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The Institute of

Chartered Accountants of

India

(Set up by an Act of Parliament)

PANIPAT BRANCH OF NIRC OF ICAI

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THE ICAI MOTTO

The Institute of Chartered Accountants of India

Ya esa suptesu jagarti kamam kamam Puruso nirmimanah | Tadeva sukram tad brahma tadevamrtamucyate | Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat | |	य एष सुप्तेषु जागर्ति कामं कामं पुरूषो निर्मिमाण :। तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते । तस्मिंल्लोका: श्रिता: सर्वे तदु नात्येति कश्चन। एतद् वै तत् ।।

That Person who is awake in those that sleep, shaping desire after desire, that, indeed is pure.

That is Brahman, that, indeed, is called the immortal. In it, all the worlds rest and no one ever goes beyond it.

This, verily, is that, kamam kamam: desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person.

Even dream consciousness is proof of the existence of the self.

No one ever goes beyond it: of Eckhart: 'On reaching God all progress ends.'

Source: Kathopanishad

PANIPAT BRANCH OF NIRC OF ICAI

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EVENTS

(FEBRUARY-2025)

HELD IN

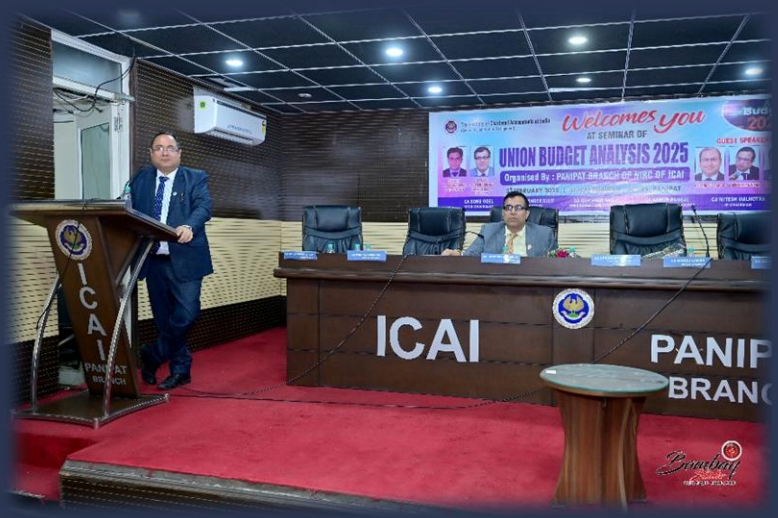
PANIPAT BRANCH

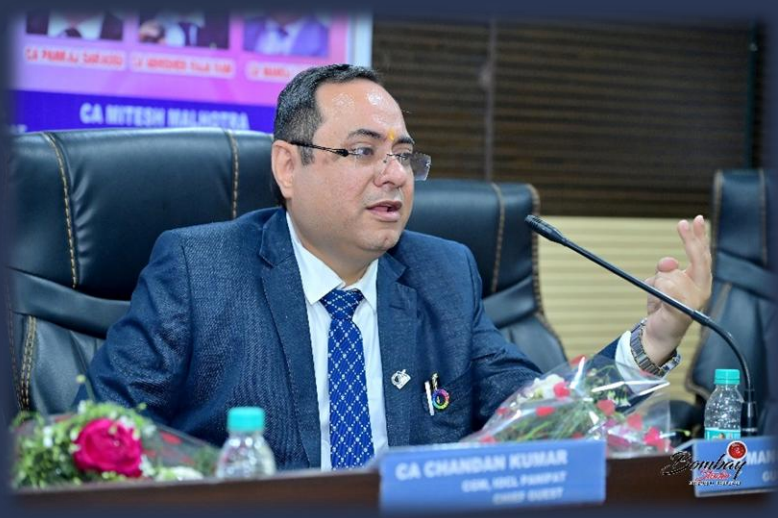
OF

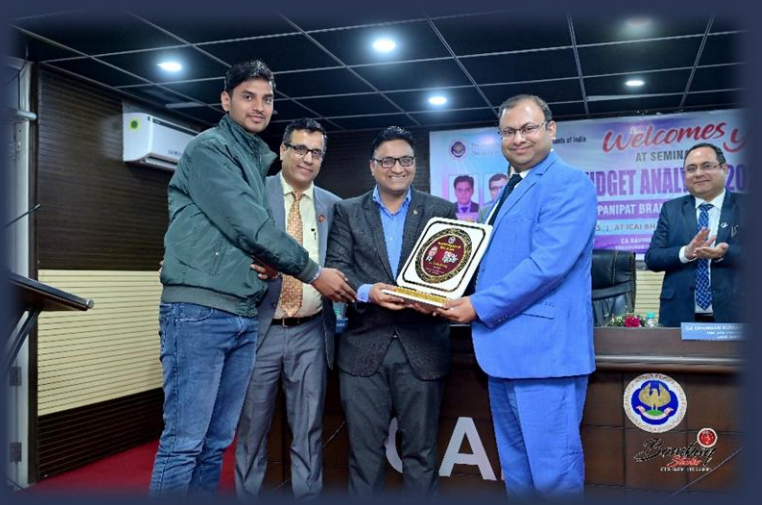
NIRC OF ICAI

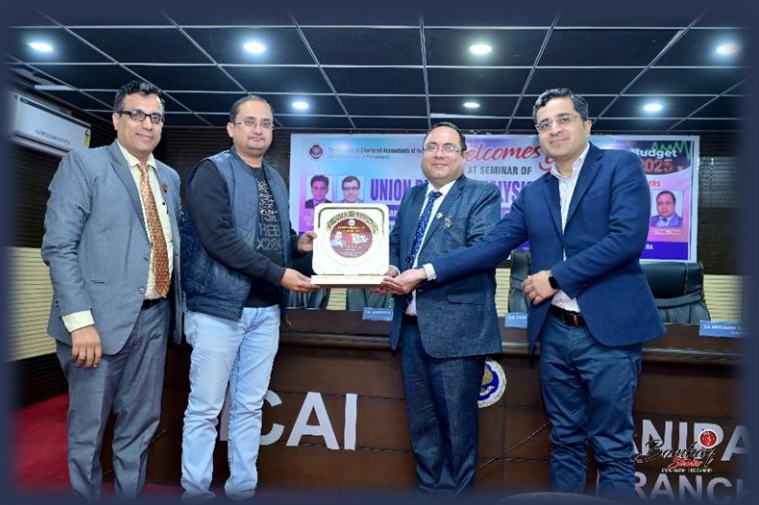
Seminar on Income TAX & GST
by CA Pankaj Saraogi & CA Abhishek Raja

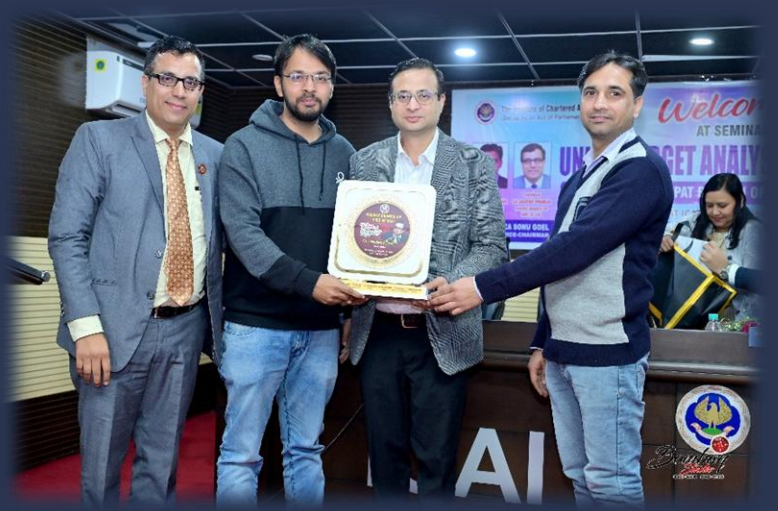
February 5th 2025

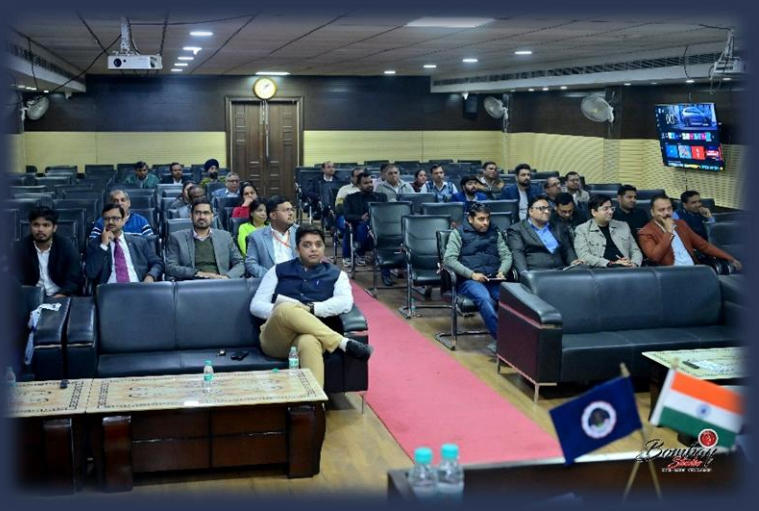




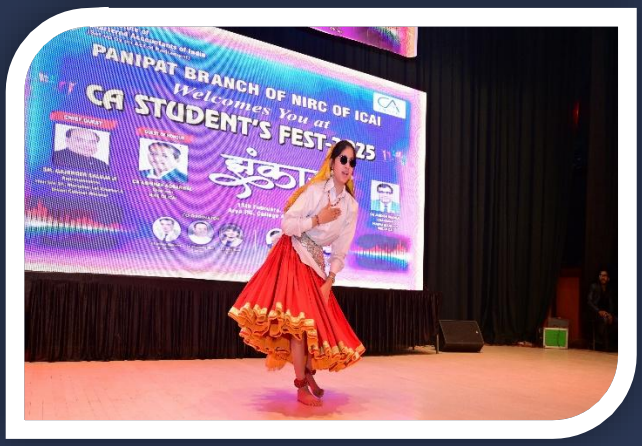








CA STUDENT's FEST
@ARYA PG COLLEGE AUDITORIUM
February 15th 2025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Welcomes You at
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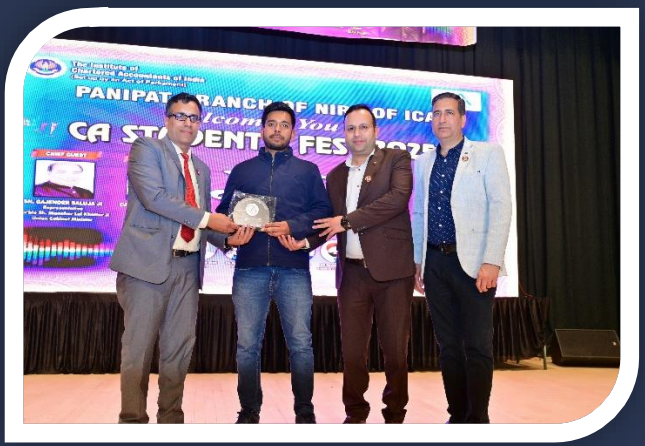
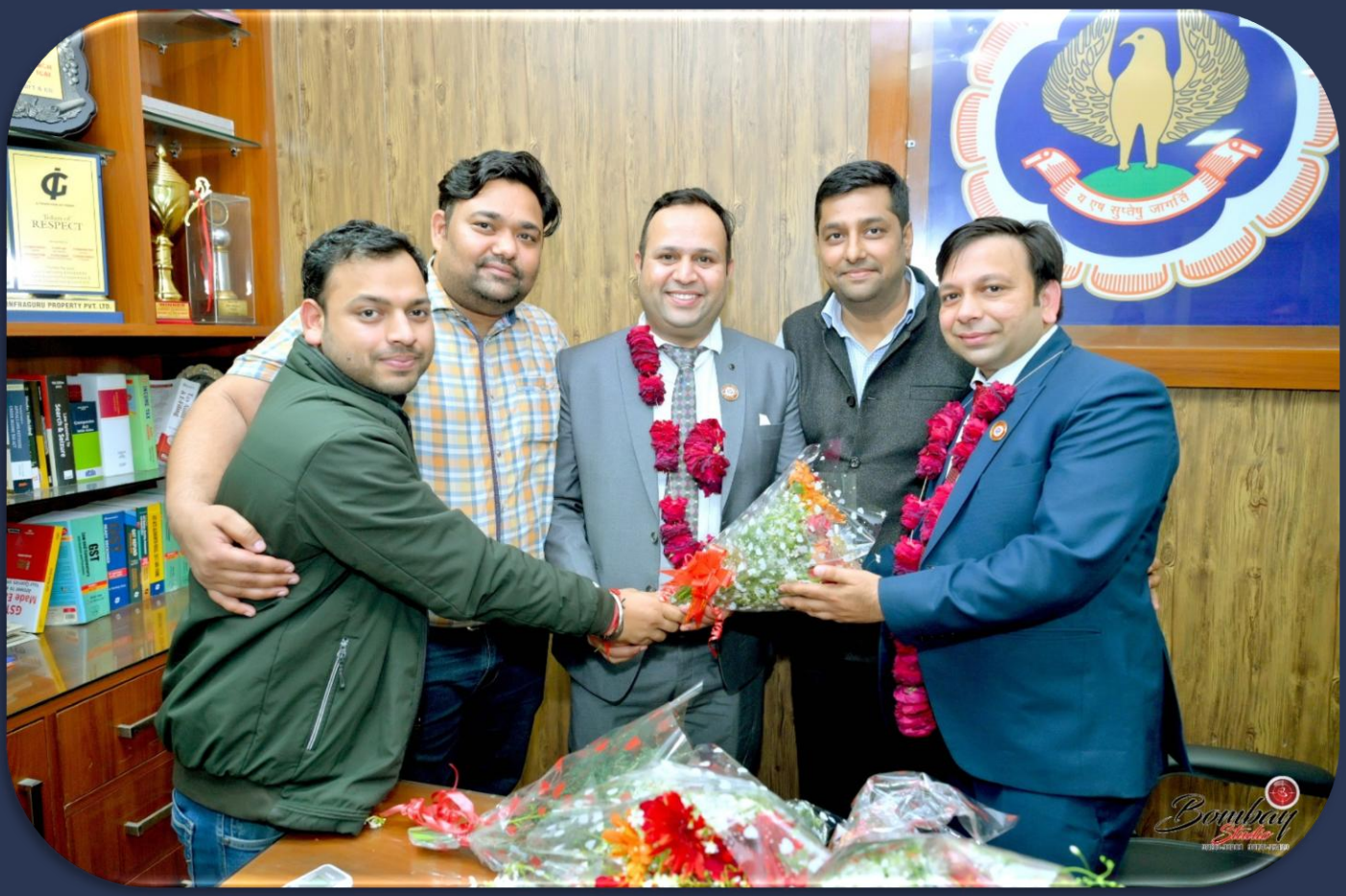
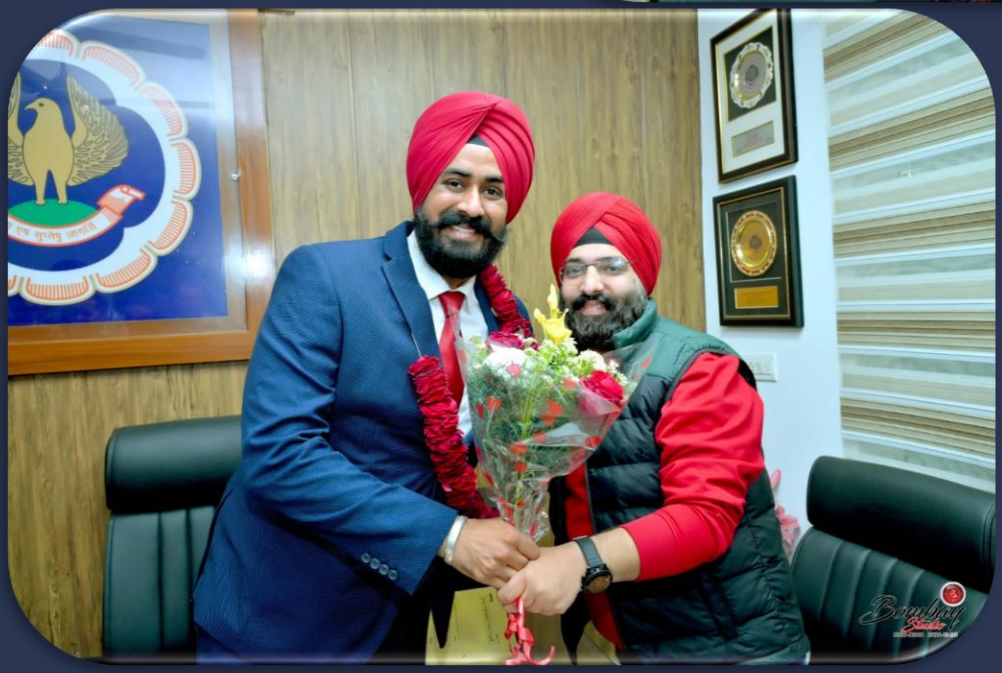
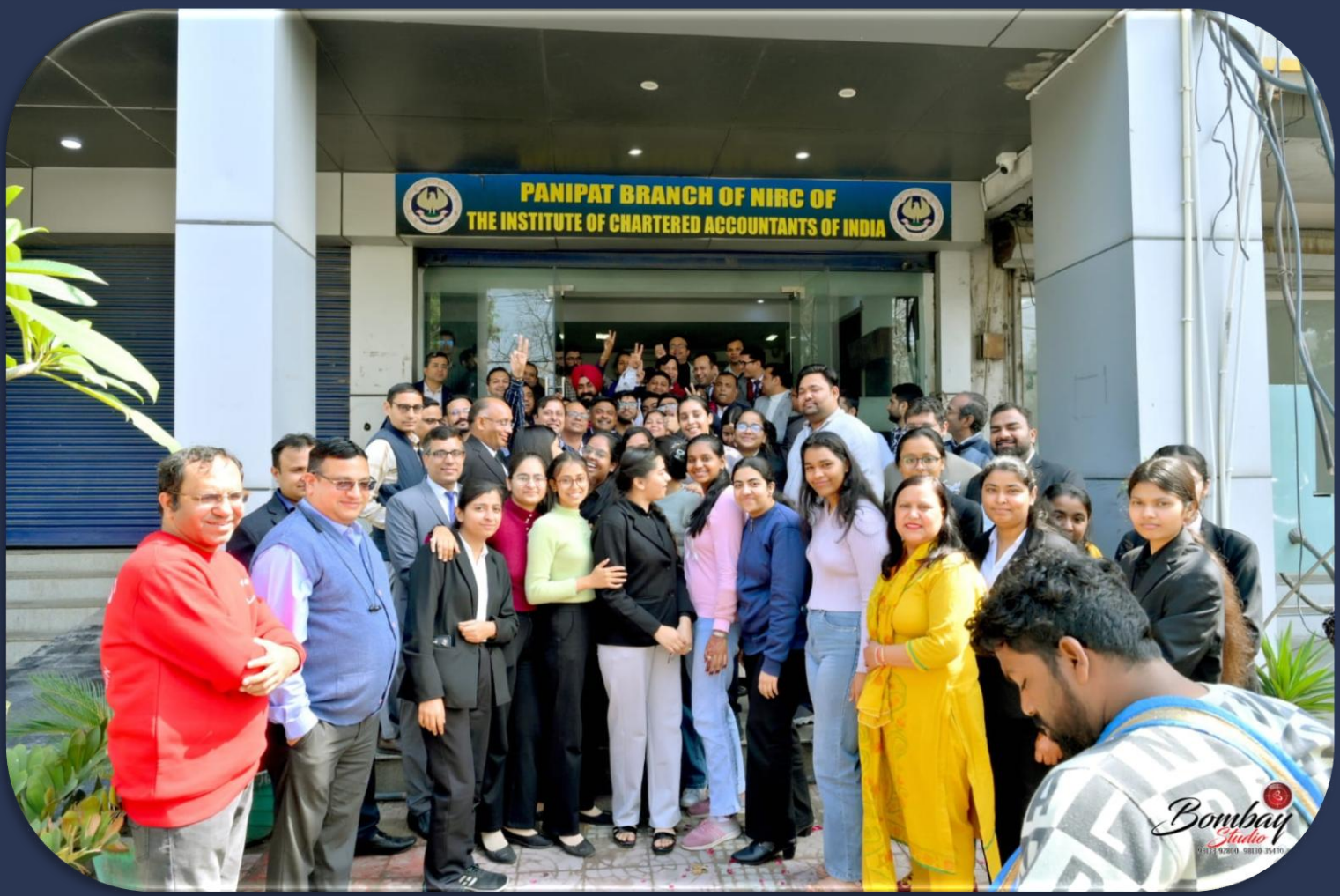


Management Committee Selection 2025-2026
February 28th 2025




RESPECT

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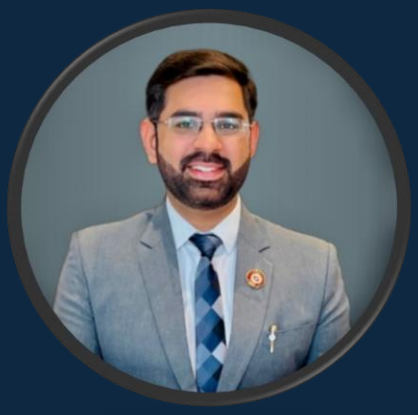
GST CASE LAW COMPENDIUM – FEBRUARY 2025 EDITION



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Partner, Ritesh Arora & Associates
Author

1.	**Whether an Order issued under Section 73 without affixing a digital or manual signature is valid?**
2.	**Whether service of Notice/ Order on the GSTN portal is valid without exercising offline modes of service?**
3.	**Whether an order passed without affording an opportunity of a hearing, violates principles of natural justice?**
4.	**Review petition against order declaring Notification no.56/2023-CT ultra-vires dismissed**
5.	**Whether ITC is available on Telecom towers being movable property?**
6.	**Whether proceedings under Section 73 of the CGST Act for availing Credit under the wrong head is valid?**
7.	**Whether a person can be arrested under the CGST Act without complying with provisions of Sec 41, 41A of Crpc./Sec 35 of BNSS Act 2023?**
8.	**Whether the requirement to file a TRAN-1 form is substantive and mandatory?**

9.	**Whether uploading SCN on the "View additional Notices & Orders" tab renders the SCN invalid?**
10.	**Whether Search can be conducted without recording reason to believe in form INS-01?**
11.	**Whether the late-night recording of the statement violates the fundamental rights under Articles 20(3) and 21 of the Constitution of India?**
12.	**Whether demand can be confirmed if the petitioner fails to prove the actual movement of goods?**
13.	**Whether issuance of notice in Form ASMT-10 is mandatory before issuing SCN u/s 73/74?**
14.	**Whether the delay in filing an appeal beyond statutory time limits can be condoned?**
15.	**Whether GST is leviable on the free bus transportation facility provided by the Employer to its Employees?**
16.	**Whether GST refund can be granted under IDS as per the modified formula for the period prior to July 05, 2022?**

1. **Whether an Order issued under Section 73 without affixing a digital or manual signature is valid?**

No, the Honorable Kerala High Court in the case of ***M/s. Fortune Service & Ors v. Union of India & Ors. [WP (C) Nos. 20656/2024, 22886/2024, 25526/2024, 26672/2024, 26855/2024, 27724/2024, 29264/2024, 29918/2024 dated November 29, 2024]*** allowed the writ petition and held that orders issued under Section 73 of the CGST/SGST Act 2017 must carry the digital or manual signature of the officer passing the order in order to treat the order to be a valid order for the purposes of the CGST/SGST Acts. The Honorable Kerala High Court relied on the case of ***Silver Oak Villas LLP v. Assistant Commissioner (ST), Begunpet Division Hyderabad [(2024) 17 Centax 442 (Telangana)]*** which had further relied on the decision of the High Court for the State of Andhra Pradesh ***SRK Enterprises v. Asstt. Commissioner [[2024] 102 GST 450 (82) G.S.T.L. 142 dated November 10, 2023]***, wherein the Honorable Division Bench held that an unsigned order cannot be covered under ―any mistake, defect, or omission therein as used in Section 160 of the CGST Act. The said expression refers to any mistake, defect, or omission in an order with respect to assessment, re-assessment; adjudication etc, and which shall not be invalid or deemed to be invalid by such reason, if in substance and

effect the assessment, reassessment etc is in conformity with the requirements of the Act or any existing law. These would not cover the omission to sign the order. An Unsigned order is no order in the eyes of the law. Merely uploading of the unsigned order, may be by the Authority competent to pass the order, would, not cure the defect which goes to the very root of the matter i.e. validity of the order. The Division Bench further relied on the case of ***A.V. Bhanoji Row v. Assistant Commissioner (ST) [W.P. No. 2830 of 2023 dated February 14, 2023]*** where a Co-ordinate Bench of this Court has held that the signatures cannot be dispensed with and the provisions of Sections 160 and 169 of CGST Act would not come to the rescue. The Honorable Kerala High Court allowed the writ petition by quashing Impugned Orders and making it clear that it will be open to the competent Authorities in all these cases to upload fresh orders by affixing digital signatures or by serving a copy of the order after affixing a manual signature. Since it is possible that in several of the cases, there may have been a change of officer, who passed the original order, fresh orders shall be passed by the competent officer presently in office, after affording a fresh opportunity of hearing to the petitioners in these cases. It is made clear that none of the orders directed to be issued in the terms of this judgment shall be questioned on the ground that they are issued beyond the period of limitation and it will be deemed for all purposes that the fresh orders will relate back to the date on which the original orders (which have been set aside) have been issued.

Author's Comments

Every mistake or omission by the department cannot be pleaded as a ground for seeking desired relief. In the Author's considered opinion, uploading of the unsigned order on the GSTN portal is not something that can bring quietus to demand. Yes, it is a mistake but not good enough to challenge the "validity of jurisdiction". Uploading of unsigned orders on the GSTN portal must be tested for its validity if order is passed by an unauthorized officer (who is not a proper officer). The Honorable Court in the instant case has accepted that it is a defect but the proceedings have not been given a halt rather second chance is given to Revenue, thereby rendering it as a technical mistake only.

Link to download judgment

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2. **Whether service of Notice/ Order on the GSTN portal is valid without exercising offline modes of service?**

No, the Honorable Madras High Court in the case of ***Udamalpet Sarvodaya Sanghamv. The Authority &Ors [W.P. (MD). Nos. 26481, 25801, 25855, 25979, 25773, 25952, 27362, 27363, 27357 to 27361 27869 & 27190***

of 2024 dated January 06, 2025] allowed the writ petition and held that Section 169 of the CGST mandates a notice to be served in person or by registered post or to the registered e-mail ID alternatively and on a failure or impracticability of adopting any of the aforesaid modes, then the State can, in addition, make a publication of such notices/ summons/ orders in the portal/ newspaper through the concerned officials.

The Honorable Court noted that petitioners contented that were not well aware about the portal of the Department and due to unawareness of the information technology. They had relied upon the practitioners for filing their returns in the portal of the Department. The practitioners uploaded their phone numbers and e-mail IDs for receipt of alerts and that in most of the cases and did not inform the Petitioners. The Authority in each of the cases had uploaded only the notices/order on the web portal and not by other modes prescribed under Section 169 of the CGST Act. The Petitioners contended that the provisions under Section 169 (1) (a) to (f) are disjunctive, they should be read conjunctively, failing which, the basic principles of natural justice would be violated. They would all submit that Clauses (a) to (c) of sub-section (1) of Section 169 should be read as alternative.

The Honorable Court observed that a conjoined reading of Sub-Section (1), (2) & (3) of Section 169 of the CGST Act would amply make it clear that the State is obliged to comply with the Clauses (a) to (c) alternatively and thereafter, comply with Clauses (d) to (f). Further, even though Clause (f) has also been proceeded with the word 'or' indicating it to be disjunctive / an alternative mode of services, a reading of Clause (f) would indicate that Clause (f) could be resorted to by the State, if any of the Clauses preceding it, was not practicable. Therefore, the object of Section 169 of the CGST Act is for strict observance of the principles of natural justice. The Revenue contended that Rule 149 only provides for the electronically issuing of notices/summons/orders. The Honorable Court opined that the Rules are creatures of a Statute and the Rules cannot circumscribe the mode that had been provided under the Statute. When the Statute had also mandated issuance of notice in person/ registered post/ e-mail, etc., the Rules cannot be limited to only serving it through electronic modes. Therefore, the contention that the Rules will prevail over the Statute cannot be accepted. When the modes of service have been prescribed, such services should be effectively done as prescribed.

The Honorable Court held Section 169 of the CGST Act mandates a notice in person or by registered post or to the registered e-mail ID alternatively and on a failure or impracticability of adopting any of the aforesaid modes, then the State can, in addition, make a publication of such notices/ summons/ orders in the portal/ newspaper through the concerned officials. The Writ Petitions are allowed and setting aside the impugned assessment orders.

Author's Comments

Section 169 of the CGST Act, 2017 specifies 14 different ways/modes of serving any decision, order, summons, notice, or other communication under the Act, care must be taken by the authorities not to simply pick and choose any option, rather the best possible option must be chosen by which it is mostly likely to reach the intended notice. The availability of multiple modes of service requires the use of the 'most suitable' mode of service considering the facts and circumstances of the taxpayer in question. Use of mode that is least likely to reach the Notice does not meet the ends of justice since the purpose of notice is to 'set the law in motion' by informing the taxpayer of the allegations contained in the notice. The notice or any other communication cannot be termed to be served until it has reached the intended notice.

In the Author's considered opinion, when the word "or" is used in clause (a) to (f), it gives liberty to the Proper officer to choose the most expeditious mode. The only aspect to consider is whether or not the intended notice was served to the intended notice. If not, then the service of SCN must be disputed and allow the revenue to discharge their burden regarding the service of SCN. Without discharging this elementary burden, 'due process' under the law fails.

Hon'ble Delhi High Court in the case of ***Anant Wire Industries v. Sales Tax Officer (W.P.(C) 17867 of 2024, CM APPL. 76030 of 2024)*** held that where show cause notice issued to the assesses was uploaded on the GST portal under 'additional notices and orders' tab and service was not effected through any other means e.g. registered email ID, order passed based on such notice was to be set aside and matter was to be remanded.

Link to download judgment

https://drive.google.com/file/d/1lSu_jC2sJEPo3_P8DwDg4_65Ll7X-Sv-/view?usp=sharing

3. Whether an order passed without affording an opportunity of a hearing, violates principles of natural justice?

Yes, the Honorable High Court of Allahabad in the case ***Chandani Tent Traders v. State of U.P. [WRIT TAX NO. 1084/2024 dated July 23, 2024]*** held that passing an order without giving an opportunity of a hearing is a violation of principles of natural justice. The Honorable Court noted that the GST registration of the petitioner was cancelled on 06.05.2019 w.e.f 31.01.2019 under the UPGST Act and never revived. The Revenue issued notice for 2017-18 and passed an ex-parte order on 31.12.2023. The petitioner contended that he never received

notice and the notice was issued online only on the portal. Revenue never issued any offline/physical notice. The Honorable noted that there is a gross violation of the rules of natural justice and thereby the Impugned order is set aside. The petitioner may treat the said order itself to be the notice and submit its final reply thereto within a period of four weeks from today. Subject to such compliance by the petitioner,

A fresh order may be passed after affording an opportunity of a personal hearing, as

expeditiously as possible, preferably within a period of three months therefrom. Consequently, the writ petition is disposed of.

Author's comments

For every adverse outcome of departmental proceedings, taxpayers can express disappointment or displeasure but rushing to file a Writ petition does not help merely because it is statutorily permitted. Choosing an appropriate forum and grounds of pleading must be a well-thought and strategic decision. The higher authorities are bound to give the relief based on relief pleaded by the aggrieved party. Whether to celebrate such an order where another round of adjudication is permitted, is a matter of choice and strategy. In the Author's considered opinion, such orders are unable to fetch the desired relief because the impugned order which deserved a quietus for blatantly failing due process of law; is now to be considered as fresh notice.

Section 169 of the CGST Act, 2017 specifies 14 different ways/modes of serving any decision, order, summons, notice, or other communication under the Act, but care must be taken by the authorities not to simply pick and choose any option, rather the best possible option must be chosen by which it is mostly likely to reach the intended noticee. The notice or any other communication cannot be termed to be served until it has reached the intended noticee. When it is accepted that notice was not served, then it ends everything and the impugned order has no legal standing and the demand must have failed in toto for the failure of due process of law.

Link to download judgment

https://drive.google.com/file/d/1c0Jh7DiyNa3ss4XI4jI6dbABgUMqn2qh/view?usp=sharing

4. Review petition against order declaring Notification no.56/2023-CT ultra-vires dismissed

The Honorable Gauhati High Court in the case of ***the Central Board of Indirect Taxes and Customs and Ors. v. Barkataki Print and Media Services & Ors. [Review Pet./206/2024 dated January 7, 2025]*** dismissed the review petition wherein the Petitioner had filed a review application against the decision in the case of ***Barkataki Print and Media Services v. Union of India (WP(C) No. 3585/2024 dated September 19, 2024),*** whereby the Court had held *that Notification No. 56/2023-Central Tax dated December 28, 2023* to be ultra vires of the

CGST Act, 2017. The issue raised in the review petition was that the Notification was subsequently ratified by the GST Council in its meeting held on June 22, 2024, and as such, there is an error apparent in the impugned judgement and order sought to be reviewed. This Court during the course of the hearing enquired whether a ratification subsequently can take care of the recommendation which was required as per Section 168A of the CGST Act. This query was made taking into account that by way of a recommendation a process is initiated by way of a proposal, whereas ratification can only be applied when there is a requirement of an approval and both the terms, under no circumstances, can be said to be the same.

Hence, the court did not find any ground for exercising it review jurisdiction. Hence, the review petition was dismissed.

Author's Comments

The Court underscored the temporal aspect of these terms— 'recommendation' is a prerequisite for making a decision, whereas 'ratification' is a post-facto approval of an already executed decision. Given the clear statutory language of Section 168A, a subsequent ratification does not fulfill the legal requirement of prior recommendation by the GST Council. Section 168A explicitly requires that an extension notification must be issued based on the recommendation of the GST Council. However, in the case of Notification No. 56/2023, no such prior recommendation from the GST Council was made. Instead, as per the Department's response in related cases, the notification was issued based on a decision by the GST Implementation Committee/Law Committee. The GST Council merely ratified this decision six month later. The Gauhati High Court's dismissal of the review petition reinforces the necessity of adhering to procedural mandates when issuing legislative recommendations under Section 168A of the CGST Act. This is not the first time when CBIC rolled out a notification without GSTC's recommendation and later ratified such a decision.

The Government may overcome the issue of absence of f*orce majeure* based on a new event (not **COVID** but a new & different *force majeure* event like a shortage of manpower to complete an audit, etc which is approved by parliament). A Similar decision has been rendered by the Honorable Kerala High Court in ***Faizal Traders Pvt. Ltd. v. Deputy Commissioner, Central Tax and Central Excise [WP(C) No. 24810 of 2023]*** wherein the Court upheld the notifications by holding that it's executive power to extend the period of limitation to COVID-19 for issuance of show cause notice by invoking the powers under sec 168A of the CGST Act.

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5. Whether ITC is available on Telecom towers being movable property?

Yes, the Honorable Delhi High Court in the case of ***Bharti Airtel Limited v. Commissioner, CGST Appeals-1, Delhi [W.P.(C) 13211/2024 dated December 12, 2024]*** held that telecommunication towers do not qualify the test of permanency, they are not 'attached to earth', they can be dismantled and moved and are never erected with an intent of conferring permanency and their placement on concrete bases was only to enable those towers to overcome vagaries of nature. Hence, they can be considered as moveable property which is eligible for Input Tax Credit. The Honorable Court noted that the prefatory parts of the impugned SCNs' seek to deny ITC on inputs and input services used for setting up passive infrastructure on the ground that the same were used in the construction of telecommunication towers and consequently falling within the ambit of clause (*d*) of Section 17(5) of the CGST Act. The Petitioners contended that the telecommunication towers are moveable items of essential equipment used in telecommunications which can be dismantled at the site and thus capable of being moved. It is explained that it is only the concrete structure on which those telecommunication towers are placed which could be treated as an immovable element of that equipment whereas the steel/metal structures are capable of being shifted to other locations. It is asserted that the errection of those towers on a concrete base is essentially for the purposes of according stability to the towers and that in itself would not detract from their basic characteristic of being items of equipment which are principally moveable.

According to the writ petitioners, the question of whether telecommunication towers are liable to be treated as immovable property is no longer res integra and stands conclusively settled in light of the recent decision rendered by the Supreme Court in ***Bharti Airtel Ltd v. Commissioner of Central Excise, Pune [2024 SCC Online SC 3374].*** It was pointed out that Bharti Airtel, in fact, affirms the view that was taken by this Court *in* ***Vodafone Mobile Services Limited v. Commissioner of Service Tax, Delhi (2018 SCC Online Del 12302)***, albeit in the context of Rule 2 of the Cenvat Credit Rules, 2004. It was submitted that telecom towers, as the Supreme Court in Bharti Airtel holds, are intrinsically moveable items and were liable to be treated as capital goods entitled to be viewed as inputs under Rule 2(k) of the 2004 Rules. The Supreme Court ultimately came to render the following conclusions that applying the tests of permanency, intendment, functionality, and marketability, it is quite clearly evident that these items are not immovable but movable within the meaning of Section 3 of the Transfer of Property Act, read with Section 3 (36) of the General Clause Act. Further noted that the provisions of Section 17(5) of the CGST Act itself stand exorcised from Section 16(1) of the CGST Act and thus not liable to be taken into consideration for the purposes of availing ITC. Amongst the various goods and services which find mention in sub-section (5) are those received by a taxable person for construction of an

immovable property. Clause (*d*) of Section 17(5) of the CGST Act, also excludes from immovable property "plant or machinery". The expression "plant and machinery" has been defined by the Explanation appearing in Section 17(5) of the CGST Act to mean apparatus, equipment, and machinery fixed to earth by foundation or structural support. However, it specifically excludes telecommunication towers from the ambit of the expression "plant and machinery".

The Honorable Court opined that the specific exclusion of telecommunication towers from the scope of the phrase "plant and machinery" would not lead one to conclude that the statute contemplates or envisages telecommunication towers to be immovable property. Telecommunication towers would in any event have to qualify as immovable property as a pre-condition to fall within the ambit of clause (*d*) of Section 17(5) of the CGST Act. Their exclusion from the expression "plant and machinery" would not result in it being concomitantly held that they constitute articles which are immoveable. Hence telecommunication towers would not fall within the ambit of Section 17(5)(*d*) of the CGST Act. The denial of ITC, consequently, would not sustain.

Author's Comments

Under the earlier indirect tax regime, the classification of telecom infrastructure components such as towers, antennas, and prefabricated buildings (PFBs) for CENVAT credit purposes was a contentious issue. The Bombay High Court ruled against Mobile Service Providers (MSPs), holding that these components function independently and cannot be treated as a single unit or capital goods. In contrast, the Delhi High Court, relying on a Supreme Court precedent, ruled in favour of MSPs, stating that movable structures capable of being relocated without damage do not qualify as immovable property.

The Supreme Court, in *M/s Bharti Airtel Ltd. vs. Commissioner of Central Excise, Pune (2024)*, consolidated all related appeals and, after applying established legal principles, concluded that towers and PFBs are movable in nature. This ruling aligned with the Delhi High Court's position and reinforced that such infrastructure cannot be classified as immovable property.

However, under the GST regime, the legal landscape differs. The Explanation to Section 17 of the CGST Act, 2017, explicitly excludes "Telecommunication Towers" from the definition of "Plant and Machinery," thereby restricting Input Tax Credit (ITC) eligibility. Notably, in the *Bharti Airtel* case, the Revenue did not present

arguments based on legislative intent under GST; rather, the discussion was cantered on whether telecom towers should be classified as movable or immovable property to determine credit eligibility.

Given the evolving jurisprudence and the distinct statutory framework under GST, this issue is far from settled. Future litigation and clarifications will likely provide further insights into the treatment of telecom towers for ITC purposes.

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6. Whether proceedings under Section 73 of the CGST Act for availing Credit under the wrong head is valid?

No, the Honorable Kerala High Court in the case of ***Rejimon Padickapparambil Alex v. Union of India [WA No. 54 of 2024 dated November 26, 2024]*** allowed the appeal filed against the judgment passed by the Honorable Single Judge Bench thereby holding that the availment of ITC under the wrong head is a technical mistake and would not fall within the purview of wrong availment of ITC, therefore, the initiation of proceedings for levy of interest and penalty under Section 73 of the CGST Act cannot be initiated. The Honorable Court noted that the Petitioner in receipt of the IGST paid inward supplies from outside the State, instead of showing the IGST component in the eligible credit details in Form GSTR-3B, inadvertently showed the IGST component as nil and added the bifurcated CGST and SGST components of IGST to the existing figures showing eligible CGST and SGST credit for availment of credit which resulted in a mismatch between Form GSTR 2A and Form GSTR 3B maintained in relation to the assessee. The Assessing Authority noticed the mismatch and opined that the mismatch had resulted in the Appellant utilizing 'unavailable credit' towards payment of CGST and SGST on outward supplies. Thereafter, the Respondent proceeded to issue the notice and demand order thereafter, confirming the demand against the Appellant. Aggrieved by the Demand Order passed, the Appellant filed a writ petition before the Honorable Kerala High Court wherein the Honorable Single Judge vide judgment dated December 19, 2023 **("the Impugned Judgment")** in the case of *WP(C) No. 40005 of 2023* wherein the Honorable Single Judge dismissed the writ petition.

The Honorable Kerala High Court noted that Section 73 of the CGST Act, is only attracted when it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax has been wrongly availed or utilised for any reason and in the present case there is no wrong availment of credit,

and that the only mistake committed by the Appellant was an inadvertent and technical one wherein the Appellant omitted to mention the figures of IGST separately during filing of return especially when there is no outward supply attracting IGST. The Honorable Court held that the Impugned Judgment passed and the demand order issued against the Appellant, is set aside.

Author's Comments

The doctrine of *moulding relief* grants Courts of Equity, such as the Supreme Court and High Courts, the authority to go beyond statutory limitations and devise equitable solutions to address grievances. The present case exemplifies the exercise of such discretionary power.

A significant and growing concern for the Revenue in litigation before courts of equity is the persistent failure of Departmental counsel to present arguments based on the newly enacted GST legislation. As GST is a relatively recent statute, its legislative intent must not be overlooked. However, departmental representatives often rely on precedents from the pre-GST era rather than engaging with the nuances of the current statutory framework.

In this case, the petitioner advanced the argument of *Revenue Neutrality*—a concept that briefly emerged under GST but lost relevance over time. If such an argument were to be accepted, it would render the law ineffective, as virtually every legal dispute could then be framed as revenue-neutral. This would undermine the very foundation of new legislation.

Furthermore, the petitioner admitted to making an incorrect ITC claim, regardless of the underlying reasons. Such an admission is conclusive and leaves no room for further debate. The Proper Officer lacks the authority to entertain pleas seeking relief based on such arguments, irrespective of their persuasiveness. The statutory framework must be upheld, ensuring that legal interpretations align with the legislative intent and do not dilute the effectiveness of GST enforcement.

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7. **Whether a person can be arrested under the CGST Act without complying with provisions of Sec 41, 41A of Crpc./Sec 35 of BNSS Act 2023?**

No, the Learned Chief Judicial Magistrate, Gurugram in the case of ***Central Goods and Service Tax v. Mr. Yogesh Gupta [CNR No. HRGR03-005388-2025 dated January 17, 2025]*** declared the arrest by the GST officer illegal as the grounds of arrest were not informed in a proper manner, and merely a formality was done by the prosecution by providing grounds of arrest in writing. The Court noted that the prosecution was under obligation to comply with the provisions of Section 41, 41A of the Criminal Procedure Code, 1973/Section 35 of the Bharatiya Nagarik Suraksha Sanhita Act, 2023before arresting the accused but the same has not been complied with and as such, arrest of accused cannot be termed as legal.

The Honorable Court noted that the accused was produced before the Court in custody and an application has been filed for seeking judicial remand under Section 167 of the Cr.PC read with Section 187 of BNSS Act, 2023 for 14 days moved on the behalf of the Department. The Accused contended that the offence was punishable under Section 132(1) of the CGST Act, 2017 for which the sentence is 5 years. Further, the grounds of arrest were not communicated properly to the Accused and just formality was made by the Complainant in the name of informing the grounds of arrest and as such, the grounds of arrest as provided by the prosecution is not sufficient to understand the nature of the case. The compliance of Section 41A of the Cr.PC/ Section 35 of the BNSS Act was not made because the issuance of notice prior to the arrest of the Accused was necessary before arresting him as the offence involved in the present case is punishable not exceeding 7 years. Hence, the arrest of the Accused was illegal and he may be released from the custody. The Complainant contended that the Accused was arrested under Section 69 of the CGST Act. The Learned CJM noted that the Accused had acknowledged in the arrest memo that the grounds of the arrest were informed and explained in writing. Relied on, the case of ***Arnesh Kumar v. State of Bihar (Criminal Appeal No. 1273 of 2014)*** Honorable Supreme Court made it mandatory to follow the provisions of Section 41 & 41A of Cr.PC for the offence which are punishable for 7 years. Observed that the Complainant contended that the Accused has been arrested under Section 69 of the CGST Act and hence provisions of Section 41 and Section 41A of the Cr.PC/ 35 of theBNSS Act arenot applicable. However, the Court did not find any force in the arguments of the Complainant.

Further, relied on ***Akhil Krishan Maggu and Another v. Deputy Director and Ors. [CWP No. 24195 of 2019 dated November 15, 2019]*** where the Honorable Punjab and Haryana High Court held that the provisions of the CGST Act are not subject to the exclusion of Cr.PC rather Section 67(10) of the CGST Act as well as Section 69(3) of the CGST Act borrows provision from Cr.PC. As per Section 41(1)(b) as amended by the Code of Criminal Procedure (Amendment) Act, 2008 applicable w.e.f. November 01, 2010, as a person may be arrested if has committed a cognizable offence with imprisonment which may be arrested if has committed a cognizable offence punishable with imprisonment which may be less than 7 years or may extend to 7 years if conditions

specified therein are satisfied. As per Section 41A of the Cr.PC Act, a notice shall be issued to the person against whom the complaint has been made or credible information has been received or reasonable suspicion exists and he shall not be arrested if he complies with the notice. The Honorable Court held that the Complainant was under obligation to comply with the provisions of Section 41, 41A of Cr.PC/ Section 35 of the BNSS Act before arresting the accused but the same has not been complied and as such, arrest of the Accused cannot be termed

as legal. Hence, the application filed by the Accused was allowed. Hence, the Accused was released from the custody. However, the Department was given the liberty to re-arrest the Applicant after following the procedure prescribed in Section 41, 41A of CrPC read with 35 of the BNSS Act and Section 70(1) of the CGST Act.

Author's Comments

Section 41 of the CrPC outlines circumstances under which police officers may arrest individuals without a warrant, ensuring that such actions are backed by credible information, reasonable suspicion, or the necessity to prevent further offenses, safeguard evidence, or ensure the accused's presence in court. Complementing this, Section 41A mandates that in cases where arrest is not immediately warranted, a notice of appearance must be issued, allowing the individual to present themselves before the authorities voluntarily.

Building on these principles, the CBIC issued *Instruction No. 1/2025-GST* on January 13, 2025, providing guidelines for arrest and bail under the CGST Act. This directive draws upon judicial precedents, including the *Delhi High Court's ruling in Kshitij Ghildiyal v. Director General of GST Intelligence*, which underscored the necessity of communicating the grounds of arrest in writing. Furthermore, the Supreme Court, in cases such as *Pankaj Basanl v. Union of India* and *Prabir Purkayastha v. State (NCT of Delhi)*, made a crucial distinction between 'reasons for arrest' and 'grounds of arrest,' reinforcing the principle that an individual must be informed of the specific legal basis for their detention.

Enforcement authorities have the power to act against violations, such actions must align with constitutional safeguards and procedural fairness.

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8. Whether the requirement to file aTRAN-1 form is substantive and mandatory?

Yes, the Honorable High Court of Rajasthan in the case of **M/s. Dharania Motors vs. UOI (D.B Civil Writ Petition No.9717/2018 dated 29/11/2024** held that the requirement to file the TRAN-1 form for claiming transitional input tax credit, as specified under Rule 117 of the CGST Rules, 2017, is substantive and mandatory not directory. The Honorable Court noted that Rule 117 of CGST Rules, 2017 provided that every registered person entitled to take credit of input tax under Section 140, shall submit a declaration in TRAN-1 within the stipulated period of ninety days, further extendable by ninety days. The petitioner did not file TRAN-1 to claim a transitional claim of excise duty, however, TRAN-3 was filed, but it was not processed by the department.

The petitioner contented that, on fulfilment of eligibility conditions prescribed under sub-section (3) of Section 140 of the CGST Act, 2017, entitlement to the credit of excise duty is vested; secondly, the Rule requiring submission of declaration in TRAN-1 is merely a procedural law and has, therefore, to be treated as a directory and not mandatory. The respondent contended that TRAN-1 submission is a mandatory condition for claiming transitional credit, as per Section 140(3) of the CGST Act, 2017. Entitlement to credit is subject to fulfilling conditions, including timely TRAN-1 submissions. The CTD mechanism is integrated with the TRAN-1 requirement. The respondent further argued that adequate time and extensions were provided for TRAN-1 submission, but the petitioner has failed to comply.

The Honorable High Court emphasized that Section 140 grants the Rule Making Authority the responsibility to prescribe procedures for claiming transitional credit and the same was carried out under Rule 117. The Honorable Court relying uponthe decision of the Bombay High Court in the case of **JCB India Limited Vs. Union of India &Ors., (2018-TIDL-23-HC-Mum-GST),** where it has been

submitted that CENVAT credit has been held to be a mere concession and cannot be claimed as a matter of right *dehors* the provisions of law as the petitioner did not fulfill the requirement of law in the matter of availing transitional credit. The Honorable Court held that the submission of a TRAN-1 declaration within the prescribed time is a mandatory requirement for claiming transitional credit. The time limit for submitting TRAN-1 is not merely procedural under rule 117(2) of CGST rules but a statutory mandate under Section 140(3) of the CGST Act, 2017. The Honorable Court further stated it’s not merely a formality but thatTRAN-1 serves a crucial purpose in ensuring smooth and hassle-free operation of the transitional credit mechanism. The Declaration is not subject to just merely submitting the details but it binds the claimant solemnly to declare as to and in what manner he is eligible. Hence, the writ petition is dismissed.

Author’s Comments

Rights are acquired, derived, and extinguished. It is essential to trace back every right to its origin—the point at which it became vested. While rights may exist in principle, they attain the status of indefeasible rights only when they irrevocably reside as such, fulfilling all four necessary components. As established in *Eicher Motors Ltd. v. Union of India* [(1999) 106 ELT 3 (SC)], rights that have not yet vested remain susceptible to being taken away, either by the operation of law or by the lapse of time due to inaction within the prescribed period. The process of perfecting rights is termed as 'vesting of rights,' which may occur through (a) actions taken by the party or (b) events specified under the law. If these vesting conditions are not met, the rights in question are

vitiated. Consequently, any benefits associated with such unvested rights, instead of flowing to the intended party, revert to the Government, which had originally extended the benefit.

In the present case, the failure to file TRAN-1, which is a statutory requirement, renders the claim for excise duty credit—though otherwise eligible—an **imperfect right**. This means that while the right to claim the credit exists, it lacks full legal enforceability due to non-compliance with statutory procedures.

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9. Whether uploading SCN on the "View additional Notices & Orders" tab renders the SCN invalid?

Yes, the Honorable High Court of Allahabad in the case of **National Gas Service vs. State of U.P. And Ors (Writ Tax No. 2420 of 2024 dated 20.12.2024)** held that Show Cause Notice uploaded under the category of "View Additional Notices and Order" instead of "View Notices and Orders" is not sufficient communication of SCN to the petitioner. The petitioner contended that the notices and orders issued by the department were uploaded on the 'Additional Notices and Orders' tab on the GST Portal, instead of the 'View Notices and Orders' tab and being unaware of the issuance of the notices as well as passing of the orders, could neither appear before the authority nor question the validity of the impugned orders within the period of limitation. The petitioner placed reliance on the decision of this court in the case of Ola Fleet Technologies Pvt. Ltd. v. State of U.P. & 2 others, Writ Tax No. 855 of 2024 decided on 22.7.2024.

The department did not dispute the uploading error, acknowledging that notices were not uploaded in the correct tab. It was observed that the procedural lapse of uploading notices under an incorrect tab on the GST portal

resulted in the petitioner being unaware of such notices. Consequently, the petitioner was granted the benefit of the doubt as no material exists to reject the contention being advanced that the impugned order was not reflecting under the tab "view notices and orders". And the writ petition was accordingly allowed and the order set aside.

Author's Comments

Although Section 169 of the CGST Act, 2017 specifies 14 different ways/modes of serving any decision, order, summons, notice, or other communication under the Act, care must be taken by the authorities not to simply pick and choose any option, rather the best possible option must be chosen by which it is mostly likely to reach the intended noticee. The notice or any other communication cannot be termed to be served until it has reached the intended noticee.

In the Author's considered opinion, it is immaterial whether the notice was uploaded on the "View Notices and Orders" tab or the "View Additional Notices and Orders" tab. The only aspect to consider is whether or not the intended notice was served to the intended noticee. If not, then the service of SCN must have been disputed and must have allowed the revenue to discharge their burden regarding the service of SCN. Without discharging this elementary burden, 'due process' under the law is abused and SCN deserves quietus in judicial review.

A Similar decision has been rendered in case of ***Bablu Rana V. Proper Officer Sgst Ward-24 Zone -1 And AnrWP (C) 9394/2024, CM Nos. 38564/2024 & 38565/2024*** **dated 11.07.2024** by Honorable Delhi High Court.

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10. Whether Search can be conducted without recording reason to believe in form INS-01?

No, the Honorable Allahabad High Court in the case of ***Excellentvision Technical Academy (P.) Ltd. v. State of U.P. [Writ Tax No. 554 of 2023 dated May 20, 2024]*** held that where the Revenue Department failed to put forward the actual reasons to believe as required under Section 67 of the CGST Act, 2017 before initiating a search, in such case the entire proceedings have no foot to stand on and are liable to be quashed. The Honorable High Court noted that the search was carried out on January 4, 2018, however, there are two INS-01 forms, which have been issued on two different dates; one on February 11, 2019, and another on January 4, 2018 (date of the search). The INS-01 issued on February 11, 2019, is subsequent to the search and is, therefore, an invalid

document. With regard to other INS-01 that has been issued on the date of search, it further appears that no reasons to believe have been noted in the same. In fact, this document was provided to the petitioner upon the petitioner making an application. This document appears to be fabricated and created as an afterthought. Further noted that the tax Department has failed to explain and put forward the actual reasons to believe as required under Section 67 of the State GST Act in the counter affidavit filed by the tax Department. The Honorable Court opined that the entire proceedings that have originated from the illegal search and seizure carried out under Section 67 and accordingly, the entire authorization is liable to be quashed. Further, ordered the Tax Department to refund the amount deposited by the Petitioner in lieu of the order passed under Section 74 of the State GST Act within a period of eight weeks.

Author's Comments

Before the Proper officer not below the rank of Joint Commissioner grants authorization to any other officer to act as the **Authorized Officer** for inspection and/or search under **Section 67**, certain fundamental and essential conditions must be met. The exercise of powers under this provision cannot be routine or based merely on suspicion; there must be a **"reason to believe"** that tax evasion has occurred. It is imperative that the following elements are established and documented before granting authorization:

1. **Existence** of relevant material,
2. **Validity** of the grounds for action,
3. **Sufficiency** of the evidence, and
4. **Proper documentation** of supporting records.

Any proceedings initiated under **Section 67** will be legally unsustainable if the Proper officer fails to substantiate the **"reason to believe"** when scrutinized. Consequently, any demand arising from such flawed proceedings will not hold legal merit. Furthermore, even if legitimate tax dues exist, they cannot be enforced in the absence of proper jurisdiction. The **Privy Council**, in *Nazir Ahmed v. King Emperor* [AIR 1936 PC 253], established a foundational principle of administrative law, stating that:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

This underscores the necessity for strict adherence to procedural mandates in the exercise of statutory powers, ensuring that any action taken under **Section 67** withstands legal scrutiny.

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11. Whether the late-night recording of the statement violates the fundamental rights under Articles 20(3) and 21 of the Constitution of India?

Yes, the Honorable High Court of Jharkhand in the case of **M/s Shiv Kumar Deora vs UOI And Ors** (W.P.(T) No.354 of 2024 dated May 13, 2024) directed the GST officers to adhere strictly to the guidelines and instructions issued by the Commissioner (GST-Investigation) and CBIC when exercising their powers under Section 70 of the GST Act. The Honorable Court observed that the proper officer under GST should not compel, coerce, or force a summoned person to give a statement after office hours aligns with the principles laid out in the GST Intelligence and Investigation Manual, 2023, which provides a comprehensive framework for the interrogation and recording of statements.

Specifically, the Honorable Court noted that Clause (iv) of Paragraph 5.142 of the manual stipulates that statements should be recorded during office hours. Further, the Honorable Court referred to Instruction No. 03/2022-23 (GST-Investigation), which reiterated the guidelines for issuing summons under Section 70 of the CGST Act.

Author's Comments

The issuance of a **Summons Notice** is a critical step in an investigation but does not signify its conclusion. Summons should be issued with **great circumspection**, serving the purpose of corroborating investigative findings rather than being misused as a tool for harassment. Recognizing the potential for misuse, the **CBIC has repeatedly issued strict guidelines and instructions** to regulate the issuance of summons in tax matters.

It is imperative that **summons are issued only in cases where there are underlying proceedings related to tax evasion**. They must not be issued in a routine or casual manner, ensuring that procedural safeguards are adhered to. Additionally, only an officer **duly authorized under Section 67** is empowered to issue a summons. Taxpayers must also be aware that **statements recorded on oath do not automatically carry evidentiary weight** unless they remain unchallenged or undisputed. In legal proceedings, such statements are often regarded as the **weakest form of evidence**, necessitating corroboration through independent and substantive proof.

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12. Whether demand can be confirmed if the petitioner fails to prove the actual movement of goods?

Yes, the Honorable High Court of Allahabad in case of ***M/s Anil Rice Mill vs. State of UP and 2 Others (WRIT TAX No. - 886 of 2023 dated 14.08.2024)*** dismissed the writ petition filed by the petitioner stating that the primary responsibility of claiming the benefit is upon the dealer to prove and establish the actual physical movement of goods, genuineness of transactions, etc. and if the dealer fails to prove the actual physical movement of goods, the benefit of ITC cannot be granted. The Honorable Court relied on the judgment of the Honorable Supreme Court in the case of ***State of Karnataka vs. M/s Ecom Gill Coffee Trading Private Limited (2023)***, which reinforces the principle that the burden of proving the legitimacy of an ITC claim lies with the purchasing dealer. The Honorable Court observed that the petitioner has only brought on record the tax invoices, e-way bills, and payment through the banking channel, but no such details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Thus in the absence of these documents, the actual physical movement of goods, and genuineness of transportation as well as the transaction cannot be established and in such circumstances, further, no proof of filing of GSTR 2 A has been brought on record, consequently, the authorities rightly initiated proceedings against the petitioner. In view of the facts as stated above, no interference is called for by this Court in the impugned orders.

Author's Comments

Where self-assessment is challenged, the burden rests on the Revenue making the allegation and not on the Registered Person-suffering the allegation. The Burden of proof is not discharged by making the allegation. The Burden of proof is discharged only when a mountain of evidence commensurate with the nature of the allegation made is produced and appended to notice. Allegations of severe wrong-doing require proportionately substantial evidence. Evidence is not extracted of form books of accounts or statements taken on-oath. Evidence is that proves something. Section 155 of the CGST Act places the burden to prove regarding "eligibility to credit" only on the taxpayer. Once, it is shown that all the conditions of section 16 are fulfilled, the taxpayer's burden is

discharged and the onus shifts on the department to prove their case. In the instant case, the petitioner could have disputed the allegation stating that being a trader; if the outward supplies are accepted to be genuine then inward supplies have to be genuine. And if inward supplies are in genuine and outward supplies are accepted to be genuine, then the allegation is deeply rooted in incomplete investigation, surmise and conjecture only. The Revenue cannot approbate and reprobate on the same issue. The taxpayer must have allowed the revenue to prove their case and in the absence of evidence in support of allegations, allegations are self-defeating. This is a classic case of poor strategy by the petitioner and in the coming times, other taxpayers will have to face the heat of this order.

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13. Whether issuance of notice in Form ASMT-10 is mandatory before issuing SCN u/s 73/74?

No, the Honorable Madras High Court in the case of **Mandarina Apartment Owners Welfare Association (MAOWA) v. Commercial Tax Officer/State Tax Officer [W.P. NOS. 15307 & 15330 OF 2024 dated 16 July 2024]** set aside the assessment order stating that a close examination of sections 61 and 73 shows that scrutiny of returns and issuance of notice in form ASMT-10 do not constitute essential steps for adjudication. The Honorable Court observed that upon selection of returns for scrutiny and discovery of discrepancies, there is a mandatory obligation to issue an ASMT-10 notice. The ASMT-10 notice allows the registered person to provide an explanation; if satisfactory, no further action is taken, otherwise, action is initiated under sections 65, 66, or 67, or tax is determined under sections 73 or 74.Failing to issue an ASMT-10 notice despite noticing discrepancies vitiates the scrutiny process and any resulting quantification. However, scrutiny of returns and issuance of ASMT-10 notice is not a mandatory prerequisite for adjudication under section 73, even if returns were scrutinized. The Honorable Court accepted the contention of the Respondents by relying on the judgment of this Court in case of ***Vadivel Pyrotech (W.P.(MD)No.22642 of 2022 and W.M.P.(MD) Nos.16803 and 16804 of 2022 dated 27.09.2022)*** and concluded that the said judgment does not lay down the proposition that jurisdiction under Section 74 cannot be exercised without issuing notice under Section 61(3).

Author's Comments

Proceedings under Section 73 of the CGST Act are distinct and independent from those under Section 61. A proceeding under Section 61 serves as a pre-adjudication exercise, where no demand can be confirmed or recovered, and it is not a prerequisite for initiating proceedings under Chapter XV of the Act.

The opening words of Section 73, *"Where it appears to the Proper Officer…"*, make it clear that scrutiny, audit, special audit, or inspection operate separately from adjudication. The former is not a mandatory precondition for the latter. A Show Cause Notice (SCN) represents the conclusion of an investigation and does not restrict the Proper Officer to findings from the scrutiny of returns under Section 61 alone. Instead, relevant information may be gathered from any legitimate source to support adjudication.

A similar position was upheld by the Division Bench of the Hon'ble Allahabad High Court in *M/s. Nagarjuna Agro Chemicals Pvt. Ltd. v. State of U.P. & Another* (2023: AHC: 148454-DB, Writ Tax No. 335 of 2023). The Court categorically held that scrutiny of returns and proceedings under Section 74 are separate and distinct, and the issuance of a notice under Section 61(3) cannot be construed as a precondition for initiating action under Section 74.

This reinforces the principle that the adjudicatory process under Sections 73 and 74 is not contingent upon prior scrutiny under Section 61, ensuring that tax authorities retain the discretion to act based on a broader range of information and investigative findings.

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14. Whether the delay in filing an appeal beyond statutory time limits can be condoned?

Yes, the Honorable Calcutta High Court in the case of ***Shruti Iron (P.) Ltd. v. Assistant Commissioner, State Tax, Bally & Salkia Charge [WPA No. 26637 of 2024 dated December 04, 2024]*** set aside the order passed on grounds of limitation, and consequently, the Appellate Authority is directed to decide the application of Assessee for condonation of delay on merits. The Honorable Court noted that the petitioner has contended that the matter was entrusted to its advocate, who, due to a mix-up, failed to respond to the show cause notice. Consequently, an ex-parte adjudication order was passed on October 16, 2023, confirming the tax demands and issuing a summary order in FORM GST DRC-07. The Petitioner filed an appeal on March 19, 2024, but

exceeded the statutory period under Section 107 of the CGST Act by 30 days due to the serious illness of its director, who handles financial and tax matters. Despite providing detailed explanations and supporting documents for the delay, the Appellate Authority rejected the appeal vide Order dated June 28, 2024, on the grounds of limitation. The Honorable Court observed that the provisions on limitation should be interpreted liberally in cases where genuine hardships are demonstrated, particularly in light of judicial precedents supporting such relief. Relied on, ***S.K. Chakraborty & Sons v. Union of India [M.A.T. Nos. 81 & 82 of 2022 dated December 01, 2023]***, the Division Bench of Honorable Calcutta High Court held that Section 107 of the CGST Act does not exclude the applicability of the Limitation Act, 1963expressly. It does not exclude the applicability of the Act impliedly also if one has to consider the provisions of Section 108 of the CGST Act which provides for a power of revision to the designated authority, against an order of adjudication. In case of revision, a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/notice. Section 107 of the CGST Act does not have a non-obstante clause rendering Section 29(2) of the Limitation Act, non-applicable. In the absence of specific exclusion of the Section 5 of the Limitation Act, it would be improper to read an implied exclusion thereof. Moreover, Section 107 of the CGST Act, it it's entirely has not expressly stated that Section 5 of the Limitation Act stands excluded. Hence, since provisions of Section 5 of the Limitation Act, have not been expressly or impliedly excluded by Section 107 of the CGST Act, by virtue of Section 29(2) of the Limitation Act, Section 5 of the Limitation Act, stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filling the appeal can be extended by the Appellate Authority.

The Honorable Court held in light of the procedural irregularities and the arbitrary nature of the actions, the Petitioner's case is meritorious. Accordingly, the writ petition is allowed, and the appellate Order dated June 28, 2024 is quashed.

Author's Comments

If the appeal is filed after the period of condonation permitted in Section 107(4) (3+1 months), the Appellate authority does not have statutory authority to condone the delay, not even if the reasons are ample and deserve

to be entertained. The appeal must be dismissed for being fatally belated because the Legislature has allowed Appellate authority this much authority and not more.

The Honorable Supreme Court has decided in **Singh Enterprises v. CCE 2008 (221) ELT 163** that where the period of limitation is specifically provided in the statute, admitting appeals albeit for 'sufficient cause' would render statutory provisions impossible. And Appellate Authority thus being the denuded of authority to condone (due to lapse of maximum time permitted) is barred from examining the cause and condone the delays even for a "good and sufficient" reason. The Honorable Allahabad High Court in the case of ***M/s. Yadav Steels v. Additional Commissioner and Anr. [Writ Tax No. 975 of 2023 dated February 15, 2024]*** and in the case *of* ***M/s. Abhishek Trading Corporation v. Commissioner (Appeals) and Anr. [Writ Tax No. 1394 of 2023 dated January 19, 2024]*** has decided that the Central Goods and Services Tax Act, 2017 is a special statute and a self-contained code in itself and Section 5 of the Limitation Act is not applicable to give power to First Appellate authority to condone the delay beyond the statutory time limit allowed.

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15. Whether GST is leviable on the free bus transportation facility provided by the Employer to its Employees?

No, the AAAR, Gujarat in the case of ***M/s. Emcure Pharmaceuticals Ltd. (Advance Ruling (Appeal) No. GUJ/GAAAR/APPEAL/2024/09 dated December 30, 2024,*** dismissed the appeal filed by the Department and reaffirmed the ruling passed by AAR, Gujarat in the case of ***In Re: M/s. Emcure Pharmaceuticals Ltd. [GUJ/GAAR/R/2022/22 dated April 12, 2022],*** thereby ruling that Applicant is not liable to pay GST on the free bus transportation facility provided to its employees. Further, it was ruled that the ITC availed on a motor vehicle for transportation of person having approved seating capacity of more than 13 persons, not being blocked under Section 17(5)(b)(i) of the CGST Act, and thereby, could be availed by the Applicant. The AAAR, Gujarat noted that the Assistant Commissionerate, CGST, Ahmedabad North Commissionerate, filed an appeal against the ruling passed by AAR, Gujarat contending that GAAR granted erroneous benefit of exemption of GST on free bus transport provided by the Respondent. GAAR on one hand held that the GST is not leviable on the Respondent on free bus transportation while on the other hand, it was held that ITC on GST paid on hiring a bus is admissible. As the Respondent did not recover the amount from its employees for bus

transportation there is no employer-employee relationship. The AAAR, Gujarat noted that the Respondent has arranged the free of cost transportation facility to for its employees in non-AC buys, which is provided by the third-party vendor, as part of its HR policy as per the employment agreement. Further Noted that, the said issue has been duly clarified by the CBIC vide ***Circular No. 172/4/2022-GST dated July 06, 2022,***and opined that the perquisite of providing free bus transportation by the Respondent to their employee in terms of the contractual agreement entered between the Respondent and their employees are in lieu of the service provided by the employee to its employer in relation to the employment and would not be subject to GST.

Author's Comments

CBIC has rolled out Circular no.172/04/2022 GST dated 06th July, 2022 to issue a clarification on the issue pertaining to the taxability of perquisites provided by the employer to the employees as per contractual arrangements. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.

Link to download judgment

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16. Whether GST refund can be granted under IDS as per the modified formula for the period prior to July 05, 2022?

Yes, the Honorable Gujarat High Court in the case of ***Tirth Agro Technology Pvt. Ltd. & Anr. v. Union of India & Ors. [R/Special Civil Application No. 11649 of 2023 dated December 20, 2024]*** allowed the writ petitions seeking GST refund under Inverted Duty Structure based on Section 54(3) of the CGST Act, 2017 read with Rule 89(5) of the CGST Rules, 2017. The Honorable Court noted that Assessee had filed a rectification application for differential refund as per the amended formula which was rejected by the issuance of SCN on the ground that refund as per the old formula was already granted to the Assessee; Assessee was granted partial refund under IDS on the ground that prior to July 05, 2022, in terms of unamended formula, assesse were not entitled to include input services as part of the formula and so they

were not entitled to refund as per the *Notification No. 14/2022 dated July 05, 2022*,read with *Circular 181/13/2022-GST dated November 10, 2022*. The Honorable Court noted that the CBIC has issued the Circular for stating that the amendment is not clarificatory in nature and is applicable prospectively with effect from July 05, 2022. Accordingly, it is clarified that the said amended formula rule 89(5) of the CGST Rules for calculation of refund of ITC on account of IDS would be applicable in respect of refund applications filed on or after July 05, 2022. The Honorable High Court relying on the decision in the case of ***Collector of Central Excise, Shilong vs. Wood Craft Products Ltd reported in (1995) 3 SCC 454***, where the Honorable Apex Court has held that a clarificatory notification would take effect retrospectively and such a notification merely clarifies the position. Clarificatory notifications have been issued to end the disputes between the parties. Therefore, Notification cannot be applied prospectively for the refund claim which were made within two years as prescribed under section 54(1) of the CGST Act. The Honorable Court noted that the Petitioner cannot be denied the refund as per the Section 54(3) of the CGST Act only because the Petitioner has been granted the refund prior to July 05, 2022, as it would create a discrimination resulting into inequality. The Circular is therefore contrary to the provisions of the CGST Act as it cannot be said that the refund applications filed after July 05, 2022, would only be entitled to the benefit of the amended Rule 89(5) of the CGST Rules. Moreover, there is no embargo on preferring a second refund application if the petitioner is entitled to the same within the period of two years. The Honorable Court held that petitions succeed and the Authorities are directed to release the respective amounts to the petitioners within a period of three months from the date of receipt of a copy of this order.

Author's Comments

The Hon'ble Supreme Court, in *Union of India & Ors.v. VKC Footsteps India Pvt. Ltd.* [(2022) 2 SCC 603], upheld the validity of Rule 89(5) of the CGST Rules while directing the GST Council to address anomalies in the refund formula. In compliance with these directions, the GST Council, during its 47th meeting on June 28–29, 2022, deliberated on agenda item 3(ii) regarding amendments to the formula prescribed under Rule 89(5) for calculating refunds of unutilized ITC due to an IDS. Following this decision, the CBIC issued the *Central Goods and Services Tax (Amendment) Rules, 2022*, incorporating modifications to Rule 89. Specifically, Rule 8(d) of the amended CGST Rules substituted the phrase "tax payable on such inverted rated supply of goods and services" with "{tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}." Subsequently, CBIC, through Circular No.

181/13/2022-GST dated November 10, 2022, clarified that this amendment is not clarificatory and is applicable prospectively from July 5, 2022.

This issue is now well-settled, with multiple High Courts, including the Hon'ble Gujarat High Court in *Ascent Meditech Ltd. v. Union of India & Ors.* (SCA No. 18317 of 2023, decided on 17.10.2024), affirming the retrospective applicability of the amendment.

Link to download judgment

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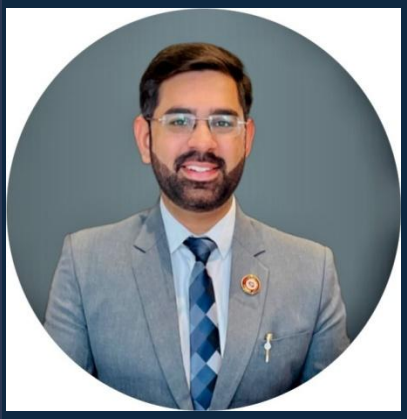

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