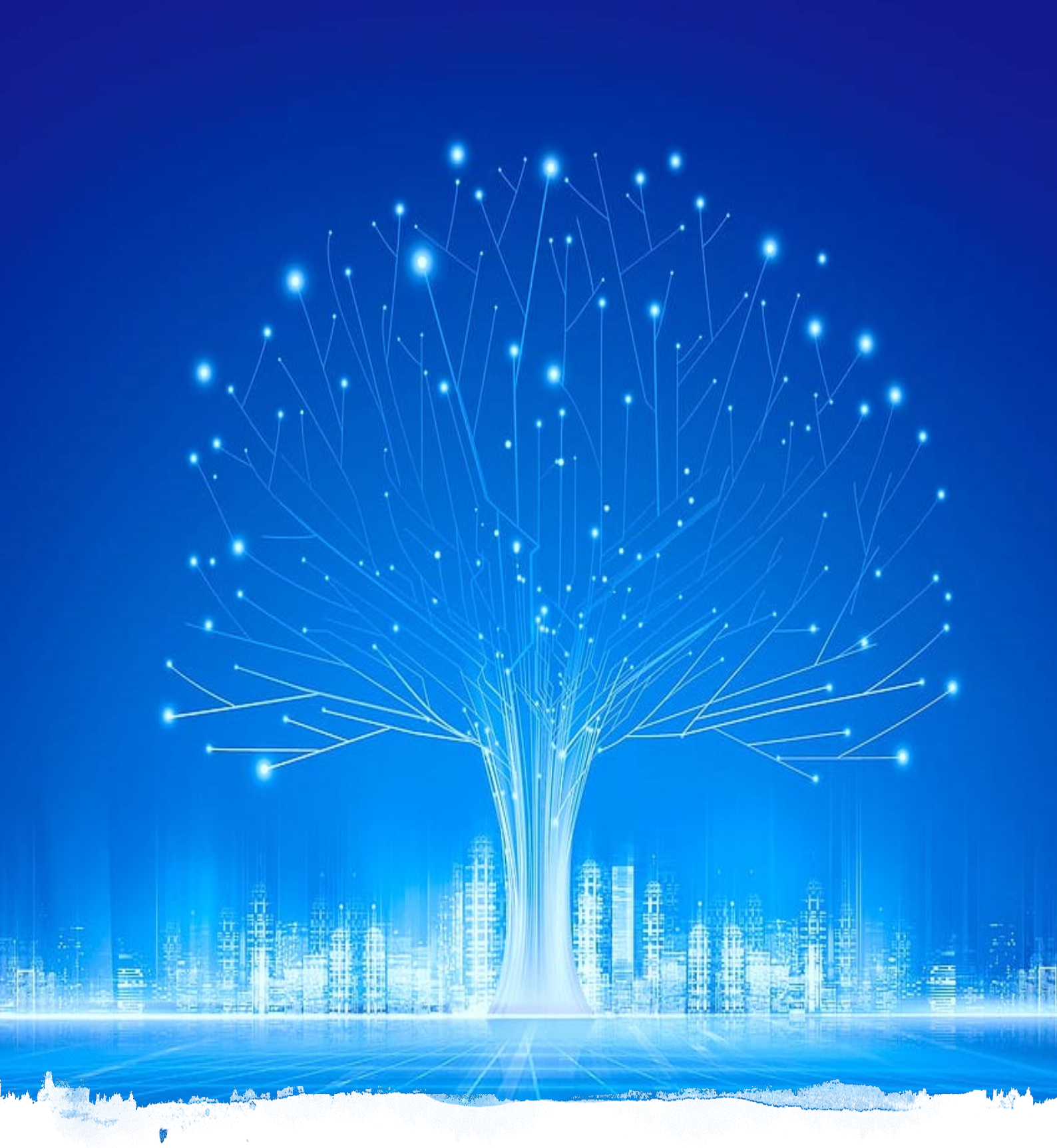

Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

Contents

Articles

DECISION OF SAFARI RETREATS - RETREATED

- **The** Finance Bill, 2025, has proposed a significant amendment to the provisions of Section 17 of the CGST Act, 2017.
- In the case of M/s Safari Retreats Private Ltd. & Ors (Civil Appeal No. 2948 of 2023 - 2024-VIL-45-SC), the Hon'ble Supreme Court examined the legal question concerning the eligibility of Input Tax Credit (ITC) on construction- related supplies associated with immovable property.
- The key issue before the Supreme Court was the interpretation of the restrictions on ITC under Section 17(5)(c) and (d) of the CGST Act. The Court deliberated on various aspects of these provisions, including, but not limited to, the following:
  a. Whether the provisions are constitutionally valid
  b. Scope of plant and machinery under Section 17(5)(c)
  c. Scope of plant or machinery under Section 17(5)(d)
  d. Scope of 'on own account'
- The Hon'ble Supreme Court while addressing the said question of law had made observations that Section 17(5)(c) and 17(5)(d) of CGST Act 2017 are different and 17(5)(d) is focusing on goods or services or both for construction of immovable property on own account.
- The Hon'ble Apex Court had observed that the phrase "On Own Account" would include only when the construction of immovable property for personal use or used as a business premise. The connotation of On Own Account would not include the construction made for further supply such as sale, lease, or license.
- Further observations were made that the phrase "plant and machinery" had been used 10 times however the phrase "plant or machinery" was used specifically in the said clause. Therefore, the definition of "plant and machinery" provided in the explanation to Section 17(5) cannot be substituted for "plant or machinery".

Amendment to Section 17(5)(d) and implications of Safari retreats.

- In Backdrop of the above decision, the Goods and Services tax council in its 55th Council Meeting had recommended amending the provisions of Section 17(5)
- (d). The Binance bill 2025 has proposed to amend the provisions retrospectively and deeming the phrase "plant or machinery" to be read as "plant and machinery".
- The questions which arise now are whether the whole decision of Hon'ble Supreme court has been overturned and if so, to what extent.
- The finance bill has proposed to deem "plant or machinery" as "plant and machinery" and the same has also been proposed to be made with retrospective effect. Hence, the scope of Hon'ble Supreme court decision to the extent of observation made where the definition of "plant and machinery" was deemed to be different from phase "plant or machinery".
- The Hon'ble Supreme Court's ruling would still be valid in other cases especially in case of "on Own account".

DECISION OF SAFARI RETREATS – RETREATED (Contd.)

- **Retrospective applications**
- The proposed amendments are proposed to be made effective from 1st July 2017. This brings to another important question i.e., whether a substantive right can be taken away by the legislature retrospectively.
- The precise question was answered by the Constitution Bench of Hon'ble Apex Court in case of CIT v. Vatika Township (P) Ltd., 2014-VIL-29-SC wherein the facts of case were whether amendments to made vide Section 113 by the Finance Act, 2002are to be considered as clarificatory and applied retrospectively or to be applied prospectively.
- The Hon'ble Apex placing reliance on "principle of fairness" had held that an legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.
- Further when that where a benefit is conferred by legislation, the rule against a retrospective construction is different. If legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislator's object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is justification to treat procedural provisions as retrospective.
- It was finally concluded that the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation.
- The decision in the Safari Retreat case was a direct outcome of the favorable ruling by the Hon'ble High Court which was later affirmed by the Hon'ble SC. Based on the Supreme Court's decision, several businesses had availed Input Tax Credit (ITC) on construction plant and machinery. With the proposed retrospective amendment to the provisions, certain critical questions remain unresolved. These include whether the retrospective application of the amendment can be legally challenged, and whether businesses that have already claimed ITC should immediately reverse the credit.
- The government has recently invoked the "as is, where is" provision in several instances, and this could also be a relevant consideration in this case. It would be prudent to refrain from unsettling the position of businesses that have legitimately availed the ITC in good faith, based on the provisions as they were interpreted by the courts. At the very least, a one-time waiver of interest should be provided to those businesses which had validly availed the ITC under the prevailing provisions, as interpreted by the judiciary.

MOVEBALE OR IMMOVABLE? THE DILEMMA CONTINUES

- **Retrospective applications**
- **THE** Central Goods and Services Tax (CGST) Act, 2017 provides a framework for the apportionment of input tax credit (ITC). However, Section 17(5) of the Act enumerates specific goods and services on which ITC is restricted, particularly those related to immovable property.
- This article delves into the implications of Section 17(5) with respect to immovable property, analyzing landmark judicial pronouncements such as Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune (SC) = 2024-TIOL-121-SC-CX, M/s Bharti Airtel Ltd. v. Commissioner, CGST (Delhi HC) -2024-TIOL-2151-HC-DEL-GST, and Sterling and Wilson Pvt. Ltd. v. The Joint Commissioner - 2025-TIOL-90-HC-AP-GST.
- **Understanding Section 17(5) of the CGST Act.**
- Section 17(5) of the CGST Act, 2017 disallows ITC for certain goods and services used in the construction of an "immovable property" other than plant and machinery. The relevant provisions state:
  - Clause (c): ITC shall not be available for works contract services supplied for the construction of an immovable property (excluding plant and machinery).
  - Clause (d): ITC is not available for goods or services used for constructing immovable property on one's own account, even if used in business.
  - Explanation: Plant and machinery exclude telecommunication towers and pipelines outside factory premises.
- It flows from the above provision that the blockage of ITC under Section 17(5) would ipso facto be attracted only if the underlying transaction results in a construction of an immovable property. In other words, if the procurements as such do not result in the construction of an immovable property, the block of ITC under Section 17(5) does not get triggered.
- The interpretation of what constitutes "immovable property" has been a contentious issue with various Supreme Court decisions in this matter. The present article would focus on three recent decisions which are directly on this issue.
- **A) Bharti Airtel Ltd. v. Commissioner of Central Excise, Pune (SC) 2024-TIOL-121-SC-CX**
- 1.6 In this case, the assessee had sought to claim ITC on mobile towers and prefabricated buildings (PFBs), arguing that they were movable goods and qualified as "capital goods" under the CENVAT Credit Rules.
- The Supreme Court held that mobile towers and PFBs do not constitute immovable property. The Key observations by the Court were
  - Mobile towers can be dismantled and relocated without damage.
  -The attachment to earth is for operational stability and not for permanent beneficial enjoyment.
  -Thus, they retain their character as movable goods and are eligible for ITC under the CGST regime.
  -The Court also provided six different overlapping tests relating to movability.

MOVABLE OR IMMOVABLE? THE DILEMMA CONTINUES (Contd.)

- **B. M/s Bharti Airtel Ltd. v. Commissioner, CGST - Delhi High Court 2024-TIOL-2151-HC-DEL-GST**
- The Delhi High Court was again on the very same question of law on which the Supreme Court had rendered its decision. The Question of law was whether telecommunication towers should be treated as immovable property, thereby falling within the ambit of Section 17(5)(d) of the CGST Act, leading to denial of ITC. Thus, the decision is directly relating to the question of movability in the context of GST.
- The Delhi High Court ruled in favor of the taxpayer, on the following grounds:
  - -Telecommunication towers are not permanently affixed to the earth.
  - -The placement of towers on a concrete base does not classify them as immovable property.
  - -The exclusion of towers from the definition of plant and machinery does not automatically render them immovable. This aspect becomes very significant as the definition of plant and machinery excludes the following -
    - (i) land, building or any other civil structures;
    - (ii) telecommunication towers; and
    - (iii) pipelines laid outside the factory premises
- While land and building more often than not be immovable, the ITC on other civil structures, telecom towers and pipelines outside factory are first required to be immovable to get blocked under Section 17(5) (C) and (d). If they are not immovable, the requirement to examine the definition of plant and machinery does not even get attracted in first place.
- The court also emphasized that exclusion from ITC must be based on clear legislative intent and not a broad interpretation of "immovable property."
- **C. Sterling and Wilson Pvt. Ltd. v. The Joint Commissioner 2025-TIOL-90-HC-AP-GST**
- This case pertained to the classification of solar power generating systems and whether they constitute immovable property for ITC eligibility.
- The Andhra Pradesh High Court ruled that:
  - -Solar modules affixed to civil foundations do not become immovable property.
  - -The purpose of the foundation is to support the equipment, not to render it permanently fixed.
  - -The project should be classified as a "composite supply," allowing for ITC claims.
- **2) Key Takeaways and Implications**
- **Distinction Between Movable and Immovable Property:**
- Judicial decisions reinforce that the intent and purpose of attachment to the earth play a crucial role in determining whether an asset is movable or immovable. Merely affixing goods for operational efficiency does not make them immovable.
- **Industry-Specific Implications:**
- The tests of movability is highly relevant for multiple sectors including the Telecommunication, Energy, shipping, storage and warehousing and oil and gas. Apart from this, any procurements made by the general trade at large where ITC is blocked may require a fresh revisit.

MOVABLE OR IMMOVABLE? THE DILEMMA CONTINUES (Contd.)

- **Conclusion:**
- The interpretation of Section 17(5) concerning immovable property remains a dynamic area of GST litigation. Landmark rulings such as Bharti Airtel Ltd. and Sterling and Wilson Pvt. Ltd. have provided much-needed clarity, reinforcing that attachment to earth for operational stability does not necessarily classify an asset as immovable. Businesses need to stay abreast of evolving jurisprudence to optimize their tax positions and ensure compliance with GST provisions.

Key Rulings and Insights

1. Shantanu Sanjay Hundekari (SC)

Facts of the case

- **The question of law pertains to whether an employee of a company can be held vicariously liable under Sections 122(1-A) and 137 of the CGST Act, 2017, and whether the jurisdictional requirements for issuing a show cause notice under Section 74 were met in the present case?**
- The petitioner sought to recover ₹3,731 crores by issuing a show cause notice under Section 74 of the CGST Act.
- They contended that Section 122(1-A) and Section 137 of the CGST Act justified the issuance of the notice.
- The petitioner further argued that the employee (respondent) was responsible for the company's tax liabilities.
- The respondent contended that he was merely an employee and could not be held personally liable for the company's alleged tax dues.
- The respondent further argued that the show cause notice was issued without jurisdiction, as the essential ingredients under Section 74 were not met and claimed that the notice was an attempt to threaten and pressurize them into compliance.
- The Hon'ble Supreme Court observed that the Hon'ble Bombay High Court had held that it was highly unconscionable and disproportionate for the Respondent to demand INR 3,731 crore from an employee, especially when the liability was clearly attributable to the employer.
- The Supreme Court upheld the Bombay High Court's decision quashing the show cause notice and found that the jurisdictional requirements for issuing the notice under Section 74 were not met.
- The court held that Sections 122(1-A) and 137 of the CGST Act do not impose vicarious liability on employees. However, it left the broader question regarding the interpretation of these provisions open for future adjudication
- The court further observed that the demand against the respondent was unconscionable and disproportionate, as the liability primarily rested with the company (Maersk), as explicitly reflected in the show cause notice.

Key insights

- This judgment reinforces the principle that employees cannot be held vicariously liable for corporate tax liabilities unless expressly provided by law, preventing arbitrary enforcement actions by tax authorities and provides relief to employees who face unreasonable duress due to their position as authorized signatory.
- Further, issuance of SCN on employee demanding tax is also not legally enforceable under the law
- **Citation:** Diary No. 55427/2024.

2. Sri Cheran Synthetics India Private Limited (Mad HC)

Facts of the case

- **The question of law pertains to:**

  a) Whether interest under Section 50(3) of the CGST Act, 2017 can be imposed on the belated reversal of ITC when the credit remained unutilized and was not wrongly availed

  b) Whether Circular No. 94/13/2019-GST dated 28.03.2019, which mandates interest on such reversals, is ultra vires the CGST Act?

- The petitioner made a case that they had excess ITC throughout and never utilized the ITC that was required to be reversed. The requirement to reverse ITC arose due to a notification which specified that ITC accumulated before July 2018 would lapse.
- The petitioner contended that the reversal was made on 19.03.2019, and no tax loss occurred to the department and that Section 50(3) applies only when ITC is wrongly utilized, and since the petitioner never utilized it, interest should not be imposed.
- The petitioner cited *Daichi Karkaria Ltd* , where the Supreme Court held that validly availed ITC is indefeasible unless wrongly utilized.
- The respondent argued that Circular No. 94/13/2019-GST requires interest to be imposed if ITC is not reversed within the prescribed time.
- The respondent further argued that the late reversal amounted to wrongful retention of credit, justifying interest under Section 50(3) and stated that the circular was issued under Section 168(1) of the CGST Act, which allows the Central Board of Indirect Taxes and Customs to clarify GST provisions.
- The Hon'ble High court relied on the Supreme Court's ruling in *Daichi Karkaria Ltd.*, affirming that ITC, once validly availed, cannot be reversed unless taken illegally or utilized wrongly.
- The Court observed that the petitioner never utilized the ITC after the cutoff date of 31.07.2018, making the imposition of interest unjustified.
- It was further held that section 50(3) applies only when ITC is wrongly utilized, not when it is validly availed but subsequently reversed. Since the petitioner had an excess balance of ITC throughout, there was no tax loss or undue benefit derived from retaining the credit.
- With respect to Circular No. 94/13/2019-GST the Hon'ble High Court held that a circular cannot expand or modify statutory provisions. Since Section 50(3) only applies to wrongful utilization, the circular's direction to impose interest on mere late reversal contradicts the CGST Act and is not binding.

Key insights

- The ruling reinforces that circulars cannot impose liabilities beyond the law, ensuring that taxpayers are not penalized for actions not explicitly covered under the CGST Act. This prevents unwarranted financial burdens on taxpayers who comply with procedural reversals but do not misuse ITC.
- **Citation:** 2025 (1) TMI 1016.

3. Crystal Overseas (Bom HC)

Facts of the Case

- **The question of law pertains to whether the petitioner is entitled to a refund of ITC for Compensation Cess under Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017, despite the definition of "input tax" under Section 2(62) of the Central Goods and Services Tax Act not specifically including Compensation Cess?**
- The petitioner argued that under the IGST Act, exports are classified as zero-rated supplies, making them eligible for a refund of unutilized ITC, including Compensation Cess.
- The petitioner subsequently placed reliance on two circulars:

  (a) Circular dated 26th July 2017, which explicitly states that exporters are eligible for a refund of Compensation Cess on exported goods.

  (b) Circular dated 18th November 2019, which further clarifies that a registered person making a zero-rated supply under LUT (Letter of Undertaking) can claim a refund of unutilized credit, including Compensation Cess.
- The petitioner contended that the respondent wrongly equated Composition Levy (under Section 10 of CGST Act) with Compensation Cess (leviable under Section 8 of the Compensation Cess Act) and misinterpreted the law.
- The respondents argued that Compensation Cess is not specifically included in the definition of "input tax" under Section 2(62) of the CGST Act, and thus, the petitioner is not entitled to a refund.
- The rejection of the refund was based on the interpretation that only the taxes defined under Sections 2(62) and 2(63) of the CGST Act are refundable.
- The Hon'ble High court held that the rejection of refund was legally unsustainable as it was based on an incorrect interpretation of tax provisions. The Circulars of 2017 and 2019 are binding and clarify that Compensation Cess is refundable for zero-rated supplies under the same principles as IGST refunds.
- The court found that the respondent failed to consider these Circulars and misapplied the law by conflating Composition Levy with Compensation Cess.

Key Insights:

- This judgment strengthens the fact that Compensation Cess is eligible for a refund for zero-rated exports, removing ambiguity and benefiting exporters.
- **Citation:** 2025 (1) TMI 1084.

4. Central Electricity Regulatory Commission (Del HC)

Facts of the Case

- **The question of law pertains to whether the regulatory fees collected by the Central Electricity Regulatory Commission (CERC) and the Delhi Electricity Regulatory Commission (DERC) are subject to GST under the CGST and IGST Acts, considering that these commissions function as quasi-judicial bodies under the Electricity Act, 2003?**
- The petitioner argued that services provided by courts and tribunals are explicitly exempt from GST and the commissions function as tribunals, as recognized by the Supreme Court in *PTC India Ltd. v. CERC (2010)*.
- The petitioner further stated that the commissions regulate tariff, issue licenses, and oversee electricity transmission, which are statutory and regulatory functions, not commercial activities.
- It was also contended that the commissions charge regulatory fees as a statutory duty, not as compensation for providing a taxable service.
- The respondents argued the commissions provide "support services to electricity transmission and distribution," taxable and fees for tariff determination and licensing are akin to charges for services rendered and should be taxable.
- The respondents further argued that only adjudicatory functions qualify as tribunal services under Schedule III of the CGST Act however regulatory functions, such as issuing licenses and overseeing compliance, are administrative and should be taxed.
- The Hon'ble High Court referred to the Hon'ble Supreme Court's decision in *PTC India Ltd. v. CERC (2010)* which recognized CERC as a tribunal performing both adjudicatory and regulatory functions and further held that the Electricity Act does not distinguish between adjudicatory and regulatory roles, meaning both must be treated similarly under tax laws.
- It was further held that for GST to apply, there must be a supply of goods or services for consideration in the course of business. The commissions' activities do not fit within the definition of "business" under Section 2(17) of the CGST Act.
- It was observed by the court that the classification as "support services to electricity transmission and distribution" is incorrect. The commissions do not provide ancillary services; they regulate the sector as a statutory duty.
- The court finally held that the commissions' functions are covered under Schedule III, which exempts services by courts and tribunals from GST. Since the commissions operate as tribunals, their fees cannot be taxed.

Key Insights:

- This judgment has held in favor of the CERC on two aspects. In respect of whether the nature of the activities constitutes business or not, various parameters of have been laid out by SC and the question of law is still wide open.
- **Citation:** 2025 (1) TMI 887.

5. Delhi Metro Express. (Del HC)

Facts of the Case

- **The question of law pertains to whether arbitral compensation for contract breach is a taxable service under Section 66E(e) of the Finance Act, 1994, or a non-taxable capital receipt?**
- The petitioner argued that the termination payment compensated losses from DMRC's breach, qualifying as a capital receipt and not a taxable service.
- It was further argued that the SCN wrongly treated compensation as a service, though it merely restored financial losses. Subsequently it was submitted that the demand violated Articles 14, 265, and 300A, which prohibit arbitrary taxation. Since no service was provided, the tax was illegal.
- The petitioner also stated that the SCN was based on an arbitral award that was later overturned by the Supreme Court in *DMRC v. Delhi Airport Metro Express Pvt. Ltd. (2024).* Since the compensation itself was nullified, any tax demand on such compensation had no legal basis.
- The respondent argued that under Section 66E(e) of the Finance Act, 1994, payments for "agreeing to the obligation to tolerate an act" qualify as a taxable service. The payment was for tolerating DMRC's breach, making it taxable.
- The respondent argued that as per the Concession Agreement, the payment was a contractual obligation, thus taxable as service for tolerating non-performance.
- The respondents asserted that service tax liability arose at the time the arbitral award was granted, and subsequent legal developments did not automatically negate the tax obligation. Even if the compensation was later overturned, the initial tax liability had already accrued.
- The Hon'ble High Court held that the SCN was based on compensation awarded by the arbitral tribunal, but that award was ultimately set aside by the Supreme Court. Since the compensation itself no longer existed, the tax demand became baseless.
- The court emphasized that compensation for breach of contract does not constitute a taxable service under Section 66E(e). The primary purpose of the payment was to restore financial loss, not to provide a service.
- The Hon'ble High Court relied on rulings that clarified that mere compensation for contractual breaches does not attract service tax and held that a payment must involve an active supply of a service, which was absent in this case.
- It was finally concluded that since the SCN was issued on an invalid foundation (a now-overturned arbitral award), it had no legal standing.

Key insights

- This ruling provides clarity on service tax applicability to compensation payments and reinforces protection against arbitrary tax demands by clarifying that compensation for breach of contract is not a taxable service.
- **Citation:** 2025 (1) TMI 295

6. Sterling and Wilson Private Limited (Andhra HC)

Facts of the Case

- **The question of law pertains to whether the supply and installation of a Solar Power Generating System (SPGS) constitutes a "works contract" attracting an 18% GST rate, or a "composite supply" under Section 2(30), which qualifies for a lower 5% GST rate?**
- The petitioner contended that solar modules are mounted on a structure for stability but are not permanently embedded in the earth so the primary function of the foundation is to support the solar panels, not to integrate them permanently into the land.
- The petitioner cited that as per precedents, only structures embedded in the earth for permanent beneficial enjoyment of the land qualify as immovable property.
- The petitioner subsequently argued that under Section 2(30) of the GST Act, a "composite supply" consists of naturally bundled goods and services in this case the principal supply is the solar power equipment, and ancillary services like installation should not change the classification.
- The petitioner concluded their arguments by stating that Section 2(119) of the GST Act defines a "works contract" as a contract for construction, fabrication, installation, or maintenance of immovable property since the SPGS is movable, it does not fall within this definition and should not be taxed at 18%.
- The respondents on the other hand argued that the mounting structure is permanently embedded in the ground, making the entire system immovable and so the project's scale, installation process, and integration with the land indicate that it is meant for long-term use, qualifying as immovable property.
- The respondent stated that the transaction should be classified under "works contract" and taxed at 18%.
- Subsequently, the respondents stated that SPGS, once installed, is not intended to be moved frequently. The civil foundation and support structures are designed for permanent placement, making the supply a works contract.
- The Hon'ble High Court based on precedents held that an asset qualifies as immovable property only if it is embedded in the earth for its own beneficial enjoyment. Since the foundation of the SPGS serves solely to provide stability to the panels rather than to enhance the land's utility and given that the system can be dismantled and relocated, it does not meet the criteria for classification as immovable property.
- The Hon'ble High Court further held that a "works contract" applied only when an installation results in an immovable structure and since the SPGS's remain moveable, the transaction falls under "composite supply" as per section 2(30) of the GST Act.

6. Sterling and Wilson Private Limited (Andh HC)

- Finally, it was ruled that the supply should be taxed at 5% aligning with industry practice for renewable energy projects whereas the 18% GST rate was deemed inapplicable as the project does not meet the criteria for a works contract.

Key Insights

- This judgment sets a crucial precedent for disputes concerning the classification of installation activities under GST by reaffirming the principles distinguishing movable and immovable property, it provides greater clarity on taxation, particularly for infrastructure projects like solar power systems.
- The ruling aligns with key judicial interpretations, reinforcing that merely affixing equipment to a foundation does not automatically render it immovable. This decision is expected to prevent misclassification of similar cases and ensure consistency in GST treatment for renewable energy installations.
- **Citation:** 2025 (1) TMI 663

7. Bharat Heavy Electricals Limited (Ker HC)

Facts of the case

- **The question of law pertains to whether the differential amount received by the petitioner due to foreign exchange rate fluctuations qualifies as "turnover" under the Kerala General Sales Tax Act (KGST Act) and is liable to tax, or if it represents a mere incidental financial gain outside the purview of taxable turnover?**
- The petitioner asserted that the additional amount received was purely attributable to fluctuations in the foreign exchange rate during the conversion of payments from US Dollars to Indian Rupees. This differential gain did not arise from the sale of any additional goods or services and, therefore, should not be included in the taxable turnover.
- The contract price remained fixed, and the variation in the final payment was solely due to exchange rate fluctuations. Since no additional supply of goods or services occurred, the differential amount could not be classified as part of the turnover for tax purposes.
- Furthermore, the petitioner argued that the definition of "turnover" under the KGST Act pertains to the total consideration for which goods are sold, and it does not encompass incidental gains resulting from currency fluctuations. The inclusion of foreign exchange gains in the taxable turnover by the authorities was incorrect, as there is no explicit statutory provision mandating such treatment.
- The respondent argued that the amount received, regardless of exchange rate fluctuations, constituted consideration for the sale of equipment and therefore fell within the definition of "turnover" under the KGST Act. The fluctuation in foreign currency value did not alter the fundamental nature of the transaction, as the final amount realized in Indian Rupees still represented the taxable turnover.
- Furthermore, the respondent enunciated that explanation (1A) of the KGST Act explicitly states that, in works contracts, the aggregate amount received or receivable for the transfer of goods, in any form, is subject to taxation. Since the petitioner realized a higher amount in Indian Rupees due to exchange rate fluctuations, this differential amount must be included as part of the taxable turnover.
- The respondent also emphasized that the Act does not provide any exemption for foreign exchange gains. Since the contract consideration was originally denominated in foreign currency, its subsequent conversion into Indian Rupees should not affect its taxability under the KGST Act.
- The Hon'ble High Court ruled that the amount received due to forex fluctuations was not a separate gain but a realization of the contract price in Indian Rupees. Since the price was denominated in US Dollars but payable in Indian Rupees, the conversion gain was merely an adjustment to the contract price, not an independent financial gain.

7. Bharat Heavy Electricals Limited (Ker HC)

- Under the KGST Act, turnover includes all amounts received or receivable for a contract, regardless of the mode of payment.
- The court emphasized that as long as the contract was performed and payment was made per the terms, any fluctuation in the amount due to exchange rate variations does not alter its classification as turnover.
- Since the petitioner had already availed permissible deductions under the KGST Act, the forex gain represented taxable turnover that had not yet been taxed. The court upheld the assessment by the respondent, affirming that the differential amount should be subject to tax under the KGST Act.

Key Insights:

- The judgment establishes that foreign exchange gains related to contract payments form part of turnover and are subject to tax.
- The ruling provides clarity on how payments received in foreign currency should be treated under domestic tax laws, preventing disputes over forex fluctuations.
- **Citation:** 2025 (1) TMI 196.

8. Gujarat Chamber of Commerce and Industry (Guj HC)

Facts of the Case

- **The question of law pertains to whether the assignment of leasehold rights in a land allotted by Gujarat Industrial Development Corporation (GIDC) is a taxable service under GST or an immovable property transfer exempt from GST?**
- The petitioner contended the assignment of leasehold rights is an absolute transfer of rights in land and is thus classified as an immovable property transaction under the Transfer of Property Act, 1882. Under Schedule III of the GST Act, sale of land and buildings is neither a supply of goods nor a supply of services.
- The petitioner argued that the transfer of leasehold rights is akin to a sale of immovable property and does not fall within the definition of "supply of services" under Section 7(1) of the GST Act.
- The petitioner submitted that the transaction is already subject to stamp duty and that imposing GST would lead to double taxation, contradicting the legislative intent behind GST, which aimed to subsume indirect taxes and prevent cascading tax effects.
- It was the contention of the petitioner that an outright transfer of leasehold rights is distinct from renting and should not be subjected to GST.
- The respondents contended that as per Section 7(1)(a) of the GST Act, lease transfers are considered supply of services when done for consideration. The respondents argued that while land ownership remains with GIDC, the leasehold assignment involves a transfer of possession and enjoyment, which constitutes a service under GST law.
- The respondents asserted that Clause 5(a) of Schedule II categorizes renting of immovable property as a supply of services, and the transfer of leasehold rights falls under this classification.
- The respondents finally contended that long-term leases, even if executed via registered agreements, involve periodic monetary consideration and should be subject to GST.
- The Hon'ble High Court held that leasehold rights confer benefits akin to ownership, making them a form of immovable property and since the GST Act does not define "immovable property," the definition under the Transfer of Property Act and the General Clauses Act applies.
- The Hon'ble High Court clarified that Schedule II, Clause 5(a), applies to renting arrangements, not to outright assignments of leasehold rights. A lessee assigning leasehold rights is effectively transferring an interest in immovable property, which falls outside GST's ambit under Schedule III.
- The court also emphasized that GST is applicable only when there is a taxable supply of goods or services. Since leasehold assignments amount to the transfer of immovable property, they are not subject to GST under Section 9 of the GST Act.

Key insights

- The judgment establishes that leasehold assignments are transfers of immovable property and are not taxable under GST, preventing arbitrary tax demands.
- By excluding leasehold assignments from GST, the ruling ensures businesses are not burdened with both stamp duty and GST on the same transaction.
- **Citation:** 2025 (1) TMI 516.

9. Infodesk India Limited (Guj HC)

Facts of the case

- **The question of law pertains to Whether the petitioner's services to its U.S. parent qualify as an "export of service" under Section 2(6) of the IGST Act, 2017, or as "intermediary services" under Section 2(13), making them taxable in India. Also, whether the refund claim was time-barred under Section 54 of the CGST Act, 2017?**
- The petitioner contended that As a wholly owned subsidiary of InfoDesk Inc. (USA), the petitioner provides IT and editorial services directly on a principal-to-principal basis, not as an intermediary.
- Citing a circular, the petitioner emphasized that an entity providing services on its own account does not qualify as an intermediary under Section 2(13) of the IGST Act. Furthermore, the terms of the service agreement between the petitioner and its parent company establish a direct contractual relationship proving it is an independent service provider.
- The petitioner further submitted that it operates on a cost-plus model (8% markup), further proving independent service provision.
- With respect to the refund application, the petitioner argued that it was filed within the two-year limitation period prescribed under Section 54(1) of the CGST Act, with the online filing date being the correct reference, not the later physical submission.
- The respondents contended that the petitioner was acting as an intermediary by arranging consultations and meetings between experts and clients on behalf of its parent company.
- Since the petitioner facilitated these interactions rather than directly supplying its own services, it met the definition of an intermediary under Section 2(13) of the IGST Act. Based on this classification, the services were subject to GST in India and did not qualify as an export of service.
- The respondents argued that the refund application should be considered from the date of full physical submission, which was beyond the two-year limit, making it time-barred.
- The Hon'ble High Court found that the petitioner directly provided software consultancy and related services to its parent company, without facilitating transactions between multiple parties, and therefore did not qualify as an intermediary under Section 2(13) of the IGST Act.
- Relying on *Ernst & Young Ltd. (2023)* case, the court ruled that the services met all five conditions under Section 2(6) of the IGST Act, qualifying them as an export eligible for zero-rated GST.
- The court also held that the date of online submission should determine compliance with the limitation period under Section 54 of the CGST Act. Citing the case of *Chromotolab & Biotech Solutions (2022)*, it clarified that procedural delays in physical document submission cannot invalidate a timely filed refund claim.
- **Key insights**
- This decision is a victory for cross-border businesses, ensuring fair GST treatment, validating export classification, and protecting taxpayers from procedural barriers to legitimate refunds.
- **Citation:** 2025 (1) TMI 583.

10. Nepra Resources Management (Guj HC)

Facts of the case

- **The question of law pertains to whether the Notified Area Authority, Vapi, qualifies as a "local authority" under Section 2(69) of the Goods and Services Tax (GST) Act, 2017, thereby making the services provided by petitioner eligible for exemption under Notification No. 12/2017 dated June 28, 2017?**
- The petitioner contended that the court wrongly applied the New Okhla Industrial Development Authority ruling, which defines "local authority" under the Income Tax Act, whereas the GST Act (Section 2(69)) has a broader definition that includes entities managing a local fund. Since the Vapi Notified Area Authority performs local governance functions, it qualifies as a local authority under GST.
- The petitioner argued that the exemption notification applies to services provided to a "local authority" and that the court erred in limiting this to entities listed in the Income Tax Act, ignoring the broader GST definition.
- The petitioner submitted that the court overlooked relevant judgments, including *JSW Energy Ltd (2019)* case, which clarified the interpretation of "local authority" in similar contexts. This misinterpretation constitutes a mistake apparent on the record, warranting a review of the judgment.
- The respondents contended that a review petition cannot be used as an appeal in disguise. The alleged errors in interpretation do not qualify as "mistakes apparent on record" but rather constitute an attempt to reargue the case.
- The Hon'ble High Court reiterated that a review is not an appeal and can only correct "mistakes apparent on record." as errors requiring detailed arguments do not qualify for review.
- The Hon'ble High Court upheld its previous interpretation, stating that the definition under the GST Act does not expand to include industrial townships like Vapi Notified Area Authority. The reliance on *New Okhla Industrial Development Authority (2018)* was appropriate.
- The court partly allowed the review petition, correcting the misattribution of the JSW Energy Ltd. case but declined to reconsider the ruling on the "local authority" status of Vapi Notified Area Authority.
- The main judgment remains unchanged, and the services provided to Vapi Notified Area Authority remain ineligible for GST exemption.

Key insights

- The judgment reinforces that industrial townships do not qualify as local authorities under GST, preventing potential misuse of tax exemptions and that Courts will not entertain review petitions merely to reargue a case, ensuring judicial finality and consistency.
- **Citation:** 2025 (1) TMI 723.

Notifications, Circulars and Other Developments

Notifications

1. Amendments to CGST Rules

- Rule 16A has been inserted to grant a person not liable to registration but required to make any payment under the act, a temporary identification number and issue an Order in Form GST REG-12.
- Rule 19(1) has been amended to include intimation furnished by composition taxpayers in Form GST CMP-02 in addition to GST REG-10. This will come into effect from a date to be notified.
- Rule 87(4) has been amended, which allows individuals with a TIN to generate payment challans through the GST portal.
- Effective date of the notification: 23.01.2025.

(Notification No. 07/2025-CT dated 23.01.2025)

2. Waiver of late fees for filing of GSTR 9 and GSTR-9C

- The Central Government has waived the late fees for taxpayers required to file GSTR-9C along with GSTR-9 but failed to do so. The waiver is applicable for the financial years 2017-18 to 2022-23.
- To avail this benefit, taxpayers must submit the reconciliation statement in Form GSTR-9C on or before March 31, 2025.
- It is further clarified that no refund shall be granted for any late fee already paid.

(Notification No. 08/2025-CT dated 23.01.2025)

Rate Notifications

Notification No. & Date	Particulars	Effective Date
01/2025	• The GST rate on Fortified Rice Kernel (HSN 1904) is reduced to 5%. • The definition of 'pre-packaged and labelled' now includes all retail commodities up to 25 kg or 25 liters, if pre-packed under the Legal Metrology Act or requiring label declarations.	16/01/2025
02/2025	• Exempts the GST on gene therapy	16/01/2025
03/2025	• It adds a new item "(c) food inputs for (a) above" after the item (b) the Fortified Rice Kernel (Premix) supply for ICDS or similar government-approved schemes.	16/01/2025
04/2025	• GST rate increase from 12% to 18 % on sale of all old and used vehicles, including EVs other than those specified at 18%.	16/01/2025
05/2025	• Redefines "specified premises" to include: o Premises where the value of supply for hotel accommodation exceeds ₹7,500 per unit per day. o Where a registered person declares the premises as "specified" between 1st January and 31st March of the preceding financial year. o Where a new registrant files a declaration within 15 days of obtaining acknowledgment of registration • Annexures VII, VIII, and IX are introduced for opt-in and opt-out declarations for such premises. o The above declaration shall be filed on or after 1st of January of the preceding Financial Year but not later than 31st of March of the preceding Financial Year. o (for already registered persons) The above declaration shall be filed within fifteen days of obtaining acknowledgement for the registration application (for new taxpayers)	01/04/2025
06/2025	• Introduces new Entry No. 36B as services of insurance provided by the Motor Vehicle Accident Fund under the Motor Vehicles Act, 1988 with rate NIL. • Adds "training partners approved by the National Skill Development Corporation" to the Serial No. 69 in Tariff list of Services covered under GST. • Changes "transmission and distribution" to "transmission or distribution" in Entry No. 25A	16/01/2025
07/2025	• Sponsorship services provided by the body corporates has been brought under Forward Charge Mechanism – Body corporate has been excluded now in RCM Notification (Serial No. 4) • Serial No. 5AB now excludes persons who have opted for the composition levy from RCM on rent requirements.	16/01/2025
08/2025	• Updates the definition of "specified premises" to align with clause (xxxvi) of paragraph 4 of Notification No. 11/2017-Central Tax (Rate).	01/04/2025

Circulars

1. Clarifications regarding applicability of GST on co-insurance and re-insurance:

- Summarized below are clarifications on the taxability of co-insurance and re-insurance as recommended by the 53rd GST Council meeting:

  i. The apportionment of co-insurance premium by the lead insurer to the co-insurer and the deduction of ceding/reinsurance commission from the premium paid by insurers to reinsurers are now categorized as neither a supply of goods nor a supply of services under Schedule III of the CGST Act. However, it is mandatory that the lead insurer/reinsurer pay the applicable GST on the gross premium amount, including the ceding/reinsurance commission.

  ii. Further, GST payments on these transactions from 01.07.2017 to 31.10.2024 have been regularized on an 'as is where is' basis.

(Circular No. 244/01/2025 dated 28/01/2025)

2. Clarification regarding GST rates & classification:

- Summarized below are clarifications on the applicability of GST on certain services

  i. No GST is applicable on penal charges levied by regulated entities (banks/NBFCs) as per RBI guidelines.

  ii. Exemption on transactions up to ₹2,000 via payment cards extends to RBI-regulated Payment Aggregators but not to Payment Gateways.

  iii. GST on past Research and Development services funded by government grants (01.07.2017–09.10.2024) is regularized; This exemption applies from 10.10.2024.

  iv. GST exemption for Training Partners of National Skill Development Corporation (NSDC) is restored from 16.01.2025, and past payments (10.10.2024–15.01.2025) are regularized on 'as is where is' basis.

  v. GST is applicable on facility management services for Municipal Corporation of Delhi HQ as they are not linked to municipal functions under Article 243W of the constitution of India.

vi. Delhi Development Authority is not considered a 'local authority' under GST law.

vii. GST on reverse charge mechanism for unregistered-to-registered rentals is regularized (10.10.2024–15.01.2025) on 'as is where is' basis; composition taxpayers are excluded from RCM.

viii. Ancillary electricity services (meter rent, testing, shifting, etc.) are exempt from GST from 10.10.2024, with past GST payments (10.10.2024–15.01.2025) being regularized on 'as is where is' basis.

ix. Past GST payments for services by M/s Goethe Institute/Max Mueller Bhawans are regularized on 'as is where is' basis.

(Circular No. 245/02/2025 dated 28/01/2025)

3. Clarification on applicability of late fee for delay in furnishing of FORM GSTR-9C:

- Summarized below is the clarification on the on applicability of late fee for delay in furnishing of FORM GSTR-9C:

i. The circular addresses whether late fees under Section 47 of the CGST Act apply if FORM GSTR-9C is submitted after the due date of the annual return (FORM GSTR-9). It states that when the reconciliation statement is required but not filed along with the annual return, the return remains incomplete, and late fees become applicable. However, late fees are not imposed separately for FORM GSTR-9 and FORM GSTR-9C; instead, they are calculated based on the total delay until the complete annual return is filed.

ii. Additionally, a notification grants a waiver of late fees for delays in filing FORM GSTR-9C for financial years up to FY 2022-23, provided the reconciliation statement is submitted by March 31, 2025.

(Circular No. 246/03/2025 dated 30/01/2025)

Portal Updates

Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants:

- The requirement of Biometric-Based Aadhaar Authentication in the registration process has been rolled out in the following states on the following dates:

S. No.	States	Date
1.	Rajasthan	7th January 2025
2.	Tamil Nadu and Himachal Pradesh	28th January 2025

- After the submission of the application in Form GST REG-01, the applicant will receive either of the following links in the e-mail, either OTP-based Aadhaar Authentication or booking an appointment with GST Suvidha Kendra (GSK) for Biometric-based Aadhaar Authentication and document verification.
- If the applicant receives the link for OTP, he/she can proceed with the application as per the existing process and if the applicant receives the link for booking, then the applicant shall book an appointment to visit the designated GSK, within the permissible time.
- During the visit to GSK, the applicant shall also carry the prescribed documents for the verification of the same, post which ARN will be generated indicating the completion of the Aadhar authentication process.

Extension of E-Way Bills Expired on 31st December 2024.

- Due to earlier technical issues, E-way bills that lapsed on December 31, 2024, can be extended until midnight on January 1, 2025.
- Taxpayers and transporters who moved goods without generating e-way bills on December 31, 2024, because of the glitch should generate them on January 1, 2025.

Portal Updates

Enabling filing of Application for Rectification:

- The Central Government, through Notification No. 22/2024 – CT dated 08.10.2024, has permitted registered taxpayers to apply for rectification of demand orders related to wrongful ITC claims under section 16(4), provided the ITC is now admissible under the newly added sub-sections (5) and/or (6) of section 16.
- A dedicated feature has been introduced on the GST Portal, allowing taxpayers to submit rectification applications by navigating to Services > User Services > My Applications and selecting "Application for rectification of order."
- While filing the application, taxpayers are required to upload a duly filled Annexure A proforma, which can be downloaded from the Portal, along with the relevant details of the demand order.

Generation Date for Draft GSTR 2B for December 2024

- The Draft GSTR-2B for December 2024 (Quarter Oct-Dec 2024) will be generated on 16th January 2025, as per rule 60 of the CGST Rules, 2017, due to the extended due dates for GSTR-1 and GSTR-3B filings under Notifications No. 01/2025 and 02/2025 dated 10th January 2025, and taxpayers can recompute it if any action is taken in IMS after its generation.

Advisory for Waiver Scheme under Section 128A

- Taxpayers can now access Forms GST SPL 01 and GST SPL 02 on the GST Portal to submit applications under the waiver scheme, provided they meet the eligibility requirement of withdrawing any appeal applications (APL 01) related to the corresponding demand order/notice.
- For appeals filed after 21.03.2023, the withdrawal option is available directly on the Portal, whereas for appeals filed before this date, taxpayers must request withdrawal through the concerned Appellate Authority, which will forward the request to GSTN via the State Nodal Officer for backend processing.

Portal Updates

Implementation of mandatory mentioning of HSN codes in GSTR-1 & GSTR 1A

- Phase-III of the GSTR-1 & 1A implementation, effective from February 2025, replaces the manual entry of HSN with a dropdown selection and bifurcates Table-12 into two tabs, B2B and B2C, for separate reporting of supplies. Additionally, validation for supply values and tax amounts has been introduced, but during the initial period, these validations will only act as warnings, not blockers for filing GSTR-1 & 1A.

Advisory on Business Continuity for e-Invoice and e-Waybill Systems

- Taxpayers are encouraged to implement alternative mechanisms for e-Invoice and e-Waybill systems to maintain smooth operations during service disruptions, in collaboration with system integrators, IRPs, ERPs, GSPs, or ASPs.
- Currently, six Invoice Registration Portals (IRPs) are active, including the interoperable NIC-IRP 1 & 2, along with Cygnet, Clear, EY, and IRIS IRPs, with testing support available in the NIC sandbox environment.
- For e-Waybill operations, two portals—eWaybill1 and eWaybill2—are available to ensure system redundancy.
- A unified authentication token generated from any NIC-IRP or e-Waybill portal can be used across all NIC platforms, eliminating the need for multiple tokens.
- API users can take advantage of cross-portal functionalities, enabling tasks such as IRN generation, cancellation, e-Waybill creation, and data retrieval across NIC1 and NIC2.
- Taxpayers should ensure their systems support cross-portal API integration, work closely with service providers to activate alternative mechanisms, and consider utilizing additional IRPs beyond NIC-IRP 1 & 2 for improved system reliability.

Advisory on the Introduction of E-Way Bill (EWB) for Gold in Kerala State.

- Starting from January 20, 2025, a new option has been introduced in the E-Way Bill (EWB) system for generating EWBs for goods under Chapter 71 (excluding Imitation Jewellery, HSN 7117) for intrastate movement within Kerala.
- Taxpayers can continue to generate EWBs for Imitation Jewellery (HSN 7117) using the standard option in the EWB system.

Portal Updates

Hard - Locking of auto-populated liability in GSTR-3B

- The decision to restrict the editing of auto-populated liability in GSTR-3B, initially planned for the January 2025 tax period, has been postponed due to requests from the trade for more time.
- While this change will be implemented soon, taxpayers are advised to prepare in advance, and further notifications will be issued to inform the trade accordingly.

Indirect Tax Compliance Calendar for February 2025

February 2025

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	

Important Due Dates under Indirect Tax

Due Date	Description
10 February 2025	↳ Filing of GSTR-7 - By Tax Deductor for the month of January 2025. ↳ Filing of GSTR-8 - By E-Commerce Operator for the month of January 2025.
11 February 2025	↳ Monthly filing of GSTR-1 for the month of January 2025 (Regular taxpayers).
13 February 2025	↳ Filing of GSTR-1 IFF - By Taxpayers under QRMP Scheme for the month of January 2025. ↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of January 2025. ↳ Filing of GSTR-6 - By Input Service Distributor for the month of January 2025.
20 February 2025	↳ Filing of GSTR-3B (Regular Taxpayers) for the month of January 2025. ↳ Filing of GSTR-5A by OIDAR Service Providers for the month of January 2025.
25 February 2025	↳ GST PMT-06- Challan for depositing GST for the month of January 2025 by taxpayers who have opted for QRMP Scheme for the quarter January-March 2025.
28 February 2025	↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.

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