

# **GST CASE LAW CONNECT - PREPARED FOR IDTC OF ICAI**

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# Doctrine of Precedents

- Judicial decision-making shall entail consideration of not only the text of the law or the intention of the legislature (as can be gathered from the text/context), but shall also require consideration of principles of statutory interpretation as well as precedents established in other cases. The justification of following the precedents includes the importance of stability, respect for established expectations, decisional efficiency, the orderly development of the law, deference to ancestral wisdom, formal or comparative justice, fairness, integrity, the moral importance of treating like cases alike, and maintaining discipline and avoiding adventurism.

## **ARTICLE 141**

- Article 141 of the Constitution lays down that the law declared by the Supreme Court is binding upon all the courts within the territory of India. Further, Article 227 of the Constitution of India vests the power of superintendence in every High Court over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction.
- The Hon'ble Supreme Court in *Union of India vs. Kamalshi Finance Corporation Ltd. 1991 (55) E.L.T. 433 (S.C.)* held that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws." The Court here reprimanded and criticized the failure of the Assistant Collector to follow the orders of the higher appellate authority.
- In *K. Ajit Babu v. Union of India (1997) 6 SCC 473*, the Hon'ble Supreme Court has held that Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which future conduct may be based. One of the basic principles of administration of justice is that cases should be decided alike.

# Doctrine of Precedents

## Ratio decidendi

- It is the principle (called ratio), culled out from the reading of a judgment as a whole, in the light of the questions raised, upon which the case is decided, which creates a binding precedent.
- Hon'ble *Supreme Court in State of Orissa v. Mohd. Illiyas* (2006) 1 SCC 275 has held that according to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment”
- Hon'ble Supreme Court in *Fida Hussain v. Moradabad Development Authority*, (2011) 12 SCC 615 has held that it is settled law that a decision of this Court based on specific facts does not operate as a precedent for future cases. Only the principles of law that emanate from a judgment of this Court, which have aided in concluding the problem, are binding precedents within the meaning of Article 141. However, if the question of law before the Court is the same as in the previous case, the judgment of the Court in the former is binding on the latter, for the reason that the question of law before the Court is already settled. In other words, if the Court determines a certain issue for a certain set of facts, then that issue stands determined for any other matter on the same set of facts.”
- Hon'ble Supreme Court in *Ambica Quarry Works v. State of Gujarat*, (1987) 1 SCC 213 has culled out as to how the ratio of a particular case must be understood for application in a later case. The Hon'ble Court has held that the ratio of any decision must be understood in the background of the facts of that case. It has been said long ago that a case is only an authority for what it actually decides, and not what logically follows from it.
- Hon'ble Supreme Court in *Union of India v. Amrit Lal Manchanda* (2004) 3 SCC 75 observed that precedents should not be read as provisions of the Statute. The Court observed that to interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes; they do not interpret judgments.

# Exceptions to the doctrine of precedents

- Decisions given by the Supreme Court in special facts exercised under the powers of Article 142 (Power to do complete justice) (Indian Bank v. ABS Marine Products (P) Ltd. (2006) 5 SCC 72))
- A decision cannot be relied upon in support of a proposition that it did not decide. [Mittal Engg. Works (P) Ltd. v. CCE (1997) 1 SCC 203].
- A decision on a question which has not been argued cannot be treated as a precedent (Goodyear India Ltd. v. State of Haryana (1990) 2 SCC 71)
- Precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it. (State of Orissa v. Sudhansu Sekhar Misra AIR 1968 SC 647)
- Each case has its own peculiar facts, and it is therefore always risky to appeal to precedents on questions of fact. (Gurcharan Singh v. State of Punjab, AIR 1956 SC 460)
- Judicial interdict at the end of the judgment against treating the decision as precedent (Labha Ram and Sons v. State of Punjab (1998) 5 SCC 207)
- The dismissal of the SLP in limine (Om Prakash Gargi v. State of Punjab (1996) 11 SCC 399). However, dismissal of the appeal on merits, even without assigning reasons, will become a precedent applying the doctrine of merger.
- Obiter dicta - Pronouncements of law, which are not part of the ratio decidendi, are classed as obiter dicta and are not authoritative. (MCD v. Gurnam Kaur, (1989) 1 SCC 101)
- Per incuriam - A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. (MCD v. Gurnam Kaur, (1989) 1 SCC 101)
- Sub silentio - A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. (MCD v. Gurnam Kaur, (1989) 1 SCC 101)

# Nijumoni Gogoi v. Union of India — (2026) 42 Centax 233 (Gau.) [11-05-2026]

## Issue

- Whether cancellation of a transport service provider's GST registration for alleged non-filing of returns, effected through a vague SCN and a non-speaking cancellation order, was sustainable in law.
- Whether the delay of about one year in approaching the writ court barred relief despite the statutory and natural-justice breach.

## Rule

- Section 29(2)(c), CGST Act empowers cancellation where a registered person has not furnished returns for the prescribed continuous period.
- Rule 22 of the CGST Rules prescribes a structured procedure: SCN in FORM GST REG-17, reply in FORM GST REG-18, and a reasoned cancellation order in FORM GST REG-19 (or order dropping proceedings in FORM GST REG-20) — recording of reasons is a condition precedent to a valid cancellation order.
- An order causing adverse civil consequences must be a 'speaking order' as a matter of natural justice; absence of a reply from the noticee does not dispense with this duty.

## Application

- The SCN dated 12.02.2025 did not specify the months/period of default, and the cancellation order dated 17.04.2025 cited only 'Others — Rule 22(1)/21A(2A)' without assigning any reason.
- The Statement Table in the cancellation order showed no tax/cess due, undercutting any revenue justification for urgency.
- Revenue's plea that the petitioner had not availed revocation or appellate remedies did not cure the underlying non-speaking, non-compliant order.
- The one-year delay in filing the writ was held to be outweighed by the seriousness of the statutory breach (absence of reasons), given the civil consequences of cancellation.

## Conclusion

- The cancellation order was quashed for non-compliance with Rule 22 and breach of natural justice.
- Matter restored to the SCN stage; petitioner granted one month to either reply to the SCN or furnish pending returns with full tax, interest, late fee and penalty under the proviso to Rule 22(4), after which the Proper Officer must pass a fresh order under FORM GST REG-19 or REG-20.

# Mohammed Kamran v. Additional Director General, DGGI, Bangalore — (2026) 42 Centax 174 (Kar.) [30-04-2026]

## Issue

- Whether DGGI's investigation/attachment proceedings were barred under Section 6(2)(b) on the ground that the State GST authorities had already initiated proceedings on the same subject matter.
- Whether provisional attachment of bank accounts under Section 83 without prior (pre-decisional) notice — effected while the petitioner was in judicial custody — violated natural justice.
- Whether writ interference under Article 226 was warranted at the investigation stage given the gravity of fraud allegations and availability of statutory remedy.

## Rule

- Section 6(2)(b) bars parallel proceedings by Central and State authorities only where formal initiation on an identical subject matter/period is demonstrated with cogent material.
- Section 83 does not, expressly or by implication, mandate a pre-decisional hearing; Rule 159(5) provides a complete post-decisional remedy of objections, hearing and a reasoned order.
- Per *Radha Krishan Industries v. State of H.P.*, (2021) 6 SCC 771, provisional attachment is a protective measure exercisable during pendency of proceedings, balanced by post-attachment safeguards.

## Application

- The petitioner placed no document (no SCN, no record of adjudication) to show formal initiation by State GST authorities on an identical subject matter — the Section 6(2) plea was therefore unsubstantiated and premature.
- Following the Division Bench ruling in *Principal Commissioner v. Narasimhan Engineering Contractors (P.) Ltd.*, (2025) 35 Centax 273 (Kar.), courts cannot read a pre-hearing requirement into Section 83 that the legislature omitted.
- Allegations of fake invoices, circular trading and wrongful ITC through non-existent entities were inherently factual matters for adjudication, not writ-stage merits review; parallel proceedings were already under challenge in a separate, reserved writ petition.

## Conclusion

- Section 6(2) bar plea rejected as premature/unsupported by material.
- Absence of pre-decisional hearing under Section 83 held not to vitiate the attachment, given the complete post-decisional remedy under Rule 159(5).
- Writ petition disposed of; petitioner relegated to objections under Rule 159(5), attachment to abide by outcome of the connected, reserved writ petition.

# Ms. Riyan Enterprises v. State of Assam — (2026) 42 Centax 407 (Gau.) [13-05-2026]

## Issue

- Whether issuance only of a Summary Show Cause Notice in FORM GST DRC-01 (without a proper, prior SCN under Section 73(1)) validly initiated proceedings under Section 73.
- Whether the consequent demand order under Section 73(9) was sustainable absent a valid antecedent SCN.

## Rule

- Section 73(1) requires the Proper Officer to serve a substantive SCN; Section 73(3) separately permits a statement of tax determination; both must be issued by the Proper Officer.
- Rule 142(1)(a) requires only a 'summary' of the Section 73 notice in FORM GST DRC-01 to accompany the substantive SCN — the summary is not a substitute for the SCN itself.
- Per the Gauhati High Court's batch ruling in Construction Catalysers (P.) Ltd. v. State of Assam, (2024) 24 Centax 122 (Gau.), compliance with Section 73(1)-(11) and Rule 142 is a condition precedent to a valid order under Section 73(9).

## Application

- It was undisputed that only a Summary SCN (FORM GST DRC-01) was served on 18.12.2023; no proper, prior SCN under Section 73(1) was ever issued.
- Applying the binding precedent in Construction Catalysers and Prolay Dey Sarkar v. State of Assam, (2025) 36 Centax 291 (Gau.), the Court held the Summary SCN cannot substitute the statutory SCN required to 'set the proceedings in motion'.
- Respondents conceded that the earlier batch judgment's observations (including liberty to proceed de novo, and exclusion of the intervening period for limitation purposes) would govern this case.

## Conclusion

- The impugned order under Section 73(9) was quashed for non-issuance of a valid prior SCN; all consequential actions held infirm.
- Liberty granted to the department to initiate de novo proceedings with a valid SCN, with the period from the Summary SCN to service of the certified order excluded for computing the Section 73(10) limitation.

# D.P. Jain & Co. Infrastructure Pvt. Ltd. v. Union of India —

## (2026) 42 Centax 208 (Bom.) [06-05-2026]

### Issue

- Whether corporate guarantees executed without fee, commission or consideration by a holding company for loans of its group entities amount to a 'supply' liable to GST.
- Whether Rule 28(2) of the CGST Rules (deeming 1% p.a. of the guaranteed amount as taxable value) and related CBIC circulars are ultra vires/unconstitutional.

### Rule

- Under Sections 7 and 9, taxability of a transaction as 'supply' hinges on the presence of consideration.
- Per Commissioner v. Edelweiss Financial Services Ltd., (2023) 5 Centax 58 (S.C.), and settled jurisprudence, a strong presumption of constitutionality attaches to taxing statutes; courts exercise minimal interference in fiscal/economic legislation (Hoechst Pharmaceuticals; R.K. Garg; State of West Bengal v. Kesoram Industries).
- Mere inequality, heavy burden, or classification choices in economic legislation do not render a taxing provision unconstitutional.

### Application

- Each corporate guarantee deed expressly recorded that no security, fee, commission or other consideration was or would be received from the borrower group entities.
- The petitioner was not in the business of providing guarantees; the guarantees were in-house support to subsidiaries, distinguishable from bank guarantees which are customer-facing banking services.
- Since consideration — the core attribute of 'supply' — was contractually and factually absent, the transactions fell outside Sections 7/9 irrespective of Rule 28(2)'s deemed-valuation mechanism.
- On the separate constitutional challenge to Rule 28(2) and the CBIC circulars, the Court applied the deferential standard for fiscal measures and declined to strike down the Rule/circulars, treating valuation policy choices as within legislative play in the joints.

### Conclusion

- SCN demanding GST on the corporate guarantees was quashed since the guarantees, being without consideration, did not constitute 'supply'.
- Challenge to the vires of Rule 28(2) and the related CBIC circulars was rejected as unsustainable, applying the presumption of constitutionality for taxing measures.

# Fateh Education Consulting Pvt. Ltd. v. Assistant Commissioner, CGST Division, New Delhi — (2026) 42 Centax 468 (Del.) [08-05-2026]

## Issue

- Whether an education consultancy providing marketing/recruitment-support services to foreign universities, invoiced to and paid by those universities, is an 'intermediary' under Section 2(13) IGST Act merely because students in India are incidentally assisted.
- Whether the consequent rejection of the IGST refund on export of services was sustainable.

## Rule

- Section 2(13) defines 'intermediary' as one who arranges/facilitates supply between two other persons, excluding a person who supplies such goods/services on his own account.
- Per *Commissioner v. Global Opportunities (P.) Ltd.*, (2025) 36 Centax 47 (Del.), and *K.C. Overseas Education (P.) Ltd. v. Union of India*, (2025) 34 Centax 141 (Bom.) (SLP dismissed), the determinative factors are the contractual recipient of service, the person liable to pay consideration, and the nature of the service — not the location of an incidentally benefited third party (the student).

## Application

- The petitioner received consideration only from the foreign universities, charged no fee from students, had no authority to bind the universities, and could not guarantee admission — facts mirroring *Global Opportunities* and *K.C. Overseas Education*.
- The Revenue Department fairly conceded that the issue was squarely covered by *Global Opportunities* and that the present facts were materially similar.
- The impugned order's reliance on promotional/recruitment-support activity and commission alone, without regard to absence of authority to bind the university or fee-charging from students, was held to be a misapplication of binding precedent.

## Conclusion

- The order rejecting the IGST refund by treating the petitioner as an 'intermediary' was set aside.
- Refund of IGST on export of services directed to be processed and granted with applicable statutory interest within two months.

# Smt Bina Taipodia v. Union of India — Case No. WP(C)/212/2026 (Gauhati High Court, Itanagar Bench) [18-05-2026]

## Issue

- Whether a sole proprietor whose GST registration was cancelled for non-filing of returns (after non-receipt/non-response to an SCN) is entitled to restoration upon subsequently filing returns and paying the requisite tax.

## Rule

- Rule 22(4) proviso permits dropping of cancellation proceedings where the noticee furnishes all pending returns and makes full payment of tax, interest and late fee, even after the SCN stage.
- Following the Court's own consistent line of decisions (*Dug Rade v. Union of India*; *Pankaj Mohan v. Union of India*; *Dhirghat Hardware Stores*; *Sanjoy Nath v. Union of India*), cancellation for return-default, once cured by compliance, warrants restoration rather than permanent exclusion from the GST regime.

## Application

- The petitioner did not receive the SCN dated 07.10.2024 (attributing it to health issues) and consequently could not reply; the resulting cancellation order dated 29.05.2025 followed.
- The petitioner subsequently paid the requisite tax on 23.04.2026, but delay in the restoration application meant registration could not be administratively restored without court intervention.
- Both counsel agreed the case was squarely covered by the Court's recent precedents granting similar relief on near-identical facts.

## Conclusion

- Writ petition disposed of; petitioner directed to file a restoration application within 20 days.
- Respondent authorities directed to verify compliance and restore the GST registration within 4 weeks of the application, in accordance with Rule 22(4).

# SNS Minerals Private Limited v. Assistant Commissioner and Others — Writ Petition No. 9413 of 2023 (Madhya Pradesh High Court, Jabalpur) [05-05-2026]

## Issue

- Whether a writ petition challenging an Order-in-Appeal that reversed an earlier refund-sanctioning Order-in-Appeal (on the ground the Department itself had appealed the refund-sanction order) should be entertained on merits, now that the GST Appellate Tribunal stands constituted and operational.
- Whether the appellate authority's later order amounted to impermissibly 'sitting in appeal' over its own earlier, final order.

## Rule

- Per Whirlpool Corporation v. Registrar of Trade Marks, (1998) 8 SCC 1, and Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771, the alternative-remedy rule yields only in limited circumstances: fundamental rights enforcement, breach of natural justice, orders wholly without jurisdiction, or vires challenge.
- Once a statutory forum (here, the GST Appellate Tribunal) is constituted and operational, the High Court should ordinarily relegate parties to that forum rather than examine merits under Article 226.

## Application

- None of the four recognised exceptions to the alternative-remedy bar was attracted: the petitioner was afforded a hearing (no natural justice breach), did not challenge the authority's jurisdiction to issue SCN/decide appeal, and did not challenge any statute's vires.
- The GST Appellate Tribunal had since become functional in Madhya Pradesh with Presiding Officers appointed, removing the original justification (Tribunal's non-constitution) for entertaining the writ in 2023.
- The Court declined to adjudicate the competing 'finality of the earlier Order-in-Appeal' versus 'Department's right to challenge an erroneous refund sanction' contentions, holding these were appropriately matters for the Tribunal.

## Conclusion

- Writ petition dismissed with liberty to file a statutory appeal before the GST Appellate Tribunal against the impugned Order-in-Appeal.
- Interim relief to continue until the stay application is decided by the Tribunal

# M/s Raja Supari Processing Unit v. Union of India and Anr. — WPA 647 of 2026 (Calcutta High Court, Circuit Bench, Jalpaiguri) [18-05-2026]

## Issue

- Whether a consignor whose perishable goods (dried areca nuts) were detained in transit, with demand raised under Section 129(1)(a)/(b), was entitled to release of the consignment upon compliance with Section 129(1)(a), without the revenue having shown unimpeachable evidence disputing ownership.

## Rule

- Section 129(1)(a) of the CGST Act permits release of detained goods on payment of the prescribed penalty where the owner comes forward; the higher penalty under Section 129(1)(b) applies where ownership is not established.
- Following the Court's own coordinate decision in Ranjeet Kumar Poddar v. Assistant Commissioner of CGST & CX, WPA 622 of 2026 (14-05-2026, unappealed), release under Section 129(1)(a) was permitted on identical facts and law.

## Application

- The goods were perishable and the revenue's detention order/demand did not point to any concrete evidence that the petitioner was not the owner of the consignment.
- Revenue confirmed that the precedent relied upon (Ranjeet Kumar Poddar) had not been appealed, supporting consistent application.

## Conclusion

- Consignment ordered released within three days of deposit under Section 129(1)(a), irrespective of the conveyance owner's separate compliance.
- If the petitioner fails to file a statutory appeal within three weeks (or beyond limitation) and the demand attains finality, revenue is free to proceed for recovery in accordance with law.

# M.M. Traders v. State of U.P. — [2026] 187 taxmann.com 714 (Allahabad) [22-01-2026]

## Issue

- Whether a writ petition entertained solely because the GST Appellate Tribunal under Section 112 was not constituted should continue to be examined on merits, once the Tribunal became operational with appointed President/Members and a notified procedure.

## Rule

- Section 112 read with Sections 107/108 contemplates a statutory appeal before the GST Appellate Tribunal; courts entertaining writs in the interregnum (pre-constitution of the Tribunal) do so as a stop-gap measure only.
- Notification dated 17.09.2025 prescribed a window (up to 30.06.2026) for filing appeals before the now-operational Tribunal without raising limitation objections.

## Application

- The Central Government had constituted the Tribunal (24.09.2025), appointed Members (26.12.2025, joining by 21.01.2026) and notified procedural rules (24.04.2025) — the Tribunal's functioning was thus 'put into motion'.
- No useful purpose remained in retaining the writ before the High Court once the dedicated forum became available.

## Conclusion

- Writ disposed of without examining the merits/legality of the impugned orders; petitioner permitted to file a statutory appeal before the Tribunal up to 30.06.2026 without a limitation objection.
- Amount deposited under the interim order to be treated as compliance with the Section 112(8) pre-deposit on production of certified copy and proof of deposit; appeal to be decided on merits, with defect-curing timelines specified

# M.M. Traders v. State of U.P. — (2026) 43 Centax 379 (S.C.) [25-05-2026]

## Issue

- Whether the Allahabad High Court's direction in M.M. Traders ([2026] 187 taxmann.com 714 (All.)), relegating the assessee to a Tribunal appeal subject to Section 112(8) pre-deposit, ought to apply where the appealable order predates the amendment introducing the pre-deposit requirement.

## Rule

- Statutory amendments imposing fresh procedural/financial conditions (such as enhanced or new pre-deposit requirements) ordinarily do not apply retrospectively to the lis created before the amendment's effective date, absent express provision.

## Application

- The petitioner contended the appealable order was passed on 01.01.2025, while the pre-deposit amendment came into force only on 01.10.2025 — i.e., before the condition existed.
- On this prima facie ground, the Supreme Court issued notice on the delay-condonation application and the SLP, and granted interim relief permitting the appeal to be entertained without insisting on pre-deposit pending final disposal.

## Conclusion

- Notice issued, returnable 14.08.2026.
- Petitioner permitted to file the appeal before the GST Appellate Tribunal without a pre-deposit, subject to the outcome of the SLP

# Directorate General of GST Intelligence (HQS) v. Gameskraft Technologies Pvt. Ltd. — (2026) 42 Centax 495 (S.C.) [27-05-2026]

## Issue

- Whether organised online gaming activities (including fantasy sports and similar formats involving pooled stakes on uncertain outcomes) constitute 'betting and gambling' giving rise to actionable-claim supplies exigible to GST, irrespective of whether the underlying game involves skill or chance.
- Whether Sections 2(31), 2(52), 7, 9 and 15 of the CGST Act, and Rules 31A, 31B and 31C of the CGST Rules (including the valuation methodology taxing the full stake amount rather than the platform's retained commission), are constitutionally and statutorily valid.
- Whether the 2023 amendments (carving out 'online money gaming' and inserting Rules 31B/31C) were clarificatory/retrospective or created a new tax liability only from 01.10.2023.

## Rule

- Under the Transfer of Property Act, 1882, 'actionable claim' is not confined to State-conferred/sovereign-grant rights; Section 2(52) CGST Act includes actionable claims within 'goods'.
- Article 246A confers wide legislative competence on Parliament/State Legislatures to levy GST on any taxable supply, including supplies of actionable claims arising from betting and gambling; economic/fiscal legislation enjoys a strong presumption of constitutionality and wide legislative latitude in classification (applying the Junglee Games line of authority, (2026) 43 Centax 33 (S.C.)).
- Rule 31A is traceable to Sections 15(4)/15(5) and 164; Sections 15(1), 15(4) and 15(5) operate harmoniously, with Rule 31A(3) clarifying that taxable value is the entire amount staked, not merely retained commission.
- Marginal notes cannot control the plain meaning of statutory text; legislative intent is gathered primarily from the language of the enactment; dismissal of an SLP in limine, without a speaking order, does not attract the doctrine of merger or constitute binding precedent.

# Gameskraft Technologies Pvt. Ltd [Continued...]

## Application

- Every game, of skill or chance involves an outcome uncertain at the commencement of play; once money is risked on that uncertain outcome, the activity acquires the character of betting/gambling regardless of whether it is skill-predominant, and regardless of whether the person staking is the player or merely a participant/spectator.
- Online gaming platforms facilitate a commercial arrangement in which beneficial interests (actionable claims) arise upon player participation; the taxable event is the supply occurring within the betting/gaming transaction itself, not the eventual payout of winnings.
- The 2023 carve-out for 'online money gaming' and insertion of Rules 31B/31C were held clarificatory/explanatory and operative retrospectively, rather than creating a wholly new liability prospectively from 01.10.2023.
- Challenges founded on absence of formal 'transfer', absence of a specific HSN entry, or alleged service-classification were rejected as misconceived, tariff entries being procedural/administrative rather than determinative of taxability.
- For pre-amendment casino transactions lacking complete contemporaneous records, recourse to best-judgment valuation under Rule 31 (read with Rules 31A/31C) was held permissible, with the statutory valuation measure under Rule 31C applying retrospectively.

## Conclusion

- Online gaming activities involving pooled stakes on uncertain outcomes (including fantasy sports) held to constitute actionable-claim supplies of betting and gambling, exigible to GST under Sections 7 and 9 read with Schedule III Entry 6.
- Constitutional and statutory challenge to Sections 2(31), 2(52), 7, 9, 15 and Rules 31A, 31B and 31C rejected; the levy and the deemed-valuation methodology (taxing the entire stake) upheld as intra vires and constitutionally valid under Article 246A.
- 2023 amendments held clarificatory and retrospective

# Maruti Enterprise v. Union of India — (2026) 42 Centax 256 (Guj.)/2026 (109) G.S.T.L. 97 (Guj.) [01-05-2026]

## Issue

- Whether Section 16(2)(c) of the CGST Act is unconstitutional and violative of Articles 14, 19(1)(g), 265 and 300A, given that a bona fide purchaser has no means of verifying or compelling such payment by the supplier;
- In the alternative, whether the provision should be read down to confine ITC denial to fraudulent or collusive transactions, excluding genuine purchasers who have satisfied clauses (a), (aa), (b) and (ba) of Section 16(2).

## Rule

- The Statement of Objects and Reasons to the CGST Bill, 2017 (clause 5(b)) expressly ties availability of ITC to "taxes paid," confirming that Section 16(2)(c) is integral to the statutory design rather than a clause that can be severed from clauses (a), (aa), (b) and (ba).
- ITC is a statutory concession, not a constitutional or vested right, and conditions attached to such a concession (per *ALD Automotive (P.) Ltd. v. CTO*, 2018 (364) E.L.T. 3 (S.C.); *State of Karnataka v. Ecom Gill Coffee Trading (P.) Ltd.*, (2023) 4 Centax 223 (S.C.)) must be strictly complied with.
- Section 155 places the burden of proving ITC eligibility — including actual payment by the supplier — on the claimant. Section 41(2), introduced by the Finance Act 2022, mandates reversal of ITC on supplier default but allows re-availment once the supplier pays, with the mechanics operationalised through Rule 37A (allowing recipients to retain credit until a prescribed cut-off and re-avail it the month after the supplier remits tax). Section 53 requires the originating State to transfer the IGST component to the destination State on inter-State supplies, making strict linkage between credit and actual tax payment essential to the destination-based GST architecture.
- The doctrine of reading down (per *Authorised Officer, CBI v. Shanmugavelu*, (2024) 6 SCC 641) is available only where a provision's plain meaning generates a constitutional or legal infirmity — harshness alone is not a ground to read down an otherwise unambiguous provision.

# Maruti Enterprise [Continued]

## Application

- The Court found the petitioners' reliance on *On Quest Merchandising India (P.) Ltd. v. Government of NCT of Delhi, 2018 (10) G.S.T.L. 182 (Del.)* (affirmed in *Arise India Ltd. and Shanti Kiran India (P.) Ltd.*) to be misplaced, since those cases construed Section 9(2)(g) of the Delhi VAT Act — a provision conspicuously lacking any counterpart to Section 41(2), Section 53 or Rule 37A of the CGST Rules.
- The DVAT regime was confined to a single originating state, whereas GST is destination-based and requires inter-state settlement via the IGST mechanism, making strict compliance with Section 16(2)(c) essential to prevent the originating State from being compelled to transfer funds it never received.
- The Court rejected the petitioners' contention that genuineness is fully secured by clauses (a), (aa), (b) and (ba) alone, holding that all conditions in Section 16(2) must be read conjointly — eligibility crystallises only once clause (c) (actual payment by supplier) is also satisfied, and the burden under Section 155 extends to establishing this fact.
- The "Lex Non Cogit Ad Impossibilia" argument was addressed but found inapplicable, since Section 41(2) read with Rule 37A already shields purchasers from permanent loss (allowing reversal-and-re-availment) and purchasers retain contractual freedom to build indemnity clauses into supply agreements to allocate this risk. The double-taxation argument was rejected because reversal/re-availment under Section 41(2) ensures the purchaser is not permanently out of pocket once the supplier eventually pays.
- The Court distinguished the contrary High Court rulings (*Tallam Apparels, Sahil Enterprises*) as having followed *On Quest Merchandising* without considering Section 41(2)/Section 53/Section 155, and aligned itself instead with the Kerala High Court's reasoning in *M. Trade Links v. Union of India, (2024) 19 Centax 131 (Ker.)*, and the Supreme Court's approach in *Ecom Gill Coffee Trading*.

## Conclusion

- Section 16(2)(c) was held not to suffer from any constitutional or legal infirmity warranting reading down; clauses (a) to (d) of Section 16(2) must be satisfied conjointly, and ITC is a statutory concession (not a vested right) conditioned on actual tax payment by the supplier, safeguarded for genuine purchasers through the reversal-and-re-availment mechanism under Section 41(2) read with Rule 37A.
- Constitutional challenge to Section 16(2)(c) under Articles 14, 19(1)(g), 265 and 300A was rejected, and the plea for reading down the provision was declined. While upholding the provision, the Court expressed concern for genuine purchasers and urged the Government to consider legislative/technological measures (real-time supplier-payment tracking) to reduce hardship, and directed prompt recovery action against defaulting suppliers rather than burdening purchasers with cumbersome remedies.

# **Thanks**

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