The Institute of Chartered Accountants of India

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST & INDIRECT TAXES COMMITTEE

GST Case Law Connect - A Monthly Webinar Series

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"The Mahabharata tells us that Dharma exists for the stability of society, social order and the welfare of humankind.

Tax law, too, is ultimately about maintaining that social compact—revenue for the State, certainty for business and fairness for the taxpayer.

The jurisprudential question arises when one of these begins to overwhelm the others."

Sr No	Case	Forum	Theme
1	Bhandari Scrap Traders v. UOI	Supreme Court	Constitutional validity of S.16(2)(c) — ITC conditionality
2	SEPL Infra (P) Ltd. v. JCCT (Appeals)	Karnataka HC	Writ jurisdiction; condonation of delay; garnishee
3	Dilip Babubhai Patel v. State of Gujarat	Gujarat HC	Transitional ITC — non-refundability u/s 54(3)
4	Sodexo India Services (P) Ltd. v. UOI	Delhi HC	Maintainability of writ vs. statutory appeal; natural justice
5	SDE Engineers Ltd. v. Commercial Tax Officer	Telangana HC	Transfer of right to use goods — composite lease amenities
6	Luxmi Traders v. UT of Chandigarh	Punjab & Haryana HC	Validity of service via GST portal upload
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8	Shyam Traders v. State of West Bengal	Calcutta HC	Appellate Authority's remand power u/s 107(11)
9	G.R. Infra Projects Ltd. v. State of MP	Supreme Court (SLP — interim)	SCN validity — material particulars u/s 74
10	Asia Sugar & Chemical Co. v. State of Karnataka	Supreme Court	Retrospective withdrawal of exemption; penalty/interest
11	Gaurav Jain & Anr. v. JC (Appeals-II), CGST Delhi	Delhi HC	Vested right of appeal; S.107(6) pre-deposit temporality
12	Torrent Power Ltd. v. UOI	Gujarat HC	Corporate guarantees; Rule 28(2) retrospective valuation
13	M/s Fastenex (P) Ltd. v. State Tax Officer	Madras HC	SCN threshold u/s 74; multi-year notices

Issues Relating to Levy & Valuation

Asia Sugar & Chemical Co., Davangere v. State of Karnataka & Ors

Civil Appeal No. 48 of 2009
Supreme Court of India
Date: Decided 13.07.2026

Fundamental Legal Question

Can an Exempt Commodity be retrospectively excluded from exemption and subjected to tax for past periods?

Asia Sugar & Chemical Co., Davangere v. State of Karnataka & Ors

Background and Factual Matrix

- Prior to a 2001 amendment, imported sugar was covered by the sales-tax exemption entry under the Karnataka Sales Tax Act, 1957.
- Dealers, including the appellant, did not collect sales tax from purchasers because imported sugar was treated as exempt — both by the statute as it then stood and by the Department's own contemporaneous assessments.
- A 2001 amendment (Karnataka Act No. 5 of 2001) inserted the words 'produced or manufactured in India' into the exemption entry, with retrospective effect, thereby excluding imported sugar from the exemption for past assessment years and triggering reassessment proceedings

Core Legal Issue(s) Involved

- Whether the Karnataka Legislature possessed competence to retrospectively withdraw a sales-tax exemption previously available and acted upon.
- Whether retrospectivity alone renders a fiscal amendment unconstitutional.
- Whether penalty and interest could be imposed/charged retrospectively on dealers who complied with the law as it stood at the time of the original transactions.

Asia Sugar & Chemical Co., Davangere v. State of Karnataka & Ors

Rulings & Judicial Observations

- State Legislature was competent to enact the 2001 amendment retrospectively.
- The contention that retrospectivity by itself renders the law unconstitutional is rejected.
- The amendment is not merely clarificatory. It substantively restricts an exemption which was earlier available to imported sugar. However, such retrospective restriction is not unconstitutional per se.'
- The State is entitled to determine and recover the principal tax liability, if any, upon lawful reassessment and recomputation.

Rulings & Judicial Observations

- **'Penalty presupposes culpability**, default, deliberate breach or at least failure to comply with an existing obligation. It would be **contrary to the basic notions of fairness** to impose penalty on a dealer who did not collect tax because the statute, the judicial understanding and the Department's own assessment treated the commodity as exempt.' **No penalty could be imposed**.
- 'Interest also cannot be treated mechanically… where the liability itself is created retrospectively by a subsequent amendment, and where the assessee could not have collected tax at the time of sale, **the levy of interest from the date of the original transaction would, in substance, operate punitively.'** Interest, if leviable at all, runs only from the date of lawful demand raised pursuant to reassessment, not from the original transaction date.

Torrent Power Ltd. v. Union of India & Ors

SPECIAL CIVIL APPLICATION NO. 12175 of 2024
High Court of Gujarat
Date: Decided 14.08.2026

Fundamental Legal Question

Can a valuation rule introduced subsequently be applied to transactions or taxable events that arose before the rule came into force?

Torrent Power Ltd. v. Union of India & Ors

Background and Factual Matrix

- Torrent Power Limited furnished corporate guarantees to its subsidiaries (as a holding company) without charging consideration,
- It challenged the vires of Rule 28(2) of the CGST Rules, 2017 and, to a limited extent, Section 164(3) of the CGST Act, seeking a declaration that Rule 28(2) is ultra vires Articles 14, 19(1)(g) and 265 of the Constitution.
- Rule 28(2) — inserted with effect from 26.10.2023 and amended on 10.07.2024 was sought to be applied to corporate guarantees executed years before its introduction
- Revenue invoking Section 74 against the corporate guarantor via a SCN dated 01.08.2024

Core Legal Issue(s) Involved

- Whether Rule 28(2) of the CGST Rules — deeming the value to be 1% of the guaranteed amount per annum, or the actual consideration, whichever is higher — is constitutionally valid.
- Whether GST can be retrospectively levied on 'continuing' corporate guarantees executed before Rule 28(2)'s introduction.
- Whether invocation of Section 74 (extended limitation) was justified against a guarantor whose guarantee predated the GST regime and whose relationship was merely intra-group holding/subsidiary..

Torrent Power Ltd. v. Union of India & Ors

Rulings & Judicial Observations

- **legislative intent of GST laws has been threadbare examined by the Supreme Court in case of Union of India and Another Vs. Mohit Minerals and recent decision in case of Gameskraft.**
- *51.8 Section 7 defines "supply" "with a broad brush" and adopts an inclusive and expansive framework. The court further recognised that GST regime marks a decisive departure from the earlier sale-centric taxation model and instead adopts a supply-centric and destination based structure. The emphasis under GST is therefore upon taxing economic supplies rather than rigidly compartmentalising transactions into conventional categories of goods and services. The following paragraphs are pertinent*

Rulings & Judicial Observations

- Is there a supply by Holding to Subsidiary?
- *Interweaving statutory intention of Section 126, 127, 140 and 145 of the Indian Contract Act, 1872, and on examination of the nature of corporate guarantee, it can be safely held that the petitioners – Holding Companies are "related persons" as per Explanation under Section 15 of the CGST Act, to their subsidiaries, and their execution of corporate guarantee without consideration will satisfy the expression "supply of services" in the course of business" as envisaged in Section 7(1)(a) of the CGST Act read with Schedule I, Article 2 of the CGST Act.* (Para 35)

Torrent Power Ltd. v. Union of India & Ors

Rulings & Judicial Observations

- Whether Holding subsidiary are Related?
- *Yes. (Para 36)*

- Does providing Corporate Guarantee satisfy Business Test?
- *The fate of business activity of the subsidiary hinges on the guarantee extended to it by the Holding Company making it eligible for loan, and reciprocally, the Holding Company is benefited by business expansion/activity. This activity will satisfy the ingredients of expression "during the course of business" of Article 2 of Schedule I, and definition of "business" under Section 2(17) of the CGST Act. (Para 40)*

Rulings & Judicial Observations

- What is the nature of supply ?
- *A corporate guarantee as sought by the subsidiary from the Holding Company and acknowledged by the Holding Company for fulfillment of its financial security will fall within the expression "agreeing to do an obligation to do an act". Hence, as a sequel will be considered as "supply of services" under Article 5(e) of II Schedule of the CGST Act.* (Para 46).
- Is Subsidiary Recipient of Service?
- *The supply of services through the corporate guarantee furnished by the Holding Company ultimately accrues to and terminates with the subsidiary company. As the ultimate beneficiary and recipient of the service, the subsidiary company qualifies as a "recipient" within the meaning of Section 2(93) of the CGST Act.* (Para 49)

Torrent Power Ltd. v. Union of India & Ors

Rulings & Judicial Observations

- Whether Corporate Guarantee is actionable claim?
- *Albeit a corporate guarantee is contingent in nature, it does not stricto sensu falls under actionable claim as defined under section 3 of the TP Act, 1882. (Para 55)*

- WHETHER CORPORATE GUARANTEE IS A SHAREHOLDER ACTIVITY?
- *No. This arraignment/obligation in the pledge agreement satisfies the ingredients of Sections 126 and 172 of the Contract Act. (Para 61)*

Rulings & Judicial Observations

- TIME OF SUPPLY AND TAXABLE EVENT?
- The time of supply has to be determined by resorting to Section 13(2)(c) of the CGST Act which stipulates the date on which the recipient shows the receipt of services in his books of accounts, as the time of supply of services. Consequently, when the subsidiary company reflects the guarantee extended by the Holding Company in its books of accounts, that date will constitute the time of supply of services, and the date has direct bearing on the outstanding balance for each financial year.
- Where there is no actual consideration involved, once the corporate guarantee deed is executed by the guarantor, the activity of provision of guarantee is crystallized. It is only the operation of the guarantee that is continuous over a period.(Para 64)

Torrent Power Ltd. v. Union of India & Ors

Rulings & Judicial Observations

- WHETHER CORPORATE GUARANTEE IS CONTINUOUS SUPPLY UNDER SECTION 2(33) OF THE CGST ACT?
- *No, since the guarantor-Holding Company does not render supply of service continuously or on recurrent basis with periodic payment obligations, more particularly, when the corporate guarantee is without consideration. Corporate guarantee is one time undertaking, with continuing obligation, the quintessential feature of periodic payment is absent. (Para 67)*

- DETERMINATION OF VALUE OF CORPORATE GUARANTEE
- *A shared reading of the provisions of Section 2(87), Section 15(5) of the CGST Act manifest that valuation of supply of corporate guarantee*

Rulings & Judicial Observations

- *culminates in Rule 28(2) of the CGST Rules between related persons like Holding Company and the subsidiary. In view of the observations of the Apex Court in Gameskraft,* ***we uphold the validity of Rule 28(2) and Section 15(4) of the CGST Act.*** *(Para 72)*

- VALIDITY OF 1% VALUATION ON CORPORATE GUARANTEE
- *The provision of Rule 28(2) can be saved if the expression "whichever is higher" is read down, since the option of determination of value is still available on actual consideration or 1%.*
- *the expression "whichever is higher" shall be read down, since the expression "whichever is higher" is arbitrary as it does not confer any option to the corporate guarantor to pay GST on the actual commission/charge. (Para 110)*

Torrent Power Ltd. v. Union of India & Ors

Rulings & Judicial Observations

- RETROACTIVE EFFECT OF RULE 28(2) OF THE CGST RULES?
- *The retroactive effect impinges the fundamental rights under Article 14 and 19(1)(g). Thus, the imposition of levy of GST on **1% valuation per annum to the corporate guarantee prior to the introduction of Rule 28(2) of the CGST Rules w.e.f 26.10.2023 is harsh and unfair** to the tax payers. The collection of tax for the period prior to introduction of Rule 28(2), will also be hit by the doctrine of unjust enrichment, since the revenue had no legal basis or authority to levy GST on corporate guarantee, which were executed prior to the date of introduction.*
- *However, **the levy is permissible, if the period crosses the date** of introduction of Rule 28(2), as the taxable event occurs every years (Para 114)*

Rulings & Judicial Observations

- INVOCATION OF SECTION 74 OF GST ON THE CORPORATE GUARANTEE
- *It further held that mere failure to declare does not amount to willful suppression. Albeit, Explanation 2 defines 'suppression'; its ingredients will only get satisfied by some positive act of the assessee which establishes willful suppression by withholding vital information for evading tax. **We do not find that there was any intention to evade payment of tax or that the assessee was guilty of fraud, collusion, misconduct or suppression of facts.***
- (Para 121)
- The Bombay High Court (Nagpur Bench) (D.P. Jain & Co. Infrastructure Pvt. Ltd. v. Union of India May 2026) - corporate guarantees issued by a company for its subsidiaries without any consideration are not taxable as a supply of service under the GST.

M/s. SDE Engineers Limited & Others v. Commercial Tax Officer

W.P. Nos. 9991, 3865 & 3866 of 2009
High Court of Telangana
Coram: Division Bench
Decided 03.07.2026

Fundamental Legal Question

What is the decisive factor wrt deemed sale ie 'transfer of the right to use goods' ?

Torrent Power Ltd. v. Union of India & Ors

Background and Factual Matrix

- IT-park developers leased commercial premises together with common amenities (air-conditioning, power infrastructure, DG sets, lifts, furniture, kitchen/cafeteria facilities) to tenant IT companies, with the lease consideration bifurcated between rent for immovable property and rent for movable fixtures/furniture.
- The Revenue accepted that rent on the immovable component was not exigible to VAT but sought **to tax the furniture/fixtures component as a 'transfer of the right to use goods' under Article 366(29A)(d)** read with Section 5E of the APGST Act

Core Legal Issue(s) Involved

- Whether consideration for furniture, fixtures and common amenities bundled with a commercial lease constitutes a taxable deemed sale (transfer of right to use goods)?
- Whether shared use of facilities by multiple tenants negates the 'exclusivity' element essential to a transfer of right to use?

Torrent Power Ltd. v. Union of India & Ors

Rulings & Judicial Observations

- Applying the Bharat Sanchar Nigam Ltd. v. Union of India tests, the Court found that **specific goods were never identified for transfer,** there was no consensus ad idem on identified goods, and **effective control and possession remained with the landlords** — the landlords retained power to regulate, repair, suspend or discontinue the facilities.
- The **requirement of exclusive use was not satisfied**, since several facilities were shared across multiple tenants (and in some instances used by the landlords themselves) — this defeated the deemed-sale characterisation regardless of whether tenants derived beneficial use.

Rulings & Judicial Observations

- **Held:** The furniture/fixtures/amenities component was an **incidental facility forming part of a composite leasing arrangement** (a contract of service), not an independent transfer of right to use goods; the assessment orders and consequential demands were set aside.

Issues Relating to Input Tax Credit

Bhandari Scrap Traders v. Union of India

Appeal (C) No. 23931 of 2026 with SLP (C) Nos. 24088 & 24103 of 2026
Supreme Court of India
Coram: Division Bench
Date: Decided 24.07.2026

Fundamental Legal Question

Can a provision be struck down/read down on the premise that it creates undue hardship or is unequitable ?

Bhandari Scrap Traders v. Union of India

Background and Factual Matrix

- The Revenue denied Input Tax Credit (ITC) to the appellant on the ground that its suppliers had failed to deposit the collected GST with the Government, notwithstanding the appellant's compliance with every other statutory condition for availing credit.
- The denial was grounded in Section 16(2)(c) of the CGST Act, 2017, which conditions ITC on actual payment of tax by the supplier.
- The Gujarat High Court, in Maruti Enterprise v. Union of India & Ors., had earlier upheld the constitutional validity of Section 16(2)(c) and declined to read it down.
- The present appeal, via Special Leave Petitions, challenged that outcome before the Supreme Court

Core Legal Issue(s) Involved

- Whether Section 16(2)(c) — conditioning ITC availment upon the supplier's actual deposit of tax — violates Articles 14, 19(1)(g), 265, or 300A of the Constitution.
- Whether the provision must be read down to protect bona fide purchasers from denial of ITC caused solely by supplier default outside the recipient's control.

Bhandari Scrap Traders v. Union of India

Rulings & Judicial Observations

- **Distinguishing Sahil Enterprises**
- *We find from the judgment passed by the High Court of Tripura that **the exercise undertaken by the High Court of Gujarat in the judgment, presently under challenge, was not undertaken** by it. (Para 1)*

- **Upholding Maruti Enterprises**
- *Further, **the High Court of Gujarat has also referred to the provisions of Section 41** of the CGST Act and also Sections 73 and 74 thereof in the context of the purchasing dealer under the CGST regime being **entitled to re-avail the reversed ITC** after the supplier-dealer is made to discharge the tax liability. (Para 3)*

Rulings & Judicial Observations

- **Distinguishing Shanti Kiran and Arise India(DVAT)**
- The distinction and differences between the *provisions of the Delhi Value Added Tax Act, 2004, and the Central Goods and Services Tax Act, 20172, brought out by way of a detailed analysis from paragraph 42 onwards in the impugned judgment along with the scheme of availing Input Tax Credit (ITC) under the GST regime, as set out in paragraph 56 of the impugned judgment, clearly demonstrate that **there is no possibility of drawing parity between the provisions of the two enactments**, so as to treat a purchasing dealer under the CGST Act on par with a purported bona fide purchasing dealer under the Delhi VAT Act in relation to ITC, when the supplier-dealer fails to pay the requisite tax. (Para 2)*

Bhandari Scrap Traders v. Union of India

Rulings & Judicial Observations

- **The Judgement**
- *In that view of the matter, the High Court was fully justified in holding that **no grounds were made out to declare Section 16(2) (c) of the CGST Act as unconstitutional or read down the provisions thereof.***
- ***We find ourselves in complete and respectful agreement with the views expressed by the High Court of Gujarat and affirm and uphold the impugned judgment.**(Para 4)*

Rulings & Judicial Observations

- **Judgement Paras of Maruti Enterprises (Guj HC)**
- Para 87 *: It is not the case of the Government/department that it is destitute or is vulnerable to the inaction of the seller who has not paid the tax. The Act provides the authorities with enough power to proceed against the selling dealer for recovery of tax. Sections 73 and 74 of the GST Act also empower the department to proceed against the defaulting parties in case of non-payment, short payment, and wrongful utilization of credit. **A balanced approach is needed, which finds place in the decision expressed by the European Court of Justice ('ECJ') in the case of Axel Kittel & Recolta Recycling SPRL** (supra). Under this principle, **the availment of ITC can be denied only if it is shown that the recipient knew or ought to have known that their purchase was connected with a fraudulent evasion of tax.***

Bhandari Scrap Traders v. Union of India

Rulings & Judicial Observations

- **Judgement Paras of Maruti Enterprises (Guj HC)**
- *Para 88. Albeit, we acknowledge that the provisions of Section 16(2)(c) of the Act are to be viewed from a regulatory standpoint and are anchored in the legitimate objective of maintaining the integrity of the tax chain, preventing systemic revenue loss to the Government;* ***however, it is high time that, in order to resolve the conundrum, the Government undertakes a comprehensive re-evaluation of the dicey situation which purchasers are facing.***
- *There is a* ***pressing need for legislative amendments or clarifications to be issued within the GST framework to alleviate the disproportionate financial and administrative burdens currently placed upon purchasers who have an honest claim of ITC.***

Rulings & Judicial Observations

- *Beyond mere policy changes, the Government should* ***implement a robust, technology-driven tracking mechanism enabling verification of payments made by suppliers against specific invoices in real time, thereby insulating bona fide recipients from the defaults of their vendors…….***
- *Para 89: Since we are* ***not inclined to read down Section 16(2)(c) of the CGST Act, the question of declaring it ultra vires Part III of the Constitution of India, including Article 14 of the Constitution of India, does not arise. However, we expect the Government to address the issue of genuine purchasers at the earliest.***

Bhandari Scrap Traders v. Union of India

- **Inference from judgement of Bhandari Scrap read with judgement of Maruti Enterprises**
- ***Union of India v. VKC Footsteps India Pvt. Ltd.*** *(Civil Appeal No. 4810 of 2021) decided on September 13, 2021. :- The Supreme Court* ***upheld the constitutional validity of Rule 89(5)*** *of the CGST Rules, confirming that the restriction of refunds on unutilized Input Tax Credit (ITC) strictly to input goods (and excluding input services) under an inverted duty structure was legally valid. While upholding the rule, the Court acknowledged that the literal operation of the refund formula created anomalies and "inequities" for taxpayers. Consequently,* ***the bench explicitly urged the GST Council to reconsider and relook at the formula to iron out these distortions.***
- ***Whether Sec 74 can be invoked in all cases of Sec 16(2)(c) default***
- ***Whether judgement can be challenged on the grounds that Sec 41 was not in force for the disputed period.***

Dilip Babubhai Patel v. State of Gujarat

Special Civil Application No. 21685 of 2019
High Court of Gujarat
Coram: Division Bench
Decided 29.06.2026

Fundamental Legal Question

Whether Transitional Credit qualifies as Net ITC eligible for Refund under Section 54(3) of the CGST Act, 2017?

Dilip Babubhai Patel v. State of Gujarat

Background and Factual Matrix

- A manufacturer of wooden pallets/boxes had accumulated ITC under the Gujarat VAT regime (VAT on purchases exceeding VAT on sales), and migrated this credit into GST via Form GST TRAN-1 under Section 140, reflected in the Electronic Credit Ledger (ECL).
- Continued inverted-duty accumulation under GST led to a Section 54(3) refund application for accumulated unutilised ITC.
- The Revenue sanctioned refund attributable to GST-period ITC but rejected the transitional VAT-credit component, invoking the second proviso to Section 142(3)

Core Legal Issue(s) Involved

- Whether transitional VAT credit carried forward under Section 140 and reflected in the ECL becomes eligible for refund under Section 54(3) merely because it forms part of the ECL.
- Whether the second proviso to Section 142(3) bars refund of such transitioned credit, and if so, whether the department must re-credit the rejected amount to the ECL.

Dilip Babubhai Patel v. State of Gujarat

Rulings & Judicial Observations

- *The Court held the legislative scheme clearly distinguishes utilisation of credit from refund of credit — these are not interchangeable rights; Section 140 preserves accumulated credit for utilisation towards GST liability, but transitioning credit into the ECL does not alter its original source/character so as to automatically qualify it for Section 54(3) refund.*
- *Interpreting Sections 49, 54, 140 and 142 harmoniously, the Court held Parliament created two separate mechanisms: a taxpayer may pursue refund of pre-GST credit under the erstwhile tax laws, or elect to carry it into GST for future utilisation — once the latter course is chosen, the second proviso to Section 142(3) embargo becomes operative, excluding subsequent refund claims under GST law.*

Rulings & Judicial Observations

- The Court relied on CBEC Circular No. 37/11/2018-GST, confirming that once pre-GST credit is transitioned into GST, its refund is not permissible, and distinguished contrary Gujarat High Court precedents relied upon by the petitioner as not having directly considered the second proviso to Section 142(3).
- Held: Refund of the transitional VAT-credit component was correctly rejected; however, the Court directed the rejected amount be re-credited to the petitioner's Electronic Credit Ledger under Rule 93, enabling future utilisation against GST liabilities

Issues Relating to Due Process, Jurisdiction.

Sodexo India Services Private Limited v. Union of India

W.P.(C) 9153/2026
Forum: Delhi High Court
Coram: Division
Date: Decided 15.07.2026

Fundamental Legal Question

Can WRIT Jurisdiction be invoked where Parallel Remedy is available?

Sodexo India Services Private Limited v. Union of India

Background and Factual Matrix

- An Order-in-Original under Section 74 confirmed a GST demand of approximately ₹8.75 crore with interest and penalty, following audit proceedings on the taxability of catering services and pre-packaged food products (treated by the Department as a composite supply taxable at 18%).
- The petitioner had participated actively — responding to the Audit Memo, Additional Audit Memo, and Show Cause Notice, submitting agreements, invoices and reconciliations, and attending personal hearings —
- Petitioner approached the Delhi High Court directly under Article 226 rather than filing a statutory appeal under Section 107, alleging procedural deficiency and breach of natural justice.

Core Legal Issue(s) Involved

- Whether a writ petition challenging a GST adjudication order is maintainable where an effective statutory appellate remedy under Section 107 exists?
- Whether the adjudicating authority is obliged to call for additional documents or clarifications before finalising an order, merely because it finds the material on record insufficient?

Sodexo India Services Private Limited v. Union of India

Rulings & Judicial Observations

- *The Court held that **writ jurisdiction is exercised with judicial restraint where a complete and efficacious appellate remedy exists**, confining interference to recognised exceptions — violation of fundamental rights, breach of natural justice, jurisdictional excess/absence, or constitutional challenge — none of which was established on the facts.*
- *On the substantive natural-justice question, the Court held that an **adjudicating authority is not obliged to seek further documents or clarifications from the taxpayer merely because it finds the material placed on record insufficient** to determine liability; it is for the noticee to place all material supporting its defence, and natural justice does not impose an inflexible duty of repeated solicitation once adequate opportunity has been afforded.*

Rulings & Judicial Observations

- *Distinguishing Assistant Commissioner of State Tax v. Commercial Steel Ltd., The Court reiterated that availability of an alternative remedy is not an absolute bar to writ jurisdiction **but no recognised exception warranting interference under Article 226 was established in this case.***
- *The Court held that **questions of sufficiency and appreciation of evidence are merits-related matters** falling squarely within the Section 107 appellate jurisdiction, not grounds for invoking Article 226.*

SEPL Infra Private Limited v. Joint Commissioner of Commercial Taxes

Writ Petition No. 104931 of 2026
High Court of Karnataka
Coram: Single Judge
Date: Decided 09.07.2026

Fundamental Legal Question

Whether HC jurisdiction under Article 226 may be invoked to condone delay in filing Statutory Appeal in exceptional circumstances?

SEPL Infra Private Limited v. Joint Commissioner of Commercial Taxes

Background and Factual Matrix

- Proceedings under Section 73 for FY 2020-21 culminated in an adjudication order confirming tax, interest and penalty.
- The order was uploaded to the GST portal but placed under the 'Additional Notices and Orders' tab rather than the conventional 'View Notice & Order' tab.
- The petitioner claimed it remained unaware of the order for several months; upon discovery it sought rectification, and upon rejection, filed a statutory appeal under Section 107 together with the mandatory pre-deposit — but the appeal was rejected as time-barred, the Appellate Authority holding it lacked power to condone delay beyond the statutory ceiling.
- A garnishee notice was issued during pendency of these proceedings.

Core Legal Issue(s) Involved

- Whether the High Court's writ jurisdiction under Article 226 may be invoked to condone delay where the statutory Appellate Authority under Section 107 lacks such power in exceptional circumstances?
- Whether continuation of coercive recovery (garnishee proceedings) is sustainable pending restoration of the appellate remedy?

SEPL Infra Private Limited v. Joint Commissioner of Commercial Taxes

Rulings & Judicial Observations

- *The Court distinguished the limited statutory powers of the Appellate Authority from the broader constitutional powers of the High Court, holding that **the right of appeal is a valuable safeguard preservable in exceptional circumstances even where statutory condonation limits are exceeded**.*
- *Weighing the peculiar placement of the order on an uncommon portal tab, **the petitioner's prompt action upon discovery, and the fact that the mandatory pre-deposit had already been made**, the Court condoned the delay in exercise of extraordinary jurisdiction and restored the appeal for merits adjudication.*

Rulings & Judicial Observations

- *The **garnishee notice was quashed** as premature coercive action that would prejudice the taxpayer pending appellate disposal — the Court expressly reserved all questions on the underlying tax demand for the appellate authority.*

G.R. Infra Projects Limited, Ratlam v. State of Madhya Pradesh & Ors.

Civil Appeal No.11277 of 2026
Supreme Court of India
Division Bench
AUGUST 19, 2026

Fundamental Legal Question

When can the jurisdiction of SCN issued under Section 74 be maintainable?

G.R. Infra Projects Limited, Ratlam v. State of Madhya Pradesh & Ors.

Background and Factual Matrix

- G.R. Infra Projects Limited Ratlam, a company engaged in road/highway construction registered under CGST/MPGST, had its premises searched under Section 67 in August 2022, extending full cooperation.
- Post-search, the Department issued DRC-01A and finally an SCN dated under Section 74, alleging tax evasion by fraud/wilful misstatement
- The petitioner filed a preliminary objection questioning the SCN's validity, then petitioned the Madhya Pradesh High Court seeking quashment.
- The Madhya Pradesh High Court dismissed the writ petition
- The petitioner then approached the Supreme Court taking a prima facie view that the SCN was deficient

Core Legal Issue(s) Involved

- Whether a Section 74 SCN that recites only quantified figures/allegation-heads, without narrating the specific factual basis for characterising the conduct as fraud, wilful misstatement, or suppression with intent to evade tax, is legally sufficient to invoke the extended limitation period?
- Whether such a challenge is properly entertainable at the SCN stage via writ jurisdiction, or must await adjudication?

G.R. Infra Projects Limited, Ratlam v. State of Madhya Pradesh & Ors.

Rulings & Judicial Observations

- *[Para 10] A bare reading of the notice would indicate that but for a bland statement of 'fraud or concealment of facts' **nothing is stated as to how fraud was inferred or concealment of facts were detected.***
- *In fact, **the 'or' employed indicates that even the assessing officer was not sure that the assessment was proceeded by reason of fraud or on the ground of concealment of facts.***
- *What is required for the extended time to be applied are **the allegations,** which lead to the inference of a fraud or the concealment as attempted by the assessee **resulting in suppression of facts, should emanate from the notice itself.***

Rulings & Judicial Observations

- *It **cannot be a mechanical use of the words 'fraud, willful misstatement or suppression of facts' without listing out the aspects** which persuades the assessing officer to conclude that there has been employed either of these surreptitious devices by the assessee*
- *[Para 11] We find absolutely **no reason to sustain the SCN issued** and find the High Court to have erroneously upheld the same. We set aside the impugned order as also the SCN and **direct the respondent-State to desist from taking any further proceedings in pursuance of the SCN** challenged before the High Court, which is set aside by this order.*
- *M/s Fastenex Private Limited v. State Tax Officer [W.P.Nos. 35967, 35970 – HC Madras - 08.06.2026]*

Luxmi Traders v. Union Territory of Chandigarh & Ors

CWP No. 27139 of 2025
High Court of Punjab & Haryana
Coram: Division Bench
Date: Decided 21.07.2026

Fundamental Legal Question

Whether CGST Rules prescribe uploading of a show cause notice or adjudication order on common portal?

Luxmi Traders v. Union Territory of Chandigarh & Ors

Background and Factual Matrix

- Following an ASMT-10 highlighting GSTR-1/3B/2A discrepancies, an SCN in Form DRC-01 was issued under Section 73 for FY 2017-18.
- The petitioner contended no communication or hearing notice was received and the SCN specified no date, time, or venue for personal hearing.
- An ex parte Order-in-Original along with DRC-07 was passed and served exclusively by uploading it under the 'View Additional Notices and Orders' tab on the Common Portal.

Core Legal Issue(s) Involved

- Whether uploading a notice/order under 'View Additional Notices and Orders' on the GST Common Portal constitutes valid service under Section 169 read with Section 146 of the CGST Act?
- Whether such portal-upload, if valid, triggers the limitation period for filing an appeal under Section 107?

Luxmi Traders v. Union Territory of Chandigarh & Ors

Rulings & Judicial Observations

- *The Court held that the **Section 146 notifications (dated 19.06.2017, 23.01.2018 and 13.12.2019) notify the Common Portal solely for registration, tax payment, return furnishing, IGST settlement, and e-way bills** — none authorises the portal for service of SCNs or orders, and no CGST Rule prescribes such service through the portal.*
- ***An email intimation** merely stating an order has been uploaded, **without attaching the notice/order** itself, **does not constitute valid service** under Section 169(1)(c).*
- *The Court found the multi-layered portal navigation (Services → User Services → Notices and Orders → View Additional Notices and Orders) renders any presumption of taxpayer knowledge unreasonable, and directed the Department to introduce prominent alerts for statutory communications.*

Significant Observations

- *Whether the retrospective amendment to N. No. 9/2018-Central Tax (Extending the Common Portal to "All Functions" under the CGST Rules w.r.e.f. 22.06.2017) and the Kerala High Court's view that notices and orders can be communicated through the Notified Portal, were not placed before the Court?*
- *The notification issued under Section 146 of the CGST Act was amended by the Fifth Schedule to the Finance Act, 2022, with retrospective effect from 22.06.2017, to provide that the common portal shall be used for:*
- *"all functions provided under the Central Goods and Services Tax Rules, 2017."*

Luxmi Traders v. Union Territory of Chandigarh & Ors

Significant Observations

- **Sunil Kumar K v. State Tax Officer-I, Kottarakkara [[2024] 165 taxmann.com 657 (Ker.)], Kerala High Court** *appears to have considered the effect of the amended notification. In para 5, the Court held that **Sections 146 and 169 must be read together and observed that once a common portal is notified, communication can also be effected through the portal.***
- **In Amar Coop Lc Society Ltd Versus State of Haryana And Others [CWP - 15601 – 2026 - July 23, 2026] (Not yet Reported)**
- *Notably, <u>learned counsel for the Revenue in that matter specifically contended that, while deciding Luxmi Traders (supra), the Court had not been apprised of the amendment introduced by the Finance Act, 2022.</u> Thus, the amended statutory position was expressly brought to the Court's notice in the subsequent proceedings.*

Significant Observations

- *However, even after considering the Revenue's submission, the amendment introduced by the Finance Act, 2022, and the updated notification, **the Court ultimately followed paragraph 31 of the Luxmi Traders judgment** and held that none of the provisions of the Rules, 2017 contemplate the Common Portal as a mode of service of a Show Cause Notice or an order.*
- *The Court observed that the **Rules expressly confine the utility of the Common Portal to limited functions such as registration, filing of returns, payment of tax, etc., and do not expand its scope to substitute the formal service of a Show Cause Notice or an order.***

Shyam Traders v. State of West Bengal

W.P.A. No. 2357 of 2025
High Court of Calcutta
Coram: Single Judge
Decided 09.07.2026

Fundamental Legal Question

Limitation on the powers of 1st Appellate Authority under section 107 of the CGST Act, 2017 ?

Shyam Traders v. State of West Bengal

Background and Factual Matrix

- An ex parte Order-in-Original under Section 73(9) confirmed a demand of ~₹18.19 lakh (tax short-paid on outward supplies and excess ITC availed) for FY 2017-18.
- On statutory appeal under Section 107, the Appellate Authority, by Order-in-Appeal directed the petitioner to appear before the Adjudicating Authority and produce requisite documentary evidence for allowing admissible ITC and settling the matter. The petitioner contended that this direction amounted to an impermissible remand, prohibits under sec 107.
- A subsequent rectification application filed under Section 161 was rejected on 16.09.2025 solely on the ground of limitation, without any adjudication on the jurisdictional issue raised by the petitioner.

Core Legal Issue(s) Involved

- Whether the Appellate Authority is empowered under Section 107 to remand a matter to the Adjudicating Authority whose order is under appeal ?
- Whether rejection of a rectification application on limitation bars a subsequent writ petition challenging the jurisdictional infirmity of the remand ?

Shyam Traders v. State of West Bengal

Rulings & Judicial Observations

- *The Court held that **Section 107(11)** unambiguously empowers the Appellate Authority only to confirm, modify, or annul the order under appeal, and **expressly prohibits remand to the authority that passed the impugned order** — where further inquiry is needed, the Appellate Authority must conduct it itself and then adjudicate on merits.*
- *Since the Appellate Authority had already recorded a finding that excess ITC stood reversed on record, it was obligated to conclude proceedings by modifying the demand, not relegate the petitioner back to the Adjudicating Authority — **the remand direction was held to be contrary to the express statutory mandate and a nullity in law.***

Rulings & Judicial Observations

- *On maintainability, **the Court held rejection of the rectification application on limitation does not result in merger with the Order-in-Appeal so as to bar the writ petition — the defect was jurisdictional, not merits-based**, and jurisdictional infirmity is not immunised from writ scrutiny merely because a collateral rectification application was time-barred.*
- ***Held:** The remand portion of the Order-in-Appeal was set aside; the rectification-rejection order was consequentially set aside; **the matter was remitted to the Appellate Authority for fresh decision strictly within the contours of Section 107(11)**, with no remand to the Adjudicating Authority.*

Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone

W.P.(C) 8414/2026 with CM APPL. 39420, 39421, 43404 & 43716/2026
Delhi High Court
Coram: Division Bench
Date: Decided 31.07.2026

Fundamental Legal Question

At what point in time does right of Appeal vest ?

Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone

Background and Factual Matrix

- The Petitioners received an SCN dated 25.06.2025 invoking Section 122(1A) of the CGST Act in a fake invoicing case.
- Personal penalties aggregating ₹346.55 crore per Petitioner were confirmed by an Order-in-Original dated 16.12.2025 — critically, no demand of tax was raised against the Petitioners individually (it being a penalty-only order).
- By Section 129 of the Finance Act, 2025, the proviso to Section 107(6) was substituted with effect from 01.10.2025 to require a 10% pre-deposit of the penalty for any penalty-only order
- Desirous of assailing the Impugned Order under Section 107 of the CGST Act, the Petitioners addressed an E-mail dated 06.03.2026 to the Appellate Authority seeking waiver or relaxation of the pre-deposit

Core Legal Issue(s) Involved

- Whether the substituted proviso to Section 107(6) (effective 01.10.2025) mandating 10% pre-deposit of penalty on penalty-only orders applies to adjudicatory proceedings initiated by an SCN issued before that date, where the Order-in-Original was passed after the substitution?
- Whether the Appellate Authority possesses inherent power to waive or reduce a statutorily prescribed pre-deposit on grounds of financial hardship?

Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone

Rulings & Judicial Observations

- *The Court held that the **right of appeal** is a substantive right that **vests at the commencement of the *lis** i.e., the date of the SCN (25.06.2025) it cannot be burdened by a subsequently introduced, more onerous condition **absent express or necessarily-intended legislative retrospectivity**.*
- *Relying on Hoosein Kasam Dada (India) Ltd. v. State of MP [1953], as crystallised by the Constitution Bench in Garikapati Veeraya v. N. Subbiah Choudhry [(1957) 1 SCC 180] and elaborated in Videocon International Ltd. v. SEBI [(2015) 4 SCC 33], **the Court held the appellate remedy is conferred as a 'package' — forum, scope, and conditions — that vests at the commencement of the lis and can be displaced only by express enactment or necessary intendment..***

Rulings & Judicial Observations

- *The words **'no appeal shall be filed' in Section 107(6) were held to fix only the stage of compliance**, not the temporal applicability of the substituted regime — accepting the Revenue's argument would render the Hoosein Kasam Dada line of authority otiose.*
- ***Held:** The substituted proviso does not govern the Petitioners' appeals; they **need not deposit 10% of the penalty** as a filing condition (subject to Section 107(6)(a) compliance on any admitted liability); however, **the Appellate Authority correctly held it possesses no inherent power to waive a statutory pre-deposit** where one genuinely applies — relief here rests on non-applicability of the proviso, not on waiver*

Rashmi Agency v. Deputy Commissioner CT & GST

W.P.(C) No. 17470 of 2026
High Court of Orissa
Single Judge
Decided 25.06.2026

Fundamental Legal Question

Whether a contemplated right to Appeal is sufficient ground to withhold Refund?

Rashmi Agency v. Deputy Commissioner CT & GST

Background and Factual Matrix

- During a Section 67 search at Hotel Rashmi Plaza((Proprietor: Sri Rashmi Ranjan Routray), ₹33,00,000 was paid via DRC-03 paid under protest,
- Due to an inadvertent error, the amount was paid by Rashmi Agency's GSTIN rather than the entity actually under investigation.
- The petitioner's initial refund claim was rejected; a Section 107 appeal was allowed in full by the Additional Commissioner, holding recovery had contravened CBIC Instruction No. 01/2022-23.
- A subsequent refund application under Form GST RFD-01 was refused by the Depty Commissioner citing the six-month period uner Section 112(3) for the State to appeal before the GST Appellate Tribunal, has not lapsed

Core Legal Issue(s) Involved

- Whether the Deputy Commissioner could lawfully withhold refund by relying merely on the possibility of a future appeal under Section 112(3), absent satisfaction of the statutory preconditions in Section 54(11) read with Rule 92(2).
- Whether refund-withholding under Section 54(11) is a jurisdictional power reserved exclusively to the Commissioner?

Rashmi Agency v. Deputy Commissioner CT & GST

Rulings & Judicial Observations

- *The Court held that* ***Section 54(11) vests the withholding power exclusively in the Commissioner,*** *not the Deputy Commissioner, and is exercisable only upon satisfaction of two cumulative conditions: (i) the refund order must actually be the subject matter of a pending appeal or proceeding, and (ii) the Commissioner must record an opinion that grant of refund is likely to adversely affect revenue.*
- *Rule 92(2), read with Form GST RFD-07, mandates* ***an order withholding refund be passed in Part A of the prescribed form with recorded reasons*** *— neither existed on the facts.*

Rulings & Judicial Observations

- *The* ***mere possibility of an appeal or continuation of the Section 112 limitation period does not satisfy the statutory precondition****; on the date of rejection, no appeal was pending before any forum (the State's appeal was filed only after the writ petition was served).*
- *The Court emphasised that a* ***subordinate authority (Deputy Commissioner) cannot sit in judgment over an appellate order of a superior authority*** *(Additional Commissioner) absent a stay by a competent authority.*
- *Held: The refusal order was set aside; the matter remitted to the Deputy Commissioner for fresh consideration within two weeks, with due regard to CBIC Instruction No. 01/2022-23*

The Institute of Chartered Accountants of India

Thank You

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