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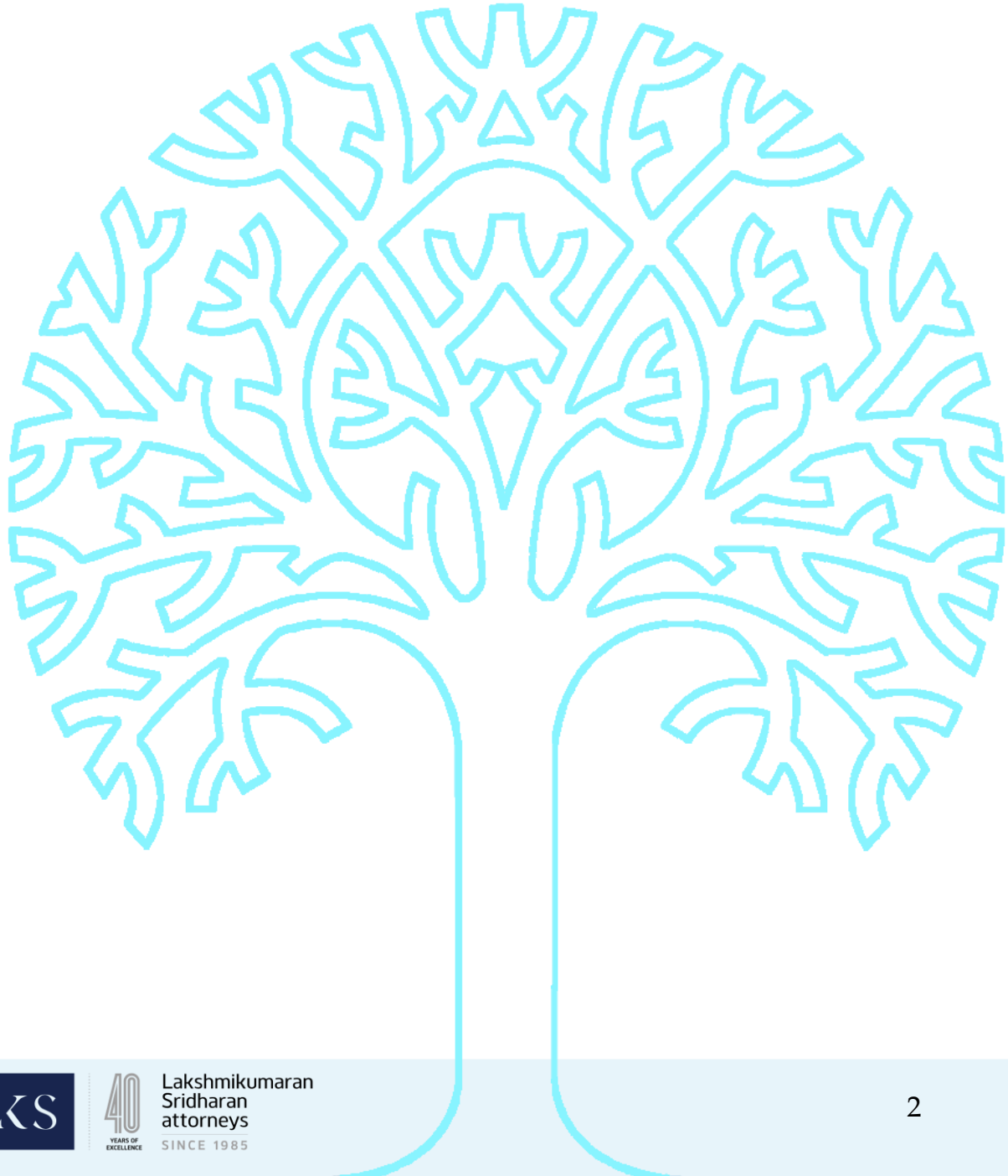

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Article

TCS under Section 52 of CGST Act, 2017 – A toothless provision?

By **Hanisha Jatania**

Section 52 of the CGST Act, 2017 introduces a special compliance framework, applicable to e-commerce operators facilitating taxable supplies through their digital platforms. The scheme of Tax Collection at Source ('TCS') under the said section however deserves closer attention in respect of enforceability, as there is no express recovery mechanism under the law (CGST Act or Rules). The author in this article investigates the question as to whether an e-commerce operator be made liable to pay TCS in the event of default in collection. It also explores the plausible explanation for such absence of recovery provision.

TCS under Section 52 of CGST Act, 2017 – A toothless provision?

Absence of recovery mechanism in case of default

By Hanisha Jatania

The effectiveness of any statutory obligation to collect an amount, hinges entirely on the existence of express recovery provision in the case of default.

The scheme of Tax Collection at Source ('**TCS**') under Section 52 of the CGST Act, 2017 deserves closer attention, particularly from the standpoint of its enforceability, in the absence of any express recovery mechanism under the CGST Act or Rules framed thereunder.

What is Section 52 of CGST Act, 2017?

Section 52 of the CGST Act, 2017 introduces a special compliance framework, applicable to e-commerce operators facilitating taxable supplies through their digital platforms. It obligates operators to collect an amount not exceeding one per cent., of the net value of taxable supplies made through it by other suppliers. The amount so collected shall be paid to the Government within the prescribed time.

It further mandates filing of periodic statements by the operators, *inter alia* containing the details of outward supplies effected through it, and the amount collected during that period. On filing of the monthly statement by the operator, the amount collected by the operator would get credited to electronic cash ledger of the supplier.

While Section 52 meticulously outlines the mechanics of collection, reporting, and matching, it stops short of prescribing any consequences or recovery procedure in the event of non-collection of TCS by the e-commerce operator.

Can e-commerce operators be made liable to pay TCS in the event of default in collection?

The aforesaid question becomes relevant when the e-commerce operator fails to collect and deposit the TCS, and the revenue proceeds to recover the same from the operator. In such a case, the issue is no longer confined to compliance architecture; it becomes a question of jurisdiction and enforceability. If the Act does not contain any recovery

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machinery treating the operator as liable for the payment of TCS not collected, can a demand nevertheless be sustained against the operator merely because Section 52 casts a collection obligation?

A striking feature of Section 52 is the repeated use of the expression 'amount' collected, throughout the Section, as opposed to the term 'tax', while remaining conspicuously silent on the consequences and recovery mechanism in case of default. In fiscal legislation, the distinction between 'tax' and 'amount' is of substantive significance, particularly in the context of recovery. While 'tax' denotes a compulsory exaction, an 'amount' remains a generic expression, unless statutorily elevated to the status of a recoverable levy. When that is so, the recovery of an amount cannot be assumed to follow the general recovery provisions applicable to tax, unless the statute expressly provides otherwise.

What further assumes significance is the absence of any deeming fiction fastening tax liability on the e-commerce operator in the event of default. In the entire CGST Act and Rules, there is no provision treating the e-commerce operator as 'assessee in default' in the event of non-collection of tax under Section 52.

The legislative omission under Section 52 becomes evident, when contrasted with Section 51 of the CGST Act, which governs Tax Deduction at Source ('**TDS**'). Section 51 not only mandates deduction of tax but also provides a complete framework for deposit, consequences of default, and recovery. The deductor's failure is clearly addressed, and statutory consequences are unambiguously prescribed. This contrast demonstrates that the legislature was fully conscious of the need to provide recovery and consequence provisions where it so intended. The absence of similar recovery provisions under Section 52, therefore, appears to be deliberate, rather than accidental.

A similar degree of legislative clarity exists under the Income-tax Act, 1961. Section 206C, read with Section 201 thereunder, expressly provides that if a person responsible for collecting tax at source, fails to do so, such person shall be deemed to be an 'assessee in default'. The statute further prescribes interest, penalty, and recovery consequences. This deeming fiction forms the legal foundation for recovery proceedings. The CGST Act, however, contains no analogous provision deeming the e-commerce operator liable for payment of tax not collected in terms of Section 52.

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Plausible explanation of legislature for not providing recovery provision in case of non-collection of tax by e-commerce operator

The absence of a recovery mechanism under Section 52 becomes understandable when one examines the true design of the provision. TCS under Section 52 is not a substitution of the supplier's output tax liability. It is not as though, once the operator collects tax, the supplier is required to pay only balance of the tax otherwise payable on the supply. The supplier remains liable to discharge the entire GST liability on the outward supply, irrespective of whether the e-commerce operator has collected tax or not. In other words, once the supplier discharges entire GST liability on the outward supply, there is no question of recovering any further tax from the e-commerce operator in case of default under Section 52.

An illustration makes this clear. Assume:

- A supplier makes a taxable inter-state supply of goods worth INR 1,00,000/- through an e-commerce platform in a particular month.
- The applicable rate of IGST on the said inter-state supply is 18%, and therefore the total amount of IGST is INR 18,000/-.
- Assuming TCS at 0.5% of the net value of such inter-State taxable supplies, the TCS would be INR 500/- (0.5% of INR 1,00,000)

In this scenario, the buyer pays INR 1,18,000/- (INR 1,00,000 + INR 18,000) to the e-commerce operator, because the operator is collecting the consideration on behalf of the supplier. Out of INR 1,18,000/-, the operator deposits INR 500/- with the Government, and passes on the balance INR 1,17,500/- (INR 1,18,000 – INR 500) to the supplier. The TCS of INR 500 gets reflected in the supplier's electronic cash ledger, and the supplier's output GST liability on the supply remains Rs.18,000/-. It is not as though, the supplier's output tax liability reduces to INR 17,500/- (INR 18,000 – INR 500). Had that been the case, then it was crucial to have a clear recovery mechanism in place, so to as recover INR 500, which the e-commerce operator failed to collect.

Recently, the Hon'ble Karnataka High Court, in the case of *Hiveloop Technology Private Limited*[1], also dealt with a question of applicability of TCS provision under Section 52 of the CGST Act, and recovery of TCS from e-commerce operator under Section 74 of the Act. The Court categorically held that, '*there is no provision in the CGST / KGST Act to treat the petitioner as an assessee in default, under which, the person responsible for collecting*

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tax becomes liable to pay tax which is a liability of the supplier of goods or services;'. Thus, reinforcing the settled principle that recovery cannot be sustained in the absence of clear statutory provision.

That said, one note of caution is necessary. *Hiveloop*[1] is an important and persuasive pronouncement. However, the Revenue may proceed to challenge this Order in Division Bench of High Court and later to the Supreme Court. In such scenario, the aforesaid issue of absence of recovery provision in TCS remains to be tested before the Court and will remain open till the time it attains finality in Court.

Conclusion

Viewed holistically, Section 52 presents a fundamental dilemma. While the provision appears designed primarily for tracking and reporting supplies facilitated through e-commerce operators, the absence of a recovery mechanism raises critical questions regarding its enforceability. If the supplier's tax liability remains entirely independent of the TCS collection, the lack of a dedicated recovery provision is perhaps explicable. However, if the Department intends to initiate recovery proceedings against e-commerce operators for non-collection, the statutory basis for such action remains precarious. In the absence of an express recovery mechanism or a deeming fiction, the law fails to provide a clear foundation for such liability. It is this unresolved tension in the design and enforceability of Section 52 that lies at the heart of the present controversy.

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Goods & Services Tax (GST)

Notifications and Circulars

- GSTAT – Classification of cases in categories and allocation to Members
- Lenient GSTAT portal filing guidelines extended up to 31 December 2026

Ratio decidendi

- ITC when supplier not paid tax – Gujarat HC disagrees with Tripura HC and declines to read down Section 16(2)(c); Government advised to implement tracking mechanism enabling verification of payments by suppliers – *Gujarat High Court*
- Common/consolidated show cause notice for multiple financial years or tax periods is permissible, however, each period forming part of notice must satisfy scrutiny on limitation – *Karnataka High Court*
- Transit State GST Authorities cannot impose penalty for any violation of law by goods in transit through that State – No cross-empowerment provided between GST Authorities of two or more States – *Allahabad High Court*
- Corporate Guarantees provided to subsidiaries without consideration are not liable to GST – *Bombay High Court*
- Multiple refund applications for same tax period are maintainable – *Bombay High Court*
- Late fee imposable for delayed filing of reconciliation statement under Form GSTR 9C – *Madras High Court*
- Solar power generating system – 70:30 mechanism available even when separate invoices issued for goods and services, if supply made under a contract – *Andhra Pradesh High Court*
- Pre-deposit deposited in cash ledger but not debited therefrom – Procedural glitch – *Jharkhand High Court*
- E-commerce – TCS liability – Section 52 applicable only when consideration collected by operator – *Karnataka High Court*

Goods & Services Tax (GST)

Ratio decidendi

- Input Tax Credit – Promotion of own platform where other service providers located is not free service to the latter requiring reversal of ITC under Section 17(2) – *Karnataka High Court*
- Release of detained consignment under Section 129 – Adjudication of ownership is not relevant – *Calcutta High Court*
- Preferential Location charges are not to be taxed independently – CBIC Circular No. 234/28/2024-GST dated 11 October 2024 is applicable retrospectively – *Punjab & Haryana High Court*
- Scrap arising from manufacturing process is eligible for reimbursement under Budgetary Support Scheme – *Jammu & Kashmir High Court*
- Appeal – Limitation – Assessee if files appeal declaring a date as communication date, presumption arises in its favour; Burden on Department to prove otherwise – *Allahabad High Court*
- Appellate AAR – Time period of 90-days for disposal of appeal is not mandatory – *Rajasthan High Court*
- Appeal against AAR ruling – Both CGST and State GST Authorities can file appeal against AAR; non-representation by anyone before AAR is not material – *Rajasthan High Court*
- Damages paid in settlement of arbitral award do not constitute 'supply' for GST liability – *Bombay High Court*

Notifications and Circulars

GSTAT – Classification of cases in categories and allocation to Members

The GSTAT President has issued Office Order No. 3/GSTAT/PB/2026 dated 14 May 2026 classifying the cases under three categories and allotting the Benches to various members basis the said categories.

The Office Order also states that all pending matters and future filings before the Principal Bench or the State Benches shall be listed before a Division Bench first, even in matters involving tax liability or other issues of a value less than INR 50 lakhs. It is stated that only if the Division Bench comes to the finding that those cases do not involve any question of law, then it may record the reasons for the same and place it before the President or Vice-Presidents, as the case may be, for appropriate directions. The Office Order is available **here** in GSTAT microsite by LKS.

Lenient GSTAT portal filing guidelines extended up to 31 December 2026

Considering the difficulties being faced by appellants while filing appeals in GSTAT portal, the GSTAT President has *vide* Order dated 14 May 2026, extended the applicability of the earlier guidelines and instructions (dated 20 January 2026 and 10 March 2026) for filing appeals on the GSTAT Portal up to 31 December 2026. The Order, as available **here**, in our dedicated microsite for GSTAT, also provides instructions to be followed by the Scrutiny officers.

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Ratio Decidendi

ITC when supplier not paid tax – Gujarat HC disagrees with Tripura HC and declines to read down Section 16(2)(c); Government advised to implement tracking mechanism enabling verification of payments by suppliers

The Gujarat High Court has declined to read down Section 16(2)(c) of the CGST Act and thus not declaring it *ultra vires* Part III of the Constitution of India, including Article 14 thereof. Not agreeing with the contentions of the assessee that they cannot be subjected to denial of ITC solely on the ground that the supplier had failed to deposit the tax with the State Government, the Court observed the following:

- In case of inter-State sales, if recipient is allowed to take credit even when supplier did not pay tax, the originating State would be forced to transfer funds to the destination State that it never actually received.
- The purchaser is not remediless as Department is empowered to initiate recovery proceedings against the supplier.
- Once the supplier discharges tax liability, the purchasing dealer becomes entitled to re-avail the credit in the immediately succeeding month.
- Mere delay or hardship in availing ITC cannot constitute a valid ground for reading down Section 16(2)(c).
- No double taxation as statute provides for reversal and re-availment.
- Unless tax collected by supplier is deposited with the Government, the purchasing dealer cannot claim ITC as a matter of right.
- Mere absence of a specific statutory mechanism enabling recovery by purchaser from the supplier cannot, by itself, render Section 16(2)(c) *ultra vires*.
- Section 16(2)(c) cannot be equated with Section 9(2)(g) of the DVAT Act, as examined by the Delhi High Court in *On Quest Merchandising India (P) Ltd.*
- Tripura HC in *Sahil Enterprises* did not consider the interplay of Sections 41, 53 and 155 of the CGST Act read with Rule 37A of the CGST Rules, 2017.
- Expression 'eligible' in Section 155 has direct nexus with actual payment of tax by supplier.

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- Clause (a), (b), (c) & (d) of Section 16(2) should be read and satisfied together and not separately to avail the benefit of ITC.
- Purchaser can have clause in the agreement to hold the supplier liable to indemnify the former suffers loss due to a default by the latter in payment of tax. Maxim *Lex Non Cogit Ad Impossibilia* is not applicable.

However, it may be noted that the Court, while stating that a balanced approach needs to be taken, observed that it is high time the Government undertakes a comprehensive re-evaluation of the dicey situation being faced by the purchasers. According to the Court, Government should implement a robust, technology driven tracking mechanism enabling verification of payments made by suppliers and take prompt steps for recovery of tax from the erring suppliers. [*Maruti Enterprise* v. *Union of India* – 2026 VIL 432 GUJ]

Common/consolidated show cause notice for multiple financial years or tax periods is permissible, however, each period forming part of notice must satisfy scrutiny on limitation

The Karnataka High Court has answered in affirmative the question as to whether it would be permissible to issue consolidated/common show cause notice under Sections 73 and 74 of the CGST Act covering multiple financial years or multiple tax periods. The Division Bench of the Court in this regard observed the following:

- 'Tax period' must be understood in the contest in which the requirement is prescribed, and it cannot be confined to a month or a financial year.
- In context of Sections 65, 66 and 67, Sections 73 and 74 cannot be construed as being confined to a tax period or a financial year.
- When legislature intends to confine to specific period, it expressly provides so. Statute employs expression 'such period' or does not refer to any period if such confinement is not intended.
- Concept of 'tax period' is relevant in dealing with furnishing of returns and cannot be imported into interpretation of Sections 73 and 74.
- Expression 'any period' in Sections 73 and 74 is not defined and cannot be equated with 'tax period'.
- Mere reference to 'financial year' in sub-section (10) neither indicates nor can it be construed to mean that Sections 73 and 74 are confined to a financial year.

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- Expression 'such periods' in sub-section (3) is significant. If legislature had intended to confine itself to a financial year the language would have been different.
- Though column 4 of Form-GST DRC-01 refers to the tax period, note appended to the form clarifies that column No.4 is not mandatory.
- No prejudice to assessee merely because after combining more than one financial year the pecuniary jurisdiction shifts to an officer of the higher rank.

However, it may be noted that the High Court here also held that if any portion of the period covered by the notice is beyond the limitation stipulated under sub-section (10), the same should be excluded as being time-barred. According to the Court, each period forming part of notice must satisfy scrutiny on the touchstone of limitation and any portion falling short of such test cannot be sustained.

Delhi, Allahabad, and Jammu & Kashmir High Courts' decisions were concurred with, while the Court here differed with the view taken by the High Courts of Bombay, Kerala, Madras, Andhra Pradesh, and Himachal Pradesh. [*Commissioner* v. *Chimney Hills Education Society* – Judgement dated 23 April 2026 in Writ Appeal No. 1751 of 2024 (T-RES) and Ors., Karnataka High Court]

Transit State GST Authorities cannot impose penalty for any violation of law by goods in transit through that State – No cross-empowerment provided between GST Authorities of two or more States

The Allahabad High Court has rejected the contention of the Revenue department that the authorities of the State GST Department of Uttar Pradesh are cross empowered, by Section 6 of the CGST Act and Section 4 of the IGST Act, to not only stop, inspect and physically verify the goods in transit through the State (originating from West Bengal and destined for Delhi), but also to impose penalty for any violation of the law including transportation without the goods being accompanied with prescribed documents.

Rejecting the contentions, the Court was of the view that scope of cross-empowerment must remain confined to transactions as may give rise to any tax liability under the State GST Act and/or under the Central GST Act, in that State only. The Court in this regard also noted that cross-empowerment is available between the authorities of the Union and the individual States but not between authorities of two or more States.

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Also, observing that no levy arose under the IGST Act, in U.P., the Court the deficiency of e-tax invoice may have been communicated to the competent authority in the originating State (West Bengal) and the goods ought to have been allowed to complete their journey, by passing through the State of U.P., without proceeding to detain, confiscate or impose penalty. Allowing the writ petitions, the Court also observed that allowing transit States to impose penalty will also violate the constitutional protection guaranteed under Article 301 of the Constitution of India. [*Maruti Enterprises* v. *State of U.P.* – 2026 VIL 515 ALH]

Corporate Guarantees provided to subsidiaries without consideration are not liable to GST

The Nagpur Bench of the Bombay High Court has held that executing a corporate guarantee to its subsidiary, without a 'consideration', is not in the nature of supply and supply of service taxable under Section 9 of the CGST Act, 2017. The Court noted that as per the specific clauses in all the guarantees in the case, the assessee/guarantor was not to receive any commission from the borrower company for providing the corporate guarantees. The High Court in this regard relied upon Supreme Court's decision in the case of *Commissioner* v. *Edelweiss Financial Services Ltd.* wherein the Apex Court had held that corporate guarantees provided without consideration are not liable to service tax under Finance Act, 1994. It may however be noted that the High Court though quashed the demand notice, it declined to declare Rule 28(2) of the CGST Rules, 2017 *ultra vires*. [*D P Jain & Co. Infrastructure Private Limited* v. *Union of India* – 2026 VIL 474 BOM]

Multiple refund applications for same tax period are maintainable

The Bombay High Court has allowed assessee's appeal in a case where the authorities had rejected its refund application as a separate application for refund for the same period was filed by it earlier. The Revenue department had earlier distinguished the Gujarat High Court decision in the case of *Shree Renuka Sugars Ltd.* v. *State of Gujarat* [[2023] 152 taxmann.com] while holding that in the present case, the assessee was at a fault in not including the claim in regard to the invoices for the period, whereas in the case of *Shree Renuka Sugars Limited*, it was an arithmetical error. Holding the Department's approach as not correct, the Court observed that Section 54(1) of the CGST Act, 2017 does not bar a party to maintain more than one application, more particularly in a case where there is an inadvertent mistake or lapse. It was also noted that the application was not barred by limitation as well. [*Valmet Flow Control Pvt. Ltd.* v. *Union of India* – 2026 VIL 411 BOM]

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Late fee imposable for delayed filing of reconciliation statement under Form GSTR 9C

The Madras High Court has held that non-filing of Form GSTR 9C [reconciliation statement] would constitute non filing of returns as required under Section 44 of the CGST Act [Annual Returns], enabling the levy of a fine under Section 47. The Court for this purpose noted that Rule 80(3) of the CGST/SGST Rules uses the phrase '*shall also furnish a reconciliation statement as specified under Section 44 in Form GSTR-9C along with the annual return*', wherein, according to the Court, the words 'along with' in this context are mandatory. Thus, it was observed that late fee is applicable if there is failure to furnish returns as required under Section 44 which prescribes filing of annual return within time and also mandates that the return may include a reconciliation statement. According to the Court, if a person files Form GSTR-9 without Form GSTR-9C, it will amount to non-filing of annual returns as required under Section 44. Kerala High Court's decision in the case of *Anishia Chandrakanth* was not agreed with here. [*TVL. Madhu Agencies* v. *State Tax Officer* – 2026 VIL 426 MAD]

Solar power generating system – 70:30 mechanism available even when separate invoices issued for goods and services, if supply made under a contract

The Andra Pradesh High Court has held that issuance of separate invoices for supply of goods and services will not exclude the assessee from the benefit under Entry 234 of Notification No. 1/2017-CT(R) and Entry No. 38 of Notification No. 11/2017-CT(R) [after the inclusion of Explanations] in a case involving supply of solar power generating systems. According to the Court, mere issuance of separate invoices cannot mean that there is no overall contract and that the supply price can be taxed at whichever rate. Also, taking note of the Explanation to Entry 234, it was held that any supply of a Solar Power Generating System, or its parts as one supply or as separate parts would not make any difference to the rate of tax. [*Tata Power Renewable Energies Limited* v. *Union of India* – 2026 VIL 429 AP]

Pre-deposit deposited in cash ledger but not debited therefrom – Procedural glitch

In a case where the assessee had deposited the pre-deposit amount in its cash ledger but had not debited the same therefrom, the Jharkhand High Court has observed that there

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may have been a procedural glitch on the assessee's part in effecting the pre-deposit. According to the Court, this was, however, far from saying that the assessee made no pre-deposit at all. In the petition filed by the assessee against dismissal of appeal by the Appellate Authority for non-compliance with mandatory pre-deposit, the Court was of the view that as per the principles of natural justice and fair play, the Appellate Authority should have issued a notice to the assessee, pointing out the procedural defect and grant it some reasonable time to cure the same. The Appellate Authority was directed to hear the appeal on merits after allowing the assessee to cure the defect. [*Ssukrit Forwarding Agency* v. *Union of India* – 2026 VIL 470 JHR]

E-commerce – TCS liability – Section 52 applicable only when consideration collected by operator

The Karnataka High Court has observed that Section 52 of the CGST Act, 2017 [TCS liability], is applicable only to cases where the e-commerce operator is collecting consideration with respect to supplies undertaken through the online portal. In a case where the assessee only operated a platform on which two independent parties chose to transact, the Court also held that Section 74 was not invocable for any non-compliance of Section 52, as the transactions on which demand was sought were not the supplies of the assessee as the sellers / service providers who undertook such supplies were required to discharge GST. It was noted that Section 74 would apply only against person chargeable with tax.

Quashing the SCN, the Court also noted that there is no provision in the CGST Act to treat the petitioner as an assessee in default, under which the person responsible for collecting tax becomes liable to pay tax which is a liability of the supplier of goods or services.

CBIC Circular dated 17 July 2023 was also relied upon. [*Hiveloop Technology Private Limited* v. *Additional Director* – 2026 VIL 490 KAR]

Input Tax Credit – Promotion of own platform where other service providers located is not free service to the latter requiring reversal of ITC under Section 17(2)

In a case where the assessee was promoting a online platform operating by it, on which independent parties chose to transact, the Karnataka High Court has quashed the SCN according to which these services were free supplies to the service providers on the platform, and hence were not taxable/exempt and

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accordingly the assessee was to reverse the ITC as per Section 17(2). Said section imposes restrictions on suppliers undertaking both taxable as well as exempt supplies. The Court in this regard noted that the promotion primarily benefited the assessee himself while also providing benefits to all the other service providers. It was also observed that there was no service, much less free services, being provided by the assessee, as no data was provided by the Department. The Court was also of the view that mere non-charging of consideration to enhance footfall on the online portal of the assessee cannot be considered / construed / treated as free or non-taxable or exempt supplies. [*Hiveloop Technology Private Limited* v. *Additional Director* – 2026 VIL 490 KAR]

Release of detained consignment under Section 129 – Adjudication of ownership is not relevant

The Calcutta High Court has held that adjudication on ownership of goods is of no relevance in a case where the petition was filed for release of detained consignment in terms of Section 129 of the CGST Act, 2017. The Department had disputed ownership, quality and quantity of the subject goods and objected the authenticity and veracity of tax invoices and e-way bills. On meaningful and harmonious reading of Section 129, the Court held that the legislative intent was not to create any charge or lien over the goods against the demand. It was observed that if during adjudication of demand it is found that the assessee is not the owner of the goods or the challenge fails, the ultimate demand will stand and will be crystallized. The High Court here also observed that if the levy is not paid, which is otherwise crystalized and determined by the Department in accordance with law, then the recovery proceeding is prescribed under the statute. Directing release of the consignment according to Section 129(1)(a), the Court also noted that no contrary material was produced in the SCN or in the order of demand, and that the goods were perishable in nature. Section 129 provides different levels of penalty for owners and others. [*Ranjeet Kumar Poddar* v. *Assistant Commissioner* – 2026 VIL 504 CAL]

Preferential Location charges are not to be taxed independently – CBIC Circular No. 234/28/2024-GST dated 11 October 2024 is applicable retrospectively

The Punjab & Haryana High Court has quashed the rulings of the Authority of Advance Ruling and the Appellate Authority for Advance Ruling which had earlier held that preferential location charges are to be taxed independent of the charges

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received by the assessee towards development/construction and thus would not be eligible for the beneficial rate of GST as applicable construction services. According to the Court, CBIC Circular No. 234/28/2024-GST, dated 11 October 2024, issued after the GST Council's recommendations, was binding on the Revenue department and being a clarification, would also have retrospective application. [*DLF Ltd.* v. *Commissioner* – 2026 VIL 514 P&H]

Scrap arising from manufacturing process is eligible for reimbursement under Budgetary Support Scheme

The Jammu & Kashmir High Court has rejected the contention of the Revenue department that scrap would not be eligible for reimbursement under the Budgetary Support scheme since it was not among the specified goods for which the assessee was registered [assessee had registered for manufacture of TMT/CTD Bars]. The Court in this regard noted that the Department conceded that the scrap in question was a necessary residue of the manufacturing process and that the scrap underwent the identical manufacturing process as the primary TMT/CTD Bars. It was thus held that the exclusion does not apply. [*Vijay Steel Industries* v. *UT of Jammu & Kashmir* – 2026 VIL 521 J&K]

Appeal – Limitation – Assessee if files appeal declaring a date as communication date, presumption arises in its favour; Burden on Department to prove otherwise

The Allahabad High Court has set aside various Orders passed by the Appellate Authorities rejecting the appeals for the delay in filing. Remanding the disputes back to the Appellate Authority, the Court noted that the decisions of the Court in the case of *Bambino Agro Industries Ltd.* and *Associate Molasses Transport Company* were not considered by the authorities below. It was noted that the Division Bench had in these cases held that if the assessee mentions the date of actual communication of the order/notice, a presumption arises in its favour. The High Court observed that it was thus held by the DB that the burden to prove otherwise lies on the Revenue department to establish that actual communication of the order or notice was prior in time. According to the Court, since the Department failed to rebut the submissions made by the respective parties/assessee, the impugned orders were not sustainable in the eye of law. [*Manoj Kumar, Proprietor of Sai Traders* v. *Union of India* – 2026 VIL 511 ALH]

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Appellate AAR – Time period of 90-days for disposal of appeal is not mandatory

The Rajasthan High Court has held that the 90-day time limit under Section 101(2) of the CGST Act, 2017, providing for passing of order by the Appellate AAR, is not mandatory. It was noted that,

- Absence of penal consequence for delay is itself a strong indicator that the provision is directory.
- Delay in adjudication by a quasi-judicial authority does not annuls proceedings or provides finality to an order validly challenged.
- No provision provides for automatic lapsing of an appeal upon expiry of a period.
- Word 'shall' *prima-facie* is used as an imperative, however, legislative intent is also to be gathered from the statute as a whole.
- Absence of phrase 'as far as possible' in Section 101(2), unlike in Sections 101C and 107, was held as not material.
- Provision whose strict construction destroys the very right it was designed to protect cannot be read as mandatory.

[*Giri Transport Company* v. *Appellate AAR* – 2026 VIL 520 RAJ]

Appeal against AAR ruling – Both CGST and State GST Authorities can file appeal against AAR; non-representation by anyone before AAR is not material

In a case where the appeal against the AAR ruling was filed by the Central Authorities while the State Authorities had participated before the AAR, the Rajasthan High Court has held that since statute confers the right of appeal on both, this right cannot be extinguished on the ground that one of them did not appear or represent the Department before the AAR. The Court in this regard noted that both [Central and State Authorities] are independently entitled to file an appeal. It was observed that jurisdiction and right of appeal are statutory and do not depend upon prior participation in the proceedings below. It was noted that Section 100(1) of the CGST Act confers the right of appeal upon the concerned officer, the jurisdictional officer, or the aggrieved applicant. [*Giri Transport Company* v. *Appellate AAR* – 2026 VIL 520 RAJ]

Damages paid in settlement of arbitral award do not constitute 'supply' for GST liability

The Bombay High Court has answered in negative the question as to whether the settlement between the parties in the

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proceedings under Sections 47 and 48 of the Arbitration and Conciliation Act, 1996, under which the arbitral award for damages stood settled between the parties, would amount to 'supply' under Section 7(1) of the CGST Act, 2017.

The Department had alleged that settlement of the arbitral award constituted supply in accordance with the provisions of sub-section (1) of Section 7 as referred to in Entry 5(e) of Schedule II to the CGST Act, 2017 with GST liability under reverse charge as involved import of service. It was alleged that the amount was paid for the activity of agreeing to an obligation of refraining from an act; the act being of continuing with the proceedings initiated against the assessee, in relation to the arbitral execution proceedings which were pending in UK and US Courts.

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Allowing the petition, the Court observed the following:

- Reciprocal obligation, even in settlement of a decree necessarily emanates from a decree, which cannot be construed to be an independent agreement *de hors* the decree and/or alien to the decree itself.
- Proceedings for recovery of award amount draw their colour from the arbitral award, hence any satisfaction of the award amounts in law would result in collateral proceedings before other Courts also coming to an end.
- Position as accepted by Department with regard to liquidated damages [in two CBIC Circulars] would necessarily apply in respect of unliquidated damages.

[*Tata Sons Private Ltd.* v. *Union of India* – TS 310 HC BOM 2026 GST]

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Customs and FTP

Notifications and Circulars

- India-Oman Comprehensive Economic Partnership Agreement comes into force from 1 June 2026
- West Asia conflict – Special procedures introduced to ease exporters' hardships extended
- Hazardous cargo – Identification and import clearance procedure prescribed
- Cotton, not carded or combed – BCD and AIDC exempted till 31 October 2026

Ratio decidendi

- n-Hexane is classifiable as organic chemical compound and not as petroleum product – *Supreme Court*
- Import of parts vs. Import in CKD form – Aggregation of disparate imports over a period of time to claim CKD form is not correct – *CESTAT Chennai*
- Interest on refund of amount deposited on directions of Court – Customs Sections 27 and 27A are not applicable – *CESTAT New Delhi*
- Demand – Extended period not invocable in case of oversight both by importer and customs officers – *CESTAT New Delhi*
- Integrated drive generator and starter generator are classifiable under TI 8501 of Customs Tariff Act, 1975 – *CESTAT New Delhi*
- Refund – Unjust enrichment – Duty burden should be passed on to the party who is part of the same transaction – *CESTAT Prayagraj*
- Automatic soap dispensers are classifiable under Heading 8424 – Difference is there between 'dispensing' and 'spraying' – *CESTAT Bengaluru*

Notifications and Circulars

India-Oman Comprehensive Economic Partnership Agreement comes into force from 1 June 2026

The Comprehensive Economic Partnership Agreement (CEPA) between India and Oman has come into force on 1 June 2026. The Ministry of Finance has issued Notification No. 20/2026-Cus., dated 31 May 2026 to provide exemption or reduced rate of customs duties on imports of certain specified goods from Oman. Importers wishing to claim the benefit have to prove origin of goods in accordance with the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 and the Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and Oman) Rules, 2026 as notified by Notification No. 48/2026-Cus. (N.T.), dated 29 May 2026.

West Asia conflict – Special procedures introduced to ease exporters' hardships extended

Considering that the maritime disruptions and supply chain challenges continue to persist because of the West-Asia conflict, the Central Board of Indirect Tax and Customs (CBIC) has extended the special procedures and relaxations introduced *vide* few Circulars issued since the start of conflict. Accordingly, various relaxations and special provided by Circular Nos. 9/2026-Cus. dated 8 March 2026, 10/2026-Cus. dated 10 March 2026, 12/2026-Cus. dated 17 March 2026, 15/2026-Cus. dated 27 March 2026, 19/2026-Cus. dated 10 April 2026 and 21/2026-Cus. dated 15 April 2026 have been extended till 30 June 2026. Circular No. 25/2026-Cus. dated 14 May 2026 has been issued for this purpose.

Hazardous cargo – Identification and import clearance procedure prescribed

The CBIC has prescribed import clearance procedure for certain hazardous cargo. Circular No. 24/2026-Cus. dated 14 May 2026, issued for the purpose, also provides list of some 68 chemicals, falling under various Tariff Items of Chapter 28, 29 and 38 of the Customs Tariff Act, which have been identified as hazardous cargo. The importer will be required to mandatorily declare Hazardous cargo at the item level in the Bill of entry. Such Bills of entry will be flagged by the system to the officer for expeditious clearance of such goods. As per the Circular, the facility will be implemented with effect from 1 July 2026.

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Cotton, not carded or combed – BCD and AIDC exempted till 31 October 2026

The Ministry of Finance has exempted cotton falling under Heading 5201 of the Customs Tariff Act, 1975 from Basic Customs duty (BCD) and Agriculture Infrastructure and Development Cess (AIDC). The exemption on imports is available from 1 June 2026 till 31 October 2026. Notification No. 19/2026-Cus., dated 30 May 2026 has been issued for the purpose.

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Ratio Decidendi

n-Hexane is classifiable as organic chemical compound and not as petroleum product

The Supreme Court has held that n-Hexane (Exxsol Hexane, Exxsol Hexane RD or Hydrosol n-Hexane) is correctly classifiable as a pure hydrocarbon existing as a separate chemical compound under sub-heading 2901 10 of the Customs Tariff Act, 1975 and not as a petroleum oil under sub-heading 2710 00 *ibid*.

Dismissing the appeal filed by the Revenue department, the Court observed the following:

- The Department, apart from contending that the flash point of n-hexane is below 25°C, could not place anything on record to conclude that the imported n-hexane was suitable for use as fuel in spark ignition engines, though 3 conditions were to be fulfilled for coverage under Chapter 27, namely, it should be a hydrocarbon oil, have a flash point of below 25°C and used as a fuel in spark ignition engines either by itself or in admixture with any other substance.
- Specific mention of hexane under Chapter 29 clearly defines and places it under Chapter 29, as it exists as a separate chemically defined compound exhibiting distinct chemical and physical properties.
- Since n-Hexane has constant ratio of elements, i.e., C_6H_{14}, and a definitive structural diagram, it satisfies the conditions to be classified under Chapter 29 as a separately defined chemical compound.
- Percentage of n-Hexane was 63.93% with other impurities standing at a lesser rate than n-Hexane, as per the SGS Chemical Analysis Report.
- DGFT Policy Circular No. 40(RE-2003)/2002-2007 dated 14 July 2004 had clarified that n-Hexane is to be covered under Chapter 29 of ITC(HS) Classifications. The decision of DGFT is binding.

[*Commissioner* v. *Reliance Industries Limited* – 2026 VIL 48 SC CU]

Import of parts vs. Import in CKD form – Aggregation of disparate imports over a period of time to claim CKD form is not correct

The CESTAT Chennai has allowed assessee's appeal in a case where the Revenue department had alleged misdeclaration of imports by importing goods in CKD form as parts. The case

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involved import of e-vehicles, allegedly in CKD form and thus being not eligible for benefit of reduced customs duty. The Tribunal for this purpose noted the following:

- Even consignments covered under the same Import General Manifest did not contain all essential components of an electric vehicle.
- Bills of Entry analysis demonstrated that various components such as frames, motors, controllers and assemblies were imported in a fragmented manner, without any co-relation on a consignment-wise basis to constitute a complete kit. Several consignments found to contain only isolated components while many had not essential components.
- Battery packs, which are critical for propulsion, were not imported along. In electric vehicles battery is not merely a component but is analogous to engine in an internal combustion engine vehicle.
- No quantification exercise carried out by Department to demonstrate number of complete kits imported.
- No correlation of the availability of essential components, including batteries, on a consignment-wise or period-wise basis.
- Imports were made through multiple Bills of Entry at different points of time.
- Rule 2(a) of the Interpretative Rules can be invoked only on goods 'as presented'.
- Decisions on classification under Rule 2(a) turn on their own facts, and no universal principle can be applied.

According to the Tribunal, the Department thus failed to establish any co-relation of components to form a complete article and instead built its case on artificial aggregation of disparate imports over a period of time. The Department's contention that the goods possessed 'essential character' of complete e-vehicles, was thus rejected. ***The assessee-importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Subash Iyappan* v. *Commissioner* – TS 121 CESTAT 2026 (CHNY) CUST]

Interest on refund of amount deposited on directions of Court – Customs Sections 27 and 27A are not applicable

CESTAT New Delhi has held that Sections 27 and 27A of the Customs Act, 1962 would not be applicable in the case of refund of amount deposited by the assessee on the directions of the

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Supreme Court. Perusing the interim order of the Apex Court, allowing such deposits on the request of the assessee, the Tribunal observed that the assessee was not required to file any application under Section 27 for refund of the amount and interest, and was only required to inform the Department that the Civil Appeal has been allowed in favour of the assessee. Allowing interest at the rate of 6% per annum from the date of deposit of the amount by the assessee pursuant to the directions of the Supreme Court till the date of payment, the Tribunal observed the following:

- Condition of the interim order must be examined and not whether it was passed in a writ petition or in a civil appeal.
- Section 27 not applicable just because the assessee used the phrase 'differential duty' in its letter to the Department and also filed refund application in Annexure A.
- Amount deposited pursuant to interim order was not 'duty'.
- Supreme Court' direction that the amount will be refunded with 'applicable interest' cannot be interpreted to mean that the assessee entitled to interest, if applicable.
- No case of Department that interest @ 6% was not the applicable rate of interest.

Supreme Court's decisions in the cases of *Tata Refractories Ltd.* v. *Sales Tax Officer*; *Commissioner* v. *Ghaziabad Ship Breakers Ltd.*; and *Daily Thanthi* v. *Commissioner*, were relied upon. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Nikon India Pvt. Ltd.* v. *Commissioner* – 2026 VIL 722 CESTAT DEL CU]

Demand – Extended period not invocable in case of oversight both by importer and customs officers

CESTAT New Delhi has set aside the demand of customs duty on basis of limitation in a case where the importer had not added the cost of local transport up to the port of export to the ex-works price and declared it as the FOB value. The Tribunal was of the view that it was an oversight on the part of the importer/assessee. It was observed in this regard that there was nothing on record to show that either the importer or the officers or the customs broker had any intention to evade duty or reduce the liability of duty. It was also noted that for major portion of the period from 3 June 2009 up to 8 April 2011, there was no provision for self-assessment, and all assessments were

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to be done by the customs officers. Thus, it was held that if there was an oversight by the importer, there was also an oversight by the officers who did not correct the declaration and assess the Bills of Entry correctly. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Ranbaxy Laboratories Ltd.* v. *Commissioner* – 2026 VIL 717 CESTAT DEL CU]

Integrated drive generator and starter generator are classifiable under TI 8501 of Customs Tariff Act, 1975

CESTAT New Delhi has held that imported integrated drive generator and starter generator are correctly classifiable under Heading 8501 of the Customs Tariff Act, 1975, and not TI 8511 50 00 and TI 8511 40 00 respectively.

The integrated drive generator is an AC generator that provides electrical power to the entire aircraft system, which includes power supply to GCU, EGIU, aircraft lighting system and air conditioning system. The starter generator is a DC generator which is a combination of a 'starter' and a 'generator' designed to start the aircraft engine and once the engine reaches self-sustaining speed, the starter generator switches its role to that of a generator providing DC power to various aircraft components.

Allowing assessee's appeal, the Tribunal noted the following:

- Goods are without prime movers, i.e. turboprop/turbofan engine.
- Goods used in conjunction with turboprop/turbofan engines which are gas turbine engines covered under Heading 8411, they cannot be classified under Heading 8511 which covers generators used in conjunction with spark-ignition and compression ignition IC engines.
- Working of turboprop/turbofan engines is entirely different from that of the reciprocating, spark-ignition IC engines and compression ignition IC engines.
- U.S. Cross Ruling NY 842759 dated 6 July 1989 in which the classification of integrated drive generator was determined under Heading 8501, was noted.

The importer was represented by Lakshmikumaran & Sridharan Attorneys here. [*C.G. Logistics Limited* v. *Principal Commissioner* – 2026 VIL 813 CESTAT DEL CU]

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Refund – Unjust enrichment – Duty burden should be passed on to the party who is part of the same transaction

In a case where the assessee-importer had taken a loan from their principals for making the deposit of the EDD, and the Department had denied refund (upon finalization of assessment) invoking unjust enrichment, the CESTAT Bench at Prayagraj has observed that for application of the principles of unjust enrichment, the burden should have been passed on to the party who is part of the same transaction, i.e. if the goods were sold after the importation to the buyer of the goods. Observing that the loan amount received by the importer from their principal cannot be said to be part of the transaction of clearance of the imported goods, the Tribunal allowed assessee' appeal. Chartered Accountant's certificate evidencing burden of EDD was borne by the importer, was also relied upon for this purpose. Allowing the appeal, the Tribunal also took note of the fact that the Commissioner (Appeals) in its impugned order had recorded the finding of unjust enrichment on the basis of the Balance Sheet for the year 2020-21 while the Bill of Entry was filed on 12 January 2022 (Financial Year 2021-22). ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Global YDK Electric P. Ltd.* v. *Commissioner* – Final Order No. 70134/2026, dated 13 May 2026, CESTAT Prayagraj]

Automatic soap dispensers are classifiable under Heading 8424 – Difference is there between 'dispensing' and 'spraying'

CESTAT Bengaluru has held that automatic soap dispensers are classifiable under Tariff Item 8424 89 90 of the Customs Tariff Act, 1975 and not under Heading 9616 *ibid*. Observing that the words 'dispersing' and 'spraying' have both been used in Heding 8424, and therefore, it is clear that there is a difference between 'disperser of liquids' and 'spraying of liquids'. It was also noted that HSN to Heading 9616 specifically mentioned that the Chapter does not apply to dispersing or spraying in appliances covered under Heading 8424. Heading 8424 deals with mechanical appliances for dispersing liquids and the Tribunal noted that there was no dispute that the product dispersed soap, which is in liquid form. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Xiaomi Technology India Private Limited* v. *Commissioner* – 2026 VIL 804 CESTAT BLR CU]

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Central Excise, Service Tax and VAT

Ratio decidendi

- Process of cutting, grooving, and assembling of the aluminium composite panels, for use in structures, does not amount to 'manufacture' – *Supreme Court*
- Appeal to High Court against CESTAT decision – Maintainability – Excisability always fell within the expression 'rate of duty' for purpose of assessment – *Supreme Court*
- Defective show cause notice – Failure to indicate specific sub-clause in SCN [for classification of service] is fatal – *CESTAT Mumbai*
- Training and coaching in direction, cinema photography and film processing by Vocational Training Institute – Service tax liability for various periods – *CESTAT Chennai*
- Cash incentives accruing on usage of commercial credit card, provided by the Bank, are not liable to service tax – *CESTAT Chandigarh*
- Refund – No unjust enrichment when goods sold below cost of production – *CESTAT New Delhi*

Ratio Decidendi

Process of cutting, grooving, and assembling of the aluminium composite panels, for use in structures, does not amount to 'manufacture'

The Supreme Court has held that process of cutting, grooving and assembling of aluminium composite panels (ACPs) does not amount to 'manufacture' under Section 2(f) of the Central Excise Act, 1944. The Apex Court, for this purpose noted the following:

- Two-fold test for manufacture – Transformation and marketability.
- No goods with distinct characteristics, identity or use came into existence after the process, as goods were merely being adapted for particular use.
- Process does not alter the material properties or the commercial character of the ACPs.
- If goods retain their substantial identity, they would be processed and not manufactured in terms of Section 2(f).
- Test of whether a distinct product has come into existence is not a test of physical transformation alone, it is a collective test - of transformation into a new product.
- Standard of proof for marketability – Courts must either believe it to exist or consider its existence so probable that a reasonable man ought, under the given circumstances, acts upon the supposition that it exists.

The assessee was represented by Lakshmikumaran & Sridharan Attorneys here. [*Alupro Building Systems Pvt. Ltd.* v. *Commissioner* – Judgement dated 27 May 2026 in Civil Appeal No. 8030 of 2010, Supreme Court]

Appeal to High Court against CESTAT decision – Maintainability – Excisability always fell within the expression 'rate of duty' for purpose of assessment

The Supreme Court has reiterated that an appeal from an order passed by the Appellate Tribunal (CESTAT) relating to the determination of any question having a relation to the rate of excise duty or to the value of goods for the purpose of assessment lies before the Apex Court and not before the High Court. The Supreme Court held that the question must have a direct and proximate relationship with assessment and that

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question of excisability of goods is connected with the 'rate of duty' for the purpose of assessment. It was also held that sub-section (2) to Section 35L of the Central Excise Act, 1944 gives statutory expression to the collective reading of Sections 35G and 35L and operates retrospectively. According to the Court, the sub-section clarified that excisability always fell within the expression 'rate of duty'.

The issue involved was whether cutting and grooving aluminium composite panels would amount to 'manufacture' wherein the CESTAT had held in favour of the assessee. The High Court had in its Order against the Tribunal decision rejected the contention of maintainability of appeal before it. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Alupro Building Systems Pvt. Ltd.* v. *Commissioner* – Judgement dated 27 May 2026 in Civil Appeal No. 8030 of 2010, Supreme Court]

Defective show cause notice – Failure to indicate specific sub-clause in SCN [for classification of service] is fatal

CESTAT Mumbai has held that where a statutory provision contains several distinct subclauses, each describing a separate species of taxable activity, and where the Department seeks to tax an assessee under one or more of those sub-clauses, the Show Cause Notice must identify the specific sub-clause or sub-clauses alleged to be attracted. The Tribunal thus set aside the demand, interest and penalty in a case where the SCN made no mention of any specific sub-clause of Section 65(19) but referred only generically to 'Business Auxiliary Services' as the taxable category in question.

According to the Tribunal, the requirement that a SCN be clear, precise, and specific is a substantive safeguard rooted in the constitutional guarantee of *audi-alteram partem* and the common law principles of natural justice. It was observed that a notice that only cites the parent provision leaves the assessee guessing as to which of the several sub-clauses it is expected to answer, thereby impairing its right of defense. The Tribunal was also of the view here that vagueness of SCN cannot be cured by the adjudicating authority at the stage of adjudication. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Standard Chartered Finance Pvt. Ltd.* v. *Principal Commissioner* – 2026 VIL 822 CESTAT MUM ST]

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Training and coaching in direction, cinema photography and film processing by Vocational Training Institute – Service tax liability for various periods

CESTAT Chennai has allowed assessee's appeal in a case where the assessee, a Vocational Training Institute, was providing training and coaching services in direction, cinema photography and film processing, while the Department had denied exemption under Notification No. 24/2004-S.T. for various periods.

For the period from 1 April 2005 to 26 February 2010, the Department argued that the courses only improved job prospects and did not guarantee employment. Rejecting this as speculative, the Tribunal noted that the exemption notification was broadly worded and unconditional. It also held that the courses promoted self-employment, especially in the growing streaming and online media sectors, and that structured training with a shorter learning curve enhanced employability. A liberal, purposive interpretation in line with the notification's object was therefore adopted.

For 1 April 2010 to 31 March 2012, the Tribunal held that Notification No. 3/2010-S.T., amending Notification No. 24/2004-S.T., took effect only on 22 January 2011, when it was published in the Official Gazette, as the Department did not rebut this claim of the assessee. Since the assessee obtained registration with National Council for Vocational Training on 10 November 2010 and offered courses in designated trades, both conditions under the amended notification stood satisfied.

For period from 1 July 2012, Department argued that the assessee was affiliated with NCVT, but the courses are not 'approved vocational education courses'. The Tribunal, however, noted that services by way of education forming part of an approved vocational education course fell under Section 66D(l)(iii) [Negative List] and were eligible for exemption. It was observed that the courses were notified as designated trade(s) under the Apprentices Act, 1961. It was also noted that expression 'approved vocational education course' encompassed 'education', is used in a broad sense and is not confined to formal schooling. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*LV Prasad Film & TV Academy* v. *Commissioner* – TS 122 CESTAT 2026 (CHNY) ST]

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Cash incentives accruing on usage of commercial credit card, provided by the Bank, are not liable to service tax

CESTAT Chandigarh has dismissed the appeal filed by the Revenue department alleging service tax liability on cash incentives accruing to the respondent-assessee on usage of the commercial credit card, provided by the bankers, in the booking of online tickets by the assessee. Show-cause notice had alleged that usage of HDFC commercial card by the assessee led to promotion of the name of HDFC and that the more widely the said card is used the more promotion and publicity of the name HDFC occurs. Agreeing with the Commissioner's finding that service tax is not leviable, the Tribunal observed that while using the commercial card issued by the bankers the assessee was promoting his own business and not the business of the bankers. It was also noted that clause (e) of Section 66(E) was invoked for the first time by the Department in the appeal and was thus not correct. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Commissioner* v. *Tek Travels Pvt. Ltd.* – 2026 VIL 832 CESTAT CHD ST]

Refund – No unjust enrichment when goods sold below cost of production

CESTAT New Delhi has held that when goods were sold below the cost price, question of recovery of central excise duty does not arise. It was noted that due to heavy losses, the assessee could not recover the cost of production from the customers on sale of their goods.

Holding that the assessee had passed the test of unjust enrichment and the refund was rightly allowed, the Tribunal also rejected Department's contention that as the assessee had entered their duty element in their books of account as expenditure, they have passed the duty incidence on their customers. Relying upon precedents, the Tribunal observed that merely booking the duty elements as revenue expenditure does not mean that duty incidence has been passed to the customers.

It was also noted that the assessee had produced a certificate from a Chartered Accountant to certify that the duty incidence was not passed. It was noted that the Department had discarded the certificate without cogent reasons. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*JK Cement Works* v. *Commissioner* – 2026 VIL 889 CESTAT DEL CE]

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