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Export Promotion Council for EOUs & SEZs
Ministry of Commerce & Industry, Goverment of India

Monthly Tax Newsletter

December 2025

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Editor's Note

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As 2025 draws to a close, India's indirect tax landscape continues to evolve through a combination of progressive jurisprudence, procedural refinements, and policy measures aimed at strengthening trust-based compliance.

The December edition of our GST Compendium brings together the key judicial rulings, regulatory updates, and trade reforms shaping the indirect tax environment as we move into the new year.

A major development this month came from the Gujarat HC in the Priya Blues Pvt Ltd. case, where the constitutional validity of the 180-day payment rule for the ITC availment was challenged. The matter is expected to have wide implications, as the requirement to reverse the ITC for non-payment within 180 days effectively curtails the freedom of contracting parties to mutually agree on more extended credit periods. In addition, the timing of payment does not affect the supplier's GST liability, rendering it an unnecessary hardship within the GST framework.

Alongside this, the Chhattisgarh HC, in the South Eastern Coalfields case, held that central adjudication is not barred merely because state authorities have initiated proceedings that have not culminated in any adjudication. The ruling reinforces the statutory scheme governing dual jurisdiction under GST and provides much-needed clarity on the contours of adjudicatory authority. Adding to the month's important jurisprudence, the Telangana HC, in the Annai Infra Developers case, has clarified that the amounts paid during investigation cannot substitute the mandatory pre-deposit for GSTAT appeals.

Furthermore, a significant clarity emerged in the Lipi Boilers case, wherein the SC restored much-needed conceptual clarity to the central excise law by reaffirming that excisability must precede valuation. The SC held that the value of bought-out items cannot be added to the assessable value of a boiler cleared in CKD condition when the final output is an immovable plant, which ceases to be goods for excise duty purposes. The judgement offers essential guidance for resolving legacy excise disputes involving turnkey and EPC contracts, discouraging valuation-centric approaches that bypass the threshold test of excisability, and reinforces the doctrinal separation between the charge and measure of duty.

Important policy actions complement these judicial developments. The RBI has extended the export realisation period for services to 15 months, directly impacting the GST compliance for the exports of services and refund eligibility. Operational efficiency received a boost through the launch of a dedicated online module for MOOWR/ MOOSWR permissions on the ICEGATE 2.0 portal, addressing long-standing procedural bottlenecks. On the trade policy front, the Union Cabinet's approval of the Export Promotion Mission marks a major step toward unified, outcome-based export support, consolidating schemes, such as IES and MAI under a digitally driven framework. Parallelly, the DGFT has revamped IEC-related procedures with a revised ANF-2A and enhanced verification mechanisms, aligning documentation norms with contemporary compliance expectations. The launch of PLI 1.2 for specialty steel further underscores the government's commitment to domestic manufacturing and value-added exports.

From a direct tax and international tax standpoint, November also witnessed key developments. The MoF has notified the revised DTAA and protocol with India-Qatar, as well as the enforcement of the amending protocol to the DTAA between India and Belgium. Further, the OECD has published its 2025 update to the Model Tax Convention on income and capital. On the judicial front, the SC has dismissed the Revenue's SLP on the interpretation of the term 'received' under relevant assessment provisions of the IT Act. In another case, the SC has granted leave in the Revenue's SLP concerning the taxability of bonus shares under the provisions of the IT Act.

We trust this edition offers meaningful insights into the rapidly transforming tax ecosystem and supports your preparedness for the year ahead.

1. Important amendments/ updates under indirect taxes

A. Key updates under the GST law

Notifications/Circulars:

RBI extends export realisation timelines

The RBI has issued the Foreign Exchange Management (Export of Goods and Services) (Second Amendment) Regulations, 2025, to substitute the existing provisions under Regulation 9 and Regulation 15 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 ('Principal Regulations').

Effective from 13 November 2025, the RBI has notified the extension of the time period for realisation and repatriation of the full export value of goods/software/services exported from India from 9 months to 15 months from the date of export from India.

In addition, the RBI has increased the time period for the shipment of goods from one year to three years from the date of receipt of advance payment or as per agreement, whichever is later.

The extended timelines under FEMA will have direct implications under GST in relation to export provisions.

1. Export of services

- Under Section 2(6) of the IGST Act, one of the conditions for a supply to qualify as an 'export of services' is when consideration is received in convertible foreign exchange or INR, wherever permitted.
- The GST law does not prescribe a fixed statutory realisation period. However, the same is aligned with the FEMA timelines.
- With FEMA extending the realisation period to 15 months, exporters now have a statutory basis to justify the delayed receipts and protect the export classification during assessments/audits.

2. Exports under LUT

- Rule 96A(1)(b) of the CGST Rules requires the receipt of export proceeds within one year from the invoice date or period - as allowed under FEMA for export under LUT. In case the payment is not received within the given time frame, the exporter is required to pay the IGST, along with interest.
- While Rule 96A itself is unchanged, the extended FEMA period of 15 months strengthens the exporters' defence in cases of delayed realisation.

3. Recovery of refund where export proceeds are not realised

- Rule 96B of the CGST Rules provides that in case the export proceeds for goods are not realised within the time limit allowed under FEMA, the sanctioned refund of unutilised ITC/IGST must be recovered, along with interest.
- The rule directly references the FEMA timelines, providing exporters a longer safe window before the refund recovery proceedings can be triggered.

[Notification No. FEMA 23(R)/(7)/2025-RB dated 13 November 2025]

GSTN advisories:

GSTN issues advisory regarding furnishing of mandatory bank account details on the GST portal

To enhance compliance discipline and ensure accuracy, the GSTN has issued an advisory regarding the mandatory furnishing of bank account details under Rule 10A of the CGST Rules, 2017.

As per Rule 10A, every registered taxpayer (except TDS/TCS registrants and persons granted suo-moto registration) is required to furnish their bank account details within 30 days from the date of registration or before filing GSTR-1/IFF, whichever is earlier. The GSTN has now issued an advisory with the objective to enforce this requirement.

Taxpayers who have not yet updated their bank account details have been advised to do so at the earliest. Non-compliance may result in the suspension of GST registration, potentially disrupting business operations.

Taxpayers may furnish their bank account details by submitting a non-core amendment using the following navigation path:
Services → Registration → Amendment of Registration (Non-Core Fields)

[Goods & Services Tax (GST) | News and Updates]

B. Key updates under the erstwhile indirect tax laws

Centre introduces twin bills to overhaul excise duty and compensation cess structure for tobacco and specified goods

The central government has tabled two significant bills in the Lok Sabha - **The Central Excise (Amendment) Bill, 2025 and The Health Security se National Security Cess Bill, 2025.** The former seeks to overhaul the excise duty framework for tobacco and tobacco products, in light of the anticipated discontinuation of the GST compensation cess on such products, while the latter establishes a new cess framework applicable to specified goods, notably pan masala, gutkha, chewing tobacco, and other notified products, by linking the levy to the machines installed or other processes undertaken for their manufacture.

The key features of the two bills are summarised below:

A. The Central Excise (Amendment) Bill, 2025

Purpose: The bill seeks to substitute the existing tariff table under Section IV of the fourth schedule to the Central Excise Act, 1944, prescribing substantially higher excise duty rates for:

- Unmanufactured tobacco
- Cigars, cheroots, cigarillos, and cigarettes
- Smoking mixtures, bidis, and other manufactured tobacco
- Products containing tobacco/nicotine intended for inhalation or oral/transdermal use

Objective: The statement of objects and reasons clarify that once the centre has fully discharged loan liabilities and interest obligations associated with the compensation cess, the levy of compensation cess on tobacco products will cease. To safeguard revenue neutrality and maintain tax incidence thereafter, the government has proposed enhanced central excise duty rates across the tobacco value chain.

B. The Health Security se National Security Cess Bill, 2025

Purpose: The bill seeks to levy a cess to mobilise resources specifically for:

- National security expenditure, and
- Public health funding.

Cess proceeds will be credited to the consolidated fund of India and utilised the following parliamentary appropriation.

Objective: To ensure a stable and predictable revenue stream, the cess is designed to be capacity-based, levied on the machines installed or the processes undertaken for manufacturing specified goods, such as pan masala, irrespective of actual production volumes.

[The Health Security Se National Security Cess Bill, 2025,Bill No. 142 of 2025 and The Central Excise (Amendment) Bill, 2025,Bill No. 143 of 2025]

C. Key updates under the Customs/FTP/FTA/SEZ laws

Customs updates:

CBIC introduces streamlined digital platform for MOOWR and MOOSWR approvals

The CBIC, vide its *Circular No. 28/2025-Customs* dated 15 November 2025, has launched a new online module on ICEGATE 2.0 for processing applications pertaining to permissions under Section 65 of the Customs Act, 1962, covering both MOOWR, 2019, and the MOOSWR, 2020. This digital interface replaces the earlier partially manual procedures and is aimed at strengthening efficiency, documentation integrity, and transparency in warehousing operations.

The online module is applicable to:

1. Warehouses licensed under Section 58 (Private warehouses) for MOOWR; and
2. Special warehouses licensed under Section 58A for MOOSWR

Key highlights:

Unified digital workflow	Applicants can now complete the entire permission cycle online, including: • Role selection • GSTIN-based auto-fetch of contact details • Mobile/email OTP verification • System-generated reference ID valid for 15 days • Online form submission across structured Parts I & II
Tailored paths for existing and new warehouse licensees	The module dynamically adapts to applicant categories: • Existing licensees can apply for additional MOOWR/MOOSWR permissions and must upload the licence details for validation. • New applicants can file fresh applications under Sections 57, 58, 58A, or directly for MOOWR/MOOSWR.
Enhanced data capture	Key fields include warehouse boundaries, floor area, item details with 8-digit HSN, and special warehouse-specific information.
Digital query management	Applicants can track the status using their reference ID and respond to Customs queries by: • Providing clarifications, • Modifying applications, or • Uploading additional documents.
DigiLocker integration	The module supports DigiLocker-based document validation for secure, authenticated uploads.
Departmental instruction	Chief Commissioners are required to issue public notices, specifying port codes for processing Section 65 applications and support stakeholder onboarding.

Our comments:

The introduction of the dedicated online module for MOOWR/MOOSWR permissions on the ICEGATE 2.0 portal addresses several long-standing operational challenges faced by the industry. Until now, the applications under Section 65 were processed through varied offline and semi-digital practices, resulting in inconsistent documentation requirements, prolonged approval timelines, and significant back-and-forth with jurisdictional officers. The manufacturers relying on duty-free procurement frequently faced uncertainty in tracking application status, duplication of submissions, and delays caused by the manual verification of warehouse licences and supporting documents.

With this fully digital framework, the CBIC has created a uniform, transparent, and predictable approval mechanism across jurisdictions. Automated GSTIN validation, OTP-based authentication, structured online forms, and integrated query resolution reduce administrative friction for businesses across various sectors, including electronics, automotive, engineering, pharmaceuticals, and renewable energy, which depend on MOOWR/MOOSWR for efficient duty-free supply chains. The addition of DigiLocker strengthens document authenticity and eliminates verification delays.

Overall, the reform enhances compliance efficiency and supports the industry's need for faster onboarding and operational scalability under the Section 65 warehousing regime. It is expected to reduce compliance time and costs substantially, enhance the ease of doing business, and further support India's export ambitions by making MOOWR more accessible, efficient, and industry-friendly.

Cabinet approves Export Promotion Mission and CSGE to strengthen India's export competitiveness

The Union Cabinet has approved the EPM, an initiative announced in the Union Budget 2025–26 aimed at creating a unified, technology-driven and outcome-based framework to boost India's exports, particularly for MSMEs and first-time exporters. With an outlay of INR 25,060 crore for FY 2025–26 to FY 2030–31, the mission consolidates existing schemes and introduces a more flexible, responsive approach to evolving global trade conditions.

The EPM consolidates key export support schemes, such as the IES and MAI, aligning them with contemporary trade needs. The EPM is designed in a collaborative framework involving the Department of Commerce, Ministry of MSME, Ministry of Finance, and other key stakeholders, including financial institutions, export promotion councils, commodity b oards, industry associations, and state governments.

Key features of EPM:

Two integrated sub-schemes:

- **Niryat Protsahan:** Financial support measures, including interest subvention, export factoring, collateral guarantees, credit cards for e-commerce exporters, and credit enhancement for diversification into new markets.
- **Niryat Disha:** Non-financial enablers, such as export quality and compliance support, branding and packaging assistance, participation in international fairs, export warehousing/logistics, inland transport reimbursement, and trade intelligence/capacity building.
- **Implementation:** The mission will be implemented through a DGFT-led digital platform, enabling end-to-end online processing, integration with existing trade systems, and seamless interaction with EPCs, financial institutions, commodity boards, and state agencies.

Addressing key export bottlenecks:

- High cost and limited access to trade finance.
- Expensive and complex international compliance requirements.
- Weak global branding and fragmented market access.
- Logistics disadvantages for interior districts and low-export-intensity regions.
- Priority support will target the sectors facing global tariff pressures, including textiles, leather, gems and jewellery, engineering goods, and marine products.

Expected impact:

- Greater access to affordable finance for MSMEs;
- Improved compliance and certification capabilities;
- Better market visibility and global positioning for Indian products;
- Boost to exports from non-traditional districts;
- Higher employment across manufacturing and logistics.

CGSE: In addition, the Cabinet approved the CGSE, which will provide 100% guarantee-backed, collateral-free credit support, thereby further strengthening the financial backbone of the export ecosystem.

(Press Release: Press Information Bureau)

Our comments:

The EPM, in conjunction with the CGSE, provides a timely and much-needed boost for India's export community, particularly MSMEs navigating the tightening global trade conditions. By consolidating financial and non-financial support into a single, digitally administered framework, the mission promises to reduce compliance burdens, lower transaction costs, and enhance market preparedness for first-time and emerging exporters. Its focus on quality, certification, branding, and logistics, areas where exporters face the highest friction, will materially enhance India's competitiveness in demanding global markets.

For industry, this integrated approach brings clearer access to incentives, faster processing through a DGFT-led digital interface and sharper, sector-specific support at a time when global tariff and supply-chain shifts are reshaping trade flows.

Overall, the mission sets the stage for more predictable, efficient, and industry-aligned export growth, reinforcing India's ambition to build a resilient, diversified, and globally competitive export base.

CBIC launches SWIFT 2.0, integrating AQCS, PQMS, and FSSAI, for unified NOC processing

The CBIC has announced the launch of SWIFT 2.0 or Single Window Interface for Facilitating Trade, an upgraded, fully digital platform serving as a single touchpoint for all EXIM processes involving importers, exporters, and PGAs.

Building on the earlier SWIFT version introduced in 2016, which operated primarily as a document repository-based clearance system, SWIFT 2.0 introduces end-to-end automation, seamless data exchange, and digital NOC processing to enhance trade facilitation and reduce physical interaction with PGAs.

Key features of SWIFT 2.0:

- Unified portal for submission of additional data fields and documents required for obtaining NOCs from PGAs.
- A single dashboard for users to track application status, queries, and historical transactions with PGAs.
- Real-time SMS and email alerts on application progress and actions required.
- Facility for the online payment of PGA fees and digital receipt generation.
- Automated scheduling and tracking of visual inspections by PGAs through the portal.
- Digital viewing and downloading of approved NOCs issued by PGAs.
- Integration of all NOC-issuing PGAs into a single platform, eliminating the need to access multiple systems.

In its first phase, SWIFT 2.0 will onboard the AQCS, PQMS, and FSSAI. Over 60 PGAs are proposed to be integrated in a phased manner, significantly expanding the scope of the platform.

[Circular No. 29/2025-Customs dated 21 November 2025]

DGFT issues notice revising the documentation requirements for IEC applications

The DGFT has brought important procedural changes to the IEC framework. These modifications are intended to streamline documentation, strengthen verification mechanisms, and improve the overall compliance environment.

Under the existing provisions of Para 2.08 of the HBP 2023, the applicants were required to submit limited documentation for the IEC issuance or modification, primarily address proof corresponding to the application. The DGFT has now removed these outdated forms and introduced a revised ANF-2A, accompanied by a new bank certificate format and updated electronic IEC certificate.

Under the amended procedure, applicants must now upload a photograph of the business premises, a geo-tagged photograph, and a bank certificate confirming the account details, along with expanded disclosures, such as all bank accounts linked to the PAN and enhanced compliance declarations.

These changes significantly strengthen physical and financial KYC, improving the authenticity of IEC records and reducing the risk of fraudulent or non-traceable registrations. The notice provides the revised ANF–2A, the bank certificate format for the issuance of IEC (ANF–2A(I)), and the format of electronic IEC.

The amended Para 2.08 applies with immediate effect, and the revised forms supersede any earlier versions.

[Public Notice No. 32/2025-26 dated 20 November 2025]

DGFT issues clarification for EODC redemption for advance authorisations impacted by Rule 96(10) for imports between 13 October 2017 and 9 January 2019

Pursuant to Notification No. 79/2017-Customs and Notification No. 33/2015-2020 -DGFT, exemption from all duties, including IGST and compensation cess, was permitted under the AA scheme, subject to the fulfilment of a pre-import condition. Subsequently, following Notification No. 1/2019-Customs dated 10 January 2019, the pre-import condition was withdrawn through Notification No. 53/2015-2020-DGFT, thereby allowing IGST-free imports without prior import linkage. Thereafter, pursuant to the SC's judgement dated 28 April 2023, which upheld the Revenue's position while directing that affected exporters be allowed a refund or ITC, wherever eligible, the CBIC issued Circular No. 16/2023-Customs dated 7 June 2023. Thereafter, the DGFT issued Trade Notices No. 07/2023-24 and 27/2023 to provide further guidance to the field formations.

In this regard, the DGFT noticed that certain exporters were facing difficulties in obtaining redemption of AAs affected by the erstwhile provisions of Rule 96(10) of the CGST Rules, which prior to the amendment restricted the refund of the IGST paid on exports in cases where the exporter or its supplier had availed specified duty exemptions.

The DGFT has now issued a Policy Circular No. 07/2025-26 dated 11 November 2025, providing clarity on the procedure for redemption of the AAs affected by the above rule and resolve long-pending cases where exporters were unable to obtain the EODCs for imports made between 13 October 2017 and 9 January 2019. The present policy circular has been issued in continuation to clarify the EODC redemption procedure.

Key clarifications:

The EODC shall not be withheld if all other requirements under the AA scheme are duly fulfilled in any of the following cases:

- **IGST paid in cash:** The importer paid the IGST in cash at the time of clearing import consignments during the period from 13 October 2017 to 9 January 2019.
- **No duty exemption availed:** The applicant did not claim exemption from IGST, compensation cess, or any other levies (except basic customs duty).
- **Compliance with pre-import conditions:** The applicant has complied with the prescribed pre-import and other procedural requirements under the AA scheme.

[Policy Circular No. 07/2025-26 dated 11 November 2025]

Our comments:

This clarification provides closure to legacy cases affected by transitional GST restrictions and aligns the DGFT's framework with recent judicial and CBIC guidance, reinforcing the government's objective of policy consistency, facilitation, and ease of doing business

DGFT notifies revised provisions for extension of LOP/LOI validity for EOU/BTP/EHTP/STP units

To provide greater clarity and streamline the administrative processes for the extensions of the Letters of Permission/Letters of Intent (LOP/LOI), the Directorate General of Foreign Trade (DGFT) has amended Para 6.34 of Chapter 6 of the Handbook of Procedure (HBP) 2023.

The amendment modifies the provisions relating to the extension of validity of LOP/LOI for export-oriented units (EOUs), bio-technology parks (BTPs), electronics hardware technology parks (EHTPs) and software technology parks (STPs) units. The validity of a LoP/LoI issued to EOU/EHTP/STP/BTP units may now be extended under revised rules as under:

Once a unit has commenced production, the validity of its LoP/LoI may be extended for up to five years at a time (under Para 6.01(c) of HBP).

Additionally, the initial 2-year validity period may be extended by one additional year for valid reasons (to be recorded in writing), except where initial approval had a specific restriction (e.g., oil-refinery projects).

The amendment removes ambiguity around the extension of LOP/LOI validity for units once production is underway.

[Public Notice No. 34/2025-26

D. Key updates under central/state schemes

Government launches PLI 1.2 for specialty steel to boost investment, innovation and advanced steel production

The government of India has launched the third round (PLI 1.2) of the PLI scheme for specialty steel, reaffirming its commitment to positioning India as a global hub for high-grade and value-added steel manufacturing. Announcing the new phase, the Union Minister for Steel and Heavy Industries stated that the initiative marks a major milestone in India's pursuit of Atmanirbhar Bharat and contributes significantly to the vision of Viksit Bharat @2047.

Since the scheme's approval in July 2021 with an outlay of INR 6,322 crore, it has attracted investment commitments worth INR 43,874 crore, created 30,760 direct jobs, and is expected to add 14.3 million tonnes of specialty steel capacity. As of September 2025, participants from earlier rounds have already invested INR 22,973 crore and generated 13,284 jobs, underscoring the strong industry response to the initiative.

Key features of PLI 1.2:

- **Application window:** The application window will be open for 30 days from launch through the online portal https://plimos.mecon.co.in.
- **Eligibility:** Indian-registered companies engaged in end-to-end manufacturing of the notified products.
- **Product coverage:** 22 sub-categories across five major segments, including super alloys, CRGO steel, stainless steel (long and flat), titanium alloys, and coated steels.
- **Incentive structure:** Ranges from 4% to 15% of incremental sales, depending on product category and the year of production.
- **Incentive period:** Up to five years starting FY 2025-26, with disbursals beginning FY 2026-27.
- **Base year for pricing:** Revised from 2019-20 to 2024-25 to reflect the current market trends.

The PLI 1.2 round aims to attract fresh investment in advanced steel categories, promote R&D, and support MSMEs and existing producers in capacity expansion. It will further position India as a preferred supplier of specialty steels in global value chains, driving sustainable, export-led growth.

(Press Release: Press Information Bureau)

Government of Karnataka announces Karnataka IT Policy, 2025–2030

The government of Karnataka has notified the Karnataka IT Policy 2025–2030 to reinforce the state's leadership in IT and emerging technologies, position Karnataka as a global deep-tech innovation hub, and drive balanced regional growth beyond Bengaluru.

The policy aligns with national digital initiatives and Karnataka's broader technology vision, while enabling enterprises to invest, innovate, and scale through a robust incentive architecture and future-ready regulatory environment.

The policy is anchored on the five foundational pillars called 'FRAME' (Frontier, future and emerging technology, Regional development, Alignment and acceleration with national and global strategies, Market creation and sectoral deepening, Enterprise facilitation and ecosystem orchestration). It aims to catalyse advanced research, enhance global competitiveness, and build a skilled talent ecosystem that supports the next-generation transformation across AI, quantum, cybersecurity, Web3, and green IT.

Key features

Policy period: The policy is effective for a period of five years till FY 2029-30 or till a new policy is announced.

Objective:

- Strengthen Karnataka's leadership in IT and deep-tech (AI, quantum, cybersecurity, cloud, and green IT).
- Promote regional IT growth beyond Bengaluru to Tier-II and Tier-III cities.
- Generate large-scale, high-skilled employment across the state.
- Expand software exports and deepen R&D and innovation capacity.
- Build a future-ready talent ecosystem through targeted skilling and hiring support.
- Improve the ease of doing business and promote sustainable, energy-efficient IT infrastructure.

Target:

- Generation of 90+ lakh direct and indirect employment in the state during the policy period.
- Increase software exports from INR 4.09 lakh crores to INR 11.5 lakh crores by 2030, reinforcing Karnataka's leadership in the global tech markets.

Applicability and eligibility:

- Applicable to new IT/ITeS units, existing IT/ITeS units undertaking expansion, and the GCCs operating in Karnataka.
- Minimum workforce: 25 employees in Bengaluru and 10 employees in beyond Bengaluru.
- At least 50% of employees must be based in Karnataka (excluding contract staff).
- Expansion units must add 50% of existing employment or 200 employees (minimum 50 hires).
- Infrastructure developers are eligible, subject to a minimum area and IT-use conditions.
- The units availing incentives under the 2020–25 policy are not eligible unless they qualify as expansion units.

Incentives and support:

Type of support	Applicability	Quantum/Duration	Conditions
R&D incentive	Eligible IT/ITeS units (New/ expansion)	40% of eligible R&D expenditure, capped at INR 5 crore whichever is lower (one-time)	Available to new and expansion units; subject to the submission of R&D proof and approvals.
Support for setting up IT/ITeS parks	• Eligible IT/ITeS Units (New/ expansion) • Infrastructure develop ers/ Consortium of developers	20% reimbursement of eligible capex, up to INR 5 crore (one-time)	Only for developers (Beyond Bengaluru); minimum area and IT-use criteria apply.
Internship cost reimbursement	Eligible IT/ITeS units (New/ expansion)	50% of stipend, capped at INR 5,000/month for 3 months (one-time)	Up to 100 interns per unit; internship must be in approved skill areas.
Recruitment assistance	• Eligible IT/ITeS units (New/ expansion) • Beyond Bengaluru	10%–50% of recruitment cost; capped at INR 7 crore (one-time)	Based on the threshold limits of the number of employees newly recruited, starting from 100 to 1,000, a customised package for above 1,000 (on a case-by-case basis)
Talent relocation support	• Eligible IT/ITeS units (New/ expansion) • Beyond Bengaluru	50% of relocation cost, capped at INR 50,000/employee (one-time)	Applies only for relocation into Beyond Bengaluru clusters.
EPF reimbursement	• Eligible IT/ITeS units (New) • Beyond Bengaluru	INR 3,000 per employee per month for 24 months	For new hires in Beyond Bengaluru; employment must be continuous for such employees for minimum 2 years.
Skilling reimbursement	• Eligible IT/ITeS units (New) • Beyond Bengaluru	20% of total expenses up to INR 36,000 per graduate; INR 18,000 per diploma-holder; plus 20% additional (one-time)	• For up to 100 employees or 15% of the total workforce, whichever is less. • Training must be >40 hours in designated emerging technologies.
Support for faculty development programme	• State government-affiliated universities /colleges. • Bengaluru and Beyond Bengaluru	50% of training costs,subject to a maximum of INR 10 lakhs per cohort (one time)	Minimum duration of 40 hours and a cohort size of at least 30 participants.
Rental reimbursement	• Eligible IT/ITeS units (New) • Bengaluru and Beyond Bengaluru	50% of rent (cap INR 10–50 lakh for the first year of operation) (one-time)	The unit must meet the minimum workforce thresholds

Type of support	Applicability	Quantum/Duration	Conditions
Quality certification	• Eligible IT/ITeS units (New/ expansion) • Bengaluru and Beyond Bengaluru	50% reimbursement (cap INR 6 lakh in Bengaluru/INR 8 lakh beyond Bengaluru)	• Up to 3 certifications per unit; applies to approved standards only. • Can be claimed thrice during the policy period.
Patent support	Same as above	Domestic: 50% of fees up to INR 2–3 lakh; International: 50% of fees up to INR 6–10 lakh	Up to 3 patents during the policy period; subject to the IP documentation.
Power tariff benefit	Same as above	Option to shift to industrial tariff	Applicable post-approval; available to all qualifying units.
Electricity duty reimbursement	• Eligible IT/ITeS units (New) • Beyond Bengaluru	100% reimbursement for 5 years	Only for Beyond Bengaluru units.
Property tax reimbursement	Same as above	30% reimbursement for 3 years	Only for Beyond Bengaluru; property must be used for IT/ITeS operations.
Telecom/Internet support	Same as above	25% reimbursement; cap INR 6 lakh/year for 3 years	Applies to dedicated internet/leased lines; Beyond Bengaluru only.
Event and conference support	• Eligible IT/ITeS units (New)/ expansion • Industry associations • Beyond Bengaluru	20% reimbursement; cap INR 25 lakh/year	Applicable for emerging-tech events; requires prior approval.
Tailor-made Incentives		Customised package for investments > INR 300 crore	Granted by the state committee, based on investment and job creation commitment.

Our comments:

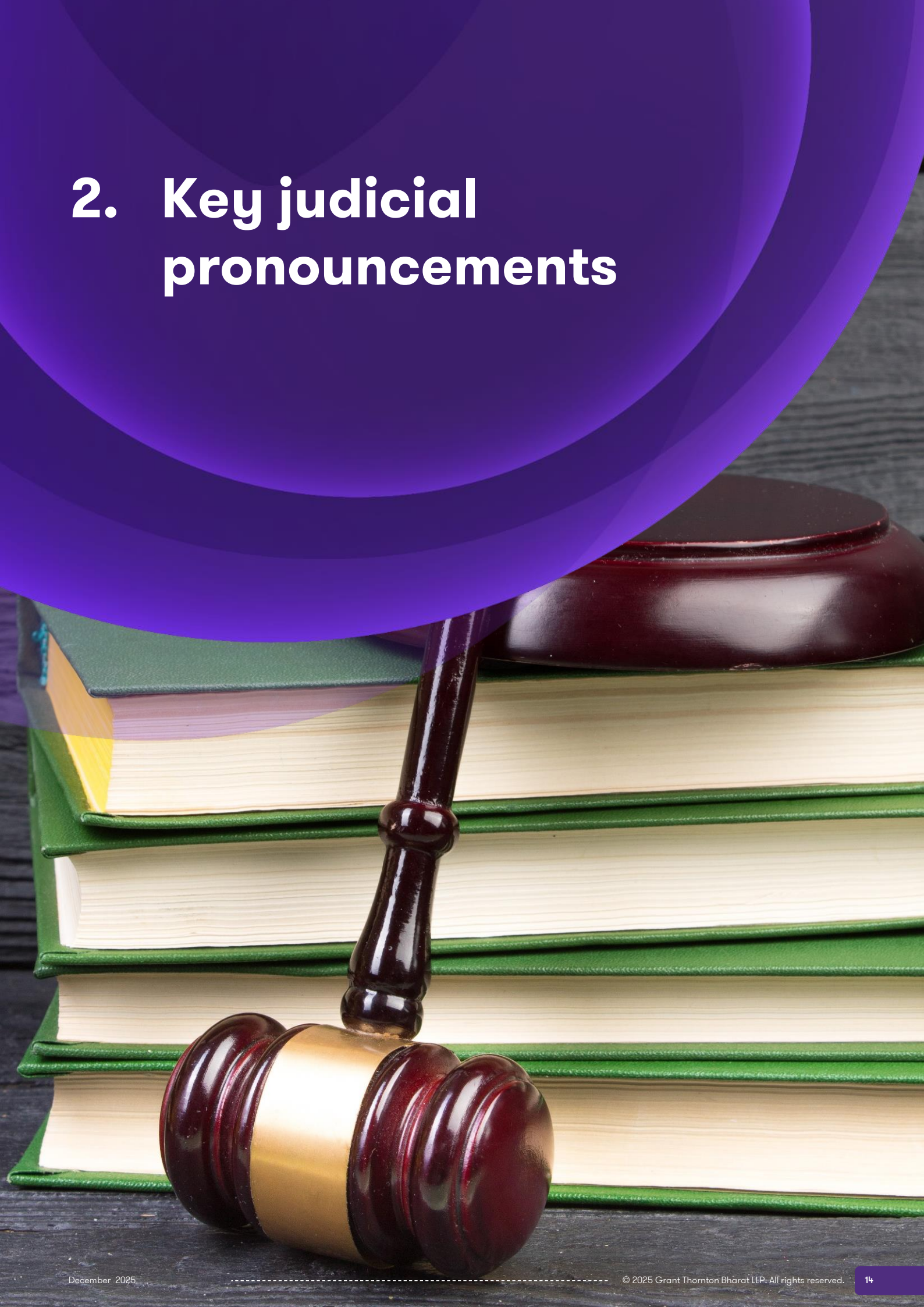
The Karnataka IT Policy 2025–2030 reflects a strong push by the state to anchor high-value digital operations, R&D centres, and emerging-tech capability hubs within Karnataka. The policy recognises the shifting global footprint of GCCs and technology service units, offering targeted support for deep-tech functions, such as AI, cybersecurity, quantum technologies, and cloud engineering, where companies increasingly require specialised infrastructure, testbeds, and skilled talent.

The combination of R&D-linked incentives, workforce reimbursements, and reduced operating costs in Beyond Bengaluru locations creates a differentiated incentive environment for enterprises planning long-term capacity expansion.

For companies evaluating operational structuring, including indirect tax positions for IT/ITeS and GCC models, the policy's emphasis on regional dispersal, co-working infrastructure, and digital test facilities may reduce the dependency on high-cost centres and enable scalable shared-service architectures. The added support for patents, certifications, and digital infrastructure is also relevant as organisations move toward IP-driven and high-compliance service models.

(Karnataka IT Policy 2025-30)

2. Key judicial pronouncements



A. Key rulings under the GST law

Two-year limitation period for refund of tax paid wrongly is directory and not mandatory – Karnataka HC

The Karnataka HC has held that the two-year limitation under Section 54 of the CGST Act for claiming a refund is only directory and not mandatory in cases of tax paid by mistake. The court observed that when tax is wrongly paid to the wrong government, the authorities are not entitled to retain it, and the principles of restitution and unjust enrichment require that such excess tax be refunded. Therefore, the court set aside the refund rejection orders and directed the department to consider the refund on merits, without rejecting it solely on limitation.

Facts of the case

- The petitioner, a science and technology company, was providing intermediary services to foreign entities during the relevant periods (July–November 2017). Under a bonafide belief that such supplies constituted the export of services, the petitioner discharged the IGST in its GSTR-3B returns for the respective months.
- Upon realising that the supplies were, in fact, intra-state supplies, the petitioner discharged the CGST and SGST in March 2018. It thereafter filed a refund application, seeking refund of the IGST wrongly paid.
- The Assistant Commissioner rejected the refund solely on the ground that the application was time-barred under Section 54, without disputing that the IGST was wrongly paid or that CGST-SGST had been subsequently discharged.
- The petitioner argued that the refund was governed by Section 77/Section 19, a standalone remedy for wrongly paid tax, and therefore, Section 54 limitation should not apply. It was also submitted that even if Section 54 was considered, the provision is directory, and strict limitation cannot be invoked to deny the refund of the tax collected in violation of Article 265.
- Since the IGST had already been paid to the centre, Merck filed a refund claim under Section 19 of the IGST Act, Section 77 of the CGST Act, read with Rule 89(1A), seeking refund of the IGST paid by mistake.
- The department issued a show-cause notice and subsequently rejected the refund solely on the ground that the applications were filed beyond the two-year limitation under Section 54 of the CGST Act.

Issues before court

1. Whether the two-year limitation under Section 54 of the CGST Act applies to the refund of tax wrongly paid?

Court's observations and ruling [W.P. No. 27259 of 2024; Order dated 7 November 2025]

- The court held that the power to grant a refund in cases of tax wrongly paid flows from Section 77 of the CGST Act, along with Section 19 of the IGST Act, read with Rule 89(1A). Consequently, the limitation under Section 54 could not be applied to defeat a refund claim of this nature.
- The court accepted that the Central GST authorities were not entitled to collect the IGST when the supply was not an inter-state supply. Once the petitioner correctly discharged CGST+SGST, the central authorities could not retain the IGST, and were obligated, on principles of restitution, to return the amount.
- The court also noted that Rule 90(3) requires officers to issue a deficiency memo if the application is incomplete. Since the department issued no deficiency memo, accepted the application, and even processed the supporting documents in comparable situations, it could not later treat the claim as barred.
- The court found a serious flaw in the decision-making process and emphasised that the authorities could not retain the IGST when the petitioner had already paid the correct CGST–SGST, applying the principles of restitution. Accordingly, the HC set aside the refund rejection orders and directed the department to process and grant refund within 30 days.

(in the case of Merck Life Science (WP No. 27259 of 2024))

Karnataka HC strikes down MRP-based compensation cess and upheld that levy must be based on transaction value

The Karnataka HC has struck down Notification No. 1/2017-Compensation Cess (Rate) as amended on 31 March 2023 and 26 July 2023, to the extent that it mandated the levy of GST compensation cess on the basis of MRP for specified tobacco products. The HC held that the notifications were inconsistent with Section 8(2) of the compensation to the States Act, 2017, which expressly requires that where cess is levied with reference to value, such value must be determined strictly in accordance with Section 15 of the CGST Act.

Facts of the case

- The petitioners, engaged in the manufacture of chewing tobacco, supplied their products through stockists, wholesalers, and retailers, paying compensation cess at 142% on the transaction value and GST at 28%.
- A circular dated 1 February 2022 under the Central Excise regime provided for abatement on MRP for the purpose of excise duties but implicitly recognised that GST and compensation cess continued to be levied on the transaction value.
- The impugned notifications introduced a change whereby cess was required to be calculated at a specified rate basis the MRP of retail packages, irrespective of the actual price charged at the time of supply.
- The petitioners contended that compensation cess, being part of the GST regime, must follow the valuation mechanism laid down in Section 15 and cannot be made referable to MRP through delegated legislation.

Issue before the HC

Whether the compensation cess can be levied on MRP through notification when the statutory scheme mandates that the cess value, where based on value, shall be determined exclusively under Section 15 of the CGST Act.

Karnataka HC's observation and ruling (W.P. No. 100239 OF 2024(T-RES), order dated 19 September 2025)

- The HC observed that Section 15 mandates the transaction value as the basis of valuation, defined as the price actually paid or payable when the supplier and recipient are unrelated and price is the sole consideration.
- Further, it emphasised that the proviso to Section 8(2) unequivocally requires that when the compensation cess is levied on a value basis, the value shall be determined under Section 15, thereby precluding the adoption of MRP as an alternative valuation metric. It held that MRP constitutes a notional and hypothetical figure and cannot be substituted for the actual consideration forming the basis of supply.
- The court relied on the SC's decision in the Rajasthan Chemists Association ((2006) 6 SCC 773) case and the Karnataka HC's ruling in ITC Ltd. (2012 SCC OnLine Kar 8765), both of which held that a notional price cannot be the measure of tax when the statute prescribes valuation based on the actual transaction value.
- The court further held that delegated legislation cannot override or contradict the parent statute. Relying on the principles laid down in the Kerala State Electricity Board vs Thomas Joseph (Civil Appeal Nos. 9252-9253 of 2022) case, it concluded that the impugned notifications run counter to Section 8(2) of the Compensation Act and Section 15 of the CGST Act, and therefore, constitute a substantive ultra vires action.
- Accordingly, the notifications dated 31 March 2023, and 26 July 2023 were quashed, and the HC clarified that such quashing will not preclude the legislature from enacting an amendment should it intend to provide for MRP-based valuation.

(in the case of VKG Packers and Others ((W.P. No. 100239/2024 (T-RES))

Gujarat HC affirms SEZ unit's eligibility for refund of unutilised ITC distributed by ISD

The Gujarat HC held that a SEZ unit is entitled to claim a refund of the unutilised ITC of the IGST distributed by an ISD under Section 54(3) of the CGST Act, 2017. The court reaffirmed the ratio laid down in the Britannia Industries Ltd. (R/SCA No. 15473 of 2019 dated 11 March 2020) case, emphasising that the SEZ units are entitled to a refund of the unutilised ITC. Since the ISD, and not any individual supplier, allocates the ITC, it would be impractical for suppliers to file refund claims for the IGST credits distributed through the ISD.

Facts of the case

- The petitioner, a SEZ unit at Dahej, engaged in the business of manufacturing and distributing medicines, has received input services proportionately distributed by its ISD in accordance with the provisions of the CGST Act.
- Since the petitioner was engaged in zero-rated supplies, it could not utilise the IGST credit lying in its credit ledger, and therefore, filed refund applications for multiple quarters under Section 54 of the CGST Act, read with Rule 89(4) of the CGST Rules.
- The refund claim was initially sanctioned by the adjudicating authority in view of the HC's order in the Britannia Industries Ltd. case and the SC's dismissal of a SLP against the HC's judgement. However, subsequently, an appeal was filed against the refund order since the department had preferred a review petition before the SC. Accordingly, the refund was set aside by the appellate authority.

Petitioner's contentions

- The petitioner argued that the appellate authority failed to follow the settled law laid down by the HC in the Britannia Industries Ltd. case, wherein it was held that the ISD, being an office of the supplier, cannot itself file a refund claim, and hence, the SEZ unit is entitled to the refund.
- Further, the petitioner contended that a deviation from the high court's settled interpretation would amount to judicial indiscipline and undermine the rule of law.

Department's arguments

- The department argued that the refund applications - in respect of supplies made to the SEZ units - must be filed by the supplier of goods or services under Rule 89(1) of the CGST Rules, and not by the SEZ unit.
- Furthermore, the department submitted that there is no specific provision or circular authorising a refund to the SEZ units in respect of the ITC distributed by ISD, and hence, the grant of a refund is without a legal mandate.

Gujarat HC's observations and ruling (SCA No. 6833 of 2025, order dated 16 October 2025)

- The court observed that the issue is squarely covered by the decision in the Britannia Industries Ltd. case, which has not been stayed or disturbed and remains binding as of date.
- Accordingly, the HC quashed the appellate order and directed the department to process the refund claim for the unutilised IGST credit.

(in the case of Ajanta Pharma Limited (SCA No. 6833 of 2025, order dated 16 October 2025))

Gujarat HC issues notice on plea challenging constitutional validity of 180-day payment rule

The Gujarat HC has issued a notice in the writ petition challenging the constitutional vires of the second and third provisos to Section 16(2) of the CGST Act 2017. The impugned provisos specify that if the payment against an invoice is not made within 180 days from the date of the invoice, the corresponding ITC must be reversed, along with applicable interest. The reversal shall be proportionate to the unpaid amount. However, once the payment is subsequently made, the taxpayer may re-avail the ITC so reversed, with no time restriction for such re-availment.

The petitioner has assailed the impugned provisos, contending that the requirement to reverse the ITC, if the payment to the supplier is not made within 180 days from the date of invoice along with interest liability, is arbitrary and violates Articles 14 and 19(1)(g) of the Indian Constitution. The said provisos impose an unreasonable restriction on business operations by indirectly prohibiting longer credit periods that are otherwise commercially viable and mutually agreed between parties.

The HC has issued a notice in the matter, and the further hearing has been scheduled on **11 December 2025.**

(in the case of Priya Blues Pvt. Ltd. (R/SCA 2342/2025) Order dated 7 November 2025)

Chattisgarh HC held that central adjudication not barred under Section 6(2)(b) when state proceedings end without adjudication

The Chhattisgarh HC has held that the bar under Section 6(2)(b) of the CGST Act is not attracted where the state GST proceedings were closed without any adjudication. The HC upheld the central GST department's right to proceed with its SCN under Section 73, observing that the state authorities had merely issued DRC-01 notices but never undertook assessment, penalty, or demand proceedings. Since Section 6(2)(b) requires that a "proceeding" must involve some form of adjudication, the central authorities' action - initiated earlier through inspection - could validly continue.

Facts of the case

- South Eastern Coalfields Limited(SECL), engaged in mining, was subjected to a central GST inspection on 27 August 2021 regarding the alleged non-payment of GST under RCM on development cess and environment cess for July 2017–August 2021.
- Following this, a memo dated 30 August 2021 demanded GST under RCM of around INR 120 crore.
- Despite the central action already being underway, the state GST department issued DRC-01/DRC-02 notices during September – October 2021 and again in February - March 2022, but closed all these proceedings without any adjudication, no assessment, no penalty, no demand under Sections 73 or 74.
- Central GST then issued a pre-SCN (DRC-01A) on 7/9 December 2022 and subsequently a SCN under Section 73 on 6/16 January 2023, which SECL challenged as being barred by Section 6(2)(b). The HC rejected this contention.

Issue before HC

Whether the proceedings initiated by the central GST authorities under Section 73 of the CGST Act were barred under Section 6(2)(b) on the ground that the state GST authorities had already initiated proceedings on the same subject matter, even though the state proceedings were later closed without any adjudication.

Chhattisgarh HC's observation and ruling (WA No. 494 of 2023, order dated 22 July 2025)

- The HC held that Section 6(2)(b) is attracted only when the earlier proceeding involves some form of adjudication, such as assessment, penalty, or demand proceedings under Sections 73/74. The mere issuance of DRC-01 notices by the state authorities does not amount to the initiation of adjudication proceedings.
- It noted that the state GST proceedings were closed without conducting any assessment, penalty, or recovery action, and without providing any reason. Thus, there was no "proceeding" in the statutory sense that could preclude the central authorities from acting.
- The court relied on the Allahabad HC's ruling in G.K. Trading Company and held that for Section 6(2)(b) to apply, the earlier proceeding must relate to demands and recovery, not mere issuance of notices. The state's action lacked such adjudicatory elements.
- The HC further noted the CBIC Circular dated 05-10-2018, which clarifies that both state and central authorities may initiate enforcement actions, but the authority initiating the first valid action can complete the entire process, including SCN and adjudication. Since central GST had first conducted inspection on 27 August 2021, it was the competent authority to proceed.
- Accordingly, the HC upheld the central GST SCN dated 6/16 January 2023, holding that it was not barred by Section 6(2)(b). The state's closed, non-adjudicated notices could not invalidate the central proceedings. The writ appeal was dismissed.

(in the case of South Eastern Coalfields Limited(WA No. 494 of 2023))

Delhi HC seeks clarity on whether customs officer can issue SCN for recovery of IGST refund on exports

The Delhi HC declined to interfere with the classification dispute raised in the petitioner's writ and directed the exporter to pursue the statutory appeal, granting protection that any appeal filed within 30 days will not be rejected on limitation. However, the court took note of the larger issue concerning the jurisdiction of Customs officers to demand and recover the IGST refund on exports, given the overlap between the Customs Act, IGST Act and CGST Act. Observing that this question requires a coordinated position of both departments, the court directed the Customs and CGST authorities to file a joint affidavit clarifying who is the 'proper officer' for such recovery.

Facts of the case

- M/s Talbros Sealing Material Private Limited (the petitioner), an exporter of sealing materials (rubberised cork gaskets, rubber gaskets, machinery and auto components), had exported goods, paid IGST on exports, and received IGST refund.
- A SCN was later issued, alleging wrong classification and proposing a recovery of the IGST refund, drawback, and RoDTEP, alleging inadmissible export benefits.
- An OIO confirmed reclassification, confiscation, redemption fine, penalties, and the recovery of export incentives.
- The petitioner challenged the OIO before the Delhi HC on two grounds - misclassification and lack of jurisdiction of Customs officers to issue a SCN and raise IGST/recovery demands under the CGST/IGST Acts.

Issue before the HC

Whether customs officers are 'proper officers' to issue a SCN and recover the IGST refund on exports, or whether the power vests exclusively with the officers notified under the CGST Act?

Petitioner's arguments

- Customs officers are not 'proper officers' under the CGST/IGST Acts, and therefore, they cannot issue SCNs or demand IGST refund recoveries;
- Section 20 of the IGST Act requires assessment and recovery to follow the CGST Act framework, meaning only GST-notified officers have jurisdiction;
- The OIO is ultra vires, as the IGST demand is raised by Customs while relying on the CGST provisions, exceeding their statutory authority.

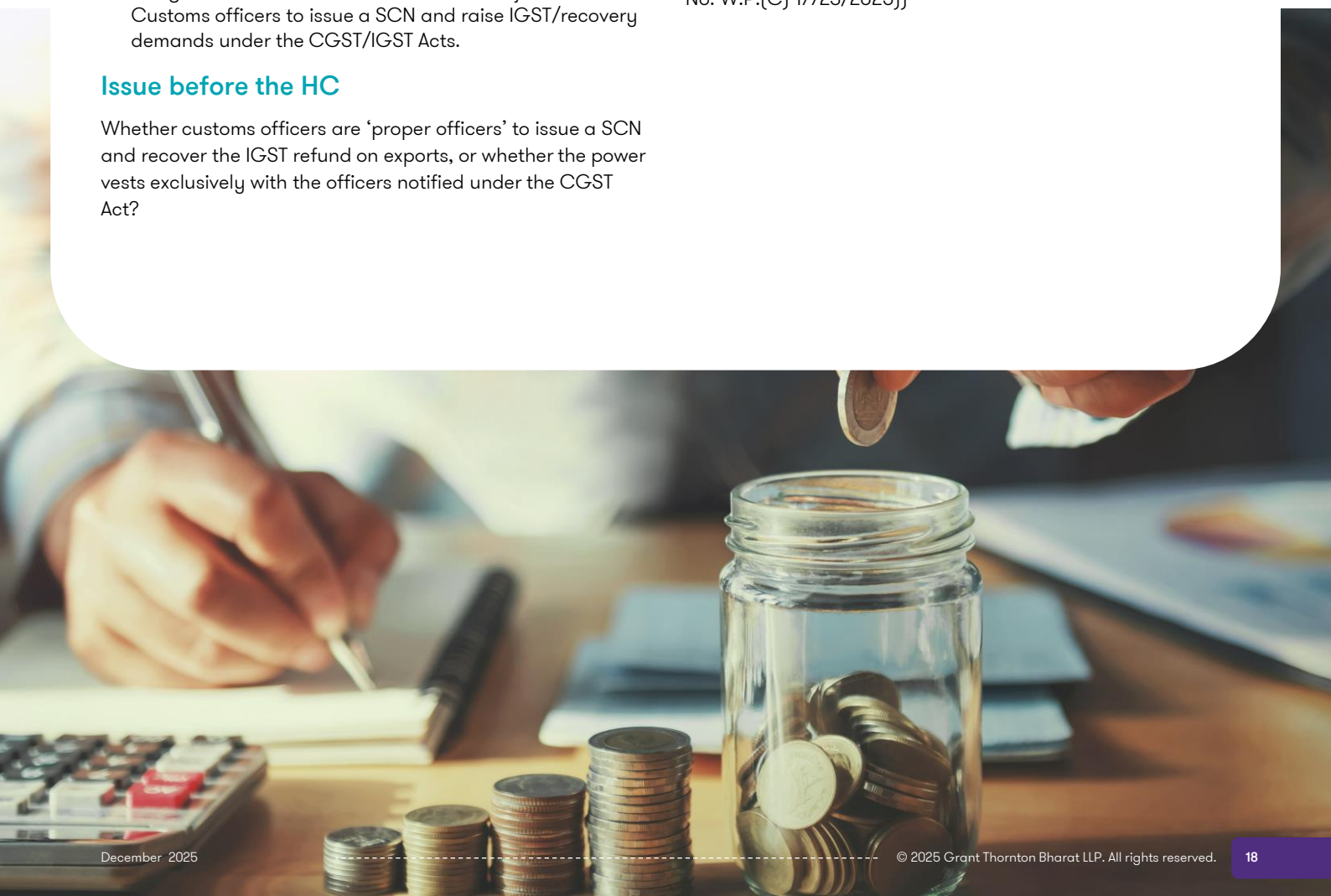
Revenue's arguments

- Customs officers are deemed proper officers for export-related functions, including IGST refund verification, under Section 2(2) of the Customs Act;
- The IGST refunds on exports are processed through the Customs system, giving Customs jurisdiction to examine eligibility and recover inadmissible refunds;
- Since export benefits (IGST refund, drawback, RoDTEP) arise out of export documentation handled by Customs, they are within the Customs' adjudicatory domain.

Delhi HC's observation and ruling (Writ Petition No. W.P.(C) 17723/2025)

- The Delhi HC has directed Customs and CGST departments to file a joint affidavit clarifying who is the 'proper officer' for IGST recovery.
- The case is now listed on 24 February 2026.

(in the case of Talbros Sealing Material Private (Writ Petition No. W.P.(C) 17723/2025))



Cross-LoC trade constitutes intra-state supply under GST – J&K HC

The Jammu and Kashmir HC has ruled that cross-LoC barter trade constitutes an intra-state supply under GST. Dismissing a batch of writ petitions, the HC held that despite being under Pakistan's de facto control, PoK legally remains part of the erstwhile state of Jammu and Kashmir. Therefore, the location of the supplier and the place of supply of goods remained within the same state/UT, and the supply would constitute an inter-state supply. The HC also upheld the validity of composite SCNs spanning multiple financial years, noting that the GST law imposes no prohibition where year-wise quantification, clarity of allegations, and independent compliance with limitation are ensured. Lastly, while reiterating that an alternative remedy does not bar writ jurisdiction in exceptional circumstances, the HC held that the present SCNs were jurisdictionally sound and raised factual matters requiring adjudication. Hence, the writ petitions were premature and not

Facts of the case

- In October 2008, the governments of India and Pakistan mutually permitted the cross–LoC barter trade between the two divided parts of the erstwhile state of Jammu and Kashmir as part of confidence-building measures. The trade operated only on the Srinagar–Muzaffarabad and Poonch Rawalakote routes and was governed by a detailed SOP1, allowing the barter exchange of specified goods without monetary transactions.
- Under the provisions of the erstwhile VAT regime2, such cross-LoC trade was treated as zero-rated, meaning that no VAT was payable on such transactions. However, upon the rollout of the CGST Act and the J&K GST Act, no provision analogous to the zero rating benefit existed, and no exemption notification was issued to exempt such transactions from GST.
- Despite no specific exemption under GST, it was observed that:
  - Petitioners continued to treat cross-LoC transactions as non-taxable;
  - Did not report outward supplies to PoK or inward receipts from PoK in GSTR-1 or GSTR-3B;
  - Did not pay GST on such transactions for FYs 2017–18 and 2018–19;
- Based on intelligence from the DGGI, the CGST authority initiated an investigation and sought item-wise and trade-wise details of barter transactions from the petitioners. It was alleged that the petitioner had engaged in substantial inward and outward supplies, which were never disclosed in the GST returns. The authority also noted that the petitioner did not cooperate with the department and failed to furnish invoices or transaction details.
- Aggrieved by the notice, the petitioner assailed it in writ before the J&K HC.

Issue before the HC

- Whether cross-LoC barter trade qualifies as an intra-state trade, and amenable to GST?
- Whether the SCN issued under Section 74 of the CGST Act valid?
- Whether the SCN issued is barred by limitation under Section 74 of the CGST Act?
- Is the issuance of a composite/bunched show cause notice for two tax periods, FYs 2017-18 and 2018-19, legally permissible under the GST law?
- Does the existence of an alternative remedy of appeal under the GST Act bar the exercise of writ jurisdiction?

Petitioner's contention

- It was contended that the cross-LoC barter trade is governed by the SOP, and it cannot be treated as an intra-state supply under GST. Instead, it resembles trade across two territories and has been historically treated as zero-rated under the State VAT Act.
- The impugned notice was issued beyond the statutory time period prescribed under Section 74 and, therefore, was time-barred, rendering it without jurisdiction.
- It was asserted that even assuming that the supply is intra-state, since there was no fraud, wilful misstatement, or suppression of facts, Section 74 cannot be invoked.
- Additionally, it was contended that bunching two distinct periods, i.e., FY 2017-18 and FY 2018-19, into a single composite notice was impermissible.

Repondent's contention

- The department contended that the territory under PoK is legally part of India as per Article 1 of the Indian Constitution; therefore, supplies to and from PoK constitute intra-state supplies under GST. Since no exemption notification exists for cross-LoC barter trade, such transactions would be amenable to GST.
- The department contended that the petitioners had failed to disclose outward supplies to PoK and inward receipts in their GST returns, despite being required to self-assess such transactions. Their non-cooperation, refusal to share invoices and information, and failure to report taxable supplies amounted to the suppression of facts, justifying the invocation of Section 74.
- Since the due dates for filing the annual returns for FY 2017–18 and FY 2018–19 were extended to 5 February 2020 and 31 December 2020, respectively, the SCN were well within the five-year limitation period prescribed under Section 74.
- GST does not prohibit issuing a single SCN covering multiple financial years, provided each period's demand is individually quantified, and allegations are clear.

1. dated 20 October 2008
2. Section 55 of the J&K VAT Act (as amended in 2012)

HC's observation and ruling (WP (C) No. 1938/2024; Order dated 27 November 2025)

Cross-LoC trade constitutes 'intra-state' transaction under GST

- The HC noted that the cross-LoC trade was introduced in 2008 as a confidence-building measure between India and Pakistan. The Ministry of Home Affairs, Government of India, issued a SoP[3] to regulate such barter trade on the Srinagar–Muzaffarabad and Poonch–Rawalakote routes. The trade involved the exchange of goods without currency. It operated strictly between the residents of the two divided parts of the erstwhile state of Jammu and Kashmir, one under Indian administration and the other in Pakistan-occupied Kashmir.
- Under GST[4], where the location of the supplier and the place of supply lie in the same state or union, the supply is considered an intra-state supply.
- The HC emphasised that despite being under Pakistan's de facto control, the PoK region legally forms part of the state of Jammu and Kashmir. Accordingly, since both the location of the supplier and the place of supply would fall within the same state/UT, the petitioners' cross-LoC transactions would qualify as intra-state supplies for GST purposes. This aspect was also fairly conceded by the petitioners' counsel.

SCN issued under Section 74 is justified and not time-barred

- Upon evaluating the allegations forming the foundation of the SCN, the HC concluded it amounted to 'suppression' of facts. The HC observed that as follows:
  - The petitioners were aware that no exemption existed on the transaction;
  - The petitioner failed to declare outward and inward supplies which resulted in suppression of material facts;
  - The petitioner did not cooperate in the investigation nor furnished the invoices.
  - The evasion would have remained undetected had the department not initiated its inquiry.
- Accordingly, the SCN was correctly issued under Section 74.
- Since the due-date of furnishing annual return was extended for FYs 2017-18 & 2018-19, the SCNs is well within the permissible period.
- However , the Court clarified that the final determination of whether Section 73 or 74 applies must be made by the proper adjudicating authority, not in writ jurisdiction.

No prohibition against issuing composite SCN for multiple FYs

- The HC emphasised that the provisions under GST do not prohibit the issuance of a composite SCN for multiple years.
- Composite SCNs are permissible if:
  - Period-wise quantification of tax, interest, and penalty is specified;
  - Allegations are clear and not vague;
  - Limitation for each year is independently satisfied; and
  - No prejudice is caused to the assessee.

Since the above pre-requisites are duly satisfied, the SCN is valid.

Availability of alternate remedy does not bar invocation of writ jurisdiction

- The HC emphasised that the availability of an alternate remedy does not bar writ jurisdiction[5] where:
  - Fundamental rights are violated;
  - Natural justice principles are breached,
  - The order is without jurisdiction,
  - Vires of the legislation are challenged.
- In the present scenario, the SCNs are prima facie within the jurisdiction, as they are not barred by limitation and raise factual issues. In concordance, the HC dismissed the writ petition as premature and not maintainable.

(in the case of New Gee Enn & Sons (WP (C) No. 1938/2024; Order dated 27 November 2025))

Our comments:

This judgement provides a necessary clarification on the GST treatment of cross-LoC trade, a trade corridor that was opened in 2008 as a confidence-building measure to facilitate controlled barter between India and Pakistan. By reaffirming the constitutional position that PoK remains an integral part of India, the HC held that supplies routed through the LoC fall within the same state or union territory for the purpose of GST. As a result, such movements are treated as intra-state supplies and are taxed accordingly.

The decision effectively resolves the long-standing ambiguity regarding whether cross-LoC transactions should be classified as domestic or international trade for GST purposes. It also reinforces the government's stated position in the Lok Sabha[6] regarding India's territorial claim over PoK.

While the government suspended the cross-LoC trade in 2019, the court's reasoning carries enduring relevance. Businesses that historically engaged in the LoC barter routes, as well as those dealing with analogous cross-border models, must reassess their reporting positions and compliance in light of the HC's authoritative articulation of the territorial and taxability principles governing such supplies.

3. dated 20 October 2008
4. Section 2(64) of the CGST Act, read with Section 8 of the IGST Act
5. Whirlpool Corporation v. Registrar of Trade Marks (1998 (8) SCC 1); Radha Krishan Industries v. State of Himachal Pradesh (AIR 2021 Supreme Court 2114)
6. Question No- 2071: Status of PoK on Indian Map dated 01 August 2025:
https://www.mea.gov.in/lok-sabha.htm?dtl/39905/QUESTION+NO+2071+STATUS+OF+POK+ON+INDIAN+MAP

Karnataka HC quashes denial of GST refund on export services; holds factual errors and procedural technicalities cannot override statutory entitlement

The Karnataka HC has set aside the orders denying the refund of unutilised ITC to Mavenir Systems Pvt. Ltd., along with the consequential demand and recovery proceedings, holding that the authorities had acted on erroneous factual premises, adopted a hyper-technical view of documentation, and misapplied the concept of intermediary services under the IGST Act. The HC concluded that once the export of services and the receipt of foreign exchange are established through statutory documentary evidence, refund cannot be withheld on procedural grounds.

Facts of the case

- The petitioner is engaged in the provision of software development and research and development support services to its overseas group entity. In respect of such exports of services made without the payment of IGST, the petitioner filed refund claims of accumulated ITC for the financial years 2018–19 and 2019–20 under Section 54(3) of the CGST Act. These refund claims were initially examined and sanctioned by the jurisdictional authority.
- Subsequently, the department undertook a review of the refund sanction orders and, in the appellate proceedings, concluded that the petitioner had purportedly failed to furnish eBRCs/FIRCs demonstrating the receipt of export proceeds. On this basis, the refund sanctions were withdrawn. Parallelly, proceedings under Section 73 of the CGST Act were initiated for the recovery of the amounts previously sanctioned, ultimately resulting in a demand and recovery order.
- The department advanced the contention that the petitioner was rendering 'intermediary services' within the meaning of Section 2(13) of the IGST Act, and therefore, was not eligible to treat the supplies as exports nor to claim refund of the unutilised ITC.
- The petitioner submitted that the refund sanction orders were proper and that the subsequent appeal, SCNs and recovery proceedings were unsustainable, having been initiated on incorrect factual assumptions and without the due consideration of the documents furnished.

Issue before the HC

- Whether refund could be denied on the basis of alleged non-submission of eBRCs/FIRCs when the petitioner had, in fact, furnished the documents during adjudication.

Karnataka HC's observations and ruling (Writ Petition No. 15323 of 2022, order dated 06 November 2025

- The HC observed that the finding recorded by the department that the petitioner had not furnished eBRCs/FIRCs was factually misconceived, noting that the petitioner had placed on record eBRCs, FIRAs and detailed remittance statements through its replies. It held that a conclusion contrary to the documents produced cannot furnish a valid basis for denying refund.
- The court further emphasised that the receipt of export proceeds had been conclusively demonstrated, and that, in view of the RBI's discontinuation of physical FIRCs, FIRAs and eBRCs constitute the appropriate and legally recognised evidentiary mechanism. It held that procedural or format-related objections cannot displace the substantive statutory requirement, once the realisation of foreign exchange is established.
- With respect to the allegation of intermediary services, the HC examined the contractual framework and noted that the petitioner independently undertook software development, testing and delivery obligations on a principal-to-principal basis. It held that the essential element of facilitation of a supply between two parties, central to the definition of 'intermediary' under Section 2(13) of the IGST Act was absent, thereby precluding such classification.
- The court further held that administrative action founded on erroneous factual assumptions and hyper-technical grounds is impermissible. It observed that the department had overlooked material evidence, misapplied Rule 89(2), and acted in a manner contrary to Articles 14, 265 and 300A of the Constitution. It reiterated that substantive refund entitlement cannot be negated through procedural rigidity or factual misappreciation.
- Accordingly, the impugned refund rejection orders, together with the consequential demand and recovery notices issued under Section 73 of the CGST Act, were quashed, and the petitioner's entitlement to a refund of the unutilised ITC was restored.

(in the case of Mavenir Systems Pvt. Ltd., (Writ Petition No. 15323 of 2022, Order dated 06 November 2025))

Telangana HC held that amount paid towards tax liability during investigation cannot be adjusted against mandatory pre-deposit required for filing appeal before GSTAT

The Telangana HC has held that the amounts paid towards tax liability during investigation through Form GST DRC-03 cannot be adjusted against the mandatory 10% pre-deposit required for filing an appeal before the GSTAT in cases involving penalty-only orders.

Facts of the case

- The petitioner had challenged the appellate order upholding the penalty imposed under the CGST Act.
- During investigation, the petitioner had deposited certain amounts towards tax liability vide Form GST DRC-03 and sought adjustment of the same towards the statutory 10% pre-deposit required for filing an appeal before the GSTAT.

Petitioner's contentions

- The petitioner argued that the amount already deposited in Form GST DRC-03 during investigation represented payment towards the same proceedings and should be adjusted against the pre-deposit requirement under Section 112(8) of the CGST Act.
- The petitioner sought a period of eight weeks to make any additional deposit, if required, and requested interim protection against coercive recovery in the meantime.

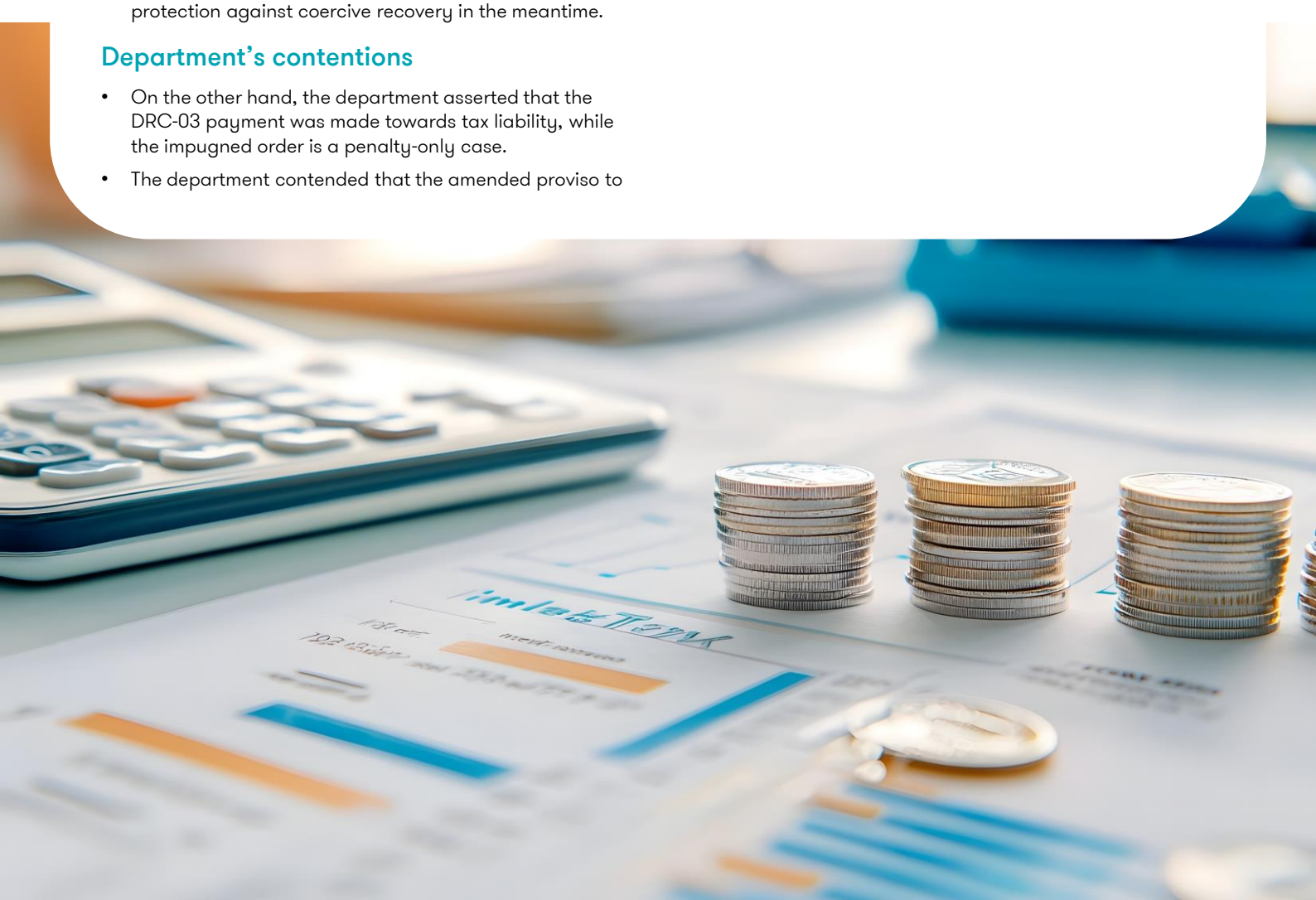
Department's contentions

- On the other hand, the department asserted that the DRC-03 payment was made towards tax liability, while the impugned order is a penalty-only case.
- The department contended that the amended proviso to Section 112(8) of the CGST Act mandates a separate 10% pre-deposit of penalty for appeals before GSTAT where no tax demand is involved.
- Accordingly, the statutory pre-deposit serves a distinct purpose under the appellate mechanism and cannot be substituted by any payment made towards tax liability during investigation.

Telangana HC's observations and ruling (W.P. No. 32612 of 2025, order dated 29 October 2025)

- The court observed that as per the amended proviso to Section 112(8) of the CGST Act, a 10% pre-deposit of penalty is mandatory for the maintainability of appeals before GSTAT in cases involving only penalty.
- It referred to the GSTAT's order dated 24 September 2025 issued under Rule 123 of the GSTAT (Procedure) Rules, 2025. Since the order is dated 26 August 2025, the window for filing appeals would commence from 1 February 2026 to 30 June 2026.
- The HC rejected the petitioner's plea to adjust the DRC-03 amount, holding that the payments made during investigation towards tax liability cannot be treated as pre-deposit for filing appeals under the statutory scheme.
- Accordingly, the court directed the petitioner to deposit 10% of the penalty amount within eight weeks and granted interim protection from coercive recovery till the disposal of the appeal by GSTAT.

(in the case of Annai Infra Developers Limited (W.P. No. 32612/ 2025, Order dated 29 October 2025)



B. Key rulings under the erstwhile indirect tax laws

SC upholds CESTAT's decision that service tax not applicable on employee CFA scheme

The SC has dismissed the Revenue's appeal challenging the CESTAT Chandigarh order that had set aside the penalty and service tax demand imposed on Bharti Airtel Ltd. over the CFA waiver extended to its employees. The CESTAT had earlier held that the CFA, provided under the Airtel Employees Services Scheme as a monthly entitlement, represented only a discount or concession and did not constitute consideration for service tax purposes. It ruled that no monetary or non-monetary consideration flowed from employees (as service recipients) to the employer (the service provider). Consequently, the CFA could not be included in the taxable value of services.

Facts of the case

- Bharti Airtel Ltd. (the assessee) provided various taxable services under categories such as telecommunication service, business support services, and sponsorship service. They introduced an AESS, under which employees were granted a CFA for mobile and fixed-line services.
- The employees exceeding the CFA limit paid the excess usage charges, along with applicable service tax, while calls within the CFA limit were not billed.
- The department issued multiple SCNs proposing to levy service tax on the value of CFA waivers, contending that the free usage represented a non-monetary consideration and invoking best judgement assessment under Section 72 of the Finance Act, 1994.
- The Commissioner confirmed a demand of INR 118 crore, along with interest and penalties under Sections 76, 77, and 78, alleging the suppression of information and extended limitation.

Issues before CESTAT/SC

- Whether the value of free/discounted telecom usage (CFA) provided to employees must be added to the taxable value of telecommunication services under Section 67, even when the employer collects service tax on any amount recovered beyond the CFA limit?

Assessee's contentions

- No consideration, monetary or otherwise, was received from employees for the CFA usage; therefore, no service tax liability arises under Section 67.
- Service tax was duly paid on excess usage beyond CFA; services provided free of cost cannot be taxed, as clarified in CBEC Circular No. 23/3/97-ST dated 13 October 1997.
- The Commissioner's reliance on "goodwill" as consideration was erroneous, as there is no statutory basis to treat goodwill as the taxable value.
- The best judgement assessment under Section 72 was invalid since regular returns were filed and the department failed to gather actual data.
- The computation of INR 118 crore was arbitrary based on extrapolation of figures from the Bangalore circle without factual basis.
- Demand was time-barred and revenue-neutral, as any tax payable would be creditable under CENVAT.

CESTAT's observations and ruling [ST Appeal No. 1768 of 2012; order 60102/2025 dated 27 January 2025]

- The Tribunal held that service tax could not be levied in the absence of consideration, noting that the CFA constituted a discount or concession to employees rather than a taxable service.
- It was observed that there was no monetary or non-monetary flow of consideration from employees to Bharti Airtel, and that "goodwill" could not be treated as consideration under Section 67 of the Finance Act.
- The Commissioner's conclusion that goodwill or employee performance represented indirect consideration was found to be legally unsustainable and beyond the scope of the SCN.
- The Tribunal also noted that reliance on the best judgement assessment was unjustified, as the department possessed relevant data and sufficient time but instead resorted to arbitrary assumptions and extrapolations across circles without factual support.
- It emphasised that tax computation must be based on verifiable and ascertainable figures, not on presumptions or estimates.
- The SCN was deemed vague, as it failed to clearly identify the specific taxable service alleged.
- The Tribunal further clarified that employee-related discounts or free allowances do not enhance the assessable value of services rendered by the employer.
- Consequently, the entire demand, along with interest and penalties, was quashed, and the appeal was allowed in favour of the assessee.

(in the case of Bharti Airtel Ltd. ST Appeal No. 1768 of 2012; Order 60102/2025 dated 27 January 2025)

SC holds that boilers erected at site are immovable; no excise duty leviable

The SC held that excise duty cannot be levied on the boilers assembled and erected at the buyer's site, as such installations become immovable property and therefore fall outside the scope of "excisable goods."

The apex court upheld the dropping of demand on the ground that valuation provisions cannot be applied unless the levy itself is attracted, and a product embedded to earth cannot be treated as movable goods. It observed that the boiler, once erected with civil foundations and structural integration, loses independent marketability, and hence, cannot be subjected to excise duty. Consequently, the duty-paid bought-out items supplied directly to the site could not be included in the assessable value of the CKD components cleared from the factory. The SC further noted that the Tribunal had wrongly relied on assumptions regarding "essential parts" and had ignored binding precedents such as quality steel tubes and Mittal Engineering, which categorically hold site-assembled structures to be immovable property. Accordingly, the appeal filed by the Revenue was dismissed.

Facts of the case

- Lipi Boilers Ltd. (the assessee) manufactured boilers and boiler parts under Chapter 84 of the CTA and entered into a contract with Shri Maroli Vibhag Khand Udyog Sahakari Mandali Ltd. to design, procure, manufacture, and supply machinery and equipment for a 50 TPH bagasse-fired steam generating plant.
- The boilers were cleared from the factory in CKD condition, while certain bought-out duty-paid items (like pumps, fans, valves, etc.) were sent directly by vendors to the buyer's site for erection.
- The department alleged undervaluation of boilers, contending that the cost of bought-out items (INR 14,02,344) should have been included in the assessable value since they were "essential parts" of the boiler.
- A SCN was issued invoking the extended limitation period under Section 11A(1) proviso, demanding INR 2,24,375 as differential duty with interest and penalty.
- The Assistant Commissioner dropped the demand, holding that the boilers erected at site and attached to earth are immovable and not excisable, and bought-out items cleared directly to the site cannot be included in the assessable value; the Commissioner (Appeals) upheld this order.
- On the Revenue's appeal, the CESTAT reversed the findings, holding that bought-out items were essential parts of the boiler and their value must be included in the assessable value.

Issues before the court

- Whether the value of the duty-paid bought-out items delivered directly to the site is includible in the assessable value of boilers cleared in the CKD form?
- Whether the extended limitation under the proviso to Section 11A(1) was validly invoked?

CESTAT's observations and ruling (CIVIL APPEAL NOS. 856-857 OF 2011)

- The SC held that excise duty could not be levied on boilers erected at site since the final product emerging at the buyer's premises was an immovable structure, and therefore, did not qualify as "excisable goods."
- The court observed that the CESTAT committed a fundamental error by relying on valuation principles under Section 4 to justify levy, without first examining the charging requirement under Section 3, which mandates that excise duty is attracted only when movable, marketable goods come into existence.
- The court reiterated that boilers assembled and permanently attached to earth through grouting, civil foundations and structural integration cannot be dismantled without substantial damage, and hence, fail the test of movability.
- The court further held that the "bought-out items" delivered directly to site were not part of the manufactured boiler cleared from the factory and could not be treated as "essential parts" for valuation when there was no material to support such a finding. Since the CESTAT incorrectly assumed that a complete boiler existed in CKD condition at the factory, contrary to the factual findings of both lower authorities, its conclusion was legally unsustainable.
- The court also emphasised that valuation provisions cannot be used to expand excisability and that the Revenue's failure to invoke Section 11D showed a misapplication of law.
- On limitation, the court held that the invocation of the extended period under the proviso to Section 11A(1) was invalid, as the department failed to establish any wilful suppression or intent to evade; the assessee had filed returns and disclosed all particulars. Accordingly, the SC set aside the CESTAT's order and restored the findings of the lower authorities.

[in the case Lipi Boilers Ltd.(CIVIL APPEAL NOS. 856-857 OF 2011)]

SC clarifies scope and taxability of a 'real estate agent', emphasises that absence of agency implies transfer of title in land

The SC held that service tax cannot be levied on the land procurement transactions undertaken by Elegant Developers for Sahara India Commercial Corporation Ltd., as such dealings represented pure sale and purchase of immovable property and not "Real estate agent" services.

The court observed that the respondent acted as an independent land aggregator assuming full commercial risk, and not as an agent rendering consultancy, advisory or facilitation services. It held that the respondent's earnings arose solely from the margin between the negotiated purchase price and the fixed average rate agreed with Sahara, which could even result in a loss; an arrangement incompatible with an agency or commission-based service. Since transfer of title in land is expressly excluded from the definition of "service" under Section 65B(44)(a)(i) of the Finance Act, 1994, the transactions could not be brought under the ambit of taxable services. The court further noted that the Revenue failed to establish any wilful suppression to invoke the extended period under Section 73(1). Accordingly, the appeal filed by the Revenue was dismissed.

Facts of the case

- Elegant Developers (the respondent), a partnership firm, entered into three MoUs with Sahara India Commercial Corporation Ltd. (SICCL) for the procurement and transfer of land parcels at Vadodara, Sri Ganganagar and Kurukshetra.
- As per the MoUs, Sahara agreed to purchase land at a fixed average rate per acre, while the respondent was responsible for identifying contiguous land blocks, furnishing title documents, obtaining necessary approvals, coordinating with landowners, and ensuring the execution of sale deeds in favour of Sahara. All land acquisition expenses were paid from the advances received from Sahara, and the respondent's profit or loss depended solely on the difference between the negotiated price paid to landowners and the fixed average rate.
- During investigation, the DGCEI alleged that these activities amounted to "Real estate agent" services, contending that the respondent facilitated land acquisition for Sahara and earned consideration akin to commission. A SCN was issued demanding service tax for the period 2004–07 by invoking the extended limitation under Section 73(1).
- The adjudicating authority confirmed the demand, treating the respondent's margin as consideration for taxable services. On appeal, the CESTAT held that the transactions constituted pure sale of land and not taxable services, and accordingly, set aside the demand. Aggrieved by the dropping of the demand, the Revenue filed a statutory appeal before the SC.

Issues before the court

- Whether the activities undertaken by Elegant Developers under its MoUs with Sahara India Commercial Corporation Ltd. amounted to a provision of taxable "Real estate agent" services under Sections 65(88), 65(89) and 65(105)(v) of the Finance Act, 1994.
- Whether such transactions constituted pure sale and purchase of immovable property falling outside the ambit of service tax; and further whether the extended period under the proviso to Section 73(1) was rightly invoked.

SC's observations and ruling (CIVIL APPEAL NO(S). 11744 – 11745 of 2025 order dated 10 November 2025)

- The SC held that the respondent did not act as a real estate agent or consultant but operated as an independent land trader purchasing land from owners and transferring it to SICCL at a fixed average rate.
- The court observed that the respondent's earnings arose solely from the differential between the negotiated purchase price and the agreed fixed rate, a model incompatible with an agency or commission-based service. Since a land transaction involves the transfer of title in an immovable property, it falls squarely within the exclusion provided under Section 65B(44)(a)(i), and therefore, cannot be treated as a taxable service.
- The court noted that the MoUs did not provide for any service fee, commission or consultancy charges. Instead, the respondent bore full commercial risk and could even incur a loss, reinforcing that the arrangement was principal-to-principal.
- Relying on the statutory definition, the SC held that the "Real estate agent" services presuppose the rendering of advice, consultancy or facilitation, none of which were present in the respondent's activities.
- On limitation, the court applied its ruling in the Stemcyte India Therapeutics Pvt. Ltd. case and held that the department failed to demonstrate any wilful suppression or intent to evade tax. All transactions were routed through banking channels and were fully reflected in accounts, indicating bonafide conduct. Mere non-payment of tax could not justify the invocation of the extended period.
- Accordingly, the SC upheld the CESTAT's decision, setting aside the demand, and dismissed the Revenue's appeals in their entirety.

[in the case of Elegant Developers (CIVIL APPEAL NO(S). 11744 – 11745 of 2025 Order dated 10 November 2025)]

Bombay HC affirms that trademark transfer to foreign entity qualifies as export; clarifies that situs shifts outside India irrespective of Indian registration or INR payment

The Bombay HC has held that the transfer of a trademark to an overseas entity qualifies as a sale in the course of export under Section 5(1) of the CST Act, and is therefore, not liable to tax under the Bombay Sales Tax Act, 1959. The court affirmed that trademarks are intangible goods or incorporeal property capable of export and clarified that the export of intangible property is affected through the transfer of ownership, rather than physical movement. Applying the *mobilia sequuntur personam* principle, the court ruled that the situs of the trademark shifted to the United Kingdom (UK) upon the transfer of ownership, as the assignee was situated in the UK, irrespective of its registration in India or payment being received in INR. As a result, the Tribunal's conclusion that the sale occurred within Maharashtra was set aside, and the transaction was recognised as an export exempt from state tax.

Facts of the case

- M/s. Duphar Interfran Ltd (the assessee), an Indian pharmaceutical and consumer healthcare company based in Mumbai, owned the registered trademark "Crocin" under the Trade and Merchandise Marks Act, 1958.
- On 18 January 1996, the assessee executed a brand acquisition agreement in London, assigning the 'Crocin' trademark to SKB, a company incorporated and located in the UK.
- Following the assignment, SKB applied to the Registrar of Trademarks, Mumbai, on 19 January 1996, seeking substitution of its name as proprietor with effect from the date of the agreement.
- The Commissioner of Sales Tax, Mumbai, in a determination dated 31 August 1998, held that the assignment constituted a local sale within Maharashtra, taxable at 4% under Entry C-I-26 of the Bombay Sales Tax Act, 1959 (BST Act).
- During the pendency of the assessee's appeal, the Assistant Commissioner of Sales Tax passed an assessment order for FY 1995–96, raising a demand of around INR 99.68 lakh, treating the assignment consideration as taxable local turnover.
- The first appellate authority, and subsequently, the Maharashtra Sales Tax Tribunal, upheld the assessment, holding that the trademark assignment was a taxable sale within the state.
- The Tribunal later referred the matter to the Bombay HC, framing the question whether the assignment of the 'Crocin' trademark was a sale agreement, and, if so, whether it constituted a sale within Maharashtra or a sale in the course of export under Section 5(1) of the CST Act.
- Before the HC, it was common ground that the subject matter was intangible property (a trademark) and that the consideration was paid in India in Indian rupees.

Issue before the HC

- Whether the assignment of the trademark 'Crocin' constitutes a sale in the course of export under Section 5(1) of the CST Act?
- Whether it amounts to a sale within the state of Maharashtra, liable to tax under the Bombay Sales Tax Act, 1959?

Assessee's contentions

- The brand acquisition agreement amounted to an agreement to sale, but the assessee argued that the consequent sale did not occur within Maharashtra. Instead, the transaction qualified as a sale in the course of export under Section 5(1) of the CST Act, taking it outside the charging provisions of the BST Act.
- The subject matter of transfer was an intangible trademark, and for such incorporeal property, the situs follows the owner. Once the trademark was assigned to SKB, a company situated in the UK, the situs of the trademark automatically shifted to the UK.
- Relying on established principles of intellectual property law, they argued that registration does not create the trademark right; ownership passes on the execution of a valid assignment. Therefore, the place of registration in Mumbai could not determine the situs or taxability of the sale.
- The CST Act uses the term "goods" consistently across Sections 3, 4, and 5, and the statutory expression includes intangibles. If intangible property is accepted as "goods" for determining the situs under Section 4, it must similarly be recognised as "goods" capable of export under Section 5(1) of the CST Act.
- The assignment of a trademark results in a complete transfer of proprietary rights, and the property vests wholly in the foreign assignee. This change in ownership, with the assignee located outside India, necessarily signifies the movement of goods outside India's territory, thereby fulfilling the export requirement.
- The governing law of the agreement, the location of payment, or the fact that consideration was received in Indian rupees cannot determine the nature of the transaction for the purposes of CST. The decisive factor under Section 5(1) of the CST Act is whether the sale occasions the transfer of property to a location outside India, which occurred when the ownership passed to a UK entity.

Revenue's contentions

- The assignment of the 'Crocin' trademark constituted a local sale within Maharashtra, as the transaction did not involve any physical or notional movement of goods outside India. Therefore, Section 5(1) of the CST Act was not attracted.
- The place of registration of the trademark, as determined by the Registrar of Trademarks in Mumbai, is its situs. Since the trademark was registered in India, the transfer took place within the state, making it taxable under the BST Act.
- The agreement was executed under Indian law, and the consideration was paid and received in India in Indian rupees, indicating that the transaction was domestic in nature and bore no export character.

- Reliance was placed on judicial precedents, such as the case of Vikas Sales Corporation1, to argue that intangible property, though considered "goods," does not automatically acquire export status merely because the assignee is located abroad. Actual movement or export must be shown, which, according to the Revenue, was absent.
- No movement across customs frontiers occurred, nor was there any act or event that evidenced the transfer of the trademark outside India. The assignment merely changed the ownership on paper, without satisfying the statutory requirement of a sale "occasioning" export.
- Even if intangible property could qualify as "goods," the absence of physical movement precluded the application of Section 5(1). Consequently, the transaction fell squarely within Entry C-I-26 of the BST Act and was chargeable at 4%.

Bombay HC's observation and ruling [Sales Tax Reference No. 9 of 2012 dated 21 November 2025]

Trademark is "Goods" and capable of export under Section 5(1) CST Act

- The court held that intangible property, such as trademarks, falls within the definition of "goods" for the purposes of Sections 3 to 5 of the CST Act.
- Post the Sixth Constitutional Amendment, there is no basis to restrict "goods" to physical items, and intangible assets are equally capable of being the subject of inter-state trade or export.

Assignment to a foreign entity constitutes an export, even without physical movement

- The court clarified that in the case of intangible assets, export is affected through the transfer of ownership rather than physical transport. Since the proprietary interest in the trademark moved to a foreign entity, the sale "occasioned the export of goods" within the meaning of Section 5(1).
- The fact that the consideration was paid in Indian rupees or that the agreement was governed by Indian law did not alter this character.

Registration formalities do not determine ownership or situs

- Rejecting the Revenue's reliance on the place of registration, the court applied the principle mobilia sequuntur personam[2] and precedents[3], thereby holding that the situs of an intangible asset follows its owner.
- Once proprietary rights in "Crocin" passed to SKB (UK), the trademark's situs shifted to the UK, irrespective of its continued registration in India.
- Registration under the Trademarks Act was held to be evidentiary, rather than constitutive of title. The title passed upon the execution of the assignment deed itself. Therefore, the mere fact that the trademark continued to appear in the Indian register could not justify treating the transaction as a local sale.

Tribunal's finding of local sale incorrect and set aside

- Since the transaction qualified as a sale in the course of export under Section 5(1), read with Article 286(1)(b), the state lacked the power to levy tax under the BST Act. • The Tribunal's view that the sale occurred within Maharashtra was held erroneous.

(in the case of Duphar Interfran Ltd (Sales Tax Reference No. 9 of 2012 dated 21 November 2025))

Our comments:

This ruling reinforces the pre-GST position that intangible property, such as trademarks, constitutes "goods" capable of export under the CST regime—a principle established by the SC in the Tata Consultancy Services case. Applying the principle of mobilia sequuntur personam, the Bombay HC held that the situs of a trademark follows its owner and shifts outside India upon assignment to a foreign entity. A similar view was earlier taken by the Bombay HC in the Mahyco Monsanto case. By recognising that the export of intangible assets occurs through the transfer of ownership rather than physical movement, the court excluded such transactions from the state sales tax, further strengthening jurisprudence on cross-border IPR transfers under the CST Act.

However, under the GST regime, such controversies are largely settled due to the statutory framework for zero rated supplies. GST deems temporary transfers of the IPR to be supplies of services (Schedule II, Entry 5(c)). Where the recipient is located outside India and the conditions for the "export of services" under Section 2(6) of the IGST Act are satisfied, the assignment of the IPR qualifies as a zero-rated supply under Section 16 of the IGST Act. GST's destination-based design focuses on the place of supply and the recipient's location rather than situs, making export classification more straightforward and rendering the earlier situs driven controversies largely redundant.

1. (1996) 4 SCC 433
2. meaning movables follow the owner
3. Mahyco Monsanto (2016 SCC OnLine Bom 5274) and CUB PTY Ltd. ((2016) 388 ITR 617)

CESTAT held that EPC/turnkey contracts cannot be clubbed into a single works contract for service tax

The CESTAT Kolkata held that service tax cannot be levied on the supply portion of EPC/turnkey contracts executed by Techno Electric, as the supply and service components were governed by separate and independent contracts.

The Tribunal observed that the existence of a cross-fall breach clause does not render an EPC arrangement indivisible or convert distinct supply and service contracts into a single works contract. It noted that the equipment supplied under separate contracts had already suffered CST/VAT, and therefore, its value could not be added to the works contract valuation for service tax purposes. The CESTAT further held that only the service elements, such as erection, installation and civil works, were taxable, and the department could not invoke a "substance over form" theory to club legally independent contracts. Relying on decisions, including those in the cases of UPPTCL v. CG Power, BHEL and Kalpataru Power Transmission Ltd., the Tribunal concluded that separable contracts in the EPC projects cannot be merged for taxation merely due to contractual linkage. Accordingly, the appeal filed by the Revenue was dismissed.

Facts of the case

- Techno Electric & Engineering Co. Ltd. (the assessee) is a public limited company engaged in executing EPC/turnkey projects for power utilities across India. For tendered projects, the electricity distribution authorities issued separate itemised bids for: (i) supply of equipment/spares and (ii) services such as erection, installation and commissioning, civil construction, and transportation and insurance.
- The assessee entered distinct contracts for each activity, raised separate invoices and paid CST/VAT on supply and service tax on service components. Under the supply contract, property in goods were transferred at the time of loading (FOR destination), and the assessee also handled import logistics, marine insurance and clearance of equipment.
- The DGGI conducted searches and later issued a common SCN covering 45 service-tax registered units of the company, alleging that the assessee had artificially split a single turnkey project into supply and service contracts. The department contended that the existence of a cross-fall breach clause made the entire contract indivisible and taxable as works contract under Rule 2A(ii). A demand of over INR 102 crore (with interest and penalties under Sections 77, 78 and 78A) was confirmed against multiple units.
- The assessee appealed before the CESTAT, contending that EPC contracts were inherently divisible, that VAT/CST was duly discharged on supply, and that the department could not resort to "substance over form" to club independent contracts for taxation.

Issues before the court

Whether independent supply and service contracts executed in an EPC/turnkey project can be treated as a single composite works contract on account of a cross-fall breach clause, thereby permitting the department to levy service tax on the entire contract value, including the supply portion already subjected to VAT/CST?

CESTAT's observations and ruling (FINAL ORDER NOs. 77577-77578 / 2025)

- The Tribunal held that the EPC contracts comprise multiple distinct and divisible elements, and the supply of equipment is a separate sale contract on which CST/VAT is payable. It noted that the transfer of property in goods occurred independently and prior to the execution of civil or erection activities, confirming its character as a pure sale.
- Accordingly, the value of such equipment cannot be included in the taxable value of the works contract service.
- The CESTAT rejected the department's reliance on the cross-fall breach clause, holding that it ensures performance obligations but does not convert independent contracts into a single composite contract. The Tribunal emphasised that the works contract is only one part of an EPC project, and it is legally erroneous to treat the entire EPC arrangement as a works contract.
- Relying on judicial precedents, including those in the cases of UPPTCL v. CG Power, BHEL (Allahabad CESTAT) and Kalpataru Power Transmission Ltd., the Tribunal held that separable contracts for supply and service must be taxed independently. It also found no basis to invoke the extended period of limitation, as all transactions were properly accounted for and the issue was interpretational.
- Accordingly, the CESTAT set aside the entire service tax demand, along with interest and penalties, and allowed the assessee's appeal.

[in the case Techno Electric & Engineering Co. Ltd. (FINAL ORDER NOs. 77577-77578 / 2025)]

Refund of unutilised education cess and SHE cess not permissible under Section 142(3) of the CGST Act – CESTAT (Larger Bench)

The Larger Bench of the CESTAT has held that the unutilised balances of EC, SHEC and KKC, lying as on 30 June 2017, cannot be refunded in cash under Section 142(3) of the CGST Act. The Tribunal ruled that these cesses were not included in the list of "eligible duties" for transition under Section 140(1) and that refund claims, if filed after the abolition of the cesses, remain governed by Section 11B, and are therefore, time-barred. The Bench relied on the earlier ruling in the matter of NMDC Ltd., 2024 (5) TMI 192 –CESTAT New Delhi, rejecting the contrary view in the matter of NuVista Ltd, 2022 (3) TMI 1254 – CESTAT New Delhi. The Bench held that transitional provisions cannot revive or extend refund entitlement for cesses that were already abolished before GST.

Facts of the case

- The appellant, KEI Industries Ltd., carried forward the accumulated balances of EC, SHEC and KKC in its ER-1/ST-3 returns for June 2017.
- These balances were initially transitioned through TRAN-1 but later reversed during audit on the ground that such cesses were not eligible duties under Section 140(1).
- Following reversal, the appellant filed a refund claim under Section 11B for the unutilised cesses lying in its books as on 30 June 2017.
- The department rejected the claim on the basis that (i) the cesses were not eligible for transition, and (ii) refund was barred by limitation, as the cesses had been abolished earlier.
- Divergent rulings of the Tribunal in the matters of NuVista Ltd. (allowing refund) and NMDC Ltd. (rejecting refund) resulted in the reference to a Larger Bench.

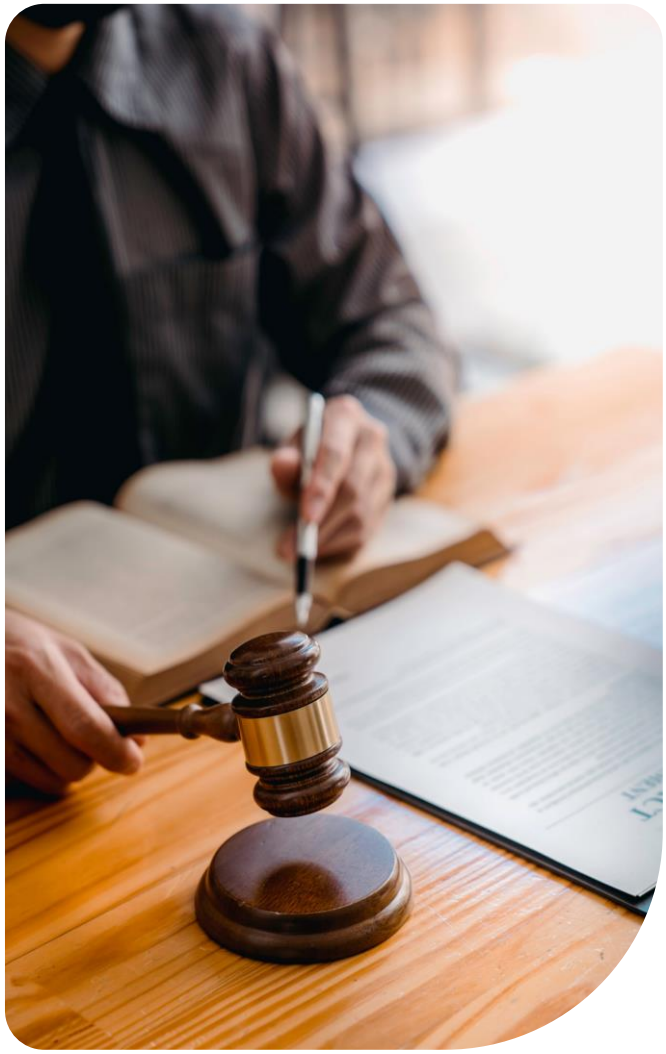
Issues before the court

- Whether the unutilised balances of EC, SHEC and KKC can be refunded in cash under Section 142(3) of the CGST Act where such cesses were abolished prior to the GST regime and were not eligible duties for transition under Section 140(1) of the CGST Act?

CESTAT's observations [2025 (11) TMI 1641 - CESTAT NEW DELHI- (LB)]

- The Tribunal noted that Section 140(1) specifically lists "eligible duties" for transition into GST and that both EC and SHEC are expressly excluded through Explanation 1 and 2. Accordingly, these cesses could never be transitioned as input tax credit.
- It held that Section 142(3) does not create a fresh right of refund; rather, the refunds of pre-GST levies continue to be governed by the limitation under Section 11B of the Central Excise Act. Since the cesses were abolished on 1 March 2015/1 June 2015 and the refund claim was filed much later, the claim was time-barred.
- The Larger Bench emphasised that the appellant had first transitioned the cesses to TRAN-1, reversed them only during audit, and thereafter sought a refund. Such conduct cannot be protected under transitional provisions, which are not intended to compensate taxpayers for credits that were never legally admissible.
- Relying on the matter of NMDC Ltd., the Tribunal reiterated that unutilised EC/SHEC/KKC cannot be refunded under Section 142(3), as these levies ceased to exist prior to GST and no right survived for refund after their abolition.
- The Bench noted that several high courts have consistently held such refund claims to be untenable, and there exists no contrary binding high court decision supporting the taxpayer's position. The appeal was dismissed on the basis of the above.

(in the case KEI Industries Ltd CESTAT's observations [2025 (11) TMI 1641 - CESTAT NEW DELHI- (LB)])



C. Key rulings under the customs laws

Royalty shall be included in assessable value of mobile phone components imported by contract manufacturers – CESTAT

The Chennai Bench of the CESTAT has held that Xiaomi India is the beneficial owner of mobile-phone parts and components imported through its contract manufacturers. As a result, royalties and licence fees paid to foreign IPR holders must be included in the assessable value of these imports.

The Tribunal found that the contract manufacturers did not have independent control over the imported goods and that Xiaomi India exercised effective control and economic ownership, consistent with the DRI findings. It also noted that Xiaomi India could not manufacture or sell devices in India without the licensed technology, making royalty a functional precondition for using and supplying the imported components.

The Tribunal further observed that shifting royalty obligations from Xiaomi China to Xiaomi India while keeping manufacturing royalty-free at the contract-manufacturer level was a deliberate structure to present royalty as a post-import charge. Accordingly, it held that the royalty payments were inextricably linked to the imported goods and must be included in the customs value.

Facts of the case

- Xiaomi India (the assessee), a subsidiary of Xiaomi Singapore Pte. Ltd., is engaged in the distribution and trading of Xiaomi-branded consumer electronics in India, including mobile phones, televisions, IoT devices, and lifestyle products, without undertaking manufacturing activities itself.
- Mobile phones are supplied to the assessee either as finished devices imported from Xiaomi group entities abroad or as finished phones manufactured in India by third-party CMs (Rising Star, Flextronics, Hi-Pad, DBG, etc.) using parts and components imported by those CMs from Xiaomi group companies.
- Under a suite of agreements, namely, the SULA, MPLA, MSA with Qualcomm Inc. (USA), and a LRAA with Beijing Xiaomi, the royalties/licence fees are payable on Xiaomi branded devices using 2G/3G/4G technologies and Xiaomi software/hardware, calculated as a percentage of net selling price or revenue from "permitted products".
- DRI intelligence suggested that the assessee was evading customs duty by not including royalty/licence fees in the assessable value of imported parts and finished phones, even though these royalties related to bundled licensed hardware and software technologies embedded in such goods.
- In its initial application to the SVB, the assessee did not disclose the royalty agreements with Qualcomm and Beijing Xiaomi; these were furnished only after the DRI commenced its investigation in 2019, which the Tribunal viewed as a material non-disclosure.
- Based on the DRI's investigations, three SCNs were issued to the assessee, its four CMs and others proposing re-determination of value under Section 14, read with Rule 10(1)(c) of the Customs (Determination of Valuation of imported goods) Rules, 2007 (CVR), recovery of differential duty under Section 28(4) of the Customs Act (CA), confiscation of goods under Section 111(m), and penalties under Sections 112(a), 114A and 114AA of the CA.
- The Principal Commissioner of Customs, acting as the common adjudicating authority, held that the assessee was the beneficial owner of imported parts and components, ordered the addition of royalties/licence fees to the transaction value, confirmed differential duty with interest, ordered confiscation of goods with the option of redemption, and imposed penalties.
- Aggrieved by the above, appeals were filed challenging the findings, while the Revenue filed cross-appeals against the dropping of certain components of the demand/redemption fine and for the enhancement of penalties.

Issues before CESTAT

- Whether the contract manufacturers could be treated as independent "importers", or whether the assessee was the beneficial owner of the imported parts and components within the meaning of the CA?
- Whether royalties and licence fees paid by the assessee to Qualcomm and Beijing Xiaomi, pursuant to the IPR agreements, were liable to be added to the transaction value of imported parts/components and finished phones under Rule 10(1)(c) of CVR?
- Whether the extended period of limitation under Section 28(4) was validly invoked in the facts, based on alleged suppression and misdeclaration regarding royalty payments?
- Whether the imported goods were liable to confiscation under Section 111(m) on account of incorrect declaration of value owing to non-inclusion of royalty/licence fees.
- Whether penalties on the assessee under Sections 112(a), 114A, and 114AA, and penalties on the CMs under Sections 112(a) and 114AA, were legally sustainable and proportionate.

Assessee's contentions

- The CMs independently imported parts and components in their own name, using their own IECs, and acquired title and risk at the point of shipment. The CMs procured import licences, issued purchase orders, and performed inspection and quality checks. They therefore acted as the actual importers of record, excluding the assessee from the character of importer or beneficial owner.
- The governing agreements—the PPAs and GSAs—explicitly denied any agency, partnership, or joint-venture relationship and recognised the parties as operating on a principal-to-principal basis. As such, the statutory concept of "beneficial owner" could not be invoked against it under the CA.
- Royalty was payable only on finished mobile phones sold within India and was calculated on the net selling price, or the revenue realised from "subscriber units". Since such royalties were triggered only after importation and domestic sale, they could not be regarded as a condition for the sale of imported components or be included in the transaction value under Rule 10(1)(c) of CVR.
- Qualcomm and Beijing Xiaomi, being the licensors under the IPR agreements, were unrelated to the foreign suppliers of the components. There was no contractual obligation imposed by any overseas seller requiring payment of royalty as a precondition for supply. Therefore, the assessee contended that the necessary nexus between the royalty and the import transaction, as mandated under Rule 10(1)(c), was absent.
- The assessee asserted that when it approached the SVB under CBEC Circular 05/2016, it acted in a bonafide manner. Its initial non-disclosure of the IPR agreements arose from interpretational uncertainty about whether portfolio-based licences impacted customs valuation; hence, allegations of suppression or intent to evade duty were unfounded.
- The assessee relied on judicial precedents1 to argue that OEM-style controls over product standards, sourcing, and quality do not convert contract manufacturers into agents or job workers, nor do they justify disregarding the independent legal identity of the CMs for valuation purposes.
- The CMs submitted that they functioned purely as EMS providers, had declared values exactly as per supplier invoices, and were never privy to the assessee's royalty or licensing arrangements. On this basis, they contended that they lacked the requisite knowledge or intent to abet undervaluation, and therefore, penalties under Sections 112(a) and 114AA were not sustainable.

1. Cosme Farma [2015 (318) ELT 545 (S.C.)] and Tata Engineering [1988 (35) ELT 617 (Patna)]

Revenue's contentions

- The contractual framework revealed that the CMs had no absolute autonomy, as they were bound to procure parts only from Xiaomi-approved suppliers, follow Xiaomi's specifications, and sell finished phones solely to the assessee, making them the effective beneficial owners of the imported goods.
- The Revenue submitted that the essential IPR covering Qualcomm's multi-mode technologies and Xiaomi's software/hardware was indispensable for the manufacture and sale of Xiaomi-branded devices in India. Since royalty payments enabled the use of this embedded technology in imported components, they constituted a condition of purchase under Rule 10(1)(c).
- The Revenue contended that shifting royalty obligations from Xiaomi China to the assessee, while retaining royalty-free manufacturing at the CM level, reflected a deliberate structuring to portray royalty as a post import charge and thereby avoid the impact of customs duty.
- It emphasised that the assessee did not disclose the Qualcomm and Beijing Xiaomi licence agreements during the SVB proceedings and furnished them only after the DRI initiated an inquiry, demonstrating suppression, which justifies the extended period under Section 28(4).
- The Revenue asserted that the exclusion of royalty from the declared transaction value resulted in undervaluation, making the bills of entry incorrect and attracting confiscation under Section 111(m). The CMs, having operated entirely within Xiaomi-controlled sourcing and production constraints, were also responsible for filing incorrect declarations.
- Accordingly, the Revenue claimed that the assessee and the CMs had abetted undervaluation and were liable to penalties under Sections 112(a) and 114AA for facilitating improper importation and making declarations that did not reflect the statutory assessable value.

CESTAT's observation and ruling [Customs Appeal No. 40085/2024 and Ors dated 14 November 2025]

Xiaomi India is held to be the "beneficial owner"

- The Tribunal examined the PPAs between Zhuhai Xiaomi and the CMs, as well as the GSAs between the CMs and the assessee, noting that the CMs were contractually bound to procure only from Xiaomi-designated suppliers, could sell exclusively to the assessee, and lacked any independent pricing or market freedom. It found that unused components and finished/unfinished goods were required to be returned, demonstrating the assessee's effective control over the imported goods.

- Applying the statutory concept of "beneficial owner" and the principle of lifting the corporate veil, the Tribunal concluded that the imports were effectively made on behalf of the assessee. The Tribunal observed that routing imports through the CMs served no commercial purpose except to avoid the duty impact on royalties, as the assessee could have directly imported the same goods and engaged the CMs purely as job workers.
- Accordingly, the differential duty demand from the assessee was upheld despite the CMs being importers of record.

Royalties includible in transaction value under Rule 10(1)(c)

- The Tribunal held that the royalties paid under the SULA, MPLA, MSA, and LRAA related to bundled software and hardware technologies embedded in imported parts and finished devices. It found that without royalty payment, Xiaomi could neither manufacture nor sell its phones in India, making the royalty a functional precondition to the use and supply of imported components.
- The fact that royalty was calculated on the net selling price of finished devices was viewed as a commercial benchmark, not a limitation on nexus. Since the right to use Qualcomm/Xiaomi IPR was inseparable from the imported goods, the Tribunal held that royalty constituted a condition of sale and must be added to customs value under Rule 10(1)(c), even though the payments were made to third-party licensors rather than the foreign suppliers.

Extended limitation under Section 28(4) justified.

- Relying on the principle of the preponderance of probabilities, the Tribunal noted that the assessee had been paying royalties since 2015–16 but failed to disclose the licensing arrangements during the SVB proceedings, revealing them only after the DRI investigation began. This omission, coupled with the layered transaction structure and shifting of royalty liability, demonstrated suppression with intent to evade duty.
- On these facts, the Tribunal held that the extended five-year period under Section 28(4) was validly invoked.

Confiscation under Section 111(m) upheld

- Since royalties were legally includible under Rule 10(1)(c), the declared transaction value that excluded royalties did not reflect the correct value under Section 14.
- The Tribunal held that the goods were liable for confiscation under Section 111(m) due to incorrect value declarations in the bills of entry, while noting that the redemption fine would depend on the adjudicating authority's discretion.

Section 114A confirmed for assessee, while the abetment penalties on CMs were affirmed

- The Tribunal held that the assessee was liable for a penalty under Section 114A due to wilful suppression, resulting in short payment of duty. It ruled that a parallel penalty under Section 112(a) could not be imposed for the same contravention. The Tribunal also found Section 114AA inapplicable, as the SCN did not allege the type of false documentation contemplated by that provision. Consequently, the penalty under Section 114A was upheld, Section 112(a) was set aside, and the matter was remanded only for quantification.
- Regarding the CMs, the Tribunal observed that they operated under restrictive arrangements, utilised IPR without a royalty burden, and failed to disclose the actual import structure. Their declarations omitted royalty components that formed part of the assessable value, amounting to an abetment of undervaluation. Accordingly, penalties imposed on the CMs under Sections 112(a) and 114AA were affirmed.
- (in the case of Xiaomi India [Customs Appeal No. 40085/2024 and Ors dated 14 November 2025])

Our comments:

The ruling marks a significant shift in customs valuation for royalty-heavy sectors. By holding Xiaomi India, rather than the contract manufacturers, to be the beneficial owner of imported components, the Tribunal has applied a substance-over-form test that prioritises actual economic control over contractual structure. This approach is likely to influence valuation in the electronic manufacturing services/electronic contract manufacturing models and globally integrated supply chains where the IPR and procurement functions are centralised.

Importantly, the Tribunal did not address the statutory exclusion that post-importation activities, such as construction, assembly, maintenance or technical assistance, cannot be added to the assessable value when they are distinct from the price actually paid. This exclusion has traditionally insulated post-importation technical and licensing fees from customs valuation. Therefore, the Tribunal's approach departs from the Supreme Court's jurisprudence in the cases of Ferodo India, JK Corporation and Essar Gujarat, all of which required a clear nexus between royalty payments and imported goods, and that such payments be a condition precedent imposed by the foreign seller. This deviation raises material questions about alignment with established principles.

Given the broadened interpretation of beneficial ownership and royalty nexus, and the departure from the settled precedent, an appeal before a higher forum appears highly likely. The long-term sustainability of this decision will be closely monitored by the industry.

Customs authorities lack jurisdiction to redetermine MRP for CVD purposes - CESTAT

The CESTAT, Kolkata, has set aside the demand of differential CVD, confiscation of goods, and penalties, holding that the Customs authorities lacked jurisdiction to redetermine the MRP for CVD purposes and that any allegation of relabelling constituting 'manufacture' lies exclusively within the domain of central excise law, not customs. The Tribunal observed that the SCN was fundamentally flawed, as the demand was issued under the Customs Act despite relying on excise provisions.

Facts of the case

- M/s Reach Infocom Tech Pvt. Ltd., (appellant) imported mobile phones/laptops. Years later, the Customs authorities alleged that the declared RSP was understated and sought to redetermine MRP for the purpose of differential CVD under Section 3(2) of the Customs Tariff Act, 1975 (CTA).
- The SCN further alleged that activities, such as relabelling and repacking, amounted to 'deemed manufacture' under Section 2(f) of the Central Excise Act, 1944 (CEA), justifying the duty demand.
- The Customs authorities proceeded to issue the demand, order confiscation under Section 111, and impose penalties under Section 112 of the Customs Act, 1962 (Customs Act).
- The appellants challenged the proceedings on the ground that the Customs authorities had no statutory authority to redetermine RSP or adjudicate excise-manufacture issues.

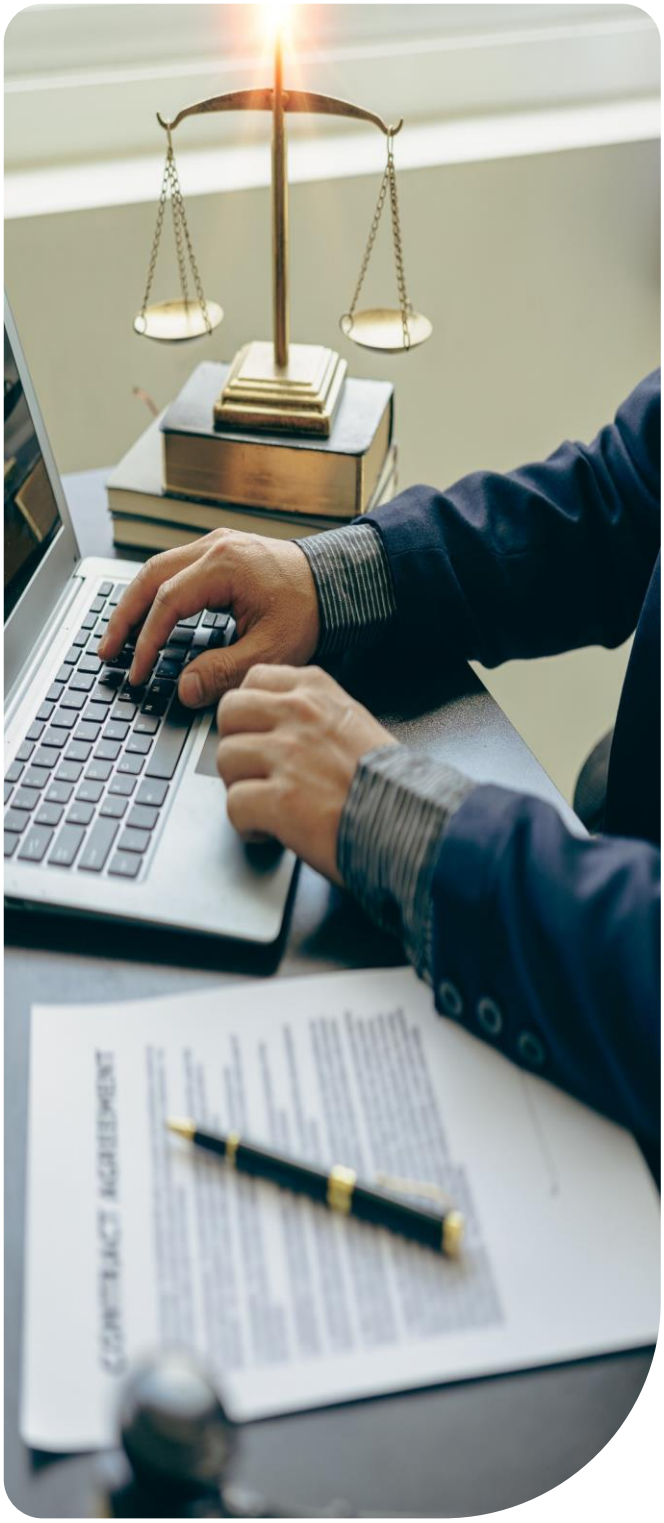
Issues before the court

- Whether Customs authorities have jurisdiction to demand differential CVD by redetermining MRP under Section 3(2) of the CTA?
- Whether the allegations of 'deemed manufacture' arising from relabelling fall under excise law rather than customs?

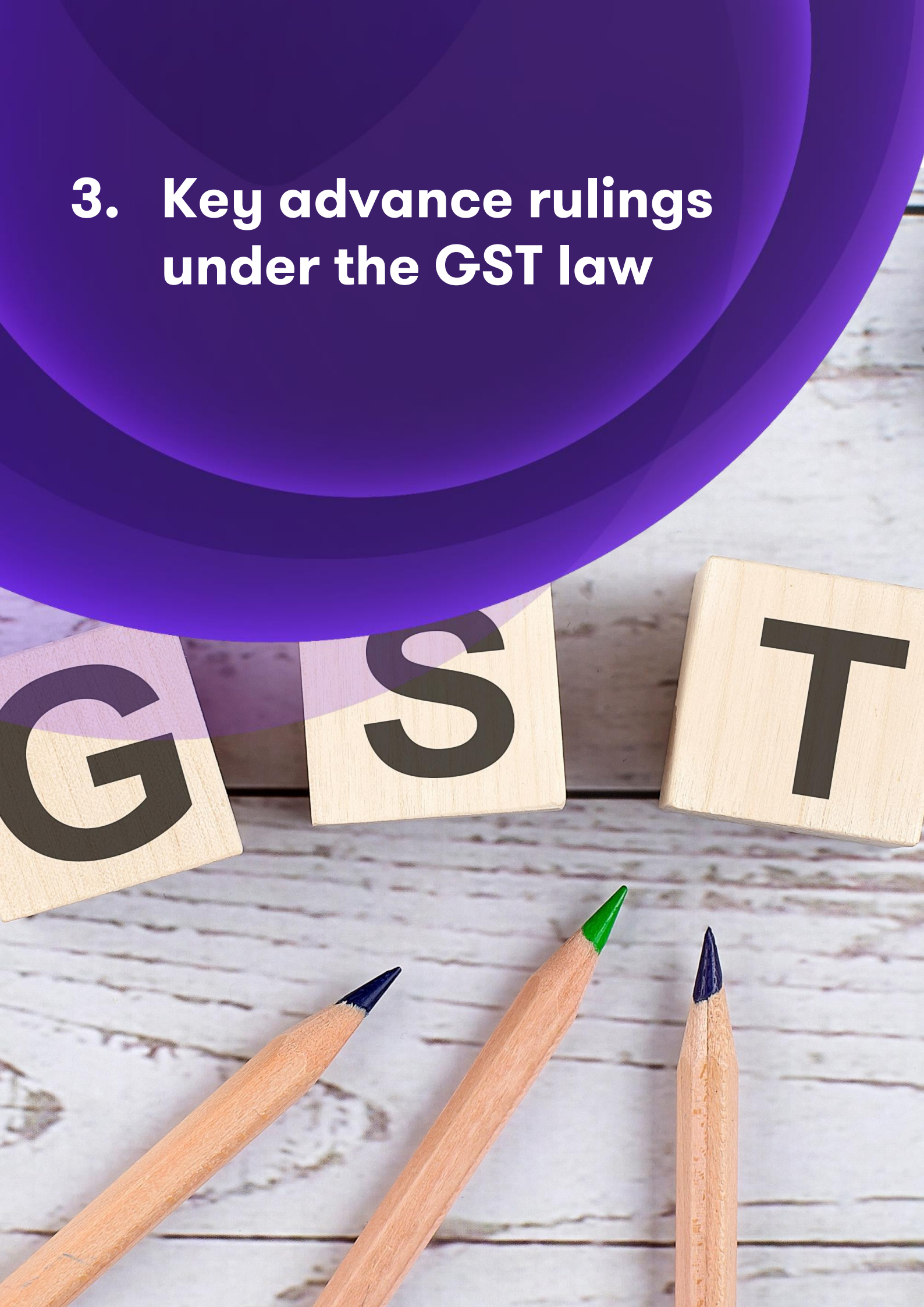
CESTAT's observations [2025 (11) TMI 210 – CESTAT Kolkata]

- The Tribunal held that Section 3(2) of the CTA does not contain any machinery for re-determination of RSP/MRP after importation. In the absence of statutory authority, Customs cannot reopen the valuation for CVD assessment. Therefore, the differential CVD demand was ultra vires.
- Mobile phones and laptops are goods covered under the Third Schedule to the CEA, and processes, such as relabelling, repacking, or altering MRP, constitute 'manufacture' under Section 2(f) of the CEA. Any duty arising from such deemed manufacture is excise duty, not customs duty.
- The Tribunal held that Customs cannot appropriate excise jurisdiction; if the department's case is that a manufacturing process occurred, the demand must originate under excise law and be adjudicated by the excise authorities.
- Since the very basis of the SCN redetermination of the RSP for CVD and invocation of excise deeming fiction under the Customs Act was flawed, the confiscation and penalties could not be sustained.
- The appeals were accordingly allowed, and all proceedings were quashed..

(in the case of Reach Infocom Tech Pvt. Ltd. [2025 (11) TMI 210 – CESTAT Kolkata])



3. Key advance rulings under the GST law



Gujarat AAR denies ITC on GST paid for long-term lease of industrial land

The Gujarat AAR, in the matter of Agratas Energy Storage Solutions Pvt Ltd, has held that a taxable person is not entitled to claim the ITC of GST paid under reverse charge on long-term lease rentals for industrial land, in light of the restriction under Section 17(5)(d) of the CGST Act, 2017. The AAR reiterated the view adopted in earlier rulings, such as those in the matters of Bayer Vapi Pvt Ltd and GACL-NALCO, emphasising that where land is leased for the purpose of constructing an immovable property, the ITC is expressly barred, regardless of the stage or nature of usage of the land.

Facts of the case

- The applicant, Agratas Energy, a company engaged in manufacturing battery cells for motor vehicles, entered into a 50-year industrial land lease with the government of Gujarat for around 321 acres, with annual lease rentals liable to GST under reverse charge.
- The annual lease rent was fixed at 60% of the market value, with 10% escalation every five years, and GST was payable under the RCM.
- The land was to be used for constructing and operating a battery cell factory, including ancillary works, such as erection, repair, and maintenance.
- The assessee sought the ITC on GST paid on lease rentals for the pre-construction period, post-construction period, repairs/renovation, and vacant land portions.
- It argued that Section 17(5)(d) applies only to direct construction inputs, not to lease rentals, and also highlighted inequity since upfront premium is exempt but annual rent is taxable.

Issues before AAR

1. Whether the ITC is available on the GST paid on annual lease rentals of land leased for 50 years for industrial purposes?
2. Whether the ITC eligibility changes depending on pre-construction/post-construction phases?
3. Whether the ITC can be availed on vacant land where construction will not take place?
4. Whether the ITC applies on GST for repairs/ maintenance/renovation of the factory building?

AAR's observations and ruling

- The AAR held that the lease is intrinsically linked to construction since the land is expressly allotted for setting up the factory, and conditions in the lease deed mandate the commencement of industrial activity within a specified period.
- Relying on the matters of Bayer Vapi and GACL–NALCO, the AAR reaffirmed that acquiring leasehold rights over land for setting up an industrial unit is inextricably linked to the construction activity, and thus, the GST paid on such lease rentals is squarely covered by the prohibition under Section 17(5)(d).
- The authority relied on the SC's decision in the Oblum Electrical Industries case to hold that the term "for" is not to be accorded a restrictive meaning. Rather, the expression expands the scope of the exclusion to all goods and services required for enabling or facilitating the construction of immovable property.
- The authority rejected the argument that Section 17(5)(d) must be read in conjunction with Section 17(5)(c), holding that both clauses operate in distinct spheres, Clause (c) dealing specifically with works contract services, while Clause (d) deals with any goods or services used for construction. Accordingly, the absence of land in the works contract service definition does not limit the scope of Clause (d).
- The AAR observed that the timing of construction activity is irrelevant for determining the ITC eligibility. Since the land itself has been leased for the purpose of industrial construction, the prohibition under Section 17(5)(d) attaches to the nature of the input service and not to the point in time at which construction is undertaken. Therefore, the ITC remains blocked both prior to the commencement of construction and after completion.
- On the issue of vacant or non-constructed portions of land, the authority held that the entire 321-acre parcel constitutes a single lease for industrial purposes, and no statutory mechanism exists to apportion or segregate the ITC based on differential utilisation of land. The AAR also noted that any vacant area retained for environmental compliance would still form part of the industrial project.
- The authority also rejected arguments based on alleged inequity between upfront premium (exempt in certain cases) and annual lease rental, holding that the two represent distinct forms of consideration. Relying on Panbari Tea Co., the AAR reiterated that premium (a capital receipt) and rent (a recurring revenue payment) cannot be equated, and the exemption policy for upfront premium represents a conscious legislative choice.

(in the case of Agratas Energy Storage Solutions Pvt Ltd. (Advance Ruling No. GUJ/GAAR/R/2025/46))

Transfer of development rights against constructed flats would tantamount to consideration for 'construction services' liable to GST – Kerala AAR

The Kerala AAR has held that the landowner's share of constructed residential apartments received under an area-sharing JDA constitutes taxable consideration for TDR to the developer and that GST is payable on the construction services supplied to the landowner. The AAR further held that the promoter is liable to discharge GST under reverse charge on the portion of development rights attributable to un-booked units at the time of completion.

Facts of the case

- The applicant had entered into a JDA with the landowner for the construction of a multi-storied residential project in Thiruvananthapuram.
- Under the arrangement, the landowner transferred development rights and undivided share in land to the applicant and, in return, was entitled to 11 residential apartments (approximately 13,573 sq. ft.), along with a proportionate share in common areas and garage. The applicant sought a ruling on GST implications on the transfer of the TDR through JDA rights in exchange for 11 apartments inclusive of proportionate common areas and garages.

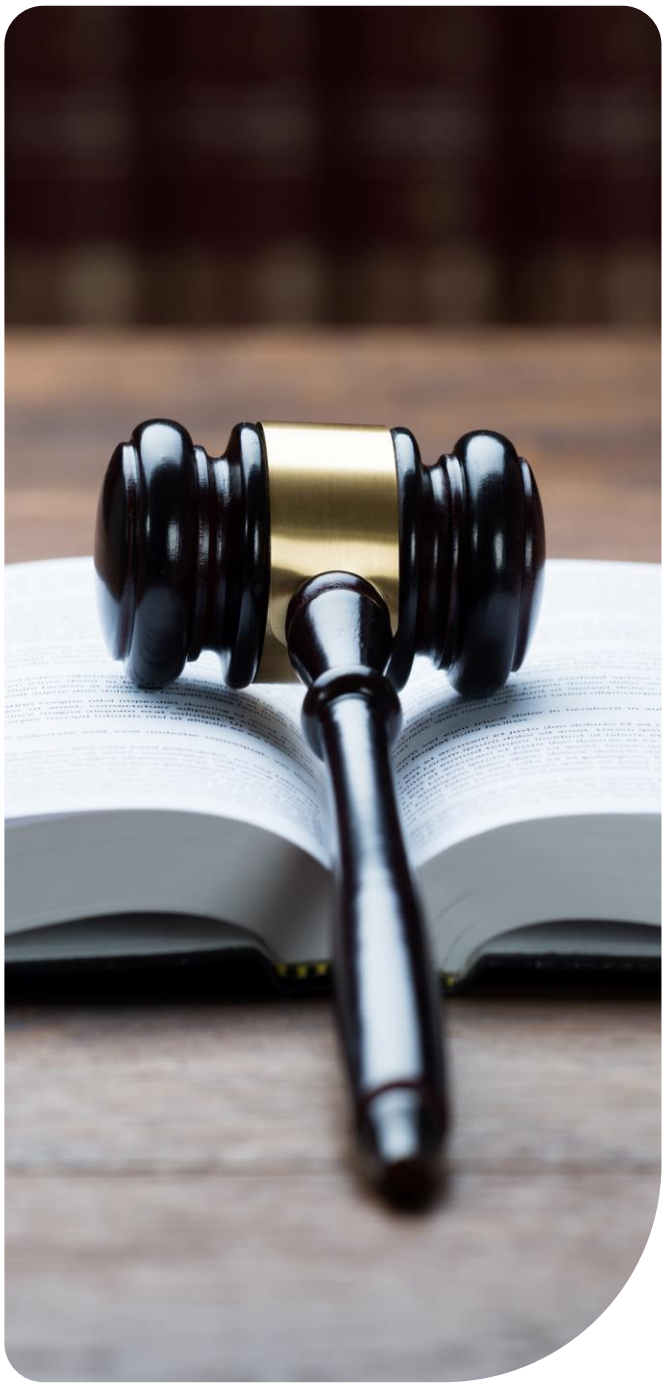
Assessee's contentions

- The applicant argued that the landowner provides development rights, and the applicant provides constructed apartments, and therefore, the transaction constitutes an exchange attracting GST.
- It was submitted that the construction of the landowner's share of apartments should be clarified in terms of taxability, the rate of GST applicable to such construction services and the liability, if any, on development rights under the real estate tax structure effective from 1 April 2019.

Kerala AAR's observations and ruling (Advance Ruling No. KER/30/2025, order dated 8 October 2025)

- The authority observed that the transfer of development rights by the landowner amounted to a supply of service and the constructed apartments allotted to the landowner constituted the consideration for such transfer. Accordingly, the construction of the landowner's share of apartments amounted to a taxable supply under Clause 5(b) of Schedule II.
- The AAR noted that, as per Notification No. 03/2019–CTR, the construction services relating to non-affordable residential apartments in a non-metropolitan city attract GST at 5% without the ITC.
- It further observed that under the real estate tax framework implemented from 1 April 2019, the development rights used for the construction of residential apartments are exempt except for the portion attributable to unbooked units as on the date of issuance of the completion certificate/first occupation, for which GST is payable under reverse charge at 18%, in terms of Notification No. 05/2019–CTR, read with Notification No. 13/2017–CTR.
- The AAR held that valuation was required to be determined based on the open market value of similar apartments sold to other buyers around the date of transfer of development rights, in accordance with Section 15(4) and Rule 27.
- Accordingly, the AAR ruled that GST is applicable on the landowner's share of constructed apartments and that the promoter must discharge GST under reverse charge on development rights relating to the unbooked units.

(In the case of SI Property Kerala Pvt Ltd, Advance Ruling No. KER/30/2025, order dated 8 October 2025)



4. Experts’ column

Maharashtra GCC Policy 2025: Enabling India's high-value growth ecosystem

Contributed by:

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Driving the next wave of innovation

The Maharashtra Global Capability Centre (GCC) Policy 2025 is a transformative initiative aimed at positioning Maharashtra as India's leading destination for high-value global capability centres. Aligned with the national vision of Viksit Bharat @2047, the policy is designed to attract global enterprises, foster innovation, and generate high-skilled employment across the state. By integrating infrastructure, incentives, and talent development into a cohesive framework, Maharashtra is poised to lead India's next wave of digital and knowledge-driven growth.

India has already emerged as a global leader in GCC operations, with over 1,900 centres employing 1.9 million professionals by FY25. These centres have evolved from cost-efficiency hubs to strategic engines of innovation and transformation. Maharashtra's policy builds on this momentum, offering a future-ready ecosystem to attract multinational corporations (MNCs) and domestic global players.

Vision for inclusive and distributed growth

The policy envisions Maharashtra as a globally competitive GCC hub, anchored in next-generation infrastructure, strong industry-academia collaboration, and innovation-led investments. It targets the establishment of over 400 new GCCs and the creation of 400,000 skilled jobs by FY2030. Importantly, it promotes balanced regional development by encouraging GCC setups in Tier-2 and Tier-3 cities, such as Nagpur, Nashik, and Chhatrapati Sambhajinagar.

Strategic pillars of the policy

1. Infrastructure and cluster development

Dedicated GCC parks and sector-specific clusters will be developed in emerging domains, such as artificial intelligence, FinTech, MedTech, LegalTech, and ClimateTech. Flagship initiatives, such as the Maharashtra Global MedTech Zone and Innovation City, will serve as anchors for R&D, start-up collaboration, and IP creation.

2. Fiscal incentives

The policy offers a robust incentive framework:

- Capital subsidies up to 20% of eligible investment (capped by specified limits for each GCC classification)
- Rental assistance up to 10% (Zone I) and 20% (Zone II) of actual rent or ready reckoner rate (capped by specified limits for each GCC classification)
- Payroll reimbursements up to 40% (Zone I) and 50% (Zone II) for employees earning above INR 1 lakh/month, capped at INR 5 crore annually per unit
- R&D grants covering 25% of eligible expenses, up to INR 50 lakh/year for 4 years, capped at INR 2 crore per unit (with minimum 2% of the FCI allocated to R&D)
- Additional support for green building certifications, patent filings, electricity duty exemption, and power tariff subsidies.

GCCs also benefit from the Maharashtra IT & ITeS Policy 2023, which includes stamp duty exemptions, additional Floor Space Index (FSI), and zoning relaxations.

3. Ease of doing business

To ensure operational efficiency, the policy provides:

- 24x7 working permissions
- Dedicated land allotment
- Single-window clearance via MAITRI
- Assured power and water supply

4. Governance and implementation

A policy monitoring unit (PMU) and the GCC Growth Council will oversee implementation, coordinate stakeholders, and ensure timely evaluation and course correction.

Incentives for incremental investment

Existing GCC units undertaking expansion, modernisation, or diversification are eligible for incentives on incremental fixed capital investment (FCI), provided:

- The additional FCI increases the unit's gross FCI by at least 25%; and
- It generates a minimum 25% increase in non-supervisory employment

Incentives will be proportional to the incremental investment and employment generated, subject to approval by the competent authority.

Conclusion

The Maharashtra GCC Policy 2025 is not just a policy — it's a strategic blueprint for building India's future knowledge economy. By combining targeted incentives, world-class infrastructure, and a progressive governance model, Maharashtra is set to become the preferred destination for global enterprises seeking to innovate, scale, and lead. As the world turns to India for digital leadership, Maharashtra stands ready to deliver.

5. Indirect tax issues on your mind

What compliance obligation does Rule 10A of the CGST Rules, 2017, impose on registered taxpayers?

Rule 10A requires registered taxpayers to furnish their bank account details within 30 days from the date of registration or prior to filing GSTR-1/IFF, whichever occurs earlier. The recent GSTN advisory underscores the mandatory nature of this requirement and emphasises that taxpayers who have not yet provided their bank account details must update them without delay. The advisory further notes that the failure to comply may lead to the suspension of GST registration, which can adversely affect the continuity of business operations.

How does the extended 15-month FEMA realisation period impact the classification of export of services under GST?

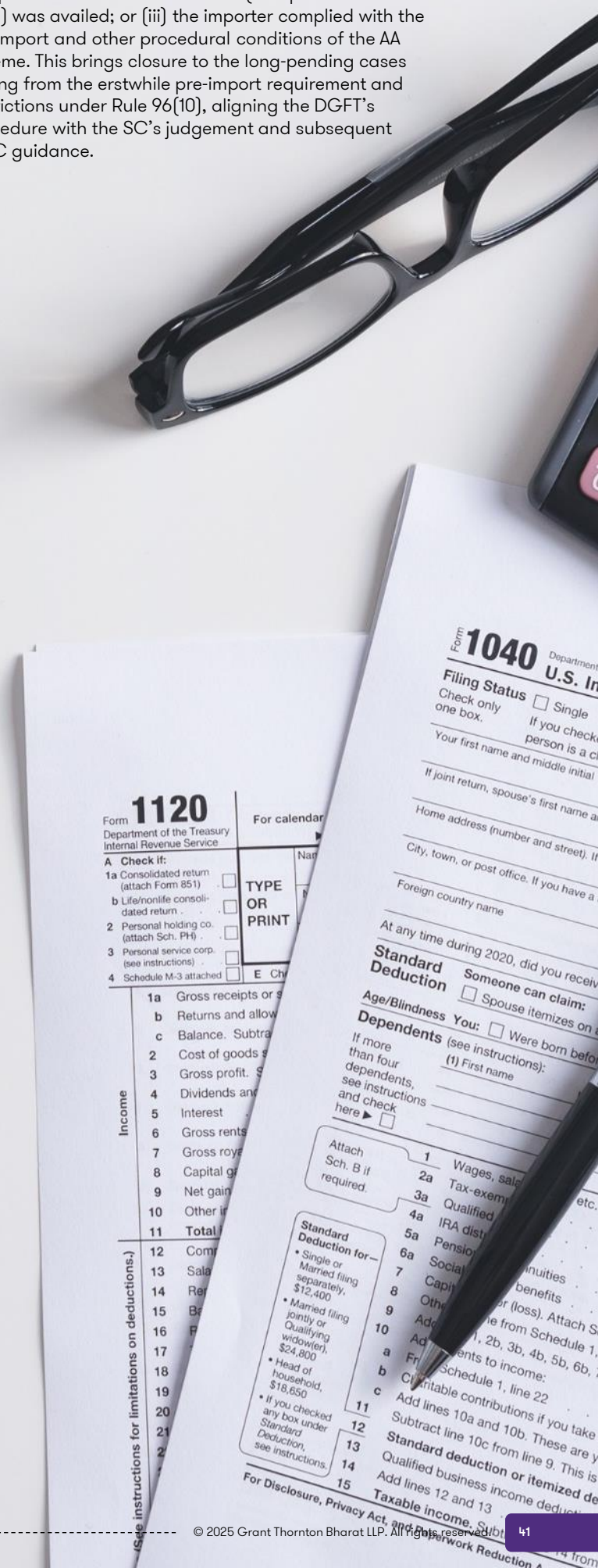
Under Section 2(6) of the IGST Act, the receipt of consideration in convertible foreign exchange (or permitted INR) is essential for a supply to qualify as an export of services. While GST law does not specify an independent realisation period, it is aligned with FEMA norms. With FEMA now allowing 15 months for realisation, exporters can rely on this extended statutory period to substantiate delayed inward remittances and preserve export status during scrutiny or audits.

What is the implication of the extended FEMA timeline on exports under LUT and refund recovery provisions?

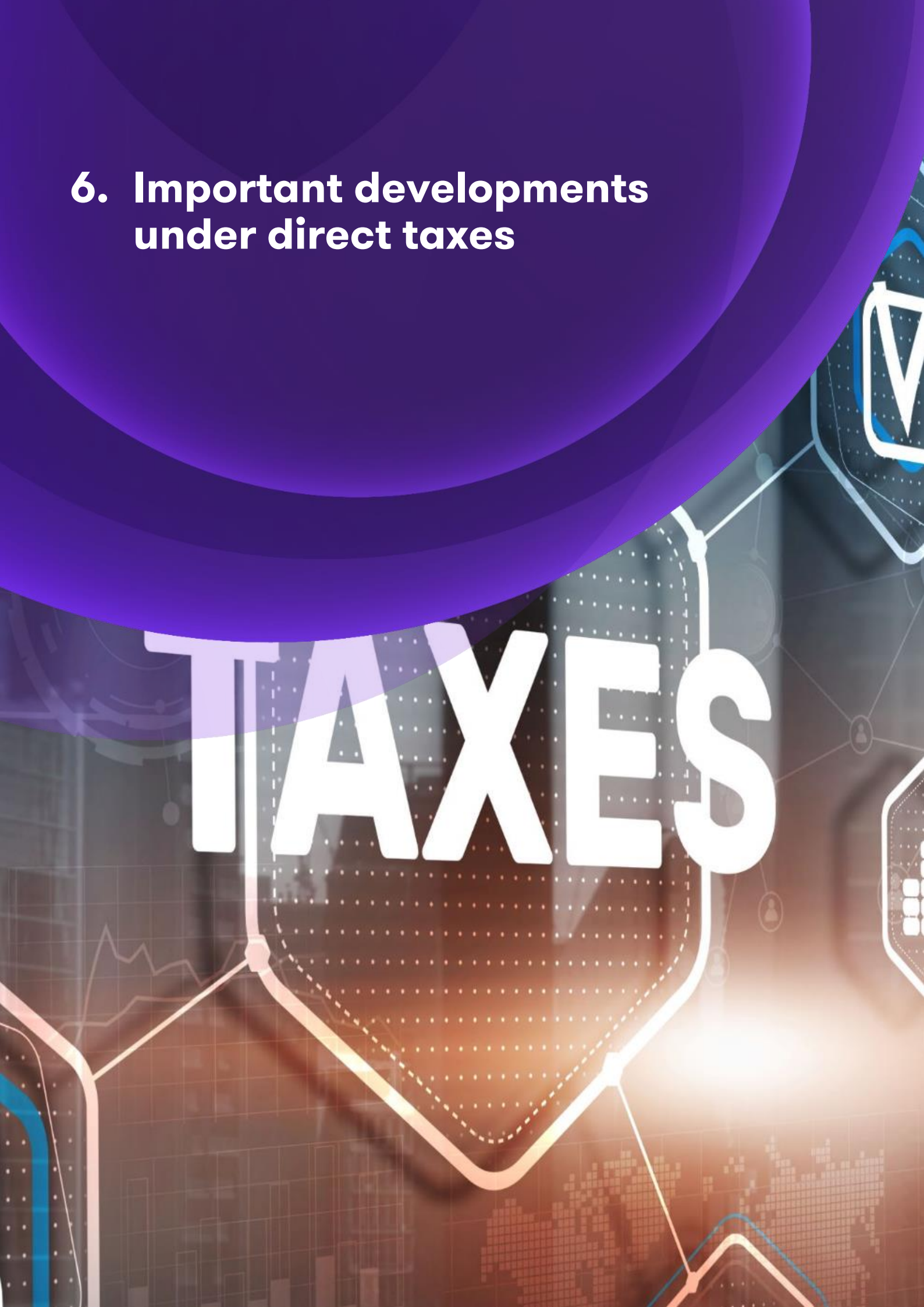
Although Rule 96A of the CGST Rules continues to require the receipt of export proceeds within either one year from invoice or the FEMA-prescribed period, the increase of the FEMA window to 15 months provides an expanded defence for exporters in cases of delayed payment, reducing exposure to the IGST liability and interest. Similarly, for goods exports under Rule 96B, refund recovery can be initiated only if the proceeds are not realised within the FEMA-authorised period; the extended timeline effectively widens the safe period before recovery proceedings may commence.

What is the key clarification issued by DGFT regarding redemption/EODC of advance authorisations affected by the pre-import condition and Rule 96(10) issues for imports made between 13 October 2017 and 9 January 2019?

The DGFT has clarified through Policy Circular No. 07/2025-26 that the EODC shall not be withheld for advance authorisations pertaining to the period 13 October 2017 to 9 January 2019, provided all other AA scheme requirements are met, in any of the following situations: (i) The importer paid the IGST in cash at the time of import; (ii) no exemption from the IGST, compensation cess or other levies (except basic customs duty) was availed; or (iii) the importer complied with the pre-import and other procedural conditions of the AA scheme. This brings closure to the long-pending cases arising from the erstwhile pre-import requirement and restrictions under Rule 96(10), aligning the DGFT's procedure with the SC's judgement and subsequent CBIC guidance.



6. Important developments under direct taxes



MoF notifies revised DTAA and protocol between India-Qatar

The MoF has notified revised DTAA and protocol between the Republic of India and the State of Qatar under Section 90(1) of the IT Act.

The revised agreement and protocol was signed on 18 February 2025 and entered into force on 10 September 2025, replacing the earlier DTAA, which came into force on 15 January 2000 as amended by No. S.O. 3468(E) dated 17 July 2018.

The revised India-Qatar DTAA and protocol will apply in India to income arising on or after the first day of the fiscal year immediately following the calendar year in which the DTAA entered into force, i.e., 1 April 2026.

Key changes in the aforesaid are as follows:

Article	Earlier DTAA	Revised DTAA
Article 1 - Persons covered	• Applied to persons who are residents of one or both contracting states.	• It now includes that the income derived by or through an entity or arrangement treated as wholly fiscally transparent under the tax laws of either country will be taxable in the resident state only to the extent that such income is treated as the income of a resident under the resident state.
Article 5 - PE	• The PEs previously covered were fixed place, construction PE, insurance PE and agent PE.	• The enhanced scope now includes a service PE clause (90 days within any 12-month period), anti-fragmentation rules, and rules for closely related enterprises.
Article 10 - Dividends	• Withholding limited to 5% if the beneficial owner is a company owning more than 10% of shares. • 10% of the gross amount of the dividends in all other cases.	• Revised rates are: - 5% of the gross amount if the beneficial owner is a company holding at least 25% of the shares of the paying company. - 10% of the gross amount in all other cases. • A new provision has been added that dividends paid to the government, a political sub-division, or a local authority of the other contracting state will be taxable in the recipient's state, subject to ownership verification.
Article 11 - Interest	• Previously allowed exemption for interest paid to mutually agreed financial institutions vide exchange of letters to the following: - In the case of India, the Export Import Bank of India and Life Insurance Corporation of India; and - In the case of Qatar, the Qatar Investment Authority and Qatar Holding LLC.	• Formalised protocol clarifies that for interest exemptions under Article 11, the term "State" will include the following: - In the case of India, the Reserve Bank of India and Export Import Bank of India. The Life Insurance Corporation of India has been removed; and - In the case of Qatar, Qatar Investment Authority, and Qatar Holding LLC are retained.
Article 13 - Capital Gains	• Allowed source country to tax gains from the shares of companies whose property consisted "principally" of immovable property in that state.	• **Introduces a quantified rule:** The source country may tax gains from shares deriving more than **50% of their value** (directly or indirectly) from immovable property situated therein.
Article 26 - Exchange of Information	• Previously required exchange of information necessary for treaty enforcement. • Allowed refusal if the information is not obtainable or held by financial institutions or fiduciaries.	• The extended scope now requires the state to obtain and share requested tax information even if not needed for its own purposes. • Prohibits refusal of data merely because it is held by financial institutions or fiduciaries.
Article 28 - Entitlement to Benefits	• Not included	• The comprehensive Principal Purpose Test now denies treaty benefits if it is reasonable to conclude that obtaining such benefits was one of the principal purposes of any arrangement or transaction unless granting the benefit aligns with the object and purpose of the agreement.

[Notification No. 154 of 2025 dated 24 October 2025]

MoF notifies enforcement of Amending protocol to DTAA between India and Belgium

The MoF has notified the **Amending protocol** to the DTAA and the protocol between the **Government of the Republic of India** and the **Government of the Kingdom of Belgium** for the avoidance of double taxation and the prevention of fiscal evasion with respect to the taxes on income.

The DTAA and the protocol between India and Belgium was signed at Brussels on 26 April 1993 and entered into force on 1 October 1997.

The Amending protocol was signed at New Delhi on 9 March 2017 and entered into force on 26 June 2025. It enters into force on the date of the later notification by the governments. From that date, it applies right away to criminal tax matters.

For all other matters covered in Articles 1, 2, and 3, it applies only for tax periods that start on or after that date, or for any tax charges that arise on or after that date if there is no specific tax period.

The central government has also directed that all provisions of the amending protocol shall be given effect in the Union of India in exercise of the powers conferred by Section 90(1) of the IT Act. The key changes are as follows:

Article	Earlier DTAA	Revised DTAA
Article 3 - General Definitions	• In Article 3 (d), the term "competent authority" included: - In the case of India, the central government in the Ministry of Finance (Department of Revenue) or their authorised representative. - In the case of Belgium, the Minister of Finance, or his authorised representative. • No criminal tax matter definition.	• Expanded the definition of "competent authority" to include the Minister of Finance of the federal government and/or of the government of a region and/or of a community, or his authorised representative **in the case of Belgium.** • The definition of the term "criminal tax matters" has been inserted as sub-paragraph (k) in paragraph 1. (k) "tax matters involving intentional conduct, whether before or after the entry into force of this agreement, which is liable to prosecution under the criminal laws and/or the tax laws of the applicant party."
Article 26 - Exchange of Information	• **Para 1 -** The competent authorities of the contracting states shall exchange such information as is **necessary** for carrying out the provisions of this agreement or of the domestic laws of the contracting states concerning taxes covered by the agreement, insofar as the taxation thereunder is not contrary to the agreement, in particular for the prevention of fraud or evasion of such taxes. • **Para 2 -** No such provision for other purposes.	• The following changes has been made in **Para 1:** - The term **"necessary"** has been replaced with "foreseeably relevant". - The scope is expanded to include **taxes of every kind and description imposed on behalf of the contracting states,** or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to the agreement. - The exchange of information is not **restricted by Articles 1 and 2.** - The ambit for exchange of information has been expanded to include such **information (including documents or certified copies of the documents).** • **Para 2** has been added with provision for allowing the use for **other purposes** if permitted under the laws of both states and authorised by the supplying state. • **Para 4** has been inserted**, introducing an obligation** that the requested state must use its information gathering measures to obtain the requested information, even if it does not need such information for its own tax purposes. • **Para 5** has been **inserted,** providing that a **contracting state cannot decline to supply information** solely because it is held by a bank, other financial institution, nominee, fiduciary or relating to the ownership interests in a person.

Article	Earlier DTAA	Revised DTAA
Article 27 - Assistance in the Collection of Taxes	• Earlier heading was **"Aid and Assistance in Recovery".** • **Para 1 -** States shall lend aid and assistance to notify and recover the taxes mentioned in Article 2. • **Para 2 -** Interest due for delay or default in the payment of taxes shall be treated as tax. • **Para 3 -** Recovery of taxes on request, subject to domestic law. • **Para 4 -** Questions concerning any period of limitation of a tax claim shall, notwithstanding the provisions of Paragraph 3, be governed solely by the laws of the applicant state. • **Para 5 -** Requests referred to in Para 3 shall be supported by an official copy of the instrument permitting execution, accompanied where appropriate by an official copy of any final administrative or judicial decision. • **Para 6 -** Regarding the taxes that are open to appeal, the requested state may take protective measures. • **Para 7 –** The amount recovered must be remitted to the requesting state. • **Para 8 –** The confidentiality applies to shared information.	• The heading has been changed to **"Assistance in the Collection of Taxes."** • **Para 1 –** The assistance **now applies to the collection of revenue claims** and is not restricted by Articles 1 and 2. • **Para 2 -** Defines **"revenue claim" broadly** to include taxes of every kind, interest, administrative penalties and costs of collection or conservancy. • **Para 3 - Adds obligation** that if a revenue claim is enforceable and cannot be prevented under the laws of the requesting state, the requested state must accept and collect it as if it were its own tax claim. • **Para 4 - Introduces conservancy measures,** requesting that states must take steps to secure collection even if the claim is not yet enforceable or the debtor can still prevent collection. • **Para 5 -** Clarifies that a revenue claim accepted under Paras 3 or 4 does not get priority or time limit benefits under the laws of the requested state. • **Para 6 - Bars any legal or administrative challenge** in requested state on the existence, validity or amount of the foreign claim. • **Para 7 - Adds obligation** that after a request for collection or conservancy has been made (under Para 3 or 4), if the revenue claim stops being enforceable or eligible for conservancy in the requesting state, the latter must promptly notify the other state. Further, the requested state then has the option to suspend or withdraw the request. • **Para 8 - Lists conditions for assistance -** no obligation if contrary to laws/public policy, disproportionate burden or if the requesting state has not exhausted its own collection measures.

OECD publishes 2025 update to the OECD Model Tax Convention on income and on capital

The OECD has published the **2025 update to the OECD Model Tax Convention on income and on capital,** as approved by the Committee on Fiscal Affairs on **13 October 2025** and by the OECD Council on **18 November 2025.**

This update reflects the latest developments in international taxation and introduces significant changes aimed at enhancing tax certainty and improving treaty interpretation.

Key highlights include:

- **Remote work guidance:** Clear rules on how cross-border "home office" arrangements are treated under tax treaties, addressing the growing prevalence of remote work.
- **Natural resource taxation:** A new optional provision ensuring income from natural resource extraction is taxed where the activity occurs, reinforcing source-country rights.
- **PE commentary:** Clarifications on when an individual's home may constitute a fixed place of business, including thresholds and tests for continuity.
- **Mutual agreement procedure:** Updates to Article 25 and its commentary, including provisions related to dispute resolution and interaction with GATS obligations, as well as language supporting OECD Pillar One's Amount B.
- **Other refinements:** Additional changes to the commentaries on Articles 5, 9, and 26 to strengthen consistency and tax certainty.

India's position: India has entered reservations on certain aspects to preserve its source-based taxation approach and maintain flexibility in interpreting PE rules under domestic law.

The revised condensed and full editions of the OECD model incorporating these changes will be published in 2026.

[Released on 19 November 2025]

SC dismisses Revenue's SLP on interpretation of the word 'received' under Section 153(2A) of the IT Act as 'having knowledge'

Brief facts of the case

- The taxpayer's case was selected for scrutiny for AY 2005-06. The AO completed scrutiny, determining the total taxable income at INR 138,83,40,893. It also taxed royalty income on the sale of CDMA handsets and revenue from BREW operator agreements.
- On an appeal before the CIT(A), it upheld the AO's order. However, the CIT(A) ordered the re-computation of the assessee's income in relation to the number of CDMA handsets.
- On an appeal before the ITAT, the ITAT, vide order dated 20 February 2015, deleted additions and partially remanded matter back to the AO for certain issues.
- Subsequently, the AO passed an appeal effect order on 12 March 2015, acknowledging the ITAT's decision. However, the AO issued a draft assessment order on 27 December 2016.
- Against the aforesaid assessment order, the taxpayer filed its objection before the DRP on the grounds that it was time barred under Section 153(2A) of the IT Act. The said objections were disposed by the DRP, resulting into the final assessment order passed by the AO on 31 October 2017.
- On further appeal, the ITAT quashed the assessment orders as time barred. It interpreted the term "received" in the provision to "having knowledge" of the order and not merely a formal receipt by the commissioner.
- Since the AO had full knowledge of the ITAT's order dated 20 February 2015 while passing the appeal effect order on 12 March 2015, the limitation period expired on 31 March 2016. Consequently, the draft order, as well as the final order, were beyond the prescribed time limit.
- The Revenue, before the HC, contended that the word "received" cannot possibly be construed as intending limitation to be computed from the date when the Commissioner may have derived knowledge of the order passed by the ITAT. Acceptance of such a view would clearly amount to reconstructing Section 153(2A) and substituting the word "received" with aspects of the knowledge derived.
- To arrive at a conclusion, the ITAT relied on the principles laid down by the Delhi HC's decision in the case of CIT vs. Odeon Builders (P.) Ltd. [2017 SCC OnLine Del 7622] and GE Energy Parts Inc. vs. DCIT [2019 SCC OnLine Del 12407], which emphasised that limitation begins when the department becomes aware of the order.
- Against the ITAT's order, the Revenue filed an appeal before the Delhi HC.

Before the Delhi HC

- The court observed that the Tribunal had concluded based on the principles on the above-mentioned decisions. The court emphasised that once an officer becomes aware of the order, the limitation period begins, regardless of when the jurisdictional commissioner physically receives it.
- The court further observed that the AO had full knowledge of the Tribunal's order dated 20 February 2015, as evidenced by the appeal effect order dated 12 March 2015. Therefore, the limitation period under Section 153(2A) expired on 31 March 2016.
- Since the draft order was passed on 27 December 2016 and the final order on 31 October 2017, both were held to be barred by limitation. The Delhi HC, accordingly, dismissed the appeal filed by the Revenue.
- The Revenue then filed a SLP before the SC.

Before the SC

- The court declined to entertain the SLP and dismissed it, thereby affirming the Delhi HC's decision on the matter.

[CIT vs. Qualcomm Incorporated [SLP (Civil) Diary No. 41696/2025]

SC grants leave in Revenue's SLP on applicability of Section 2(22)(b) and 56(2)(viia) of the IT Act to bonus shares

Brief facts of the case

- The taxpayer was engaged in the business of facility management and making investment and assessed under Section 143(3) of the IT Act. Subsequently, the case was reopened under Section 148 for AY 2017-18 on the belief of income escapement.
- The taxpayer had acquired 41,31,989 shares of USPL in AY 2015-16 at INR 273.48 per share. During AY 2017-18:
  - USPL bought back 20,75,000 shares at INR 275 per share.
  - Later, the taxpayer received 92,56,451 bonus shares in the ratio of 45 shares for every 10 shares held, without any consideration.
- The AO treated these bonus shares as dividend under Section 2(22)(b) of the Act and further invoked Section 56(2)(viia) to tax INR 254.55 crore, adopting a FMV of INR 275 per share. The AO relied upon the prior buyback transactions for the purpose of determining FMV.
- On an appeal, the CIT(A) deleted the addition and held as follows:
  - Section 2(22)(b) of the IT Act applies only to bonus shares issued to preference shareholders, not equity shareholders.
  - It was further noted that as per the provisions of Section 55(2)(aa) of the IT Act, the cost of acquisition of such shares was to be taken as 'nil'.
  - The CIT(A) relied upon the decision of the **SC in the CIT vs. Dalmia Investment Co. Ltd. [52 ITR 567]** case, holding that the issue of bonus shares to equity shareholders does not amount to dividend, as it is a conversion of reserves into capital without releasing profits.

- Similarly, in the case of **Hansur Plywood Works Ltd. vs. CIT [229 ITR 112],** it was held that bonus shares do not constitute the distribution of accumulated profits. Furthermore, the Karnataka HC, in the case of **PCIT vs. Dr. Ranjan Pai [ITA No.501/2016],** held that Section 56(2)(vii) of the IT Act does not apply to bonus shares since no property is transferred and funds remain with the company.

- On further appeal, the ITAT upheld the order of the CIT(A) and observed that the bonus to equity shareholders is not covered within the ambit of Section 2(22)(b), and the same could not be brought to tax under section 56(2) of the IT Act.
- The ITAT agreed with the CIT(A) that bonus shares reduce original share value, keeping the overall value unchanged and no property transfer or real gain arises to shareholders.

Before the Madras HC

- The Revenue challenged the ITAT's order before the HC under Section 260A of the IT Act on the applicability of Sections 2(22)(b), 56(2)(viia) and the interpretation of CBDT Circular No.3/2019 pertaining to the applicability of Section 56(2)(viia) or similar provisions under Section 56(2) for issue of shares by a company.
- The Madras HC observed that the core issue had already been settled by binding precedents, namely Dalmia Investment Co. Ltd. (Supra), Hansur Plywood Works Ltd (Supra), and Dr. Ranjan Pai (Supra). The court noted that the Tribunal had correctly relied on these authorities and found no substantial question of law arising for consideration. Accordingly, the appeal was dismissed.

Before the SC

- The Revenue filed a SLP before the SC arising out of the Madras HC's judgement. The court, after hearing the parties, has now granted leave, thereby admitting the matter for further consideration.

[CIT vs. M/S Tangi Facility Solutions Pvt. Ltd [SLP (Civil) Diary No. 57035/2025]

7. Glossary

AA	Advance Authorisation
AAR	Auhority for Advance Ruling
AAAR	Appellate Authority for Advance Ruling
AESS	Airtel Employees Service Scheme
ANF	Aayat Niryat Form
AO	Assessing Officer
AQCS	Animal Quarantine and Certification Services
AY	Assessment Year
BoE	Bill of Entry
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
CEA	Central Excise Act, 1944
CESTAT	The Customs Excise and Service Tax Appellate Tribunal
CENVAT	Central Value Added Tax
CG	Central Government
CGST Act	Central Goods and Services Tax Act, 2017
CGST Rules	Central Goods and Services Tax Rules, 2017
CIT	Commissioner of Income Tax
CIT(A)	Commissioner of Income-tax Appeals
CKD	Completely Knocked-Down
CST Act	Central Sales Tax Act, 1956
CTR	Central Tax (Rate)
Customs Act	Customs Act, 1962
CGSE	Credit Guarantee Scheme for Exporters
CVD	Countervailing Duties
CEA	Central Excise Act, 1944
CM	Contract manufacturers
DVAT,2004	Delhi Value Added Tax Act, 2004
DGCEI	Directorate General of Central Excise Intelligence
DGFT	Directorate General of Foreign Trade
DRI	Directorate of Revenue Intelligence
DTA	Domestic Tariff Area
DTAA	Double Taxation Avoidance Agreement
DRC	Demand and Recovery Case
DRP	Dispute Resolution Panel
EC	Education Cess
EPC	Engineering, Procurement and Construction
EPM	Export Promotion Mission
EODC	Export Obligation Discharge Certificates

FA	Finance Act
FAQ	Frequently Asked Questions
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FMV	Fair Market Value
FSSAI	Food Safety and Standards Authority of India
FTA	Free Trade Agreement
FTWZ	Foreign Trade Warehousing Zones
FY	Financial Year
GSA	Goods Sales Agreements
GST	Goods and Services Tax
GSTAT	Goods and Services Tax Appellate Tribunal
GSTN	Goods and Services Tax Network
GSTR	Goods and Services Tax Return
HBP	Handbook of Procedures,2023
HC	High Court
HSN	Harmonized System of Nomenclature Code
ICEGATE	Indian Customs Electronic Gateway
IEC	Importer Exporter Code
IFF	Invoive Furnishig Facility
IFSC	International Financial Service Centre
IMS	Invoice Management System
INR	Indian Rupee
IGST	Integrated Goods and Services Tax
IES	Interest Equalisation Scheme
IP	Intellectual Property
IPR	Intellectual Property Rights
ISD	Input Service Distributor
IT	Information Technology
IT Act	Income-tax Act, 1961
ITAT	Income Tax Appellate Tribunal
IT Act 2025	Income-tax Act, 2025
IT Rules	Income-tax Rules, 1962
ITC	Input Tax Credit
ITR	Income-tax Return
KKC	Krishi Kalyan Cess
JDA	Joint Development Agreement
LOC	Line of Control
LUT	Letter of Undertaking

LRAA	Licence and Royalty Assignment Agreement
MAI	Market Access Initiative
MFN	Most Favoured Nation
MNC	Multinational company
MoF	Ministry of Finance
MOOWR	Manufacture and Other Operations in Warehouse Regulations,2019
MOOSWR	Manufacture and Other Operations in Special Warehouse Regulations,2020
MPLA	Multi-Mode Patent Licence Agreement
MPLA	Maximum Retail Price
MSA	Master Software Agreement
MSME	Micro, Small, and Medium Enterprises
NOC	No Objection Certificates
NPA	Non-Processing Built-up Area
NRI	Non-Resident Indians
NTM	Non-Tariff Measures
OBBA	One Big Beautiful Bill Act, 2025
OECD	Organisation for Economic Co-operation and Development.
OIO	Order-in-Original
OTP	One Time Password
PE	Permanent Establishment
PGA	Partner Government Agencies
PLI	Production Linked Incentive
PO	Proper officer

PPA	Product Purchase Agreements
PQMS	Plant Quarantine Management System
PRC	Policy Relaxation Committee
RBI	Reserve Bank of India
RCM	Reverse Charge Mechanism
R&D	Research and Development
RSP	Retail Sale Price
SC	Supreme Court
SCN	Show Cause Notice
SCOMET	Special Chemicals, Organisms, Materials, Equipment and Technologies
SEZ	Special Economic Zone
SEZ Rules	Special Economic Zone Rules, 2006
SGST	The State Goods and Service Tax
SHEC	Secondary & Higher Education Cess
SICCL	Sahara India Commercial Corporation Ltd.
SLP	Special Leave Petition
SULA	Subscriber Unit Licence Agreement
SVB	Special Valuation Branch
TDR	Transfer of Development Rights
TCS	Tax Collected at Source
TDS	Tax Deduction at Source
TP	Transfer Pricing
u/s	under section
USPL	Updater Services Pvt. Ltd
VAT	Value Added Tax

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