence of jurisdiction;

violation of **natural justice**;

proceedings beyond limitation (where applicable);

constitutional challenges;

lack of authority under the Act;

failure to satisfy mandatory statutory preconditions;

orders passed without reasons or without application of mind.

In fact, even after the introduction of **Section 74A**, High Courts continue to emphasise that where an effective statutory appeal exists, writ jurisdiction is ordinarily not exercised for disputes involving appreciation of facts, while jurisdictional and legal challenges remain open in appropriate cases.

WHAT HAS SUPREME COURT DONE TO SECTION 16(2)(C) OF CGST ACT? HAS THE CONTROVERSY BEEN FINALLY SETTLED OR LITIGATION LEVERAGE REMAINS?

@ SV

My take is a profound NO. It is no doubt a landmark judgment, but it would be premature to overstate its reach in GST tax litigation. Of course it now settles, perhaps based on Gujarat **High Court**, that **Section 16 (2)** (c) must be applied as enacted; but as lawyers we have to appreciate the real impact of this decision – what issues really the **Supreme Court** considered and what issues that we think are still open for debate in Courts.

In tax jurisprudence, landmark judgments often narrow the scope of future disputes rather than eliminate them altogether. In my assessment, *Bhandari Scrap* is likely to have that effect: **it will reshape ITC litigation, but it will not bring it to an end**

I, for one, would continue to take following questions of law before the TRIBUNALS, BEFORE THE FIRST APPELLATE AUTHORITIES AND BEFORE THE HIGH COURTS: BECAUSE I THINK THESE QUESTIONS REMAIN HIGHLY RELEVANT TO THE FACTUAL MATRIX AND FOR WHICH THE **SUPREME COURT** HAS NOT DELIVERED ANY FINALITY.

Did the purchasing dealer act bona fide?

Was there any collusion?

Were the goods actually received?

Was the tax invoice genuine?

Was the transaction real?

Did the purchaser exercise reasonable diligence?

Was the supplier's default attributable to fraud by the purchaser?

I would still raise Constitutional Issues

Can an innocent purchaser be deprived of ITC solely because of a supplier's default when the purchaser has no statutory mechanism to compel payment by the supplier?

Does such denial satisfy the tests of fairness and proportionality?

Has the Department exhausted remedies against the defaulting supplier before proceeding against the recipient?

Can **Section 16(2)**(c) be interpreted in a manner consistent with constitutional guarantees of equality and non-arbitrariness?

Based on Maruti Enterprises v UOI I would still explore the possibilities on the issues in my appeals and writs:

For example, it does not directly decide questions such as:

whether the Department must first exhaust recovery against the supplier;

what constitutes "tax has actually been paid";

cases involving portal mismatches or clerical errors;

fraud by the supplier without any involvement of the recipient;

disputes under Section 16(2)(b) (like your bill-to/ship-to issue).

So the litigation landscape is still wide open despite the SC holding constitutional validity of one of the provisions of **Section 16** i.e. 16(2)(c)

I would not allow Revenue to feel too happy with this judgment. Even if the Department relies upon **Section 16(2)**(c), it must still establish the factual foundation for its case.

For example:

Was tax actually unpaid?

How was that determined?

Was the supplier afforded due process?

Is the alleged default final, or merely under investigation?

Has the Department correctly identified the tax period and the relevant supplies?

Going forward therefore I would not describe *Bhandari Scrap* as the "end" of ITC litigation under **Section 16(2)**(c). Rather, I see it as:

settling certain principles on the interpretation of **Section 16**;

strengthening the statutory framework governing ITC; but

leaving substantial room for litigation on factual disputes, procedural safeguards, constitutional arguments, and cases that turn on different provisions of **Section 16**.

GST: My Take | Three Important Issues for My Readers

Adv. Sushil Verma

GST – MY TAKE

@ SV

THREE IMPORTANT ISSUES FOR MY READERS

1)The **Supreme Court**'s shift

In Bhandari Scrap Traders, the **Supreme Court** held that a recipient's bona fides cannot substitute for actual payment of tax by the supplier, nor can **Section 16(2)**(c) be diluted by judicial reading-down. The debate has moved from constitutional validity to implementation fairness. So notwithstanding the total bona fides of the purchasing dealer and all other proofs if the supplier has not discharged his tax liabilities and the ITC may be denied and hence confirmed by the Court

Why the VAT analogy fails under GST

The Gujarat **High Court**'s reasoning in Maruti Enterprise (affirmed by the **Supreme Court** in Bhandari Scrap Traders) was structural. Under State VAT, a seller's default stayed within the same State's revenue account. Under GST, utilisation of credit can trigger inter-governmental settlement under **Section 53. Allowing credit without actual tax payment would force settlement against revenue never collected. Comparable hardship does not equate the two regimes; removing the supplier-payment condition would alter the wider fiscal architecture.**

What remains

The pending Sahil Enterprises matter may clarify fact-specific relief and the consequences of ITC reversal.

Sahil Enterprises (pending before Supreme Court)

Separately, the SLP against the Tripura **High Court** judgment in *Sahil Enterprises* (which had protected bona-fide recipients under **Section 16(2)**(c) by reading down the supplier-payment condition) remains pending. In *Bhandari Scrap Traders*, the **Supreme Court** noted this pendency but still affirmed the Gujarat **High Court**'s stricter view upholding **Section 16(2)**(c). Of course, we should be aware that Bharti Scrap judgment was not on merits – SC dismissed the SLP without converting this into a civil appeal. However, the observations made are relevant and hence Sahil Enterprises when heard on merits may finally make BHARTI SCRAP case a judgment under **Article 141** of the Constitution.

The **Supreme Court**'s shift

In Bhandari Scrap Traders, the **Supreme Court** held that a recipient's bona fides cannot substitute for actual payment of tax by the supplier, nor can **Section 16(2)**(c) be diluted by judicial reading-down. The debate has moved from constitutional validity to implementation fairness.

My- take is that a mature GST system must protect revenue while offering invoice-level visibility, automatic restoration upon payment or recovery, and safeguards so that supplier default does not become an irreversible burden on a bona-fide purchaser.

2)The Limitation under Section 107 – Service and Communication Controversy

Luxmi Traders (Punjab & Haryana High Court, July 2026)

The P&H **High Court** held that mere uploading of a **Show Cause Notice** (SCN) or Order-in-Original under the "View Additional Notices and Orders" tab on the GST Common Portal does not constitute valid service under **Section 169** of the CGST Act.

Key reasons:

The GST portal () has not been notified under **Section 146** for the purpose of serving notices or orders.

An automated email intimating that "a notice has been uploaded" (without attaching the actual document) is also insufficient.

Consequences laid down:

If the SCN was served only via portal and the taxpayer did not reply → ex-parte order is set aside; proceedings are restored to the SCN stage; taxpayer gets time to file a reply and be heard.

If a contested order was served only via portal → limitation under **Section 107** does not begin to run; taxpayer gets a fresh window to file an appeal.

Sai Overseas (Delhi High Court, August 2026)

The Delhi **High Court** expressly followed *Luxmi Traders*. It set aside an ex-parte order passed under **Section 73** on the ground that the SCN had been uploaded only on the portal and had neither been acknowledged nor replied to. The Court applied the same principle: portal-only service is not sufficient service.

Interplay with judgments stayed by the Supreme Court

Bambino Agro Industries / Bambino International (Allahabad **High Court**): Took a similar view that mere portal upload does not amount to valid "communication" under **Section 107** for starting the **limitation period**, and that the deeming fiction under **Section 169(2)**/(3) does not fully apply to portal/email service. The **Supreme Court** stayed this judgment in May 2026.

S.K. Chakraborty matters: Related challenges concerning limitation under **Section 107** and the meaning of "communication" of orders.

Connected SLPs are pending before the **Supreme Court**.

Where do we stand today (August 2026)?

High Courts (P&H in *Luxmi Traders*, Delhi in *Sai Overseas* and other recent orders) continue to grant relief on the ground that portal-only service is defective — especially in ex-parte cases and for computing limitation.

My Take on these Judgments.

* A **High Court** is not constitutionally required to stay its hand merely because a similar point is pending before the **Supreme Court**, especially when the stay is interim and the facts before it demand immediate relief to litigants.

* Taxpayers in P&H and Delhi were facing irreversible consequences (ex-parte demands, blocked ITC, time-barred appeals). Denying them relief on the ground of "wait for SC" would itself have caused hardship.

* High Courts retain the power and duty under **Article 226** to protect citizens within their jurisdiction when they find a clear statutory defect (here, absence of notification under **Section 146** for service via the portal).

DESPITE the above legal position which is settled, still I am of the view that once the apex court has seized of the issue and stayed a **High Court** ruling, other High Courts normally exercise restraint to avoid a multiplicity of conflicting views and to prevent the very situation of uneven application across States.

The judgments are legally tenable on the merits (the portal was never notified for service of notices/orders). **However, given the pending Supreme Court stay in Bambino and the national character of GST, greater judicial restraint would have been preferable from the standpoint of systemic consistency. The current situation leaves taxpayers outside P&H and Delhi in a weaker position until the Supreme Court finally settles the question.**

In my view(I wish I could be wrong) Luxmi Traders (P&H) and Sai Overseas (Delhi, following it) have, to a noticeable degree, oversimplified a more nuanced statutory and practical problem.

Where the oversimplification lies

Statutory text is not as one-sided as the judgments make it appear Section 169(1)(d) expressly lists "by making it available on the common portal" as one of the recognised modes of service. **Section 169(2)** then creates a deeming fiction of service.

The High Courts have effectively read a further condition (specific notification under **Section 146** exclusively for service of notices/orders) into the provision. While the absence of a clear **Section 146** notification for *service* is a legitimate point, treating it as virtually conclusive overlooks the fact that the portal has been notified and operational for the entire GST ecosystem (registration, returns, payments, e-way bills, etc.). The judgments treat the portal as if it were an unauthorised side-channel rather than the central statutory interface.

Earlier judicial approaches were more measured Several earlier **High Court** decisions (including some from Delhi) had accepted portal upload as a valid mode while still insisting on *effective* communication or requiring the Department to fall back on other modes under **Section 169(1)** when there was no response. **The newer judgments move to a near-absolute rule: portal upload alone is insufficient *unless* the taxpayer acknowledges or replies. This is a sharper, more taxpayer-friendly bright-line rule than the earlier, more fact-sensitive approach.**

Practical and systemic realities are under-weighted The GST regime was designed around the common portal. Millions of notices and orders have been uploaded for years. A rule that treats pure portal service as almost never sufficient creates retrospective disruption and places a heavy burden on the Department to prove actual knowledge or alternative service in every contested case. The judgments do not fully engage with the administrative and transitional consequences of such a strict reading.

Inconsistency with the deeming fiction Once a mode listed in **Section 169(1)** is used, **Section 169(2)** deems the communication served. The High Courts have effectively neutralised that deeming provision in the case of portal upload by insisting on additional proof of acknowledgement. That is a significant interpretive step that deserved more detailed engagement with the text and purpose of the deeming clause.

The judgments are not wrong in highlighting a real problem of ineffective communication, but they have resolved a complex interplay of **Sections 146**, 169(1)(d) and 169(2) with a relatively blunt instrument. Earlier judicial approaches tended to be more balanced — treating portal upload as a valid mode while still examining whether communication was effective in the facts of the case. The newer line is cleaner and more protective of taxpayers, but it does simplify (and harden) the legal position beyond what the statutory text and prior case law strictly required.

This is precisely why the **Supreme Court**'s eventual ruling in the Bambino line of matters will be important — it will have to decide whether the stricter "acknowledgement or reply" test is the correct reading, or whether a more calibrated approach is warranted.

However, the Supreme Court's stay on the Bambino line of cases means the issue is not finally settled. Until the Supreme Court decides the larger question of what constitutes valid service/communication under Sections 169 and 107, the position remains fluid. Taxpayers currently benefit from the High Court view in many jurisdictions, but the final word rests with the Supreme Court.

3) SPECIAL BENCH OF GSTAT

Special Bench of GSTAT to hearing batch cases on Limitation under Section 107 – is it worth the effort? Will judgment of the Special Bench, whatever it may be, could overrule High Court or Supreme Court Judgments or even bind other GSTAT Benches in law?

Will the Special Bench serve any purpose?

Yes, a limited but real purpose — primarily internal consistency within GSTAT.

Hundreds of appeals (reports indicate 500+) involving the same question of law on limitation/condonation under **Section 107(4)** are pending across multiple State Benches.

High Court judgments (*Luxmi Traders*, *Sai Overseas*, *Bambino* line) and the **Supreme Court**'s interim stay create a fragmented landscape. Different **GSTAT** State Benches could otherwise deliver conflicting orders on identical facts.

A Special Bench (constituted by the Principal Bench under the powers available to the President) can settle the Tribunal's own view on whether delay beyond the statutory one-month period under **Section 107(4)** can be condoned, and on related issues of "communication" for limitation purposes.

This reduces the risk of contradictory **GSTAT** orders and provides a single reference point for lower authorities and taxpayers dealing with the Tribunal.

However, it **cannot** resolve the larger controversy. **High Court** and **Supreme Court** decisions remain binding on **GSTAT**. The Special Bench cannot overrule or dilute *Luxmi Traders*, *Sai Overseas*, or the **Supreme Court**'s stay in the *Bambino* matter. Its role is confined to the Tribunal's own functioning.

Will the Special Bench decision be legally binding on other GSTAT Benches?

There is **no express provision** in the CGST Act that makes a Special Bench decision binding on other **GSTAT** Benches.

Section 109 and the **GSTAT** (Procedure) Rules empower the President to constitute benches and transfer cases involving identical questions of law (including to a larger/Special Bench when matters are pending before two or more State Benches).

Unlike the Income Tax Act (which has a clearer Larger Bench mechanism) or certain CESTAT conventions, the CGST Act is silent on the binding effect of such decisions.

In practice, however:

Larger/Special Bench decisions of Tribunals are conventionally treated as binding on co-ordinate benches (drawing from long-standing ITAT and CESTAT practice, as well as principles of judicial discipline and consistency).

Other **GSTAT** Benches are expected to follow the Special Bench view unless distinguishable on facts or until a higher court decides otherwise.

Failure to follow can lead to appeals and criticism for creating avoidable conflict within the same Tribunal.

So while not strictly "statutory" binding force, the decision will have strong **persuasive and conventional binding force** within **GSTAT**.

Is it an exercise in futility?

Partially yes, but not wholly.

It is not futile because:

It promotes uniformity at the Tribunal level where the bulk of second-appeal litigation is now concentrated.

It gives taxpayers and the Department a clear **GSTAT** position pending the **Supreme Court**'s final word.

It is a legitimate administrative-judicial response to a large volume of identical matters.

It is of limited value because:

It cannot settle the law nationally — only the **Supreme Court** can do that.

High Court judgments already exist and bind the authorities in their respective jurisdictions.

The **Supreme Court**'s stay in the *Bambino* matter already signals that the apex court is seized of the core issue of "communication" and limitation under **Section 107**.

The Special Bench is a useful housekeeping exercise for GSTAT. It is not a substitute for a Supreme Court decision, nor can it create a national binding precedent in the absence of an express statutory provision.

@ SV/DGST Group

Legal Trivia | Legal Terminology

Adv. Kumar Jee Bhat

1. Bequeath:

To give (personal) property by will. To assign or transfer real or personal property by formal declaration, either inter vivos or after death.

2. Blue Law:

A statute regulating or prohibiting commercial activity on Sundays.

3. Blue Pencil Test:

A judicial standard for deciding whether to invalidate the whole contract or only the offending words. Under this standard, only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them as opposed to changing, adding or rearranging words.

4. Bottomry bond;

A contract for the loan of money on a ship, usu at extraordinary interest, for maritime risks encountered during a certain period or for a certain voyage.

5. Breaking bulk:

The act of dividing a large shipment into smaller units.

6. Actus Reus;

An act which is illegal, such as theft. (This term is Latin.)

7. Ad Idem:

In agreement. (This term is Latin.)

8. Ambulatory will;

A will which can be revoked or changed while the person who made it is still living.

9. Antenuptial agreement;

A legal agreement between two people who are about to get married. The agreement sets out how the couple's assets will be divided between them if they later divorce.

10. Bench warrant;

A warrant issued by a court for the arrest of an accused person who has failed to attend court. It is also issued when someone has committed contempt of court and can't be traced.

Kumar Jee Bhat

Legal Trivia | Constitutional Principles

Adv. Sushil Verma

LEGAL TRIVIA

@SV

Constitutional / Foundational Principles of Taxation.

No tax without authority of law (Article 265 of the Constitution of India): "No tax shall be levied or collected except by authority of law." This is the bedrock principle. Tax can be imposed only by a valid statute passed by the competent legislature (Parliament or State Legislature under the Seventh Schedule). Executive action alone cannot create a tax liability.

Distribution of taxing powers between the Union and States (Articles 246, 268–270, and the three Lists in the Seventh Schedule).

Restrictions such as no taxation of inter-State sales/imports/exports in certain ways (Article 286) and immunity of State property/income from Union taxation (Article 289).

Legal trivia

@SV

A taxing statute must be read as it is — no additions or subtractions on grounds of legislative intent or "spirit".

Strict / literal interpretation is the primary rule for charging provisions.

If the language is plain and unambiguous, the court must give effect to it even if the result appears absurd or harsh; it is for the legislature (not the court) to remedy any absurdity.

Where two interpretations of a charging provision are reasonably possible, the one favouring the taxpayer is ordinarily preferred.

LEGAL TRIVIA

@SV

Equity has no place in the interpretation of taxing statutes ("Equity and taxation are strangers").

Taxing provisions cannot be interpreted on presumption, assumption, or implication. The court cannot supply what the legislature has omitted.

There is nothing unjust if a taxpayer escapes liability because the legislature failed to express itself clearly.

Exemption / deduction provisions are also strictly construed; after the Constitution Bench decision in Commissioner of Customs v. Dilip Kumar (2018), ambiguity in an exemption generally goes against the taxpayer (i.e., in favour of the Revenue).

GST LATEST UPDATES | JULY–SEPTEMBER 2026

Compiled by CA Renu Sharma

Selected CBIC and GSTN updates for 1 July to 30 September 2026. Refer to the original circular, instruction or GST portal advisory for full applicability and conditions.

Source	Date	Reference	Update / Practical matter
CBIC Circular	25 Jul 2026	256/02/2026-GST	Departmental appeals before GSTAT in cases involving orders of a Common Adjudicating Authority (DGGI).
CBIC Instruction	3 Aug 2026	01/2026-GST	Coordination with State Mining Authorities for sharing information on illegal mining and mineral transportation.
GSTN Advisory	1 Jul 2026	Revenue update	Gross and net GST revenue collections for June 2026.
GSTN Advisory	1 Jul 2026	AATO amendment	Revised timeline for amending Aggregate Annual Turnover (AATO) for 2026.
GSTN Advisory	29 Jul 2026	E-way bill	Proposed e-way bill enhancements kept on hold.
GSTN Advisory	1 Aug 2026	Revenue update	Gross and net GST revenue collections for July 2026.
GSTN Advisory	1 Sep 2026	Revenue update	Gross and net GST revenue collections for August 2026.
GSTN Advisory	7 Sep 2026	Appeals	Filing enabled for appeals involving NIL or zero demand.
GSTN Advisory	19 Sep 2026	emSigner	Advisory regarding use of emSigner version 3.3.

Source: CBIC (https://cbic-gst.gov.in) and GST portal (https://www.gst.gov.in). This is a selective summary of the updates supplied for this issue, not an exhaustive index of notifications.

57TH GST COUNCIL MEETING | BUSINESS IMPACT

Recommendations of 8 October 2026 | By CA Renu Sharma

The GST Council has recommended changes to refunds, input tax credit, dispute resolution and compliance. Recommendations are not themselves amendments to the law. Businesses should follow the existing provisions until the relevant law, notification or circular takes effect.

Area	Council recommendation	Business consequence
Faster refunds	Automated cash-ledger refunds and risk-based provisional sanction of 90% for eligible zero-rated and inverted-duty claims.	Potentially faster recovery of working capital.
Wider refund eligibility	Input-service ITC in inverted-duty refunds proposed from 1 November 2026; eligible capital-goods ITC in zero-rated and inverted-duty refunds from 1 April 2027, spread over 60 months.	Less accumulation of eligible ITC, subject to prescribed conditions.
Blocked ITC	Proposed rationalisation of restrictions for specified insurance, food-related expenses, infrastructure and stock write-offs.	Potential ITC benefit, only to the extent permitted by final amendments.
Minor disputes	Proposed ₹10,000 combined-tax threshold for SCNs and reduced maximum general penalty under section 125 from ₹25,000 to ₹10,000.	Fewer low-value disputes and lower general penalty exposure.
Arrest and prosecution	Recommended omission of section 69 and raising the prosecution threshold from ₹1 crore to ₹5 crore.	Reduced criminal exposure, without removing tax recovery obligations.
Goods movement	Risk-based, authorised interception and fewer transit-State disruptions, subject to exceptions.	Potentially smoother interstate transportation; documentation still required.
Scrap transactions	Proposed RCM on specified purchases from unregistered suppliers and 2% TDS on specified registered-party transactions.	Buyers should verify supplier status and the final rules before changing compliance.

For the remaining recommendations and detailed conditions, see the official GST Council Press Release (8 October 2026) and FAQs: https://www.gstcouncil.gov.in/press-release | https://www.gstcouncil.gov.in/faq

BHARTIYA VYAPAR MAHOTSAV

DGST Participation in Collaboration with CAIT











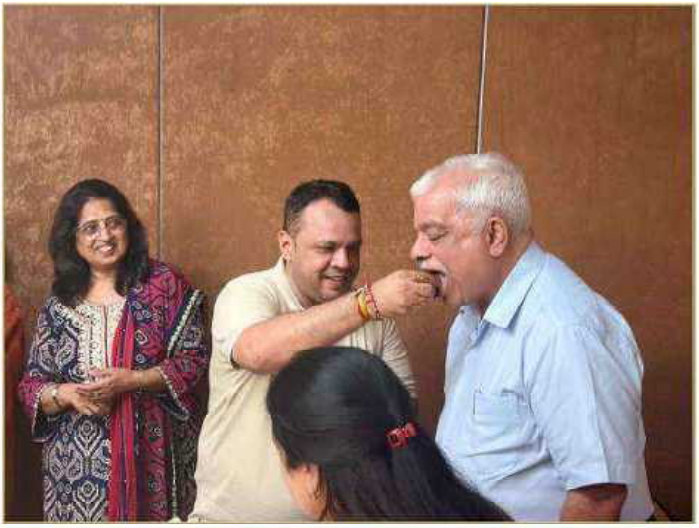




CELEBRATIONS AT DGST

Moments of Togetherness and Celebration















MONTHLY EVENTS AT DGST

Study Sessions, Felicitations and Professional Engagements











