



Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

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Articles

Streamlining GST Time Limits: More Teeth to Department

TAX statutes have always had distinct provisions for recovering taxes in cases involving fraud, suppression, or willful misrepresentation in contradistinction to provisions relating to interpretative issues.

↳The rationale behind this approach stems from the complex nature of fraudulent activities, which necessitate thorough investigations. The recent recommendations by the GST Council in India to harmonize these timelines highlight the importance of addressing such cases with appropriate diligence.

Rationale for Extended Time Limits

1. Complexity and Concealment: Fraudulent activities typically involve intricate schemes and deliberate concealment, making detection and investigation more complex and time-consuming. Extended periods allow authorities sufficient time to uncover and investigate these sophisticated schemes thoroughly.

2. Intentional Misrepresentation: Cases of fraud or willful misstatement involve intentional wrongdoing. Authorities need more time to gather evidence, prove intent, and establish a solid case against the perpetrators.

3. Ensuring Comprehensive Investigation: Fraudulent activities often involve multiple transactions, cross-border elements, and various parties. A longer period ensures that authorities can conduct a thorough investigation, including tracing financial trails, examining documents, and interviewing relevant persons.

4. Deterrence: Extended limitation periods serve as a deterrent against fraudulent activities. Knowing that fraudulent acts can be scrutinized for an extended period discourages assessee's from engaging in such behavior.

5. Judicial Precedents and Legislative Intent: Judicial precedents and the intent of the legislature often support extended periods for fraud cases to ensure justice is served. Courts have upheld longer periods to ensure that tax evasion and fraudulent activities do not go unpunished due to procedural time limitations.

Specific Provisions in other Tax Laws

1. Income Tax Law:

Section 147: Governs reassessment and reopening of cases where income has escaped assessment due to fraud or willful neglect, providing extended timelines. The present bill prescribes time limits of 3 and 5 years for non-suppression and suppression-related cases, respectively.

2. Customs and Excise Law:

Section 28 of the Customs Act and Section 11A/Section 73/74 of the Excise Act and Finance Act differentiate between normal cases and cases involving suppression of facts or willful misstatement for issuing demand notices and adjudication.

3. VAT provisions of all states also had separate provisions relating to normal assessments and assessments involving fraud, suppression etc.

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GST Council Recommendations:

↳The statutory framework under the GST regime prescribes distinct time limits for the issuance of demand notices and orders contingent on whether the case involves allegations of fraud, suppression, or willful misstatement. At the 53rd Council meeting, the Council recommended establishing a uniform time limit for issuing demand notices and orders pertaining to demands for the financial year 2024-25 onwards. This uniformity will apply irrespective of whether the cases involve charges of fraud, suppression, willful misstatement, or similar allegations.

↳Furthermore, the Council has proposed extending the time limit for taxpayers to avail themselves of the benefit of reduced penalties. Taxpayers can now pay the demanded tax amount along with the applicable interest within an extended period of 60 days instead of the current 30 days to benefit from the reduced penalty provisions. This recommendation aims to harmonize the procedural timelines, thereby simplifying compliance and enforcement under the GST laws.

Comparison of Provisions:

↳The Finance Bill (2) of 2024 proposes a new provision related to the recovery of tax, capturing the essence of the Council's recommendations. The comparison table below provides clarity:

Basis of Comparison	Section 73	Section 74	Section 74A
Applicability	Upto 31 st March 2024		From 01 st April 2024
Scope	Non-payment, short payment, erroneous refund, or ITC wrongly availed or utilised other than fraud or wilful misstatement	Non-payment, short payment, erroneous refund, or ITC wrongly availed or utilised due to fraud or wilful misstatement	All cases
Time limit for Issue of Notice	3 months prior to the issue of Order. Outer time limit for order specified	6 months prior to the issue of Order. Outer time limit for order specified	Within 42 months from the due date of furnishing the annual return for the financial year
Waiver of Notice	No Minimum amount prescribed	No Minimum amount prescribed	No Notice if the amount of tax due is less than Rs.1,000
Issuance of Order	Within 3 Years from the due date of furnishing annual return for the FY.	Within 5 Years from the due date of furnishing annual return for the FY.	Within 12 months from the date of issuance of notice.

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Basis of Comparison	Section 73	Section 74	Section 74A
Waiver of penalty prior to SCN	If 100% Tax amount + Interest u/s 50 paid - No Penalty	If 100% Tax amount + Interest u/s 50 paid + penalty of 15% of tax paid (Balance 85% penalty waived)	Same provisions of 73 & 74 maintained for payment
Period for seeking waiver of penalty	30 days	30 days	60 days
Upon issue of notice, period for seeking waiver of penalty If tax paid after notice within 30/60 days	If 100% Tax amount + Interest u/s 50 paid - No Penalty	If 100% Tax amount + Interest u/s 50 paid + penalty of 25% of tax paid Balance 75% penalty waived	Same provisions of 73 & 74 maintained for payment
Upon issue of Order, period for seeking waiver of penalty	30 days	30 days	60 days
If tax paid after order within 30/60 days	100% Tax amount + interest Paid Penalty - higher of 10% of tax paid or Rs. 10,000.	100% Tax amount + interest Paid Penalty - higher of 50% of tax paid or Rs. 10,000.	Same provisions maintained

In addition, the bill has also now amended the provisions of blocked ITC under Section 17(5)(i) and restricted blocking the ITC till the old provisions are notified.

Impact of the new changes

The new demand provision significantly enhances the time limit for issuance of SCN (contradistinction to time limit for provision of order. We take a hypothetical scenario of when the orders would be required to be passed under the existing provisions and the new provisions

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Year	Time limit - passing order under Section 73 (Three years from end of FY from due date of filing GSTR 9)	Time limit - passing order under Section 74 (Five years from end of FY from due date of filing GSTR 9)	Time limit - passing order under Section 74A (54 months from filing of Annual returns)
2024-25	31 st December 2028	31 st December 2030	30 th June 2030
2025-26	31 st December 2029	31 st December 2031	30 th June 2031

Though, on comparison of existing provisions with the new proposed provision, the department had slightly more time (of six months) for fraud related cases, the time for passing order significantly increases for normal cases from 31st December 2028 to 30th June 2030 for the year 2023-24. The provision hence provides greater time and latitude to the Department for all non-fraud cases too.

Key Rulings and Insights

1. Mineral Area Development Authority & Anr. (SC)

Facts of the Case

↳ **The question of law discussed in this case are as follows:**

i. Whether royalty determined under Section 9 read with Section 15(1) of the Mines and Minerals (Regulation & Development) Act, 1957 (MMDR Act) is in the nature of a tax?

ii. Whether State Governments can tax mines and minerals under Entry 50 of State List?

iii. Whether the State Government can levy tax on mineral land based on the value of the minerals under Entry 49?

↳ Tamil Nadu Government granted a mining lease to India Cement Ltd., wherein the royalty was fixed as per the Mines Act. Meanwhile under the state legislation, a local cess was levied by the State government. India Cement challenged the levy of such cess on royalty.

↳ The Assessee contended that Tamil Nadu Government was out of its legislative jurisdiction by levying cess on royalty which is fundamentally a tax on the royalty.

↳ Tamil Nadu government, on the other hand contended that the cess was a levy pertaining to land and therefore, fell under the State List.

↳ The Court held that Royalty is different from tax. Royalty under the MMDRA is with respect to mining leases. It was further observed that Royalty is paid out of a contractual obligation between the lessor and lessee wherein the lessor maybe either a private person or the state government.

↳ Therefore, Royalty is a consideration paid to the lessor for parting with their exclusive rights in the minerals, on the other hand, tax is a compulsory statutory obligation that is to be paid to the government.

↳ The Court further put forth the fundamental difference between tax and royalty in a three-fold manner. Firstly, tax is an imposition of a sovereign, whereas royalty is charged by a proprietor.

↳ Secondly, tax is levied on a "taxable event" as determined by law, but royalty is a consideration and finally, tax is imposed by an authority of law and on the contrary royalty arises from a deed of lease. Similarly, dead rent was also held not to be tax based on the application of the same principle.

↳ With respect to whether the State governments can tax mines and minerals, the Court held that Entry 50 of the State List allows State Legislatures to impose taxes on "mineral rights," but this power is subject to "any limitation" set by a Parliamentary law on "mineral development," such as the MMDR Act. "Mineral rights" refers to the rights of individuals with an interest in mineral-bearing land, including landowners or lessors.

↳ The law on "mineral development" falls under Entry 54 of the Union List, allowing Parliament to regulate mineral development, which can restrict the states' taxing authority to ensure it doesn't hinder mineral development.

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- ↳ The court held that there's no direct conflict between the States' taxing powers under Entry 50 and the Union's regulatory powers under Entry 54. The taxing power under Entry 50 is only limited by explicit restrictions imposed by Parliament on mineral development. Without such explicit limitations, the States' power to tax mineral rights remains unaffected.
 - ↳ The MMDR Act cannot be interpreted to implicitly limit the States' taxing authority under Entry 50, and Section 9, which prescribes royalty, is not a limitation.
 - ↳ The judgment also clarifies that Parliament retains the authority to impose new limitations on this taxing power. The phrase "any limitation" is broad enough to encompass all types of restrictions, including the possibility of entirely prohibiting the states' power to tax mineral rights.
 - ↳ Regarding whether the State government can levy tax on mineral land based on the value of the minerals under Entry 49, the Court held that Entry 49 of the State List defines "land" in a broad sense to include all types of land. This allows state legislatures to tax mineral-bearing land, even though it isn't explicitly mentioned in the entry. Land includes everything beneath and above its surface, meaning sub-soil minerals are constitutionally considered part of the land.
 - ↳ There's a key distinction between Entry 49 and Entry 50. Entry 49 pertains to taxing land, while Entry 50 concerns taxing mineral rights.
- Therefore, taxing mineral-bearing land under Entry 49 is not prohibited by the fact that Entry 50 covers mineral rights. Moreover, the MMDR Act cannot restrict the power to tax under Entry 49, as it isn't subject to any Parliamentary law.
- ↳ Taxes on land and buildings are often based on the "income derived" from them, and similarly, state legislatures can determine taxes based on the value of the minerals. This approach is valid as long as there is a connection between the method of calculating the tax (the "measure") and the type of tax being imposed (the "nature of tax").
 - ↳ The Courts furthermore clarified that the Constitution allows Parliament to impose limitations on State taxes on mineral rights, but not on taxes on land itself.

Key Insights

- ↳ The Hon'ble Apex, through this 9-judge bench, has overturned its earlier ruling in *India Cements v. State of Tamil Nadu*. The court upheld the state's authority to impose royalty under Articles 49 and 50 of the State List of the Seventh Schedule. As a result, it is concluded that royalty does not constitute a tax.
- ↳ The States are now permitted to recover past tax dues for any period from April 1, 2005.
- ↳ The tax arrears may be paid in installments over a 12-year period beginning on April 1, 2026,
- ↳ Civil Appeal Nos. 4056-4064 of 1999

2. M/s. Konkan LNG Limited (Bom HC)

Facts of the Case

- ↳ **The question of law pertains to whether the Assessee is eligible to claim Input Tax Credit (ITC) under Section 16 read with Section 17 of the CGST Act and MGST Act for the taxes paid on the construction of a breakwater, which is considered essential for the operational efficiency and safety of the jetty used for LNG unloading and regassification.**
- ↳ The Assessee argued that the breakwater qualifies as “plant and machinery” under Section 17(5)(d) of the CGST Act, and therefore, they should be entitled to claim ITC. They contended that the breakwater, although an immovable property, fits within the dictionary definition of “apparatus”, which is part of “plant and machinery”.
- ↳ The Assessee argued that the breakwater functions as an apparatus by absorbing or deflecting sea wave energy and the accropodes are interlocking device fixed to earth by foundation, thus meeting the criteria of apparatus and subsequently within the term “plant and machinery”.
- ↳ The Department argued that the breakwater, primarily involving civil work and extensive earthwork, is a civil structure and not “plant and machinery”. They emphasized that the breakwater’s purpose is to protect the jetty and ships from high waves, not to directly facilitate the outward supply of goods or services.
- ↳ According to the Department the breakwater, being an immovable civil structure, does not qualify for ITC as it is not directly used in the outward supply of goods or services.

- ↳ The court observed that the breakwater does not qualify as “plant and machinery” under Section 17(5)(d) of the CGST Act. It was reasoned that “plant and machinery” should be interpreted as a place where industrial activities or production processes occur, which is not applicable to the breakwater.
- ↳ The breakwater is used to protect vessels during LNG unloading and is not directly involved in making the outward supply of goods or services. Therefore, it does not satisfy the conditions specified in the explanation to Section 17 for eligibility for ITC.

Key insights

- ↳ The court agreed with the Department’s view that the breakwater, involving extensive civil work, falls under the “civil structures”, and not “plant and machinery” and thus not eligible for ITC. Notably, the term civil structure, being an exclusion to the term “plant and machinery” is not defined anywhere in the law.
- ↳ The Court’s narrow interpretation may prompt the Department to broadly classify other installations/ assemblies as “civil structures” by default. To prevent unwarranted denial of ITC, it is crucial that the scope of this exclusion is clearly defined.
- ↳ Citation: 2024 (7) TMI 289.

3. M/s. Shobikaa Impex Private Limited (Mad HC)

Facts of the case

↳ **The Question of law is whether a 100% Export Oriented Unit (EOU) that has mistakenly claimed a refund under Rule 96 of the CGST Rules, 2017, for IGST paid on exports, instead of claiming it under Rule 89 of the CGST Rules, 2017, is entitled to the refund despite the procedural irregularity and the limitations imposed by Rule 96(10) of the CGST Rules, 2017?**

↳ The Assessee, a 100% EOU, mistakenly filed a refund claim under Rule 96 of the CGST Rules, 2017, for IGST paid on capital goods and inputs instead of under Rule 89. An SCN was issued, and at that time, no mechanism existed for reversing the excess refund claimed under Rule 96. The total sanctioned refund amount was Rs. 22.5 crores. After the Writ Petition was admitted, the petitioner reversed Rs. 1.15 crores and Rs. 49.59 lakhs in interest, using the Electronic Cash Register, following the amendment to Rule 96 by Notification No. 14/2022-Central Tax dated 05.07.2022, which allowed for such adjustments.

↳ The Assessee argued that that Section 16(3) of the IGST Act, 2017, and Rule 96 of the CGST Rules, 2017, should be read in light of the substantive benefits intended for exporters. It is asserted that the refund claim should be eligible under Rule 89(4B) of the CGST Rules, 2017, if it is not possible under Rule 96 due to restrictions in Rule 96(10).

↳ The Department argued that Rule 96(10) is specifically designed to bar the refund claim if the taxpayer

availed the benefit of specified notifications on input procurement. They contended the assessee was not eligible for claiming refunds of the IGST paid on exports and should repay the erroneously refunded amount.

↳ The court found that the petitioner was entitled to a refund under Rule 89 of the CGST Rules, 2017, rather than Rule 96, due to the availing of exemptions which Rule 96(10) excludes.

↳ However, it held that procedural errors in claiming a refund under Rule 96 instead of Rule 89 do not invalidate the legitimate right to a refund of input tax credit. Procedural rules are meant to aid justice, not to impede it.

↳ The Court recognized that export incentives are crucial for competitiveness in the international market. Therefore, procedural technicalities should not override the entitlement to these incentives, and thus aside the impugned order and directed the department to issue a fresh order.

Key insights

↳ In this case, although the EOU inadvertently claimed refund under Rule 96 instead of Rule 89, the Court affirmed the right to a refund, recognizing the substantive intent of export benefits. The decision underscores that procedural errors should not bar legitimate refund claims, especially for exporters.

↳ Citation: 2024 (7) TMI 1107

4. M/s. Evergreen Constructions and Anr. (Cal HC)

Facts of the case

- ↳ **The question of law is whether the interim order, which directed the Assesses to deposit 20% of the remaining unpaid interest, is legally sustainable given that the applicable provisions of the GST Act specify a pre-deposit requirement only for the remaining tax in dispute, excluding interest (Post Finance Act, 2024, the requirement of 20% as pre-deposit is reduced to 10%, and would be effective from a notified date).**
- ↳ The Assesses argued that according to Section 112 of the GST Act, the pre-deposit requirement for filing an appeal before the appellate tribunal pertains only to 20% of the remaining amount of tax in dispute and does not include interest. The interim order requiring a pre-deposit of 20% of the disputed interest does not align with the statutory provision, which explicitly limits the pre-deposit to the disputed tax amount.
- ↳ The court observed that the requirement of pre-deposit of 20% of the remaining amount of tax in dispute under Section 112(8) of the GST Act does not extend to interest or other penalties. The legislative intent, as reflected in the statute, is to limit the pre-deposit requirement to the disputed tax amount only.

- ↳ The court noted that the Karnataka High Court's decision in M/s Tejas Arecanut Traders supports the interpretation that the pre-deposit obligation should not include interest. This decision was consistent with the legislative intent as interpreted by the Hon'ble Supreme Court in Prakash Nath Khanna v. CIT, which emphasized that the language of the statute is a key determinant of legislative intent.
- ↳ The court concluded, given that the legislative text restricts the pre-deposit to the disputed tax amount, the direction to deposit 20% of the disputed interest exceeds the statutory requirement.

Key insights

- ↳ Emphasizing that the discretion to be exercised by the court should be in terms of the statute, the decision has brought clarity to the scope of pre-deposit requirements under the GST Act, particularly with respect to disputed interest.
- ↳ Citation: 2024 (7) TMI 232.

5. M/s. Landmark Cars Private Limited (Guj HC)

Facts of the case

↳ **The Question of law is whether the detention of goods and imposition of tax and penalty under Section 129 of the GST Act, due to a minor discrepancy in the truck number on the e-way bill while the chassis number and other details were correctly mentioned, is justified, or should the case be governed by Circular No. 64/38/18 of the CBEC, which prescribes a token penalty under Section 125 for minor errors in the e-way bill?**

↳ The assessee, an authorized distributor of Mercedes-Benz cars, on the request of Thane branch, purchased a car from Mercedes-Benz India Pvt. Ltd., and the car was to be delivered from their Ahmedabad headquarters.

↳ A stock transfer invoice was generated, and an e-way bill was created based on the invoice and lorry receipt. During transit, the truck broke down and a replacement truck was used. The truck carrying the car was stopped by the Department. On inspection the driver provided the stock transfer invoice and e-way bill. However, the truck number on the e-way bill differed from that of the replacement truck.

↳ The department issued a detention order citing a mismatch in truck numbers. A notice was issued.

↳ The assessee had provided all required documentation, including a tax invoice and e-way bill, both of which were aligned with the car's chassis number. The only discrepancy was the truck number, which was due to the breakdown of the original truck and the use of a replacement truck.

↳ This procedural issue, as per the CBEC circular dated 14.09.2018, should have warranted only a minor penalty under Section 125 of the GST Act rather than a detention under Section 129.

↳ The court found that the only error in the e-way bill was the incorrect truck number, while the chassis number and other details matched the transported goods. The assessee explained that the error was due to a breakdown of the original truck and that a replacement truck was used. The court referred to Circular No. 64/38/18, which allows minor errors in the e-way bill, such as incorrect vehicle numbers, to be addressed with a token penalty under Section 125 of the GST Act, rather than detaining goods under Section 129. The Court found that the circular's provisions were found applicable to the case. Further the court has also observed that there was no evidence of intentional tax evasion or fraudulent activity by the Assessee. The court cited similar cases where detention was deemed impermissible without proving fraudulent intent and ruled that the detention order and the demand for tax and penalty were unjustified and beyond jurisdiction.

Key insights

↳ The Court's ruling clarifies that minor discrepancies, such as an incorrect truck number on the e-way bill, should not lead to detention or significant penalties when other documentation is accurate. Aligning with Circular No. 64/38/18, the Court emphasized that such issues warrant only a token penalty under Section 125 rather than stringent measures under Section 129

↳ Citation: 2024 (7) TMI 370

6. M/s. Sudharshan Theatre 35mm (Tel HC)

Facts of the case

↳ **The question of law was whether the Assessee had committed any default under Section 171 of CGST Act in not passing on the benefits of reduction in the price of cinema tickets to beneficiaries.**

↳ The department contended that the Assessee had not reduced the price of tickets for a period of 69 days from the date of amendment in accordance with the reduced rate of tax of 18% and 12% and thus pocketed the profits.

↳ The Assessee argued that permission should be sought from the Government to change the price of tickets which are granted at the time of granting licenses in its periodical renewals, and that they could not have changed it unilaterally.

↳ They also argued that non-reduction of the prices attracts higher GST, and such amount had already been deposited with the Department from which the State has also benefitted by way of more revenue.

↳ However, the department pointed out that the requirement was on part of the Assessee to adhere to the conditions stipulated under Section 171(1) of CGST Act and reduce the prices of tickets proportionate with the reduction in the rate of tax.

↳ The Court had observed that the intent behind Section 171(1) is to ensure that the suppliers of goods and services do not make profit from the reduction of tax rate and the benefit should be immediately passed on to the end-users.

↳ Therefore, the Court did not find any illegality committed by the department in passing the impugned order, and thus the writ petition was dismissed with no costs.

Key Insights

↳ The judgment underscores that the intent of Section 171(1) of the CGST Act is to ensure tax rate reductions benefit consumers directly, rather than allowing suppliers to retain profits. The Court affirmed that the assessee's failure to adjust ticket prices promptly, despite benefiting from higher GST collections, constituted a default. This ruling reinforces the requirement for suppliers to pass on tax benefits immediately, rejecting arguments about procedural delays or licensing constraints.

↳ Citation: 2024 (7) TMI 1024

7. M/s. Nanhey Mal Munna Lal (All HC)

Facts of the case

- ↳ **The question of law is whether a minor typographical error on the E-way Bill, specifically the discrepancy between the dates on the E-way Bill and the Tax Invoice, can justify the imposition of a penalty under Section 129(3) of the Goods and Services Tax (GST) Act, 2017.**
- ↳ Brief facts of the case are when the goods were in transit, the authorities intercepted and passed a seizure order on the ground that the date mentioned in 'tax invoice' and 'E-way bill' were different and that both the seller and the purchaser are not bonafide as the registered address of the seller was disclosed as a flat.
- ↳ The Department contended that the transactions in question were bogus as the dates mentioned in E-way bill and Tax invoice were different.
- ↳ The Court observed that the difference in the date is only a mistake, a bonafide typographical error on the part of the person generating the same.

- ↳ The case of M/s Cavendish Industries Ltd. v. State of U.P. & Ors., 2024 (4) TMI 1144 was cited wherein it was observed that the presence of mens rea for evasion of tax is a sine qua non for imposition of penalty.
- ↳ Therefore, the Court held that a typographical error in the E-way bill without any further material to substantiate the intention to evade tax should not and cannot lead to imposition of penalty, and thus set-aside the impugned order.

Key insights

- ↳ The decision clarifies that a minor typographical error on an E-way Bill, such as a date discrepancy, does not warrant a penalty under Section 129(3) of the GST Act if there is no intent to evade tax. The Court has emphasized that penalties require proof of deliberate tax evasion, not mere clerical errors. This decision underscores the importance of distinguishing between genuine mistakes and intentional wrongdoing in penalty assessments.
- ↳ Citation: 2024 (7) TMI 613.

8. M/s. Arya Cotton Industries (Guj HC)

Facts of the case

- ↳ **The issue was whether interest under Section 50 of the CGST Act should be levied from the date of deposit into the electronic cash ledger (ECL) or from the date of filing of the return.**
- ↳ The petitioners contended that, the tax, once deposited into the ECL should be considered as payment of tax. Since the tax amount is already with the government, interest should not be charged for the period from the deposit to the return filing.
- ↳ The Hon'ble High Court held that the tax deposited into the ECL is regarded as payment of tax. Interest under Section 50 of the CGST Act is not applicable for the period from the deposit in the ECL to the filing of the return. It was noted that since the government already has the tax amount from the deposit date, charging interest for the delay in return filing, even after tax is deposited into ECL is not warranted.

Key insights

- ↳ New proviso to Rule 88B, which provides for manner of calculating interest on delayed payment of tax has been inserted vide Notification 12/2024 dated 10/07/2023. This proviso provides that interest will not be attracted in case where the amount of tax to be discharged is deposited in the electronic cash ledger on or before the due date but the GSTR 3B return is filed after the due date. In such a scenario, no interest would be applicable on the amounts from due date till the date of filing the GSTR 3B.
- ↳ By establishing that deposits into the ECL are considered tax payments, the decision ensures that businesses will not face undue interest penalties for delays in filing returns, provided the tax has already been deposited. This decision upholds the principle that interest is compensatory and should not be applied when the government has already received the tax amount
- ↳ Citation: 2024 (7) TMI 239.

9. M/s. Shree Dhanlaxmi Metal Industries(Guj HC)

Facts of the case

↳ **Whether the provisional attachment of both movable and immovable properties under Section 83 of the CGST Act, in light of the alleged fraudulent ITC claims and bogus billing, was justified, proportionate, and compliant with relevant circulars and judicial precedents?**

↳ The department had received information about bogus billing and fraudulent input tax credit involving the Assessee, who was engaged in trading and processing copper items, for more than 28 years, in Surat. A search was conducted but no incriminating documents were found, and physical stock matched records, indicating legitimate operations.

↳ It was alleged by the department that there were bogus purchases of Rs. 214.27 Crore and fake input tax credit of Rs. 32.67 Crore. Based on the accusations, provisional attachment was ordered for various assets. The investigation continued and it was eventually found bogus ITC of Rs. 76.68 Crore.

↳ Following the release through bail after arrest, the Assessee requested return of seized items and the lifting of asset attachments. A valuation report for assets was submitted, seeking the release of all except factory land as it covered a substantial portion of the demand. The department rejected the request to lift attachment over movable assets. The Court subsequently required a Rs. 15 Crore bank guarantee for lifting the attachment. The Assessee, unable to provide the guarantee, requested the release of immovable properties instead.

↳ The Assessee cited a circular, as per which attachments should not disrupt normal business activities, especially regarding essential assets like raw materials and stock. The Assessee argued that the department had acted in contrary to the Circular issued on 23.02.2021. The circular also stated that movable property should only be attached if immovable property is insufficient. Hence, it was argued that attachment of factory land and residential flat should suffice to protect the revenue, and the attachment of movable assets should be lifted.

↳ Further, it was argued that provisional attachment powers under Section 83 of the GST Act are severe and should be exercised with caution. As it is already established in the Radha Krishan Industries Case that Provisional attachment must be justified by clear evidence that it is necessary to protect revenue and should not be used to harass or unduly disrupt the taxpayer's business and Valerius Industries and Others Case that such attachment should be based on substantial evidence of potential tax evasion and must be proportional, only as necessary to safeguard revenue.

↳ It was also argued by citing Circular No.171/03/2022-GST indicating that penalties should target those directly involved in fraudulent activities, and not extend to those who merely receive input tax credit without fault.

↳ The department argued that Assessee is accused of issuing fraudulent invoices through 79 bogus dealers to wrongfully claim ITC of ₹76.68 crore, with no actual receipt of goods.

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- Further, the transporter statements also indicated fabricated lorry receipts, leading to the provisional attachment of both movable and immovable properties to protect revenue.
- ↳ The Department argued that the provisional attachment, including movable properties, is justified under the Circular dated 23.02.2021 due to insufficient immovable properties to cover the tax liability. It was further argued that the reliance placed on the Radha Krishan Industries case is contested, as the facts differ significantly. The Supreme Court's observations in that case highlight the need for tangible evidence for provisional attachment, but the current case involves substantial fraudulent activity justifying the attachment orders.
 - ↳ The Court has found that the Assessee was involved in bogus billing and fraudulent ITC claims exceeding ₹76 crore. Given the large amount of evasion and the potential shortfall in securing revenue, the provisional attachment of movable properties was deemed necessary. This decision was in line with Circular No. 171/03/2022-GST, which outlines actions to be taken in cases involving fake invoices and fraudulent ITC claims.
 - ↳ The court found that the Assessee's of the situation fell under the second scenario of the Circular No. 171/03/2022-GST, where fraudulent ITC was claimed based on fake invoices. This Circular justifies the attachment of movable properties to ensure recovery and prevent further evasion.
 - ↳ Thus, the court concluded that the Department had formed a proper opinion based on the facts and circumstances of the case and had acted within the scope of their powers under Section 83 of the CGST Act. The provisional attachment order was upheld, and the petition was dismissed.

Key insights

- ↳ The Court upheld the provisional attachment under Section 83 of the CGST Act, recognizing it as crucial for protecting government revenue amidst substantial ITC fraud. The Court rejected claims of undue harassment, affirming that the attachment was both necessary and within legal bounds to secure potential tax liabilities and penalties.
- ↳ Citation: 2024 (7) TMI 371

10. M/s. Dynamed Equipments (Mad HC)

Facts of the case

- ↳ **The question of law is whether the impugned order is valid where the order exceeded the scope of the show cause notice issued earlier.**
- ↳ The Assessee contended that the impugned order imposed a penalty, which was not part of the original show cause notice. This discrepancy indicated that the impugned order goes beyond what was initially proposed, depriving the Assessee of the opportunity to address these additional charges.
- ↳ The department argued that the proceedings followed proper procedure, including issuing an intimation, a show cause notice, and subsequent reminders.
- ↳ The Hon'ble Court found that in the detailed notice in Form DRC-01 there was no mention of interest or penalty. The imposition of a penalty in the impugned order, which was not proposed in the show cause notice, constitutes a deviation from the scope of the notice.

- ↳ This deviation means that the Assessee did not have a proper opportunity to contest the additional penalty and interest liabilities.
- ↳ The court acknowledged that while the Assessee did not respond despite receiving several opportunities, the lack of opportunity to address the new charges of interest and penalty impacts the fairness of the proceedings. Therefore, the impugned order is treated as a show cause notice to allow the petitioner to respond to the additional charges.

Key insights

- ↳ The ruling highlights that imposing penalties or additional charges not included in the original show cause notice violates procedural fairness. Since the impugned order introduced new penalties and interest that were not part of the initial notice, the Assessee was deprived of the opportunity to address these charges.
- ↳ Citation: 2024 (7) TMI 175

11. M/s. A.V. Enterprises (P&H HC)

Facts of the case

↳ **The Question of law is whether a show cause notice (SCN) and a corrigendum issued under the CGST Act, 2017, can be quashed on the grounds of non-compliance with Rule 142(1A) of the GST Rules of 2017, that is, non-issuance of GST DRC 01A.**

↳ The fact of the case is that a SCN was issued in GST DRC 01 for FY 2019-2020, the SCN provided a detailed breakdown of discrepancies in tax liability, excess ITC claims, and other issues were outlined. Further, a Corrigendum was also issued to correct calculation errors in the original SCN.

↳ The assessee argued that the SCN and corrigendum violated Rule 142(1A) of the GST Rules, which requires a detailed communication of tax, interest, and penalty details before issuing an SCN, that is, issuance of Form GST DRC 01A and the non-compliance with this mandatory requirement under Rule 142(1A) of the GST rules, breached principles of natural justice and denied a fair opportunity to contest the allegations

↳ The Department argued that the SCN provided sufficient details of the tax liabilities, interest, and penalties. It was argued that the corrigendum issued to SCN was merely a corrective measure to rectify errors in the initial SCN and that it did not alter the substantive content of the SCN.

↳ The court found that the SCN and corrigendum complied with the procedural requirements in a substantive sense. It found that while

there were errors in the initial SCN, the corrigendum corrected these errors and ensured compliance with the GST Rules. The court determined that the details of tax liabilities, interest, and penalties were adequately communicated to the Assessee through the corrigendum.

↳ Further, the court found that procedural errors did not constitute a breach of natural justice. The corrigendum provided sufficient clarification and corrected the initial defects, ensuring that the Assessee had the necessary information to contest the claims made against them. Therefore, the court found that the principles of natural justice were upheld.

↳ Therefore, the court held that the writ petition lacks merit at this stage and, in light of the observations made, dismisses the petition and the Assessee is granted the liberty to pursue an alternative remedy by filing a statutory appeal.

Key insights

↳ The decision, in favour of the Revenue, reinforces that minor procedural lapses do not necessarily breach natural justice if the errors are rectified and the taxpayer is given a fair opportunity to address the allegations.

↳ Citation: 2024 (7) TMI 1033.

Notifications, Circulars and Other Developments

Key GST Notifications

1. CGST Amendment Rules, 2017

(Notification no. 12/2024 – CT)

Pursuant to the 53rd GST Council meeting held on 22 June 2024, the CBIC has introduced the following changes, to give effect to certain recommendations of the Council.

↳ **Additional verification for Registration**

Pursuant to Bio metric Aadhar verification being mandated across India, if the applicant has not opted for Aadhaar authentication, they are required to undergo an additional verification process at facilitation centers. (Effective from 10th July 2024)

↳ **Clarification on valuation of Corporate Guarantee**

This amendment to Rule 28(2) (newly inserted valuation rule for corporate guarantee) seeks to clarify the applicability of Rule 28 to related persons in India and simplifies the valuation process for transactions where full ITC based on invoice value is available to the recipient (Effective from 26th October, 2023).

↳ **Procedure for distribution of ISD credit**

The amendment, introducing the procedure and conditions for the distribution of ISD credit, brings in change in the manner of ITC distribution, issuance of relevant documents (invoices, credit notes, and debit notes), and the conditions for distributing ITC. (Effective from a date to be notified)

The amendment clarifies the process of distributing ITC to multiple recipients, particularly in cases where ITC is ineligible or where the ISD operates across multiple states or union territories.

↳ **Introduction of Form GSTR-1A**

Form GSTR-1A introduced, for allowing amendments in the GSTR-1 before filing GSTR-3B. Amendments through this form cannot be made after filing GSTR-3B. (Effective from 10th July)

Effective from 1st August, 2024, threshold for reporting invoice wise details in Form GSTR-1 for B2C interstate supplies has been reduced from Rs. 2,50,000 to Rs. 1,00,000.

Key GST Notifications

↳ **Extension of due date for composition taxpayers**

Due date for filing of return in FORM GSTR-4 for composition taxpayers has been extended from 30th April to 30th June following the end of the financial year. This will be applicable for returns for the financial year 2024-25 onwards.

↳ **Interest on delayed payment of tax**

If a taxpayer deposits an amount into their Electronic Cash Ledger on or before the due date of filing a GST return, but debits the amount after the due date when actually filing the return, the amount deposited will not be considered for calculating interest, if such amount remains in the ledger from the due date until the actual debit date (Effective from 10th July 2024).

↳ **Refund of additional IGST**

This amendment to Rule 89 of the CGST Rules introduces provisions related to the refund of additional Integrated Tax paid due to an upward revision in the price of goods after their export. It details the process for claiming such a refund, the documentation required, and the timelines within which the application for a refund must be made. (Effective from 10th July 2024) (also ref GST portal updates).

↳ **Refund of tax to Canteen Stores Department**

The newly introduced Rule 95B provides a specific mechanism for the Canteen Stores Department (CSD), under the Ministry of Defence, to claim a refund of 50% of the central tax paid on inward supplies of goods. This refund applies to goods received for the purpose of supplying them to Unit Run Canteens or authorized customers. The refund process is outlined in a new form, **GST RFD-10A**, and must be submitted quarterly (Effective from 10th July 2024).

↳ **Receipt of payments for export of services**

The amendment to Rule 96A extends the period within which payment for exported services must be received to qualify for an IGST refund. It aligns the timeframe with the FEMA and RBI regulations, offering more flexibility for receiving payments in convertible foreign exchange or Indian rupee (Effective from 10th July 2024).

Key GST Notifications

↳ **Appeal to Appellate Tribunal**

The amendment to Rule 110 brings changes in the process for filing appeals and cross-objections with the Appellate Tribunal under GST. It mandates electronic filing (GST APL-05), allows manual filing under specific conditions, and defines the procedures for provisional and final acknowledgments (Effective from 10th July 2024).

Additionally, it outlines the fee structure for filing appeals and applications for rectification of errors.

Similarly, applications to Appellate Tribunals must be filed electronically in Form GST APL-07.

Rule 113A introduces provisions for withdrawing an appeal or application filed before the Appellate Tribunal under GST. The rule specifies the process for withdrawing appeals or applications, conditions for approval, and timelines for filing subsequent appeals or applications.

↳ **E-way bill**

New proviso has been inserted, requiring unregistered persons who need to generate an e-way bill to submit their details electronically on the common portal. They will receive a unique enrolment number upon validation of their submission (Effective from 10th July 2024).

↳ **Form GSTR-3A**

If payments are mistakenly made towards a demand through Form GST DRC-03, the taxpayer can submit an application in Form GST DRC-03A. The payment will be adjusted as though it was originally made towards the demand on the date of intimation via Form GST DRC-03. This amount can be applied towards the pre-deposit requirements under Sections 107 and 112 of the CGST Act, and the remaining confirmed demand will be stayed.

However, if an order in GST DRC-05 has been issued, concluding the proceedings for the payment made in GST DRC-03, filing GST DRC-03A is not allowed (Effective from 10th July 2024).

Key GST Notifications

2. **Bio-metric based Aadhaar authentication on All-India basis**
(Notification No. 13/2024)
 - ↳ Notification No. 27/2022-Central Tax is rescinded, which previously limited Aadhaar-based authentication for GST registration to the states of Andhra Pradesh, Gujarat, and Puducherry.
 - ↳ As of July 10, 2024, the requirement for Biometric-based Aadhaar authentication and risk-based physical verification has been extended to all States and Union Territories across India.
 - ↳ The earlier exemption from Aadhaar-based authentication for GST registration has been revoked, making biometric authentication mandatory across India.
3. **Exemption from filing of Annual Return**
(Notification No. 14/2024)
 - ↳ Registered persons whose aggregate turnover in the financial year 2023-24 is up to INR 2 crore, are exempted from filing annual return in Form GSTR-9 for the said financial year.
4. **Reduction of rate of TCS to 0.5% for ECOs**
(Notification No. 15/2024)
 - ↳ The Rate of Tax Collected at Source (TCS) has been reduced from 1% to 0.5% for e-commerce operators.
 - ↳ The existing TCS rate of 1% will remain applicable for transactions occurring from July 1 to July 9, 2024.

Key GST Circulars

Guidelines for the recovery of the outstanding dues, in cases where first appeal has been disposed of, till Appellate Tribunal comes into operation. - Circular No. 224/18/2024-GST:

↳ Pre-Deposit for GST Appellate Tribunal Appeals:

1. Make payment via **Services >> Ledgers>> Payment towards demand**. The taxpayer would be navigated to Electronic Liability Register (ELL) Part II, and
 2. File an undertaking/ declaration with the jurisdictional proper officer.
- If pre-deposit not made, or undertaking/declaration not filed, recovery proceedings may be initiated.
- ↳ If amounts meant for demand inadvertently paid amounts through FORM GST DRC 03 – File **FORM GST DRC 03A**:
- The payments will be treated as made towards the demand from the date of intimation through FORM GST DRC-03.
 - FORM GST DRC-03A cannot be filed if proceedings have concluded with issuance of FORM GST DRC-05.
 - FORM GST DRC 03A currently unavailable on the common portal.
 - Once the functionality of **FORM GST DRC 03A** is made available, the amount paid vide FORM GST DRC 03 may be adjusted against the pre deposit.

Circular on issues pertaining to taxability and valuation of the corporate guarantee between related persons- circular no. 225/19/2024-GST:

- Valuation Rules amended - 26th October 2023
 - GST payable on 1% of the Corporate Guarantee for related party transactions
 - 1% is payable every year (amendment made in Rule 28 in July 2024 w.r.e.f 26th Oct 2023)
 - If Recipient is entitled to full ITC – Any value can be adopted (amendment made in Rule 28 in July 2024 w.r.e.f 26th Oct 2023)

Key GST Circulars

➤ **Key Clarifications**

- Guarantees taxable from **1st July 2017**.
- 1% valuation rule applies from **26th October 2023**. Pre-amended Rule 28 applies prior to this date.
- Pre-Amendment, Valuation is based on the open market value or the value of similar services. Previous rulings (e.g., ITAT) have suggested that 0.5% of the guaranteed amount is a reasonable benchmark for valuation.
- Guarantee Received from Foreign Group Company is taxable, and benefit of new rule (**Rule 28(2) proviso**) can be taken.
- Guarantee Provided to Foreign Group Company Qualifies as export; the benefit of deemed value under Rule 28(2) is not applicable.
- GST is calculated on the guaranteed amount (not on any disbursed loan amounts).
- Joint Guarantees: If no commission or if the total commission is less than 1%, GST applies on 1% of the guaranteed amount shared proportionately by the guarantors. If the total commission exceeds 1%, GST applies on the actual commission.
- The tax should be calculated and paid proportionately for the period the guarantee was active.

Circular on mechanism for additional IGST paid- Circular No. 226/20/2024-GST:

Issue – No mechanism exists for claiming refund of IGST paid on upward revision of price of goods exported.

- Reasons for Price Revision: International index linkage, contract terms, etc.

Procedure to claim refund

- File FORM GST RFD-01 under "Any other" with remarks on "Refund of additional IGST paid due to post-export price increase."
- Minimum Claim: ₹1000.
- Time Limit: Claim within 2 years from relevant date.
- Submit the refund claim long with necessary documents.
- After verifying the claim, the proper officer will issue a refund sanction order.

Key GST Circulars

Life insurance premium - Circular No. 214/08/2024-GST:

- ↳ The portion of insurance premium not included in taxable value under Rule 32(4) of the CGST Rules should not be treated as exempt or non-taxable for the purpose of ITC reversal.
- ↳ Rule 32(4) - Value of supply for services related to life insurance business. Life insurance policies often include both investment and risk cover components. The value of supply for such policies is determined by deducting the investment portion from the gross premium.
- ↳ The portion of the premium not included in taxable value as per Rule 32(4) does not fall under exempt or non-taxable supplies, and hence, ITC reversal is not necessary for that portion.

Place of Supply for Custodial Services Provided by Banks to FPIs - Circular No. 220/1/2024-GST

- ↳ Place of supply for custodial services provided by banks to Foreign Portfolio Investors (FPIs):
 - ↳ These services are not to be treated as services provided to 'account holders' under section 13(8)(a) of the IGST Act.
 - ↳ Instead, the place of supply should be determined based on the default provision under section 13(2) of the IGST Act.

Time of Supply for Spectrum Usage Services under GST - Circular No. 222/16/2024-GST

- ↳ Spectrum allocation by the Department of Telecommunications (DoT) is considered a continuous supply of services under section 2(33) of the CGST Act.
- ↳ The Frequency Assignment Letter, which details auction results and payment options, is a bid acceptance document and not an invoice.
- ↳ Therefore, GST liability arises at the time when instalment payments are either due or made, whichever occurs first.

Portal Updates

1. Enhancements to Address-Related Fields in GST Registration Functionalities

- ↳ Enhancements to address-related fields in various GST registration functionalities - New Registration, Amendment Application (Core & Non-Core), and Geocoding Business Addresses.
- ↳ Address selection enabled from autosuggestions, completion of the locality/sub-locality fields not mandated.

2. Increase in size of documents upload in Principal Place of Business and Additional Place of Business for New Registration and Amendment

- ↳ Document size limit increased from 100KB to 500KB for documents uploaded for Principal Place of Business and Additional Place of Business sections in New Registrations and Amendments.

3. Refund of additional IGST paid on account of upward revision in prices of goods subsequent to exports

- ↳ Refunds for additional IGST paid due to price increases after exports, the same will be handled by the Tax Administration.
- ↳ GSTN is working on creating a separate category in FORM GST RFD-01 for these refund applications. Until this separate category is available on the common portal, exporters can claim refunds for the additional IGST by submitting their applications under the "Any other" category in FORM GST RFD-01.

4. Integrated Services from NIC-IRP e-invoice-1 and e-invoice-2 Portals

- ↳ NIC is releasing the integrated services from e-invoice-1 and e-invoice-2 portals. These portals run in parallel and now allow for seamless inter-operations.
- ↳ It enables taxpayers to use a single set of login credentials across both platforms. This enables seamless cross-functional operations and ensures that if one portal is under maintenance, the other can still be used for transactions.

Portal Updates

5. Refund of tax paid on Inward supply of goods by Canteen Store Department (FORM GST RFD 10A)

- On July 11, 2024, the CBIC issued Circular No. 227/21/2024-GST regarding the online processing of refund applications by the Canteen Stores Department (CSD). In response, GSTN has introduced an online feature on the GST common portal for CSDs to submit refund applications using FORM GST RFD-10A.

6. Advisory for FORM GSTR-1A

- Form GSTR-1A, introduced vide Notification No. 12/2024 – CT (July 10, 2024) has been made available from July 2024.
- GSTR-1A is an optional form for adding or amending details missed or incorrectly reported in FORM GSTR-1 before filing FORM GSTR-3B.
- The form can be filed only once per tax period. Changes reflected in FORM GSTR-3B for the same period. ITC adjustments available in FORM GSTR-2B for the next period.
- This form will be available from due date of filing GSTR-1 or actual date of filling GSTR-1, whichever is later, before filing GSTR-3B.

7. Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Uttarakhand

- Biometric Aadhaar authentication and document verification launched in Uttarakhand on July 28, 2024.
- Post Form GST REG-01 submission, applicants receive an email with:
 - OTP-based Aadhaar Authentication Link, or
 - Appointment Booking Link for GSK (GST Suvidha Kendra) visit.
- Biometric authentication and document verification are performed at GSK (GST Suvidha Kendra). Appointments may be scheduled within the permissible period for ARN generation.

Indirect Tax Compliance Calendar for August 2024

August 2024

Important Due Dates under Indirect Tax

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Important Due Dates under Indirect Tax

Due Date	Description
10 August 2024	<ul style="list-style-type: none">↳ Filing of GSTR-7 - By Tax Deductor for the month of June 2024↳ Filing of GSTR-8 - By E-Commerce Operator for the month of June 2024
11 August 2024	<ul style="list-style-type: none">↳ Monthly filing of GSTR-1 for the month of June 2024 (Regular taxpayers)↳ Monthly filing of GSTR-1 for the Quarter April – June 2024 (QRMP Scheme)
13 August 2024	<ul style="list-style-type: none">↳ GSTR 1 - IFF by Taxpayers under QRMP Scheme for the Quarter April – June 2024↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of June 2024↳ Filing of GSTR-6 - By Input Service Distributor for the month of June 2024
20 August 2024	<ul style="list-style-type: none">↳ Filing of GSTR-3B (Regular Taxpayers) for the month of June 2024↳ Filing of GSTR-5A by OIDAR Service Providers for the month of June 2024
22 August 2024	<ul style="list-style-type: none">↳ Filing of GSTR-3B under QRMP Scheme for the Quarter April – June 2024 (Taxpayer Opted QRMP Scheme)
24 August 2024	<ul style="list-style-type: none">↳ Quarterly Filing of GSTR-3B for the quarter January to March 2024 (Taxpayer Opted QRMP Scheme and located in the specified states)
25 August 2024	<ul style="list-style-type: none">↳ PMT-06 - for a taxpayers with aggregate turnover up to Rs. 5 Crs. during the previous year under QRMP Scheme.
28 August 2024	<ul style="list-style-type: none">↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.

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