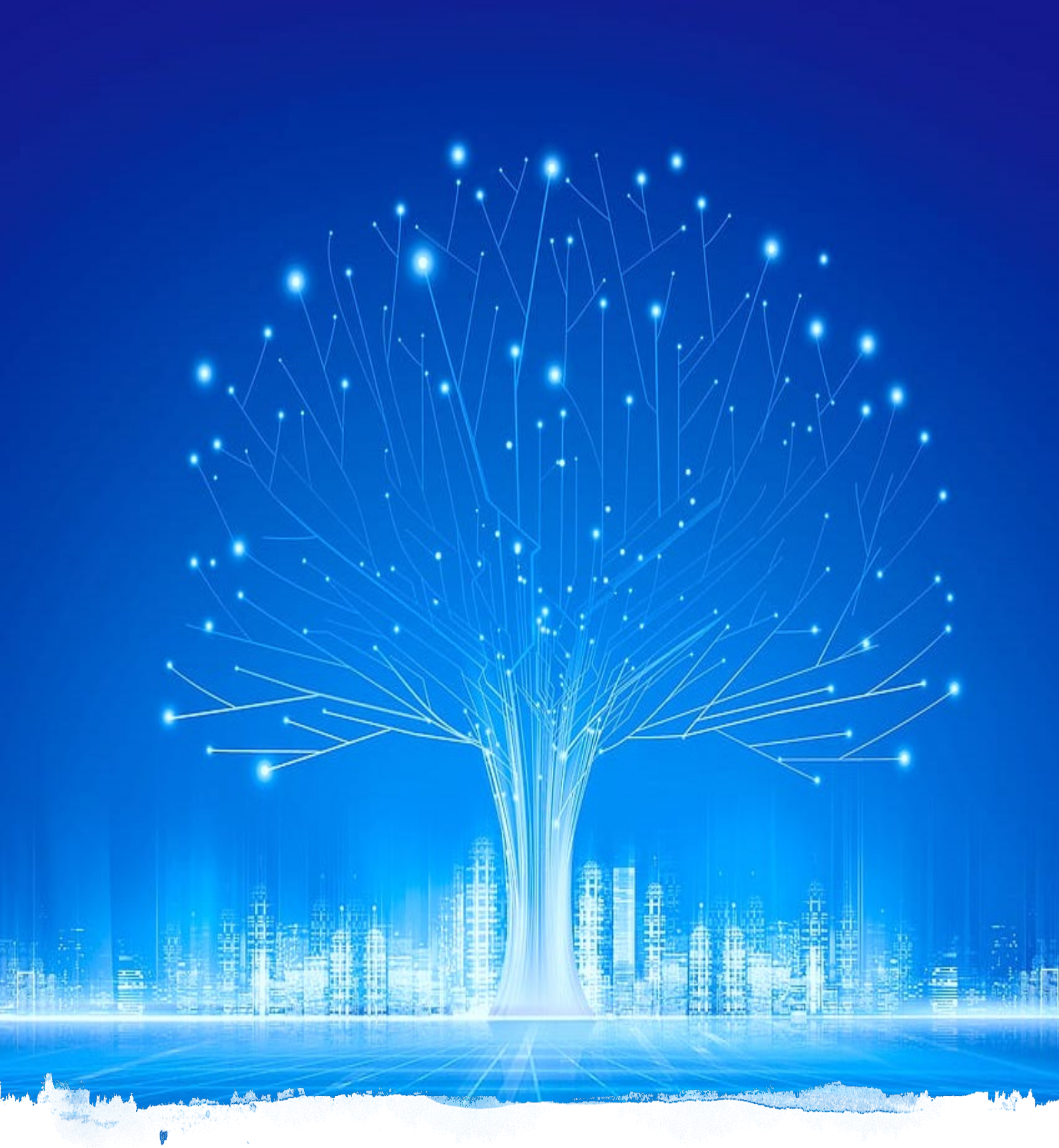

# Indirect Tax Compendio

## Vol 18: Aug 2024

Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

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# Articles

# High Court Ruling Clarifies Interpretation of Place of Supply Under GST: Sri Avantika Contractors Case

**A** decision concerning the interpretation of the place of supply under the Goods and Services Tax (GST) was recently delivered by the Telangana High Court in the case of *Sri Avantika Contractors (I) Ltd. vs. Appellate Authority for Advance Ruling (GST) & Ors. - 2024-VIL-813-TEL.*

The judgment is centered around the determination of the location of the supplier, the location of the recipient, and the place of supply in a cross-border works contract involving the Government of India and the Government of Maldives.

## Brief facts

The case arose from a Memorandum of Understanding (MoU) between the Government of India and the Government of Maldives for the construction of a police academy in the Maldives. The National Buildings Construction Corporation Limited (NBCCL) was appointed to execute the project, and it subsequently awarded the works contract to Sri Avantika Contractors Limited (the petitioner).

Both the petitioner and NBCCL had their registered offices in India, but they established site offices in Addu City, Maldives, to execute the project. The contracts were executed within Indian territory, and payments were made in Indian Rupees (INR). However, the petitioner sought an advance ruling to clarify the taxability of the transaction under GST, which led to a series of legal disputes, ultimately resulting in the matter being brought before the Telangana High Court.

## Key Legal Arguments

The core issue in this case was determining the location of the supplier and the place of supply for the services rendered. The petitioner argued that the GST law was not intended to apply beyond the territory of India. They relied on Section 2(56) of the CGST Act, which defines 'India,' to assert that the works contract services provided in the Maldives fell outside the jurisdiction of Indian GST law.

The petitioner further contended that the 'consideration' for the works contract services was earned entirely in the Maldives, making it exempt from GST. They argued that the authorities misinterpreted the relevant provisions, particularly Section 12(3) of the Integrated Goods and Services Tax (IGST) Act and failed to recognize the fixed establishment of the petitioner in the Maldives.

### Determination of location of Supplier and Recipient

In any cross-border transaction, the place of supply is one of the core determinatives to identify whether the particular transaction is subject to GST under the Indian law. In the same vein, establishing the location of supplier and recipient is crucial in determining the place of supply. In ascertaining the same, the contentions may be divided into two limbs (i) determination of location of supplier and recipient and (ii) scope of fixed establishment.

While determining the location of the supplier and recipient, the department classified the matter under Section 12 of the IGST Act, which is applied when both the supplier and recipient are located within India.

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This was basis the definition of location of the supplier which states as under:

> *(71) "location of the supplier of services" means,-*
> *(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;*
> *(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*

The definition of location of the recipient is a mirror image of the definition of location of supplier. It was the case of the department that clause (a) pertaining to 'registered office' of the supplier and recipient which is present inside the territory of India to be considered as their location of service.

The Court however held that in the present case, clause (b) of the definition would be more apt. Clause (b) specifies that the location of the supplier/recipient would be the 'fixed establishment' in case where supply is made from a place other than the registered place of business.

> *The phrase "fixed establishment" is also defined to mean a* ***place (other than the registered place of business)*** *which is characterized by a* ***sufficient degree of permanence and suitable structure*** *in terms of* ***human and technical resources*** *to supply services or to receive and use services for its own needs. (Emphasis Supplied)"*

From a plain reading of this definition clause, the Court held that all the three necessary conditions of (i) a place other than the registered place of business, (ii) establishment with sufficient degree of permanence, and (iii) suitable structure with a sizeable number of human and technical resources involved, have been met in this case.

The court further ruled that the expression 'registered place' under Section 2(7) of IGST Act does not encompass re-registration under foreign law in different jurisdictions and the petitioner's office in Maldives to be considered as 'fixed establishment'.

The court concluded that the supply is certainly made through 'fixed establishment' in Maldives, which is other than the place of registration of business of the petitioner i.e., Hyderabad. Hence, the transaction was fully undertaken outside India and was not taxable.

The Court further examined Section 13 of the IGST Act and held that it had a direct and special provision with regards construction service. A bare reading of Section 13(4) makes it clear that 'place of supply' in relation to an immovable property for carrying out construction work will be the place where the immovable property is located. The court observed that this provision is clear as cloudless sky (unambiguous) and must be applied regardless of the consequences.

## Conclusion

The decision would have a significant impact on various cross-border transactions. More often than not, determining the supplier's location becomes challenging with the authorities deeming it to be where the contract is signed. The Court's decision provides a roadmap as to how the clause is to be interpreted which would have a substantial impact on cross-border transactions.

# CTA, 1975 - Has the last word been said on the question of levy of interest and penalty?

**UPON** reviewing the differences between the Finance (No.2) Bill, 2024 and the enacted Finance Act, 2024, it is evident that certain critical provisions, which were notably absent from the Finance Bill, have now been directly incorporated into the Customs Tariff Act through the Finance Act, 2024. These amendments pertain to the substitution of various provisions in the Tariff Act concerning the imposition of interest and penalties, which had been contentious issues. Through these amendments, it appears that the Government of India aims to conclusively address the disputes surrounding the applicability of interest and penalties on IGST demands.

Specifically, Sections 106, 108, 109, 110, 159, 160, 161, 163, 166(a), 166(b), 166(c), 167, 168(a), and168(b) of the Finance Act, 2024 have introduced identically worded provisions that replace the existing provisions in the relevant legislations to resolve this matter.

For example, the existing Sub-section 3(12) of the Customs Tariff Act, 1975, as well as its substituted version under Section 106 of the Finance Act, 2024, are as follows:

| Existing | Substituted in the Finance Act, 2024 |
|---|---|
| *(12) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to* ***drawbacks****, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act. (emphasis supplied)* | *"(12) The provisions of the Customs Act, 1962 and all rules and regulations made thereunder,* ***including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy,*** *refunds, exemptions,* ***interest, recovery, appeals, offences and penalties*** *shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that* ***Act or all rules or regulations made thereunder, as the case may be****." (emphasis supplied)* |

## Background of litigations

The Hon'ble Bombay High Court in the Mahindra and Mahindra case, was dealing with a challenge to a demand for interest and penalty on a short-paid CVD, SAD and surcharge leviable respectively under Section 3(1), 3A of the Customs Tariff Act 1975 and Section 90 of the Finance Act, 2000.

The Hon'ble Bombay High Court, relying on the settled ratio laid down by Hon'ble Supreme Court in the matters of *M/s. Khemka and Co. (Agencies) Pvt. Ltd.* and Apex Court in *Collector of Central Excise, Ahmedabad V/s. Orient Fabrics Pvt. Ltd. 2003 (158) E.L.T. 545 (SC) = 2003-TIOL-32-SC-CX*, and the Hon'ble Delhi High Court decision in the matter of *Pioneer Silk Mills Pvt. Ltd.* (approved by the Hon'ble Supreme Court), rejected the demand for interest and penalty on a short paid on the ground that -

a) The interest and penalties being substantive levies, the statute that levies and charges these levies should make a substantive provision for the levies, and

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b) In the absence of such a substantive charging provision for charging interest and penalty, any attempt to levy interest and penalties would be without jurisdiction.

The Kolkata Tribunal in the matter of *M/s. TEXMACO RAIL ENGINEERING LIMITED* was dealing with the question of leviability of interest under Section 28AA of the Customs Act, 1962 on the confirmed demand for additional duty under Section 3(1) of the Customs Tariff Act, 1975. The Tribunal held that interest was leviable on the following grounds:

a) the scope of the expression, 'includes' as already decided in many a rulings, should cover interest and penalty also;

b) the principle of automatic attraction of interest when duty is due;

c) the fact that Section 28AA starts with a non-obstante clause; and.

d) that interest is not penal but compensatory in nature.

The Tribunal did refer to the Hon'ble High Court decision in the Mahindra and Mahindra matter and also the other Hon'ble Supreme Court decisions relied upon by the Hon'ble High Court. But the Tribunal distinguished these decision holding as under:

*Unless, it is shown that "levy of interest," is by way of an "additional tax", rulings of the Court delivered in the context of penalty cannot be applied ipso facto to environments and issues relating to imposition of interest. The context in the present matter being compensatory and not punitive action.*

*We therefore fail to derive any support from this ruling of the Hon'ble Court in favour of the appellants.*

While the Kolkata Tribunal was deciding as above in January 2024, in April 2024, the Ahmedabad Tribunal in the matter of *Chiripal Poly Films Ltd.* while dealing with the question of levy of interest, redemption fine on short-paid IGST, decided to follow the ratio laid down by the Hon'ble High Court in the Mahindra and Mahindra matter and also the ratio laid down by the Hon'ble Supreme Court relied upon by the Hon'ble Bombay High Court. The Kolkata Tribunal also relied upon a decision on a similar question by Chennai Tribunal in Acer India matter.

This being the background, the action of Government of India to put the question beyond any doubt is understandable.

**Does the amendment actually put the dispute to rest**

The question that arises is whether the substituted provisions introduced by the Finance Act, 2024, will conclusively resolve the issues at hand. In this context, it is essential to consider the underlying principle consistently upheld by the courts. Article 265 of the Constitution of India mandates that no tax shall believed or collected except by the authority of law. This authority must be specific, explicit, and expressly provided for within the statute.

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The Apex Court, in the case of *J.K. Synthetics Ltd. v. Commercial Taxes Officer (1994 SCC (4) 276) = 2002-TIOL-736-SC-CT-CB*, established that any statutory provision for the charging or levying of interest on delayed tax payments must be construed as substantive law, rather than adjectival law. Furthermore, in *India Carbon Ltd. & Ors. v. State of Assam (1997 (6) SCC 479) = 2002-TIOL-2656-SC-CT*, the Court, referencing the decision in J.K. Synthetics Ltd., affirmed that interest can be levied and charged on delayed tax payments only if the statute imposing the tax includes a substantive provision for such interest. Absent such a provision, authorities cannot impose interest merely for the purpose of enforcing tax collection.

This brings us to the critical question: What constitutes a specific, explicit, and express provision for the imposition of interest or penalties?

The Hon'ble Delhi High Court, in Pioneer Silk Mills Pvt. Ltd., which was affirmed by the Hon'ble Supreme Court, observed:

> *"When penalty is additional tax, the constitutional mandate requires a clear authority of law for its imposition. If extensive argumentation is required to interpret whether an Act, through referential legislation or incorporation, imposes a penalty, it is prudent for the court to lean in favor of the taxpayer. There is no room for presumption in such cases. The levy of penalty, which is an additional tax, must be under the authority of law that is clear, specific, and explicit."*

The Hon'ble Bombay High Court, in the Mahindra and Mahindra case, echoed these sentiments, emphasizing that the imposition of a penalty, being in the nature of additional tax, requires clear legal authority. The Court held that where legislation relies on referential provisions or incorporation to levy penalties, it is preferable to resolve doubts in favor of the taxpayer, as presumptions have no place in such matters.

The amendments introduced through the Finance Act, 2024, appear, at best, to be referential legislation and do not seem to meet the threshold of specific, explicit, and express legislation required by Article 265of the Constitution. The existing provisions, before their substitution, did not constitute substantial, specific, or express provisions that could legitimately impose interest or penalties. The government's reliance on the phrases *"including"* and *"but not limited to"* has resulted in the wholesale incorporation of the machinery provisions of the Customs Act, 1962, along with interest and penalty provisions, into the respective legislations.

The substituted provisions seem to fall short of the substantial charging provisions required to satisfy the specific, explicit, and express characteristics necessary for the imposition of interest or penalties under any legislation that has a substantial provision for imposing levies, such as the Customs Tariff Act, 1975, or the Finance Acts of 2001, 2002, 2003, 2005, and 2018.

In conclusion, it appears that the final word on this issue has not yet been spoken, and the recent substitutions introduced by the Finance Act, 2024, may still be subject to legal challenge. The matter remains unresolved, and the legal debate continues.

# Key Rulings and Insights

## 1. M/s. A.O. Smith India Water Products Pvt. Ltd. (KA HC)

**Facts of the case**

- **The question of law was whether holding of equity capital of the subsidiary company by the parent company is exempt from the purview of GST.**
- The assessee relied on Circular No. 218/12/2024-GST dated 26.06.2024 to state that mere holding of shares by the holding company in the subsidiary company cannot be construed as "supply of service".
- The Court reiterated the rationale in the Landmark judgement of *Yonex India Private Limited v. Union of India & Ors*. dated 18.01.2024, where it was clarified that holding shares of subsidiary company by a parent company cannot be classified as supply of service in light of various circulars issued by the government.
- Citation: 2024 (8) TMI 1453

## 2. M/s. Stalwart Alloys India Pvt Ltd (P&H HC)

**Facts of the case**

- **The question of law pertains to whether the proceedings initiated by a State GST Officer can be transferred to and taken over by a Central GST Officer (DGGI)?**
- The Petitioner argued that the State Tax Officer is the proper officer as he had initiated the proceedings prior to any involvement by the central GST authorities.
- The GST Act does not allow for transfer of proceedings and no provision enables the power to transfer proceedings between the State and Centre under the CGST/SGST Act.
- The department argued that since the Central GST authorities were already investigating, and there were concerns about substantial fraudulent transactions, they should continue the investigation.
- The Court observed that transferring the proceedings from one proper officer to another runs contrary to the provisions contained under Section 6(2)(b) of the CGST Act.
- In the present case, the authority did not have any specific power to transfer the case from its own jurisdiction to another.
- The Court noted the fact that merely because similar proceedings have been initiated against the Petitioner elsewhere and that the central authorities have Pan-India jurisdiction, the same cannot be considered as a sufficient ground to allow the transfer of proceedings. As there is no concept of joint proceedings under the framework of the GST Acts.
- It was held that the action of the department in transferring the proceedings vide orders and letter are not sustainable in law and, therefore liable to be quashed and set aside.

**Key insights**

- The decision reinforces once a proper officer initiates proceedings, transfers or joint investigations between State and Central GST authorities are not allowed.
- Citation: 2024 (8) TMI 1458.

# 3. M/s. KNR Srirangam Infra Pvt Ltd (Mad HC)

**Facts of the case**

- **The question of law pertains to whether the Petitioner is liable to pay tax on the entire value of the work rendered to NHAI or only when invoices are raised or annuity payments are received.**
- The Petitioner had provided services to the National Highways Department of India under a hybrid annuity model contract.
- The consideration was received in two parcels, i.e., 40% received during the execution of work and remaining 60% received annually that is spread over 14 years.
- The department argued that since the work had been substantially completed, and that the Petitioner had availed 100% of ITC on the tax paid by suppliers to whom the work was sub-contracted, the Petitioner was liable to pay GST on the entire value of the work.
- The Petitioner placed reliance upon Circular No. 221/15/2024-GST dated 26.06.2024 issued pursuant to the 53rd GST Council Meeting recommendations wherein the issue of time of supply for the purpose of payment of tax for services under the Hybrid Annuity Model (HAM) was clarified.
- The Hon'ble Court observed that merely because the assessee had completed the work in advance for receiving the payments in the form of Annuity over the years would neither disentitle the assessee to avail ITC on the sub-contracted work nor make the assessee liable to pay tax on entirety when no invoice has been raised or payment has been received.
- The Court stated that the assessee was liable to pay tax as and when the invoice is raised for the payments made in the form of annuities.
- The impugned orders were set aside and the cases were remanded for re-examination in light of the clarification given under the said Circular.

**Key insights**

- The ruling reinforces that GST liability is linked to either the issuance of invoices or receipt of payments and cannot be imposed based on the percentage of completion. This decision aligns with principles of accrual and safeguards the taxpayer's right to claim ITC even in cases of subcontracting.
- Citation: 2024 (8) TMI 136

# 4. Suraj Mangar (Cal HC)

**Facts of the Case**

- **The question of law pertains to whether the time-period for passing an order of refund under Section 54(7) of the CGST Act is mandatory or directory in nature.**
- Section 54 (7) of the Act provides for a period of 60 days from the date of filing of the refund application, for the proper officer, to pass an order.
- The petitioner contended that the respondents failed to pass an order within the 60-day time limit for refund processing, and that the word "shall" in the said provision makes the time frame mandatory.
- The department contended that the time limit was merely directory as the said provision was procedural in nature and does not impose a strict deadline for passing a rejection order.
- The court emphasized that the interpretation of a statutory provision as mandatory or directory depends on the legislative intent.
- This intent is determined not only by the language used (such as "shall") but also by the context, subject matter, and objective of the statute.
- It acknowledged that while the word "shall" generally indicates a mandatory provision, this presumption can be rebutted.
- In the case in hand, it was observed that the objective of the section—ensuring timely refunds—is not defeated by delays in processing, as Section 56 of the Act provides a remedy for delays by allowing interest on late refunds.
- Thus, it was concluded that the legislative intent appears to be procedural rather than mandatory.
- It was highlighted that when a statute imposes a public duty and specifies the manner and time for its performance, any resulting injustice or inconvenience from strict adherence to this interpretation should be considered – deeming such provisions as directory.
- The rejection of the refund was upheld, noting that that the delay in processing the refund application was also justified in light of the COVID-19 pandemic, and that the petitioner failed to respond to the SCN,.

**Key Insights:**

- Given the flexible interpretation, the tax authorities may now argue that procedural timelines are not rigid.
- They might justify delays on grounds of cross-verification or other procedural reasons, making it more difficult for assessees to challenge delayed refunds effectively, reducing likelihood of successful challenges based on procedural delays alone.
- This could lead to longer wait times for assessees to receive refunds. It is also notable that the interest may not always adequately compensate assessees for the financial strain caused by delayed refunds.
- Citation: 2024 (8) TMI 456

# 5. M/s. Darshan Processors (Guj HC)

**Facts of the Case**

- **The question of law is whether a refund application initially submitted within the time limit is valid where a subsequent time-barred application is filed in response to a deficiency memo.**
- The petitioner had manually filed a refund of accumulated ITC due to the inverted duty structure.
- Initially, the refund was filed with the wrong jurisdiction (State GST). Later, upon realization, the petitioner requested that the case be transferred to the appropriate Central GST authority.
- Pursuant to issuance of a deficiency memo, the Petitioner submitted additional documents and a re-formatted refund application.
- However, the refund application was rejected on the sole ground that it was time barred, exceeding as it exceeded the two-year limit from the due date for filing the GST return.
- It was argued by the department that the refund application shall be considered only if the same is filed after issuance of deficiency memo.
- The petitioner argued that the refund was initially filed on time, and the delay was due to confusion regarding the correct jurisdiction.
- The court observed that the petitioner had filed the refund initial application within the prescribed two-year limitation period. The subsequent application, made in response to the deficiency memo, is to be considered a continuation of the initial application.
- Thus, the first refund application was directed to be restored for consideration by proper officer on merits.

**Key insights**

- The Hon'ble court's decision underscores that an initial refund application filed within the two-year period is valid, even if procedural errors occur. Assessees should file timely applications, promptly address any jurisdictional or procedural issues, and maintain documentation to support the timeliness of their claims.
- Citation: 2024 (8) TMI 188

# 6. M/s. SEIL Energy India Limited (AP HC)

**Facts of the case**

- **The Question of law is which period's documentation can be considered as proof for the purpose of claiming refund under Rule 89 of the CGST Rules – Whether the month of actual supply of goods or the date when the invoice is issued or payment is made.**
- The petitioner contended that the supply of electricity to M/s. Bangladesh Power Development Board constituted an export sale, which is exempt from tax. As per the power purchase agreement, invoices for electricity supply were raised in the succeeding month.
- The applications for refund were initially rejected on the grounds that the petitioner had submitted the Regional Energy Account/ REA for proof of export, instead of bill of shipping.
- Further the department argued that as per Rule 89 of the CGST Rules, the "relevant period" for which the documents have to be submitted is the month for which the refund was sought. They noted that the petitioner was filing the REA as proof of export for the previous month while applying for a refund for the current month.
- The Hon'ble High court noted that the supply of electricity falls under the definition of "continuous supply of goods" as per the CGST Act, and that the time of supply for such continuous transactions is determined by when the invoice is raised or when payment is received, whichever is earlier.
- It was highlighted that the time of supply for the electricity provided in one month is considered to be the date when the invoice is raised in the following month. In the case in hand, though supply of electricity was done in the month of December, the time of supply, by legal fiction, would be the date on which the bill was presented in the month of January and so on and so forth.
- Allowing the use of the REA as proof of export instead of a bill of shipping, it was held that furnishing of the REA for the preceding month, while making an application for refund in the succeeding month would be in accord with the said provisions of the Act and Rules.

**Key insights**

- The Hon'ble Court has affirmed that the Regional Energy Account/ REA is a valid proof of export for electricity transactions, and has established that for continuous supplies, the relevant period for claiming refunds under Rule 89 of the CGST Rules is determined by the date when the invoice is issued, not the actual supply date.
- This decision allows suppliers to use the REA from the previous month as valid documentation for refund applications in the succeeding month, addressing the practicalities of invoicing and refund claims.
- Citation: 2024 (8) TMI 1313.

# 7. M/s. Den Ambey Cable Network Pvt Ltd .(CESTAT Del)

**Facts of the case**

- **The question of law in this case revolves around denial of CENVAT Credit for invoices that were addressed to the appellant's premises not registered at the time of availing services, but subsequently registered; and the determination of service tax liability based on actual receipts instead of billed amounts.**
- On denial of Credit for invoices to unregistered Premises, the Hon'ble Tribunal observed that the CENVAT Credit Rules allow credit only for invoices that relate to registered premises. It upheld the Department's contention that CENVAT Credit can only be availed for invoices pertaining to registered premises. Since the premises in question were not registered at the relevant time, the credit could not be allowed, even if the premises were subsequently registered.
- With regards to the alleged short payment of service tax, the Point of Taxation Rules, 2011 (POTR), provides that the service tax liability arises when the service is either provided or invoiced, whichever is earlier.
- The Appellant in the case in hand had been paying service tax on the basis of amounts actually received rather than amounts billed.
- The Department argued that as per POTR, the Appellant should have paid service tax on the entire invoice value, regardless of whether the payments were actually received in full during the relevant period.
- The appellant had submitted a reconciliation statement, showing that there was no short payment of service tax when considering payments received in subsequent periods. However, the Tribunal remanded the matter noting that the appellant did not provide adequate documentary evidence, such as invoices, bank statements, ledgers, and tax payment challans, to corroborate the reconciliation statement.

**Key Insights:**

- The Tribunal's decision to deny credit for invoices addressed to such unregistered premises highlights the importance of timely and accurate registration of premises for claiming of credit.
- Though the decision relates to Service Tax regime, it stresses the need to update GST registrations promptly with changes in locations, to claim credit.
- It also highlights that the assessees must discharge their tax liability as per the invoicing timelines, even if the payment has not been received.
- Citation: 2024 (8) TMI 203

# 8. M/s. Procolor Photographics Pvt. Ltd. (CESTAT Chandi)

**Facts of the case**

- **The Question of law in this case relates to the difference in gross receipts from services as shown in the Income Tax returns and ST-3 returns.**
- The Department had issued SCN highlighting the mismatch between the service receipts shown in the Income Tax returns and the taxable value reported in the ST-3 returns.
- The appellant argued that the service receipts were inclusive of service tax, and this tax was accounted for separately in the financial statements as an expense.
- They also contended that their services fell under the category of works contracts and should be taxed accordingly, which allows for a reduced taxable portion under the Service Tax (Determination of Value) Rules.
- The Department argued that the appellant failed to classify the services under works contracts in the returns and did not provide adequate information when requested, thereby giving rise to extended limitation period.
- The Tribunal noted that the Original Authority incorrectly computed the service tax based on the total service receipts without accounting for taxes already paid.
- Further, the service tax rate was improperly applied uniformly throughout the year, disregarding the rate changes during the relevant months. Also, the authorities did not assess whether the services provided fell under works contracts, which would significantly alter the tax calculation.
- Thus, the Tribunal directed the authorities to re-examine the issues, adhering to the principles of natural justice and providing a reasoned decision.

**Key insights:**

- The case underscores the importance of applying the correct service tax rate for the applicable periods. A uniform rate application across a financial year, despite rate changes, was a significant error in this instance, leading to a faulty tax demand.
- Under the GST law also, various notices have been issued comparing the turnover under Income Tax with turnover under GST.
- Such litigations underscore the requirement of maintaining adequate and detailed records to support assesses in disputes and facilitate smoother interactions with tax authorities.
- Citation: 2024 (8) TMI 90.

# 9. M/s. Saddles International Automotive & Aviation Interiors, (AAAR AP)

**Facts of the case**

- **The question of law in this case revolves around whether seat covers, designed to fit over existing vehicle seats, should be classified under HSN 9401 as "parts of seats" or as parts of a "motor vehicle" under HSN 8708.**
- The Appellant argued that the seat covers, permanently affixed to the raw foam seat and an integral part of the car seat, should be classified under Chapter Heading 9401, which pertains to "Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof,' and should be liable to GST at 18%.
- The Appellate Authority noted that the primary function of the seat covers in question was to provide protection and enhance comfort, distinguishing them clearly from the actual seats themselves. While heading 9401 pertains to 'seats for motor vehicles', it does not cover accessories or coverings for those seats.
- The AAAR applied the "sole use/principal use" test and noted that the seat covers are identifiable as accessories designed for exclusive use in motor vehicles, meeting the requirement for classification under heading 8708.
- Seat covers are not integral parts of seats but rather accessories, whose purpose is to supplement the seat's utility.
- Further, the AAAR discussion the definition of "accessory" as an additional or supplementary item that contributes to the main item in this case, the seat covers add to the functionality and style of vehicle seats but are not integral parts of the seats themselves.
- Thus, the Appellate Authority upheld the AAR's decision that the seat covers are accessories specifically designed for motor vehicles and should be classified under Chapter Heading 8708 as are parts and accessories of motor vehicles, attracting GST at 28%.

**Key Insights:**

- It may be noted that the 54th GST council meet has recommended increase of tax rate of car seats classified under 9401, from 18% to 28% on a prospective basis.
- Thus, when such amendment is notified, tax rate of car seat covers would attract GST @ 28%, irrespective of classification under 9701 or 8708.
- The council has recommended such rationalization and increase in tax rates to bring the rate at par with other related goods (seats of motorcycles attract 28% GST rate).
- Citation: 2024 (8) TMI 136

# Notifications, Circulars and Other Developments

# Highlights of the 54th GST Council Meeting.

The major recommendations of the 54th GST Council meeting, held on 9 September 2024 are summarized as under:

| Supply of Goods/ Services | Changes | Clarification |
|---|---|---|
| **Certain cancer drugs** | 12% to 5% | To lower the overall cost of cancer treatment. |
| **Select extruded/ expanded savoury snacks (Namkeens)** | 18% to 12% | To be applicable prospectively. |
| **Metal Scrap** | TDS of 2% in B2B supply by registered person | RCM to be introduced on supply of metal scrap by unregistered person to registered person. |
| **Roof mounted package unit for AC machines for Railways** | Attracts 28% | - |
| **Car seats of motor cars** | 18% to 28% | Uniform rate of 28% on car and motor-cycle seats to be applicable prospectively. |
| **Life and Health insurance** | - | Group of Ministers (GoM) to look into issues pertain to life and health insurance industry. |
| **Transport of passengers by Helicopter** | Attracts 5% | Past demands to be regularized on 'as is where is' basis; Charter of helicopter continue to attract 18% GST. |
| **Flying training courses** | Exempt | Circular to be issued to approve exemption on courses conducted by Flying Training Organizations. |
| **Research and development services by government entity/ research association/ university/ college/ other institution using government or private grants** | Exempt | Past demands to be regularized on 'as is where is' basis. |

# Highlights of the 54th GST Council Meeting.

| Supply of Goods/ Services | Changes | Clarification |
|---|---|---|
| **Preferential Location Charges (PLC)** | Composite Supply | When Location charges/ PLC are paid along with the consideration for the construction services of residential/commercial/industrial complex before issuance of CC, where PLC is naturally bundled with the main supply of construction service. |
| **Affiliation services** | Exempt | Affiliation services by state/ central educational boards, educational councils and other bodies to 'government schools'; to be applicable prospectively.<br>Services by educational boards like CBSE taxable. |
| | - | For services provided by universities to constituent colleges not covered under this exemption and will attract 18% GST. |
| **Import of service by Foreign Airline's branch office** | Exempt | Import from related company exempt when made without consideration. |
| **Renting of commercial property** | RCM | RCM for renting of Commercial property by unregistered person to a registered person to prevent revenue leakage. |
| **Ancillary/ intermediate services provided by GTA** | Composite Supply | When provided in the course of transportation of goods, which is the main service, and single price charged for entire service. |
| | Not composite supply | If service provided and billed separately. |

# Highlights of the 54th GST Council Meeting.

## Trade Facilitation and other Measures

1. **Amnesty Scheme under Section 128A of the CGST Act:**
   a) Section 128A of the CGST Act to be brought into effect from 1st November 2024.
   b) The scheme provides for the waiver of interest or penalties on tax demands for financial years 2017-18 to 2019-20. Tax payments under this scheme must be completed by 31 March 2025.x
   c) The CGST Rules will be amended to introduce Rule 164 and associated forms detailing the procedure for availing benefits. Further circulars will be issued to address various clarifications regarding the implementation of this scheme.
2. **Extension of Input Tax Credit (ITC) Availability (Sections 16(5) and 16(6) of the CGST Act):**
   a) The Finance (No. 2) Act, 2024, will introduce Sections 16(5) and 16(6) with retrospective effect from 1 July 2017, extending the time frame for availing ITC for financial years 2017-18 to 2020-21.
   b) A special rectification procedure will be established for addressing delayed ITC claims subject to adjudication or appeal, where the ITC is now available under the new provisions. Further, circulars will be issued to elucidate the procedures and address issues related to these new provisions.
3. **Amendments to Refund Rules (Rules 89 and 96 of the CGST Rules)**:
   a) The restrictions under Rules 89(4A), 89(4B), and 96(10) regarding refunds on exports, where benefits under the Foreign Trade Policy, 2023, schemes are claimed, will be omitted prospectively.
   b) Further, circulars will clarify that refunds of IGST on exports, even if IGST and Cess were initially unpaid but subsequently settled with interest, will not contravene Rule 96(10) of the CGST Rules.
4. **B2C E-invoicing**

   E-invoicing for B2C transactions recommended in select sectors and states on voluntary basis to improve business efficiency, environmental impact, and invoice accuracy for consumers.
5. **Invoice Management System (IMS)**
   a) Introduction of IMS facility discussed, which would allow the taxpayers to accept, reject, or to keep the invoices pending for the purpose of availment of Input Tax Credit.
   b) The GSTN portal has issued an advisory dated 03rd September, 2024 with the manual on the new facility.

# Portal Updates

## 1. Detailed Manual and FAQs on filing of GSTR-1A:

- Key FAQs with respect to GSTR – 1A:
  i. Can GSTR 1A of the current period be used to amend the records reported in earlier GSTR 1? – No, GSTR 1A allows to amend the records filed in the GSTR 1 of current tax period only.
  ii. Can details of debit/credit note be added in form GSTR 1A? – Yes. A debit note/ credit note can be added in the corresponding tables of GSTR 1A.
  iii. Can the filed GSTR 1A amended again if the GSTR 3B is not filed? – GSTR 1A can be filed only once for a particular tax period even if GSTR 3B is not filed.

## 2. Introduction of RCM Liability/ ITC Statement

- New facility for "RCM Liability/ ITC Statement" introduced to provide a clear overview of the RCM liabilities and the ITC claimed.
- The following RCM liabilities and corresponding ITC are captured:
  - Table 3.1(d) – RCM liability
  - Table 4A(2) – ITC on import of services
  - Table 4A(3) – ITC on RCM inward supplies other than import of services and goods.
- Option provided to report opening balance of RCM ITC to address cases where excess RCM liabilities were paid, or excess ITC was claimed in prior periods.
  - Positive Opening Balance → Report when excess RCM liabilities are paid, i.e., when more is declared in Table 3.1(d) compared to the ITC claimed in Table 4A(2) or 4A(3).
  - Negative Opening Balance → Report when the ITC claimed in Table 4A(2) or 4A(3) exceeds the RCM liabilities declared in Table 3.1(d). Excess ITC claimed to be reported as a negative opening balance.
  - Reclaiming Reversed ITC → Where RCM ITC has been reversed in previous tax periods, it can be reclaimed vide Table 4A(5). However, this reclaimed ITC should not be included in the opening balance.
- Facility applicable from August 2024 for monthly filers and the July-September 2024 period onwards for quarterly filers.
- Monthly and quarterly filers are required to report the opening balance by considering the RCM ITC till the return for the tax period of July 2024 and April-June of 2024 respectively.

# Portal Updates

**3. Advisory in respect of Changes in GSTR 8:**

- The reduction in the Tax Collected at Source (TCS) rate from 1% to 0.5% (consisting of 0.25% CGST and 0.25% SGST/ UTGST, or 0.5% IGST) took effect only from 10.07.2024 onwards for all transactions. In this regard, the following are to be noted:

| Particulars | Applicable Rate |
|---|---|
| Transactions from 01.07.2024 to 09.07.2024 | 1% |
| Transactions from 10.07.2024 onwards | 0.5% |

**4. Advisory for furnishing bank account details before filing GSTR 1/ Invoice Furnishing Facility (IFF):**

- As per Rule 10A of CGST Rules, the taxpayers must furnish bank account details within 30 days of registration or before filing GSTR-1/ IFF, whichever is earlier.
- This requirement was initially notified in June 2019, but starting from 01.09.2024, the rule will be strictly enforced. Non-compliance will result in the inability to file returns for the August period and onwards.
- Therefore, the taxpayers who have not yet furnished the details have been informed to add the same in the portal by visiting *Services > Registration > Amendment of Registration Non – Core Fields tabs on GST Portal.*

# Key GST Notifications

## Effective Dates for New GST Provisions in Finance Act, 2024

**(Notification no. 16/2024 – CT)**

The notification specifies the implementation dates for certain provisions of the Finance Act, 2024:

(a) The revised definition of "Input Service Distributor" (ISD) and the manner of credit distribution by ISDs will become effective on **1st April 2025**.

(b) The new Section 122A pertaining to imposition of penalty for failing to register certain machines used in the manufacture of goods in accordance with the special procedure will become effective on **1st October 2024**.

# Indirect Tax Compliance Calendar for September 2024

# September 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 | | | | | |

# Important Due Dates under Indirect Tax

| Due Date | Description |
|---|---|
| 10 September 2024 | ↳ Filing of GSTR-7 - By Tax Deductor for the month of August 2024<br>↳ Filing of GSTR-8 - By E-Commerce Operator for the month of August 2024 |
| 11 September 2024 | ↳ Monthly filing of GSTR-1 for the month of August 2024 (Regular taxpayers) |
| 13 September 2024 | ↳ Filing of GSTR-1 IFF - By Taxpayers under QRMP Scheme for the Quarter July - September 2024<br>↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of August 2024<br>↳ Filing of GSTR-6 - By Input Service Distributor for the month of August 2024 |
| 20 September 2024 | ↳ Filing of GSTR-3B (Regular Taxpayers) for the month of August 2024<br>↳ Filing of GSTR-5A by OIDAR Service Providers for the month of August 2024 |
| 25 September 2024 | ↳ PMT-06 - for a taxpayers with aggregate turnover up to Rs. 5 Crores during the previous year under QRMP Scheme. |
| 28 September 2024 | ↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund |

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