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CHANGES IN GST RETURNS AND IMPORTANT JUDGEMENT

CA GADIA MANISH R.

DATE: 06-07-2025

Barring of GST Returns on expiry of three years....

BARRING OF GST RETURN ON EXPIRY OF THREE YEARS

- As per the Finance Act, 2023 (8 of 2023), dt. 31-03-2023, implemented w.e.f 01-10-2023 vide Notification No. 28/2023 – Central Tax dated 31th July, 2023,
- The taxpayers shall not be allowed file their GST returns after the expiry of a period of three years from the due date of furnishing the said return under
- Section 37 (Outward Supply),
- Section 39 (payment of liability),
- Section 44 (Annual Return) and
- Section 52 (Tax Collected at Source).
- **These Sections cover GSTR-1, GSTR 3B, GSTR-4, GSTR-5, GSTR-5A, GSTR-6, GSTR 7, GSTR 8 and GSTR 9.**

Contd….

- Hence, above mentioned returns will be barred for filing after expiry of three years.
- The said restriction will be implemented on the GST portal from July 2025 Tax period.
- **Hence, the taxpayers are once again advised to reconcile their records and file their GST Returns as soon as possible if not filed till now.**

ATTENTION – HARD-LOCKING OF AUTO-POPULATED LIABILITY IN GSTR-3B

ADVISORY REGARDING NON-EDITABLE OF AUTO-POPULATED LIABILITY IN GSTR-3B

- Portal provides a pre-filled GSTR-3B, where the tax liability gets auto-populated based on the outward supplies declared in GSTR-1/ GSTR-1A/ IFF.
- As of now taxpayers can edit such auto populated values in form GSTR 3B itself.

Contd....

- With introduction of form GSTR 1A,
  - taxpayer now has a facility to amend their incorrectly declared outward supplies in GSTR-1/IFF through GSTR-1A,
  - allowing them an opportunity to correct their liabilities before filing their GSTR-3B in the same return period.
- In view of the same, from **July, 2025 tax period** for which form GSTR 3B will be furnished in August, 2025 such auto populated liability **will become non editable.**
- Thus, taxpayers will be allowed to amend their auto populated **liability by making amendments through form GSTR 1A which can be filed for the same tax period before filing of GSTR 3B.**

Concept of Mutuality - A Real Concern

PRINCIPLE OF MUTUALITY

STATE OF WEST BENGAL
Versus
CALCUTTA CLUB LIMITED[2023]
2019 (29) G.S.T.L. 545 (S.C.) [03-10-2019]

Facts of the case:

- There has been dispute regarding the taxability of transactions between clubs, associations, etc. and its members.
- Whether a members' club, specifically the Calcutta Club, could be subjected to sales tax or service tax on supplies made to its permanent members.

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- The club argued that because it and its members were essentially the same entity (due to the principle of mutuality),
- there was no sale or service involved, and thus no tax liability.
- The case centered on whether the 46th Amendment to the Constitution (a deeming fiction, treating certain transactions as sales, even if they might not have been considered sales under traditional legal definitions), altered the application of the mutuality principle to incorporated clubs.

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- **In this regard, the Hon'ble Supreme Court** for erstwhile Service tax regime has **held that;**
- The 46th Amendment did not; nullify the principle of mutuality for incorporated clubs.
- It affirmed that the essence of mutuality remained,
- and therefore, the transactions between the club and its members
- **were not taxable sales.**

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- The court concluded that
- because the club and its members were considered one and the same,
- there was no sale or service involved in the club's provision of goods and services to its members.
- This decision clarified that the principle of mutuality continues to be relevant in determining tax liability for members' clubs, even after the 46th Amendment.

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- As per Section 7(1) of CGST Act, 2017;

  (1) For the purposes of this Act, the expression - "supply" includes-

  (a) …….

  *(aa) the activities or transactions, by a person, other than an individual, **to its members** or constituents or vice-versa, for cash, deferred payment or other valuable consideration.*

  *Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, **the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;** (inserted through Finance Bill, 2021 & applicable retrospectively from 01.07.2017)*

….CONTD

- The amendment in the above mentioned provision, clears that in the **scope of term 'supply' includes**
- activities or transactions of supply of goods or services or both between any person (other than individual) to its members or constituents or vice versa for cash, deferred payment or other valuable consideration.
- Further, an explanation is added to say that
- **the person and its members or constituents shall be**
- **deemed to be two separate persons and**
- **overriding effect has been given to the said explanation over anything contained in any other law for the time being in force and even to the judgements of any Court, Tribunal or any other authority.**

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KERALA HIGH COURT

Indian medical association .....Appellant

V/s

Union of India & Ors. .....Respondent

[2025] 83 TAXLOK.COM 047 (Kerala)

- *Club and Member Transactions – Mutuality – Constitutionality of Retrospective GST – Scope of Supply*

Facts of the case:

- The IMA Kerala challenged retrospective GST demands on contributions collected under welfare schemes for members, claiming immunity under the mutuality principle.

….CONTD

- The Court considered the constitutional competence to tax intra-member supplies post the Finance Act, 2021 amendment.
- While it **upheld the prospective applicability** of the deeming fiction introduced under Section 7(1)(aa), it **declared the retrospective effect (from 01.07.2017) as unconstitutional.**
- **The Court ruled that legislative power cannot override constitutional understanding of taxable transactions requiring two distinct persons.**

….CONTD

- **Held by Court:**
- We do however find that the statutory provisions impugned in these proceedings suffer from a definitive lack of legislative competence. Accordingly **the provisions of Section 2(17)(e) and Section 7(1)(aa) and the Explanation thereto of the CGST Act, 2017** and the provisions of Section 2(17)(e) and Section 7(1)(aa) and the Explanation thereto of the KGST Act **are declared as unconstitutional and void being ultra vires the provisions of Article 246A read with Article 366 (12A) and Article 265 of the Constitution of India.**

Input Tax Credit under GST

RECTIFICATION OF MISTAKE IN GSTR-3B

Chukkath Krishnan Praveen.....Appellant

V/s

State of Kerala, Deputy Commissioner, Office of The Deputy Commissioner, Tax Payer Services Division - Wadakkanchery, State Goods and Service Tax Department, Poothole, Thrissur, State Tax Officer, Assistant State Tax Officer, Central Board of Indirec .....Respondent

[2023] 67 TAXLOK.COM 022 (Kerala)[08-12-2023]

….CONTD

Facts of the case:

- The petitioner sought issuance of a Writ of mandamus directing respondents to permit the petitioner to rectify the mistake in Form GSTR-3B by accounting ITC as IGST instead of SGST and CGST credit.
- The Counsel for the petitioner submitted that the petitioner committed some errors in submitting the returns in GSTR-3B, on the basis of which the assessment order has been passed.
- The petitioner has made a representation on 21.10.2023 for rectifying the mistakes.

….CONTD

Held that:

- The present writ petition is disposed of with a direction to the respondent to permit the petitioner to rectify the mistake in Form GSTR-3B by accounting input tax credit as IGST instead of SGST and CGST credit.

- The High Court directed the 3rd respondent to consider representation as a rectification application and pass necessary orders in accordance with the law, within a period of two months.

ITC IN CASE OF ADVANCE

- **L & T IHI Consortium VS UOI (2024) 24 Centax 353 (Bom.)**
- The Bombay High Court, allowed Input Tax Credit (ITC) on GST paid for advances received from MMRDA for the Atal Setu project.
- The consortium paid advances with GST to L&T, **received a "Receipt Voucher**," and remitted output tax even before the service was delivered and claimed the ITC of the same.

….CONTD

- Phrases ‘intended to be used in course’ or ‘furtherance of his business’ as occurring in Section 16(1) would mean/include deferred receipt of goods or services or both.
- Despite not fulfilling the Section 16(2)(b) criteria for the receipt of goods/services,
- Provisions of sub-sections (1) and (2)(b) of Section 16 are to be read conjointly.
- **The Court upheld the eligibility for ITC, citing the “Receipt Voucher” as a valid tax document under Section 31 of the GST Act.**

KERALA HIGH COURT

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Henna medicals .....Appellant

V/s

State Tax Officers, Deputy Commissioner (Arrear Recovery) Office of The Joint Commissioner, State Goods and Service Tax Kannur, Union of India, Central Board of Indirect Taxes & Customs, State of Kerala .....Respondent (2023) 11 Centax 32 (Ker.) [19-09-2023]

….CONTD

Facts of the case:

- The present writ petition has been filed, impugning Ext. P1 assessment order and Ext. P2 recovery notice dated 28.12.2021 and 02.09.2023, respectively. The petitioner claims input tax credit to the extent of **Rs. 2,58,116/-** with interest and penalty. The total amount comes to approximately **Rs. 4,58,156/-**.
- From the perusal of the Assessment Order impugned in the present writ petition, it appears that the only ground on which the petitioner has been said to have availed the input tax credit is the difference between GSTR 2A and GSTR 3B.

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This Court, after taking note of the judgment of the Supreme Court in the case of **The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited 2023 (3) TMI 533 SC, [2023]** as well as Calcutta High Court judgment in **Suncraft Energy Private Limited v. The Assistant Commissioner, State Tax, Ballygunge Charge Judgment dated 02.08.2023 in MAT No.1218/2023** has held that the input tax credit of the assessee under the GST regime cannot be denied merely on the difference of GSTR 2A and 3B.

….CONTD

- Paragraph 8 of Diya Agencies v. The State Tax Officer Judgment dated 12.09.2023 in WPC 29769/2023, of this Court would read as under:
- “8. In view thereof, I find that the impugned Exhibit P-1 assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit.

….CONTD

- If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax credit. **Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit.** The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim for higher claim of input tax credit.

….CONTD

After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law."

- In view thereof, the present writ petition is allowed. The matter is remitted back to the file of the Assessing Authority/1st respondent to examine the evidence of the petitioner irrespective of the Form GSTR 2A for the petitioner`s claim for the input tax credit. After examination of the evidence placed by the petitioner/assessee, the Assessing Authority shall pass fresh orders in accordance with the law.
- The petitioner is directed to appear before the Assessing Officer on 03.10.2023 at 11.00 a.m. with all the evidence in support of his claim for input tax credit.

DENIAL OF ITC

Suncraft Energy Private Limited.....Appellant

V/s

Assistant Commissioner, State Tax.....Respondent

[2023] 63 TAXLOK.COM 001 (Calcutta)

- The Hon'ble Calcutta High Court held that
- Issuance of notice on recipient on account of **mismatch in GSTR-2A and GSTR-3B**,

….CONTD

- ITC cannot be sustained **without any investigation being done at the end of the supplier** whose invoices are not reflecting in GSTR-2A and
- that allegation of non-payment of tax by supplier and
- denial of ITC cannot be made
- without any investigation of the supplier in question.

….CONTD

- In the said case, the Apex Court have recently
- dismissed the SLP filed by the GST Authorities
- and agreed with the Hon'ble High Court.
- For the on-going cases, the Courts should pay attention to the fact that the **recipient has no control over the supplier's actions** and
- GSTR-2A restricted eligible ITC to the recipient.
- Thus, demand raised on the basis of GSTR-2A is wrong and contrary to the very fundamental principles on which foundation of the Act were laid.

Section 16(4)

Thirumalakonda Plywoods, Rep. by its Sole Proprietor Kondalaiah Sunduru .....Appellant

V/s

The Assistant Commissioner – State Tax .....Respondent

(2023) 9 Centax 270 (Pat.) [18-08-2023]

Issues Involved:

- The **time limit prescribed for claiming ITC U/s 16(4) of CGST Act is violative** of Articles 14, 19(1)(g) and 300-A of the Constitution of India?

….CONTD

- **Section 16(2) of CGST Act, 2017 has overriding effect on Section 16(4)** of the said Act?
- Acceptance of Form GSTR-3B returns with late fee will exonerate the delay in claiming ITC beyond the period specified U/s 16(4) of CGST Act, 2017?

Facts of the Case:

- The petitioner prayed that the non-obstante clause in Section16(2) would prevail over Section 16(4) and challenged the action of Respondent No.1 in passing summary order dated 15.3.2022 in Form GST DRC-07, on the ground of without serving proper SCN and granting sufficient opportunity to the petitioner U/s 74(5).

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- The court observed that even if an assessee passes basic eligibility criteria imposed under Section 16(2), still he will not be entitled to claim ITC if his case falls within the limitations prescribed under sub-sections (3) and (4). **Section 16(2) in terms only overrides the provision which enables the ITC i.e., Section 16(1).** This stipulation manifests that Section 16(2) is not an enabling provision but a restricting provision.
- Both Section 16(2) and (4) are two different restricting provisions, the former providing eligibility conditions and the later imposing time limit. However, both these provisions have no inconsistency between them. Therefore, **Section 16(4) being a non-contradictory provision and capable of clear interpretation**, will not be overridden by non obstante provision U/s 16(2). Section 16(4) only prescribes time restriction to avail credit.

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- Further, mere **filing of the return with a delay fee will not act as a springboard for claiming ITC.** The ITC being a concession/benefit/rebate, the legislature is within its competency to impose certain conditions, including time prescription for availing such right and the same cannot be challenged on the ground of violation of Constitutional provisions.
- The objection regarding Assessment Order dated 14.02.2022 were vividly discussed and rejected by the 1st respondent. Hence there is no force in the present contentions.

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Held That:

- **The Hon'ble High Court held that the time limit prescribed for claiming ITC U/s 16(4) is not violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India. Section 16(2) has no overriding effect on Section 16(4) of the said Act as both are not contradictory with each other.**
- **They will operate independently.**
- **Mere acceptance of Form GSTR-3B returns with late fee will not exonerate the delay in claiming ITC beyond the period specified U/s 16(4) of the Act.**

ITC ON CONSTRUCTION OF SHOPPING MALL FOR THE PURPOSE OF LETTING OUT

GMJ

Safari Retreats Private Limited

Vs

CC of CGST – Orrisa High Court

[2019 (25) G.S.T.L.341(Ori.)]

- Applicant is in the business of construction of shopping mall and later on give on Rent

….CONTD

- Applicant purchase various material and availed various services for construction of Mall.
- Where inputs are consumed in the construction of an immovable property which is meant and intended to be for the provision of taxable output services, whether input tax credit was available to the assessee?

CC OF CGST v/s SAFARI RETREATS PVT. LTD. (2024) 23 Centax 62 (S.C.)

- It has rejected the challenge to constitutional validity of Section 17(5)(c) and (d) of CGST Act which prohibits input credit for works contract and construction activity, respectively.
- However, the Supreme Court has highlighted the difference in the language of the two provisions.
- Section 17(5)(c) uses the expression 'Plant **and** Machinery' whereas Section 17(5)(d) uses the expression 'Plant **or** Machinery'.
- Explanation to Section 17(6) defines what is meaning of 'plant and machinery'.

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- Accordingly, the Supreme Court has held that input credit will be allowed if the construction activity is for ‘plant’ or ‘machinery’ because ‘plant or machinery’ is carved out from the prohibition.
- Whether a mall, warehouse or any building **other than hotel or cinema theater** constitutes a plant / machinery is a factual question. These have to be decided by tax authorities.
- If it is concluded that the mall, etc. constitutes a plant / machinery of the concerned taxpayer, then input credit on the construction activity has to be allowed.

SC DISMISSED THE REVIEW PETITION ON 20.05.2025

- Further, The Supreme Court of India dismissed the Finance Ministry's review petition in the Safari Retreats Pvt. Ltd. case **on May 20, 2025**, upholding its October 3, 2024, ruling.
- This landmark decision reaffirmed that commercial real estate firms can claim Input Tax Credit (ITC) on construction costs for properties intended for leasing, provided the building qualifies as a "plant" under the functionality test outlined in **Section 17(5)(d)** of the CGST Act, 2017.
- The Supreme Court's decision effectively dismissed the government's attempt to retroactively restrict ITC claims, affirming taxpayer rights and the judicial interpretation of "plant or machinery."

CASE LAW ON SECTION 17(5)

GMJ

M/s ARS Steels &Alloy International Pvt. Ltd.

vs.

The State Tax Officer (Madras High Court)

Facts:

- The petitioners are engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars.
- There is a **loss of a small portion of the inputs, inherent to the manufacturing process**.

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- The impugned assessment orders **reject a portion of ITC claimed**, invoking the provisions of clause (h) which relates to goods lost, stolen, destroyed, written off or disposed by way of gift or free samples.
- The impugned orders seek to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of **Section 17(5)(h)** of the GST Act.

Issue:

- **Reversal of Input tax credit in case of loss of inputs during the manufacturing process.**

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Judgement:

- **The situations as set out above in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions.** A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.
- The expression ‘inputs of such finished product’, ‘contained in finished products’ cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is.

….CONTD

- If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.'
- **The reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h).**

GST
PRE-DEPOSIT

PRE DEPOSIT FROM ECL

Yasho Industries Limited .....Appellant

V/s

Union of India & Anr. .....Respondent

[2024] 77 TAXLOK.COM 101 (Gujarat)

Issues Involved:

- The central issue was whether payment of the **GST pre-deposit** could be made using the **Electronic Credit Ledger (ECL)**, specifically under Section 107(6) of the Central Goods and Services Tax (CGST) Act.

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Facts of the Case:

- M/S Yasho Industries Limited, a manufacturer and exporter of specialized chemicals, challenged a directive from tax authorities under the CGST Act.
- The issue arose when the company used its Electronic Credit Ledger (ECL) to pay a pre-deposit required to appeal a tax demand order.
- The authorities rejected this, insisting on payment via the Electronic Cash Ledger. This conflict stemmed from a 2018 rule change that limited the company's tax benefits, triggering an investigation, a show cause notice, and the disputed tax order.

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- The company defended its use of the Electronic Credit Ledger, citing a prior court decision and a Central Board of Indirect Taxes and Customs circular Circular No. **172/04/2022–GST, dated 6th July, 2022** supporting this method.
- As per the circular,
  - **It clarified that any amount towards output tax payable, as a consequence of any proceeding instituted under the provisions of GST Laws, can be paid by utilisation of the amount available in the Electronic Credit Ledger of a registered person.**

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- The High Court of Gujarat sided with the company, drawing on a Bombay High Court ruling and the CBIC's clarification.
- The court noted that the CGST Act's term "paid" does not require cash payment, allowing the use of Input Tax Credit from the Electronic Credit Ledger for pre-deposits.

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Held that:

- The court overturned the tax authorities' directive, affirming the company's right to use its Electronic Credit Ledger for the pre-deposit.
- It further directed the Commissioner (Appeals) to consider the appeal on its merits.
- This ruling reinforces flexibility in payment options under the CGST Act, offering relief to M/S Yasho Industries and establishing a precedent for similar disputes.

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Supreme Court's Affirmation:

- The Supreme Court, on May 19, 2025, upheld the Gujarat High Court's decision, dismissing the Union of India's SLP.
- The court found no legal error in the High Court's interpretation, affirming that Electronic Credit Ledger payments for pre-deposits are valid under **Section 107(6).**
- This ruling, was a significant victory for taxpayers, setting a binding precedent across India.


GST
GST AMNESTY
AMNESTY
SCHEME

Sec 73 Vs 74

Srinivasa Shetty .....Appellant

V/s

The Commercial Tax Officer, Bengaluru .....Respondent

[2025] 82 TAXLOK.COM 116 (Karnataka)

Issues Involved:

- The petitioner, Srinivasa Shetty, challenged an ex-parte order issued by the Commercial Tax Officer, which was labeled as being under **Section 74** of the CGST/KGST Act. **Section 74 deals with cases involving fraud or suppression of facts.**

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- **However, the petitioner argued that the order's content and circumstances aligned with Section 73, which addresses non-fraudulent tax discrepancies.**
- The background of this issue stems from the petitioner's attempt to seek relief under the GST Amnesty Scheme (Section 128A), a benefit available only to Section 73 proceedings, prompting a legal challenge to reclassify the order and set it aside due to its ex-parte nature.

….CONTD

Facts of the Case:

- Srinivasa Shetty, the petitioner, received an ex-parte assessment order dated January 30, 2025, from the Commercial Tax Officer under Section 74 of the CGST/KGST Act, 2017.
- **The petitioner contested this order, arguing that it lacked allegations of fraud or suppression, key requirements for a Section 74 proceeding, and should instead be treated as a Section 73 matter, which applies to tax disputes without fraudulent intent.**

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- **The ex-parte order was issued <u>without giving the petitioner a fair chance to respond</u>, further complicating their ability to apply for the GST Amnesty Scheme under Section 128A.**
- In response, the petitioner filed a writ petition (No. 7313 of 2025) before the Karnataka High Court, seeking to quash the order, reclassify the proceedings under Section 73, and secure eligibility for the amnesty scheme. The respondent, represented by the Additional Government Advocate, opposed the petition, claiming it lacked merit.

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Held that:

- The Karnataka High Court noted that there were **no allegations of fraud, willful misstatement, or suppression of facts**, which are prerequisites for invoking Section 74.
- Since, the essential conditions for Section 74 were absent, the Court held that the proceedings should have been **initiated under Section 73**, which deals with non-fraudulent tax discrepancies.
- **The Court set aside the Section 74 order and remitted the matter for fresh adjudication under Section 73(9).**
- The Court held the Section 74 order was wrongly applied due to no fraud or suppression, treated it as a Section 73 case, set it aside, and **allowed fresh consideration for GST Amnesty Scheme benefits.**

Refund under GST

REJECTION OF REFUND ON FALSE GROUND

Tata steel ltd. .....Appellant

V/s

Additional Commissioner of State Taxes

.....Respondent

[2025] 83 TAXLOK.COM 023 (Jharkhand)

Issues Involved:

- The case revolves around the rejection of a refund application filed by Tata Steel Ltd. (formerly Tata Steel Long Products Limited) under the CGST Act, 2017.

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GMJ

- The company sought a refund of **Rs. 1,23,22,617**, which was accumulated ITC of Compensation Cess for the financial year 2021-2022.
- The **refund was denied** by the tax authorities due to the **alleged non-submission of certain documents and certificates, which Tata Steel argued were not legally required under the CGST Act, Rules**, or applicable circulars.
- The company challenged this rejection, asserting that the grounds for denial were extraneous and inconsistent with the law.

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Facts of the Case:

- Tata Steel Ltd., a manufacturer of steel and sponge iron, uses coal as a raw material and pays Compensation Cess, availing ITC on it. The company exports goods under a letter of undertaking **(LUT)** without paying tax, resulting in an accumulation of ITC.
- On January 30, 2023, Tata Steel filed a refund application for **Rs. 1,23,22,617** for the financial year 2021-2022, submitting all necessary documents. However, on April 24, 2023, the tax authorities issued a show cause notice questioning the application.

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- **Despite the company's reply, the refund was rejected on May 16, 2023, citing five reasons:**
  - Non-furnishing of proof of payment receipt within **180 days** of export.
  - Non-furnishing of proof of export within **90 days** of invoice.
  - Non-furnishing of a declaration of non-prosecution.
  - Non-furnishing of an undertaking under Section 11(2) of the Cess Act.
  - Non-furnishing of a statement as per Paragraph 43(C) of the 2019 Circular.
- The company's appeal against this rejection was dismissed, leading it to file a writ petition in the Jharkhand High Court. Tata Steel sought to quash the rejection orders and requested the refund with interest under **Section 56** of the CGST Act

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Held by Court:

- The Jharkhand High Court ruled in favor of Tata Steel Ltd., based on the following grounds:
  - **Non-furnishing of payment receipt within 180 days of export** – The Court held this requirement applies only to services, not goods, per **Rule 89(2)(b) & (c) of the CGST Rules**. Also supported by **Paragraph 48 of Circular No. 125/44/2019 – GST, dated 18th November 2019**, which states realization proof isn't required for goods.

  - **Non-furnishing of proof of export within 90 days of invoice** – Refuted with evidence (Annexure 9), supported by **Rule 96A(3) of the CGST Rules**, **Paragraph 45 of Circular No. 125/44/2019 – GST, dated 18th November 2019** stating that actual export suffices even if delayed.

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- **Non-furnishing of declaration of non-prosecution –** No statutory basis exists. Additionally, **Paragraph 46 of Circular No. 125/44/2019 – GST, dated 18th November 2019** says this declaration is not mandatory for exports under LUT.
- **Non-furnishing of undertaking under Section 11(2) of the Cess Act –** Irrelevant because Tata Steel exported goods under LUT without paying tax, so set-off doesn't apply. Clarified by **Paragraph 42 of Circular No. 125/44/2019 – GST, dated 18th November 2019**.
- **Non-furnishing of statement under Para 43(c) of Circular No. 125/44/2019 – GST, dated 18th November 2019 –** Found inapplicable since it only applies to credit reversals, which weren't involved. A CA certificate was also submitted to prove no passing of tax incidence.

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- The court quashed the rejection orders dated May 16, 2023,
- and the appellate order dated October 25, 2023,
- declaring them based on extraneous grounds.
- It directed the authorities to process the refund of **Rs. 1,23,22,617**
- with interest under Section 56 of the CGST Act
- within **12 weeks**.

REFUND OF UNUTILIZED ITC

SICPA India Private Limited.. .....Appellant

V/s

Union of India and Others.....Respondent

Issues Involved:

- The case revolves around whether SICPA India Private Limited was entitled to a refund of unutilized Input Tax Credit (ITC) worth **Rs. 4,37,61,402** after closing its business in Sikkim.
- The tax authorities rejected the refund, arguing that the CGST Act does not allow refunds for business closure, sparking a legal dispute over the interpretation of the law.

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Facts of the Case:

- SICPA India Private Limited, a manufacturer of security inks in Sikkim, shut down its operations in January 2019 and sold its assets between April 2019 and March 2020, reversing ITC as required under GST law.
- They claimed a refund of **Rs. 4,37,61,402** in unutilized ITC under **Section 49(6)** of the CGST Act.
- The Assistant Commissioner rejected this claim on February 8, 2022, and the Appellate Authority upheld the rejection on March 22, 2023, stating that **Section 54(3)** of the CGST Act limits refunds to specific scenarios, excluding business closure.
- SICPA then filed a writ petition in the High Court of Sikkim to challenge this decision.

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Held that:

- The High Court of Sikkim, ruled in favor of SICPA on June 10, 2025.
- The court set aside the Appellate Authority's order, declaring that the company was entitled to the refund.
- **It reasoned that the CGST Act (Sections 49(6) and 54) does not explicitly prohibit refunds upon business closure.**
  - **Section 49(6),** grants a taxpayer for refund of utilized ITC after the payment of taxes, interest, fees, etc. and
  - **Section 54** delas with Refund of tax.
- Precedents, like the Slovak India Trading Company case, support refunds in similar situations.
- The High Court could hear the case despite an alternative remedy, as it involved a pure question of law.

REJECTION OF REFUND DUE TO TECHNICAL FILING ERROR

Bajaj herbals pvt. ltd.. .....Appellant

V/s

Deputy Commissioner of Customs & Ors.....Respondent

[2024] 76 TAXLOK.COM 120 (Gujarat)

Issues Involved:

- The case revolves around Bajaj Herbals Pvt. Ltd., an exporter, seeking a refund of IGST amounting to **Rs. 19,44,122** for exports made in September and October 2018.

…..CONTD

- The issue stems from an inadvertent error made by the company while filing Form GSTR-1, a critical document required under the GST regime for claiming refunds on zero-rated supplies (exports).
- Due to this mistake, the automated refund system, which relies on accurate data from Form GSTR-1, failed to process the refund. The company paid IGST on these exports as required, but the omission of IGST amounts in Table 6A of Form GSTR-1 prevented the system from recognizing the claim.

….CONTD

GMJ

- When attempts to amend the form failed due to system limitations, the petitioner approached the Gujarat High Court, requesting manual processing of the refund under Section 54 of the CGST Act and Section 16 of the IGST Act. **The core issue was whether the petitioner could be denied a legitimate refund due to a technical filing error and whether manual intervention could be ordered to rectify the situation.**

….CONTD

GMJ

Facts of the Case:

- Bajaj Herbals Pvt. Ltd., an exporter, conducted export transactions in September and October 2018, filing shipping bills (nos. 7542580 dated 12.09.2018 and 8531969 dated 27.10.2018) and paying IGST on these zero-rated supplies as per the GST framework.
- Under the law, exporters are entitled to a refund of IGST paid on such supplies, facilitated through an automated system that cross-references data from shipping bills and Form GSTR-1.
- However, the company inadvertently **omitted the correct IGST amounts in Table 6A of Form GSTR-1** for the relevant months, despite **accurately reporting them in Form GSTR-3B and Form GSTR-9**. The discrepancies were as follows:

….CONTD

- **September 2018:** The correct IGST amount to be mentioned was Rs. 10,23,941, but only **Rs. 2,83,530.24** was reported, leaving a difference of **Rs. 7,40,410.76**.
- **October 2018:** The correct amount was **Rs. 16,22,041,** but only **Rs. 4,18,315.88** was reported, leaving a difference of **Rs. 12,03,725.12.**
- **Total Refund Claimed: Rs. 19,44,122** (the sum of the omitted amounts).

- Upon realizing the error after not receiving the refund, the petitioner attempted to amend Form GSTR-1, but the GSTN system (respondent no. 3) did not allow corrections once the refund claim was initiated based on the shipping bills.

….CONTD

- The company then **made multiple representations to the authorities**, starting from 12.07.2019, and submitted a CA certificate and undertaking as per Circular No. 12 of 2018-Cus dated 29.05.2018, which outlines procedures for handling such refund issues.
- Despite these efforts, the **customs authorities, via a letter dated 27.08.2021, stated they lacked the mechanism to manually correct the GSTR-1 data or process the refund**. Frustrated by the automated system's rigidity and the authorities' inaction, Bajaj Herbals filed a petition under Articles 226 and 227 of the Constitution of India in the Gujarat High Court, seeking a direction for manual processing of the IGST refund.

….CONTD

GMJ

Held that:

- The Gujarat High Court, ruled in favor of Bajaj Herbals Pvt. Ltd. on 26.09.2024. **The court directed the respondent authorities to manually process and sanction the IGST refund of Rs. 19,44,122 within 12 weeks from the date of receiving the order.**
- **The decision rested on the recognition that the petitioner was legitimately entitled to the refund under Section 54 of the CGST Act and Section 16 of the IGST Act, which govern refunds for zero-rated supplies, despite the technical error in filing Form GSTR-1.**
- The court emphasized that the **automated system's inability** to accommodate the correction **should not deprive the petitioner of its rightful claim**

….CONTD

- However, the court also ruled that the petitioner **was not entitled to interest on the delayed refund**, attributing the delay to the company's own filing mistake.
- The judgment underscored a pragmatic approach, ensuring that **substantive rights were not defeated by procedural or technical glitches, and cited a prior case (Rameswar Udyog Pvt. Ltd. v. Union of India) to support its reasoning.**
- The petition was disposed of with no order as to costs, affirming the petitioner's eligibility for the refund while balancing accountability for the error.

TIME LIMIT FOR FILING OF APPEAL

PROCEDURAL DELAY

Chennais pet. .....Appellant

V/s

The Deputy Commissioner (ST) GST Appeals.....Respondent

[2025] 81 TAXLOK.COM 074 (Madras)

Issues Involved:

- The case centers on Chennais Pet's challenge to the rejection of its GST appeal, which was dismissed **due to a procedural delay.**

….CONTD

- The background stems from the petitioner's unawareness of tax proceedings initiated by the State Tax Officer, Madurai, because the notice was uploaded to the **"Additional Notices"** section of the GST portal—a section not regularly monitored by the petitioner's consultant.
- **This lack of awareness prevented the petitioner from responding in time, leading to the reversal of its ITC for the financial year 2019-2020.**
- The petitioner only discovered the order when its bank account was attached, prompting a delayed appeal.

….CONTD

- The appeal was rejected by the appellate authority for being filed 5 days beyond the condonable period allowed under the GST Act, 2017.
- The key issue before the court was **whether strict adherence to procedural timelines should take precedence over substantive justice**, especially given the petitioner's efforts to comply by depositing **25%** of the disputed tax amount.

….CONTD

Facts of the Case:

- Chennais Pet, the petitioner, faced the reversal of its input tax credit for the financial year 2019-2020 by the State Tax Officer, Madurai (first respondent), through an order dated July 15, 2024.
- The notice for these proceedings was placed in the "Additional Notices" section of the GST portal, which the petitioner's consultant failed to check, resulting in no reply being filed.
- The petitioner remained unaware of the order until November 16, 2024, when its bank account was attached under Section 79 of the GST Act, 2017, as part of recovery proceedings.

….CONTD

- Upon learning of the order, the petitioner filed an appeal on November 20, 2024, before the Deputy Commissioner (ST) GST Appeals, Madurai (second respondent), with a delay of **35 days**.
- Alongside the appeal, the petitioner sought condonation of the delay under Section 107(4) of the GST Act and made a pre-deposit of **10%** of the tax liability (**Rs. 21,136**) as mandated by Section 107(6).
- However, the second respondent rejected the appeal on January 3, 2025, citing that the delay exceeded the condonable period by **5 days.**

….CONTD

- Subsequently, the petitioner deposited an additional **15%** of the disputed tax—Rs. **8,009** under CGST and **Rs. 23,696** under SGST—on January 31, 2025, bringing the total deposit to **25%** of the disputed amount (**Rs. 13,348** under CGST and **Rs. 39,493** under SGST).
- The petitioner argued that the rejection was unfair, given its good-faith efforts and the circumstances of the delay.
- The respondents countered that the notice was validly uploaded to the portal, and the petitioner's failure to monitor it did not excuse the delay, emphasizing the strict statutory timelines under the GST Act.

….CONTD

Held that:

- On February 14, 2025, the Madras High Court, ruled in favor of Chennais Pet.
- **The court held that procedural delays should not override substantive justice, particularly when the petitioner had demonstrated compliance by depositing 25% of the disputed tax.**
- It quashed the appellate authority's rejection order dated January 3, 2025, and remanded the case back to the Deputy Commissioner (ST) GST Appeals, Madurai, for fresh adjudication on merits.

….CONTD

- The court acknowledged that the 35-day delay exceeded the condonable period but deemed it excusable in the interest of justice, given the petitioner's efforts and the circumstances surrounding the unnoticed notice.
- The appellate authority was directed to decide the appeal within two months, ensuring a fair hearing on the substantive issues. The writ petition was disposed of without costs, and connected miscellaneous petitions were closed.


GST on Transfer of
Leasehold Rights in Land
Gujarat HC Ruling

GUJARAT HIGH COURT

Alfa Tools Private Limited .....Appellant

Vs

Union of India & Anr. .....Respondent

[2025] 82 TAXLOK.COM 052 (Gujarat)

Issue Involved:

- The Petitioner is a private limited company, inter alia engaged in the business of manufacturing Cutting Tools. In furtherance of its business, the Petitioner was allocated an industrial plot, bearing Plot No. 179, vide a Lease Deed dated 27.09.1978, executed with **the Gujarat Industrial Development Corporation (GIDC) for a period of 99 years**, commencing from 27.03.1978.

….CONTD

- After enjoying the possession of this plot for over 39 years, the **Petitioner assigned its leasehold rights in the Demised Premises to one Beta Poly Plast Private Limited**, vide a Deed of Assignment dated 28.03.2018, for a consideration of Rs. 75,00,000/-. In furtherance of this, the GIDC issued the final transfer order dated 30.03.2018, which confirmed the aforesaid transfer of the demised premises to Beta Poly Plast Pvt. Ltd.
- Subsequently, the Petitioner applied for suo-motu cancellation of its GST Registration, which was accepted by the Commercial Tax Officer vide an order of cancellation of the registration dated 18.01.2021.

….CONTD

- The Petitioner was served with a letter dated 27.06.2024, issued by the Respondent No. 2, after more than 3 years from the date of cancellation of the GST registration, whereby, the **Petitioner was called upon to deposit the GST by 03.07.2024, on the consideration amount received by the Petitioner towards assignment of leasehold rights in the favour of the Assignee vide the Deed of Assignment.**
- In response to the aforesaid communication and in compliance with the letter dated 27.06.2024, the Petitioner addressed an email to Respondent No. 2 on 03.07.2024, requesting a period of 4 weeks to reply to the letter.

….CONTD

- The Respondent No. 2 issued the Impugned Notice seeking further explanation with a further period of 30 days as to why such tax together with the interest and penalty should not be levied on the Petitioner. The Petitioner, with a prayer to quash and set aside the said notice, has filed this Petition.

….CONTD

GMJ

Held by Court:

- **The High Court ruled that the assignment of leasehold rights does not constitute "supply" under GST and is not subject to taxation.**
- **A**ssignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of third party-assignee for a consideration **shall be assignment/sale/ transfer of benefits arising out of "immovable property"** by the lessee-assignor in favour of third party-assignee who would become lessee of GIDC in place of original allottee-lessee.

….CONTD

In such circumstances, provisions of **section 7 (1) (a)** of the GST Act providing for scope of supply

For the purposes of this Act, the expression "supply" includes—

a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

b) read with clause 5 (b) of Schedule II - construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the Competent authority or after its first occupation, whichever is earlier.

….CONTD

Clause 5 of Schedule III

Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

GST would not be applicable to such transaction of assignment of leasehold rights of land and building and same would not be subject to levy of GST as provided under section 9 of the GST Act.

….CONTD

GMJ

Held by Court:

- The High Court ruled that the assignment of leasehold rights does not constitute "supply" under GST and is not subject to taxation.

- It held that the show cause notice is time-barred and beyond the scope of **Sections 73 and 74.**

- The Court quashed the impugned notice, reaffirming that leasehold rights fall outside the GST framework as they relate to immovable property.

GST RETURN

RIGHT TO CORRECT BONAFIDE ERROR

Central Board of Indirect Taxes and Customs

.....Appellant

VS

Aberdare Technologies Private Limited & Ors.

.....Respondent

[2025] 82 TAXLOK.COM 127 (SC)

Issues Involved:

- The primary issue in this case was whether taxpayers should be allowed to rectify errors in their GST returns—specifically GSTR-1 and GSTR-3B—beyond the statutory deadlines outlined in Sections 37(3) and 39(9) of the CGST Act, 2017.

….CONTD

- The Supreme Court was tasked with deciding whether such **procedural rigidity should prevail over the taxpayer's right to correct bona fide errors, especially when no financial harm was done to the government.**

Facts of the Case:

- Aberdare Technologies Private Limited sought to amend their GSTR-1 and GSTR-3B returns for the financial years 2021-22 due to clerical errors.
- These mistakes were **unintentional and did not lead to any revenue loss** for the government.

….CONTD

- However, the revenue authorities denied the rectification, pointing to the expiration of the deadlines set under **Sections 37(3) and 39(9)** of the CGST Act.
- The assessee contended that denying the correction was unfair, given their good faith and the absence of any financial impact on the government.
- The Bombay High Court sided with the assessee, permitting the rectification despite the time bar, based on the taxpayer's honest intent and the lack of revenue loss.
- Dissatisfied, the CBIC escalated the matter to the Supreme Court, asserting that the statutory timelines must be enforced without exception.

….CONTD

- The Supreme Court thus had to evaluate whether the High Court's ruling was justified or if the deadlines should be applied rigidly.

Held by Court:

- The Supreme Court upheld the Bombay High Court's decision and dismissed the CBIC's special leave petition on March 21, 2025.
- The Court ruled that there was no error in the High Court's judgment, emphasizing that taxpayers should not be barred from correcting bona fide clerical or arithmetical errors due to procedural inflexibility, particularly when no revenue loss occurs.

….CONTD

- **The Court reasoned that, human errors are inevitable, and the right to correct such mistakes is a natural extension of the right to do business.**
- **Denying rectification can lead to unjust outcomes**, such as purchasers losing input tax credit due to errors beyond their control, effectively forcing them to pay twice.
- **Software limitations often cited by the revenue as a reason for denying corrections—should not override justice.**

….CONTD

- The Court stressed that **software should simplify compliance, not obstruct it, and can be reconfigured if needed. The Supreme Court directed the CBIC to re-evaluate the rectification timelines in the CGST Act, urging the adoption of more realistic deadlines to prevent unfairness to taxpayers.**
- The Court also cast doubt on prior High Court rulings, such as Bar Code India Limited v. Union of India ([2024] SCC OnLine P&H 13853) and Yokohama India Private Limited v. State of Telangana ([2023] 108 GSTR 115), suggesting that their strict interpretations might not align with good law and could be revisited in future cases.
- The petition was dismissed, and all pending applications were disposed of.


PROCEEDING

2 SEPARATE ADJUDICATION ON THE SAME SUBJECT MATTER

Shiva enterprises.....Appellant

V/s

The Commercial Tax Officer, Bengaluru & Others

.....Respondent

[2025] 82 TAXLOK.COM 093 (Karnataka)

Issues Involved:

- The case centers on a legal dispute regarding the validity of two separate GST adjudication orders issued by different Commercial Tax Officers under Section 73(9) of the KGST Act, 2017.

….CONTD

- These orders were issued against the same assessee (Shiva Enterprises), for the same tax period (2019-2020), and concerning the same subject matter.
- Shiva Enterprises, the petitioner, challenged these parallel proceedings, arguing that such duplicative actions were impermissible under the law.
- Additionally, the petitioner sought to avail the benefits of the Amnesty Scheme under **Section 128(A)** of the KGST Act, which offers relief to taxpayers under certain conditions.
- The core issue was whether the issuance of two identical adjudication orders by different authorities for the same liability was legally sustainable, and whether the petitioner could seek reassessment and amnesty benefits.

….CONTD

Facts of the Case:

- Shiva Enterprises, the petitioner, faced two separate GST adjudication orders for the assessment year 2019-2020, both issued under Section 73(9) of the KGST Act, which deals with the determination of tax liability not involving fraud or willful misstatement.
- The **first order**, dated 27.06.2024, was issued by the Commercial Tax Officer, Ramanagara (referred to as the 4th respondent), along with a summary in Form DRC-07 dated 29.06.2024.
- The **second order**, dated 31.08.2024, was issued by the Commercial Tax Officer (Audit), Channapatna (referred to as the 5th respondent), with a summary in Form DRC-07 dated 31.08.2024.

….CONTD

- **Both orders addressed the same tax liability for the same period, creating a situation of parallel proceedings.**
- The petitioner argued that having two adjudication orders for identical issues was legally untenable and approached the Karnataka High Court through Writ Petition No. 258 of 2025. They sought the following reliefs:
  - Quashing of the first adjudication order (dated 27.06.2024) and its summary.
  - Quashing of the second adjudication order (dated 31.08.2024) and its summary.
  - A direction to the 4th respondent to reassess the GST liability for 2019-2020 afresh.
  - Any additional orders deemed appropriate by the court.

….CONTD

- The petitioner also expressed their intent to apply for the Amnesty Scheme under Section 128(A) of the KGST Act, which could potentially reduce their tax burden.
- The respondents, represented by the High Court Government Pleader, opposed the petition, arguing it lacked merit. However, the petitioner emphasized that the **duplicative orders violated legal principles,** necessitating judicial intervention**.**

Held that:

- The Karnataka High Court, delivered its judgment on 24.03.2025, ruling in favor of the petitioner.

….CONTD

GMJ

- The court held that the issuance of two adjudication orders by different officers—the 4th respondent (Commercial Tax Officer, Ramanagara) and the 5th respondent (Commercial Tax Officer (Audit), Channapatna)—for the same tax period (2019-2020) and **subject matter was impermissible under the law.**
- Such parallel proceedings were deemed **legally unsustainable**.
- The court set aside the impugned orders dated 27.06.2024 and 31.08.2024 and remitted the matter back to the Commercial Tax Officer, Ramanagara, for fresh reassessment of GST liability as per law.
- The petitioner was directed to appear before the officer on 26.03.2025, and a fresh order was to be passed by 28.03.2025.

PLACE OF SUPPLY

INTERMEDIARY SERVICE

Dharmendra m. jani.....Appellant

V/s

Union of India and others.....Respondent

[2021] 37 TAXLOK.COM 008 (Bombay)

Issues Involved:

- The petitioner, Dharmendra M. Jani, a Mumbai-based proprietor providing marketing and promotional services to principals located outside India, challenged the constitutional validity of **Sections 13(8)(b)** which explains Place of Supply for Certain Cross-Border Services and **Section 8(2)** which classifies Intra-State Supplies of the IGST Act.

….CONTD

- Under Section 2(6) and Section 2(13) of the IGST Act, his service qualifies as an “export of service” by an “intermediary,” yet sub-section 13(8)(b), in conjunction with Section 8(2), deems the place of supply to be the supplier’s location in India, thereby treating genuine exports as intra-state supplies liable to CGST and SGST.
- He contended that this deeming fiction
  - exceeds Parliament’s power under Articles 246A and 269A of the Constitution,
  - violates the destination-based consumption principle of GST, and
  - runs counter to Section 9 of the CGST Act (the charging provision)

….CONTD

GMJ

Facts of the Case:

- M/s Dynatex International (proprietorship of Dharmendra M. Jani) enters into contracts with overseas principals to solicit purchase orders from Indian importers, earns commission paid in convertible foreign exchange, and never contracts directly with the Indian purchaser.
- All conditions of Section 2(6) for “export of service” and the definition of “intermediary” under Section 2(13) are satisfied, yet the apposite IGST provisions (Section 13(8)(b) read with Section 8(2)) treat the supply as intra-state.
- The petitioner, having discharged CGST and SGST “under protest” since 2017, argued that this levy fundamentally alters the destination-based tax structure, infringes Articles 14, 19(1)(g), 286 and 269A of the Constitution, and results in double taxation and commerce-deterrence.

….CONTD

Held that:

- The Bombay High Court issued a split verdict, leaving the matter unresolved:
  - **Justice Ujjal Bhuyan** ruled **Section 13(8)(b)** unconstitutional and ultra vires the IGST Act. He argued it undermines GST's destination-based nature by taxing services consumed abroad, **violating Articles 14** (due to unequal treatment of intermediaries) and **19(1)(g)** (due to unreasonable trade restrictions).
  - **Justice Abhay Ahuja** upheld the provision's validity, asserting it falls within Parliament's legislative powers under **Articles 246A and 269A**. He found no violation of Article 14, as intermediaries are a distinct class, and no unreasonable restriction under Article 19(1)(g), aligning with the Gujarat High Court's precedent.

….CONTD

- Due to this disagreement, the case was referred to the Chief Justice for further action.
- The Bombay High Court, in its final judgment on June 6, 2023, **upheld the constitutional validity of Sections 13(8)(b) and 8(2) of the IGST Act, 2017.**
- **However, the court ruled that these provisions are confined strictly to the IGST Act and cannot be applied to levy taxes on services under the CGST Act or the MGST Act.**

….CONTD

- **This means that while Section 13(8)(b) designates the place of supply for intermediary services as the location of the supplier (India), preventing their classification as exports, the tax cannot be imposed under CGST or SGST.**
- The exact tax treatment, whether subject to IGST or exempt, remains unclear due to this limitation.
- The petitions challenging the provisions were dismissed, and the decision is anticipated to be appealed to the Supreme Court for further clarification.

Arrest and Bail under GST

CONSTITUTIONAL VALIDITY OF ARREST POWER IN GST AND CUSTOMS

Radhika agarwal .....Appellant

Union of india. .....Respondent

(2025) 27 Centax 425 (S.C.)

Issues Involved:

- The case of Radika Agarwal v. Union of India centers on the constitutional validity and application of arrest powers under the Customs Act, 1962, and CGST Act, 2017.
- The background traces back to the Supreme Court's ruling in Om Prakash v. Union of India (2011), which classified offences under the Customs and Excise Acts as non-cognizable and bailable, necessitating a warrant for arrests.

….CONTD

GMJ

- Subsequent legislative amendments in 2012, 2013, and 2019 altered this framework by making certain offences cognizable and non-bailable, prompting petitioners to challenge these provisions.
- They argued that arrests were being executed arbitrarily, without adherence to statutory safeguards, thus infringing on fundamental rights enshrined in **Articles 14 (equality), 19 (freedom), 21 (liberty), and 22 (protection against arbitrary arrest) of the Constitution.**

….CONTD

Facts of the Case:

- Radika Agarwal, alongside numerous other petitioners, filed writ petitions contesting the arrest powers under the Customs and CGST Acts.
- They alleged that tax authorities were making arrests without sufficient "reasons to believe," often relying on mere suspicion rather than credible evidence, and failing to inform arrestees of the grounds for their arrest.
- Further, they claimed that authorities coerced tax payments under the threat of arrest, bypassing due process.

….CONTD

- The respondents, representing the Union of India, defended the arrest provisions, pointing to the legislative amendments that classified certain offences as cognizable and non-bailable.
- They asserted that the Acts included adequate safeguards to prevent misuse.
- The Supreme Court was tasked with determining whether these arrest powers complied with constitutional and statutory mandates, particularly focusing on the requirement of "reasons to believe" and the provision of written grounds for arrest.

….CONTD

Held that:

- The Supreme Court **upheld the constitutional validity of the arrest provisions under the Customs and CGST Acts, affirming that they fall within the legislative competence under Article 246A (power to levy GST).**
- However, it imposed strict safeguards to curb misuse.
- **The Court ruled that arrests require "reasons to believe" based on credible material, a higher threshold than mere suspicion, recorded in writing and communicated to the arrestee promptly.**
- Arrestees must be produced before a Magistrate within 24 hours for a decision on bail or detention.

….CONTD

- **The Court rejected the notion that arrests could only follow a formal assessment order,** allowing them based on substantial evidence of an offence.
- It also mandated procedural compliance, such as maintaining arrest diaries and informing a nominated person, to safeguard individual liberty.
- **While dismissing the petitions, the Court issued guidelines to ensure arrests are not arbitrary, balancing enforcement powers with constitutional protections.**

Opinions or views are like wrist watches.

Every watch shows different time from others.

But every one believes that their time is right!

GMJ

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