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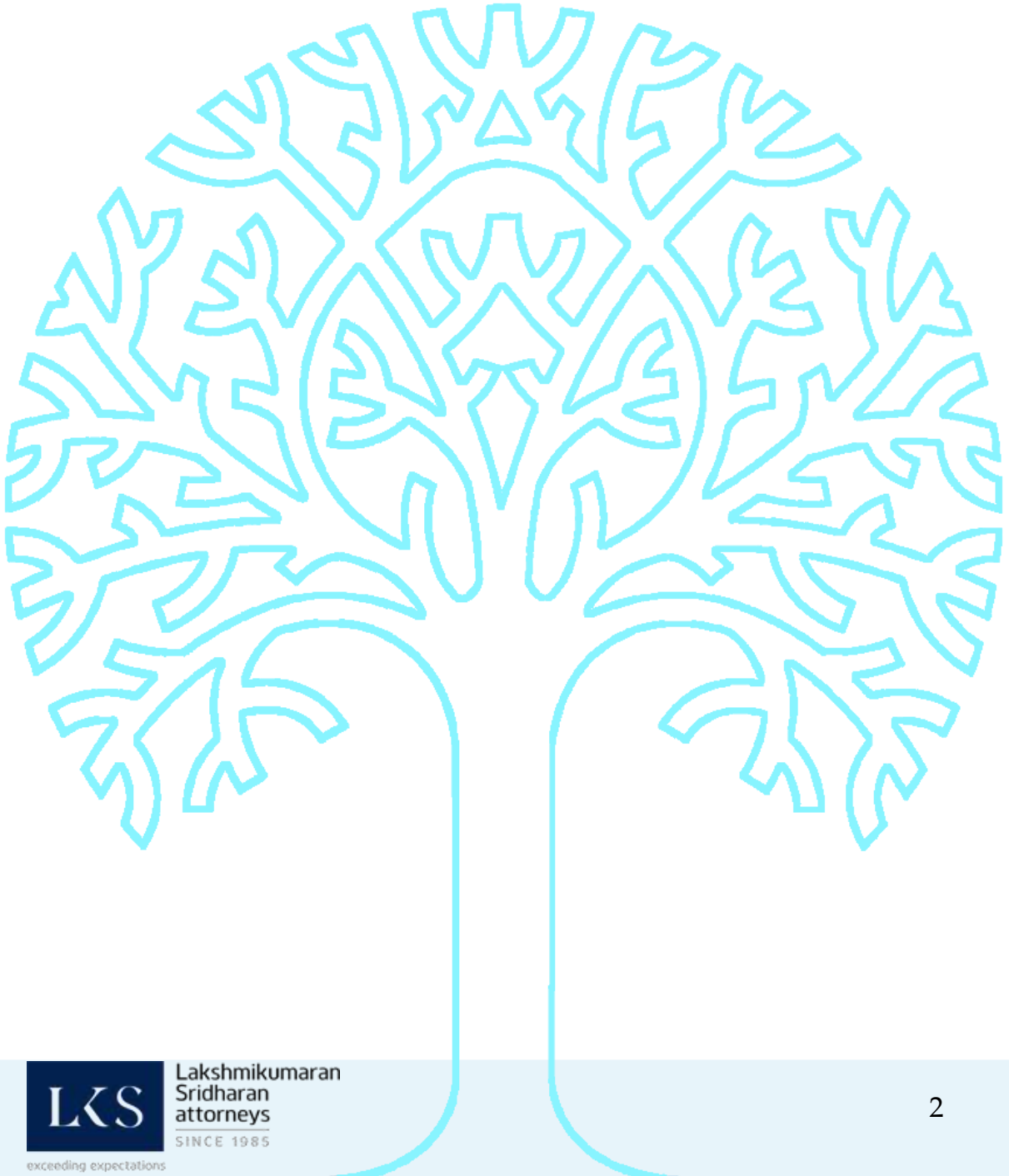

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Articles

When are development rights actually transferred: A one-time grant on date of agreement or a continuous supply?

By **Nupoor Agrawal, Kunal Nikumbh and Anitta Jose**

In recent times, real estate transactions have become increasingly complex, and with that, the GST implications surrounding such transactions have also grown more intricate. Among the various arrangements in the real estate and construction sector, one of the most nuanced and challenging to interpret under GST law is the development agreement. The article in this issue of Indirect Tax Amicus focuses on a specific aspect of such agreements — determining the time of transfer of development rights in the context of a joint development arrangement. Discussing as to why determining time of transfer of development rights is crucial, the authors also examine judicial analysis of transfer of development rights. According to them, a careful examination of the development agreement is essential, both from a GST standpoint and from the perspective of overall project cost management.

When are development rights actually transferred: A one-time grant on date of agreement or a continuous supply?

By Nupoor Agrawal, Kunal Nikumbh and Anitta Jose

Introduction

In recent times, real estate transactions have become increasingly complex, and with that, the GST implications surrounding such transactions have also grown more intricate. Among the various arrangements in the real estate and construction sector, one of the most nuanced and challenging to interpret under GST law is the development agreement. This article focuses on a specific aspect of such agreements — determining the time of transfer of development rights in the context of a joint development arrangement.

Why is determining time of transfer of development rights crucial for GST compliance?

A development agreement is a contract wherein a landowner who may not have the expertise and resources to develop construction projects on his land engages a developer to undertake such projects in return for grant of development rights in the land.

In the pre-GST regime prior to 1 July 2017, the activity of 'transfer of title in immovable property by way of sale or in any other manner' was specifically excluded from the definition of 'service'. Therefore, transfer of development rights was not taxable in the service tax regime.

However, as per GST law, transactions involving transfer of immovable properties are taxable unless specifically exempted. In this regard, only sale of 'land' and 'building' are kept outside the purview of GST. Since 'transfer of development rights' cannot be equated with 'sale of land' itself, it is a taxable supply of service in the GST regime.

Further, post April 2019, the developer/promoter of a project is not just liable to discharge GST on construction services he provides to the landowner. Rather, the liability to discharge tax on supply of development rights for construction of a project is also on the developer on reverse charge basis. In this regard,

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certain limited exemptions are provided if the development rights are transferred on or after 1 April 2019.

Therefore, the question as to when and how development rights under a joint development agreement are transferred from landowner to developer assume significance since the taxability of such transfer will differ depending on the answer.

Let us take the example of a development agreement which was signed in the year 2016. However, since the construction activity span over years, the consideration in the form of revenue/area share will be given to the landowner entirely in the GST regime.

One may take a view that the development rights are transferred on date of entering into the development agreement. If this view is adopted, in case of the example given above, development rights would be transferred in 2016. Since the development rights were not taxable in the service tax regime, such transfer would not be subject to any tax.

However, there are other schools of thought as per which development rights are transferred only at a later point of time. The joint development agreement is subject to various terms and conditions like the developer constructing the building as agreed between the parties and sharing the revenue from the sale of the building or giving constructed flats to the landowner etc. Therefore, the rights for the developer may not be unconditional or absolute on the date of execution of the development agreement. In other words, the rights of the developer may crystalise only over a period of time as and when he fulfils the conditions of the development agreement. In that case there may not be any outright transfer of development rights on the date of agreement itself.

If this view is adopted, in the example in our case even though the development agreement was executed in 2016, the supply of development rights may get taxed under GST law by virtue of sub-section (10) of Section 142 of the CGST Act. Further, there may be added liability in the hands of the developer if such supply happens post April 2019.

Judicial analysis of transfer of development rights

There are conflicting decisions from various High Courts in the context of levy of income tax on capital gains arising from transfer of development rights.

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In a number of cases, the Supreme Court and the High Courts have opined that merely entering into a development agreement for undertaking construction activity on an immoveable property would not be construed as 'transfer' under Section 2(47)(v) of the Income-tax Act, 1961 for the purpose of imposing tax on the income to be earned by the landowner under the agreement.[1] The courts have opined that the landowner has merely given a license to the developer to enter the land and construct. These decisions opine that transfer in case of development agreements will only take place only when the construction activity is completed and the consideration in terms of share in the built-up area/revenue share from sale of units is handed over to the landowner.

However, in case of *Chaturbhuj Dwarkadas Kapadia* v. *CIT* [260 ITR 491(Bom)] the Bombay High Court has taken a contrary view that transfer of property under Section 2(47)(v) of Income Tax Act was complete in the year in which the builder is given irrevocable license by the landowner to enter upon the land to carry out construction.

The recent judgment by Patna High Court in *Shashi Ranjan Constructions Pvt. Ltd.* v. *Union of India* [2025 (5) TMI 633] has touched upon this issue in the context of levy of GST. In this case, the court was primarily dealing with taxability of construction services provided by developer to landowner in pursuance of a development agreement entered in pre-GST regime. However, in the judgement, the Court made an observation that developer does not get any right in the land until the completion of the project. The High Court did not elaborate on this finding and has not laid down any clear legal principles so as to resolve the issue.

In light of the divergent judicial pronouncements discussed above, it is evident that the issue regarding the timing of transfer of development rights remains legally unsettled and continues to be a matter of interpretational uncertainty.

Conclusion

For developers and landowners, understanding when development rights are transferred under a joint development agreement is not just a legal question — it is a financial

[1] Please see: *Commissioner of Income Tax* v. *Balbir Singh Maini* [(2018) 12 SCC 354]; *Principal Commissioner of Income Tax, Kolkata-1* v. *Infinity Infotech Parks Limited* [[2018] 257 TAXMAN 359 (Cal)]; *Bharat Jayantilal Patel* v. *Deputy Commissioner of Income Tax* [[2023] 292 TAXMAN 276 (Bom)]

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necessity. The timing determines who bears the GST liability, what exemptions may apply and ultimately, the overall cost structure of the project. Further clarifications from government in future will bring more certainty in these matters. Till then, a careful examination of the development agreement is essential, both from a GST standpoint and from the perspective of overall project cost management.

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Goods & Services Tax (GST)

Notifications and Circulars

- Grant of registration within 3 days, electronically

Ratio decidendi

- No negative blocking of credit ledger under Rule 86-A – Plain reading of Rule and not legislative intent important – Bombay HC relies on Gujarat and Delhi HCs decisions while differs with Calcutta HC
- No GST on reinsurance service of exempt insurance schemes as regularized for period from 1 July 2017 to 24 January 2018 – *Delhi High Court*
- Compensation Cess payable on transaction value and not on MRP – Notification No. 2/2023-Compensation Cess (Rate) quashed – *Karnataka High Court*
- Recovery of GST from Electronic Credit Ledger is valid – *Chhattisgarh High Court*
- No GST liability on charges paid by electricity distribution licensee to Municipal Corporation for restoration of roads dug up for laying distribution lines – *Gujarat High Court*
- Refund is not time-barred when relevant notifications imposing tax held ultra vires by Court – *Gujarat High Court*
- No ITC on inputs used for generation of electricity supplied to own township for employees – *Chhattisgarh High Court*
- GST Returns of third parties cannot be disclosed under RTI – *Bombay High Court*
- Interest is payable on refund of IGST on ocean freight, as tax was collected without authority of law – *Bombay High Court*
- Payment made during search when not voluntary under CGST Section 74(5) – *Karnataka High Court*
- Printing of content furnished by customers with own paper and ink is a composite supply with supply of service being predominant – *Kerala High Court*
- Joint Development Agreements – *Supreme Court stays GST demand*

Notifications and Circulars

Grant of registration within 3 days, electronically

The Ministry of Finance has amended Central Goods and Services Tax Rules, 2017 to provide for grant of registration electronically. New Rule 9A has been inserted for this purpose with effect from 1 November 2025 and provides for grant of registration electronically by the common portal, within three working days from the date of submission of application. Any person who has applied for registration under Rule 8 [Application for registration] or Rule 12 [Registration of persons required to deduct tax at source or collect tax at source] or Rule 17 [special entities], would be eligible for this registration.

Further, new Rule 14A has also been inserted to provide for such option of electronic registration to person who determines that his total output tax liability does not exceed INR 250,000 per month. The Rule for this purpose also provides for certain conditions, including that for withdrawal from the option.

Certain consequential changes have also been made in Rule 10, Form GST REG-01, REG-02, while also substituting Forms GST REG-03, 04 and 05. Further, new Forms GST REG-32 and 33 provide for application for withdrawal of option under Rule 14A(5) and allowing such application, respectively. Notification No. 18/2025-Central Tax, dated 31 October 2025 has been issued for the purpose.

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Ratio Decidendi

No negative blocking of credit ledger under Rule 86-A – Plain reading of Rule and not legislative intent important – Bombay HC relies on Gujarat and Delhi HCs decisions while differs with Calcutta HC

Relying upon the decisions of the Gujarat High Court in *Samay Alloys India Pvt. Ltd.* and the Delhi High Court in *Best Crop Science Pvt. Ltd.* regarding the interpretation of Rule 86-A of the CGST Rules, 2017, and further giving a plain reading of the said Rule, the Bombay High Court has reiterated that if on the date of making an order under the said Rule for blocking the ITC in the Electronic Credit Ledger, no ITC is found to be available, then, there can be no question of exercising the powers under the said Rule to block such non-available Input Tax Credit. The Calcutta High Court decision in *Basanta Kumar Shaw*, which according to the Court had emphasised on the presumed legislative intent, thereby paying less credence to the actual words used in Rule 86-A, was thus differed from.

Further, observing that tax provision must be strictly construed, the Court observed that if the intention of the legislature was to enable the blocking of any future credit that might be available in the credit ledger, then the Rule would have been differently worded to expressly enable or permit such a consequence.

It may be noted that the Court however clarified that the blockage to the extent of credit available (even if less than the ineligible credit) on the date of the order's communication would be *intra vires* and valid. [*Rawman Metal & Alloys* v. *Deputy Commissioner* – 2025 VIL 1048 BOM]

No GST on reinsurance service of exempt insurance schemes as regularized for period from 1 July 2017 to 24 January 2018

The Delhi High Court has held that reinsurance services relating to exempt general and life insurance schemes would not be liable to GST for the period from 1 July 2017 to 24 January 2018, in the light of CBIC Circular No. 228/22/2024-GST dated 15 July 2024, which regularized such transactions on an '*as is where is*' basis. The Court rejected the Department's argument that the circular was inapplicable as the Order-in-Original and the Order-in-Appeal were passed before its issuance. The Court noted that the impugned orders were passed prior to the issuance of the circular

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and hence the concerned authorities did not take note of the same. Holding that the benefit of the circular cannot be denied to the assessee, the Court noted that the GST Council in its 53rd Meeting held on 22 June 2024 had recommended the said clarification, which was thereafter incorporated *vide* issuance of the said circular. Court's earlier decision in the case of *AXA France Vie-India* v. *Union of India* was also relied upon. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Oriental Insurance Co. Ltd.* v. *Additional Commissioner* – TS 844 HC DEL 2025 GST]

Compensation Cess payable on transaction value and not on MRP – Notification No. 2/2023-Compensation Cess (Rate) quashed

The Karnataka High Court has quashed Notification No. 02/2023-Compensation Cess (Rate), dated 31 March 2023 by which the taxpayers were directed to pay compensation cess at Maximum Retail Price ('MRP') as against the transaction value, as determined under Section 15 of the Central Goods and Services Tax Act, 2017. The Court in this regard observed that from a conjoint reading of Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 along with Section 15 of the CGST Act, 2017, the value of cess is imposable only under Section 15 of the CGST Act. Noting that Section 15 mandates cess to be imposed only on transaction value and not beyond it, the High Court held that notification which brings in value of cess linked to the MRP and not to transaction value runs counter to the provisions. The Court was of the view that justification of the Revenue department to plug leakage cannot mean that power can be exercised contrary to the provisions, and that the impugned notification, being a delegated legislation, cannot travel beyond the contours of its parent Act i.e., the Compensation Act. [*VKG Packers* v. *Union of India* – 2025 VIL 1086 KAR]

Recovery of GST from Electronic Credit Ledger is valid

Relying upon provisions of Section 79(1)(a) of the CGST Act, 2017, the Chhattisgarh High Court has held that the Department is entitled to recover the amount, payable by the assessee as per the assessment order, from its Electronic Credit Ledger. According to the said Section, if any amount is payable by a person to the Government under the Act or Rules, the proper officer shall proceed to recover the amount from any money owing to such person.

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The Court in this regard also noted that there was no stay of the assessment order after the rectification application was filed and the amount was deducted prior to the filing of appeal. It was thus concluded that recovery of the amount from Electronic Credit Ledger was not perverse and illegal. [*Shivam Metallurgicals Private Limited* v. *Assistant Commissioner* – 2025 VIL 1049 CHG]

No GST liability on charges paid by electricity distribution licensee to Municipal Corporation for restoration of roads dug up for laying distribution lines

The Gujarat High Court held that reimbursement paid by the assessee (a distribution licensee) to the Municipal Corporation according to Section 67(3) of the Electricity Act towards repair and restoration for roads damaged for laying down the electricity distribution lines will not be covered as 'supply' under Section 7(1) of the CGST Act read with Clause 5(e) of Schedule II *ibid*. Therefore, the same is not liable to GST under reverse charge. Contention of the Department that agreeing to tolerate the digging up of road by the Municipal Corporation would be covered by Clause 5(e), was thus rejected. The Court noted that the Municipal Corporation was not agreeing to tolerate the act of digging up of the road but in fact, it was mandatory for the distribution licensee to compensate for the damage caused. Department's plea that such repairing of the road is not within the scope of the function of the Corporation under Article 243W of the Constitution was also rejected by the Court, while it also held that Circular No.178/2022-GST was not applicable here. Similarly, Circulars No.182/2016 and 89/2006 which were under the service tax regime, were also held as not applicable. [*Torrent Power Ltd.* v. *Union of India* – 2025 VIL 1036 GUJ]

Refund is not time-barred when relevant notifications imposing tax held *ultra vires* by Court

The Gujarat High Court has reiterated that refund application under Section 54 of the CGST Act, 2017 is not time-barred when the relevant notifications imposing IGST on ocean freight in case of CIF imports were subsequently held to be *ultra vires* by the High Court as well as the Supreme Court. Relying upon its earlier decision in the case of *ADI Enterprises* v. *Union of India*, the Court held that the refund would not be covered by the provisions of Section 54 of the CGST Act and that the same is required to be refunded by the authorities. [*Patanjali Foods Ltd.* v. *Union of India* – 2025 VIL 1054 GUJ]

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No ITC on inputs used for generation of electricity supplied to own township for employees

The Division Bench (DB) of the Chhattisgarh High Court has upheld the Single Bench decision denying the benefit of Input Tax Credit on inputs used in generation of electricity which was supplied to the township maintained by the assessee for its employees. The Court in this regard noted that the electricity consumed for township purposes was neither used within the factory for manufacturing nor for captive consumption related to production of goods and was supplied externally for residential consumption. The DB upheld the views of the Single Judge that ITC is a concessional benefit and is available only in accordance with the scheme of the statute. According to the DB, the electricity supplied to the township was a welfare-related activity and was not integrally connected with the manufacturing or business operations of the assessee, being not in the course or furtherance of the business, as contemplated under Sections 2(17) and 16(1) of the CGST Act, 2017.

Dismissing the assessee's appeal, the DB also upheld the decision of the Single Bench that the amendment to Explanation 1(d) of Rule 43 of the CGST Rules, 2017, effected *vide* Notification No. 14/2022-Central Tax dated 5 July 2022, was prospective in nature. It was held that the amendment does not confer any retrospective right or entitlement to claim ITC for periods prior to the date of amendment. [*Bharat Aluminum Company Limited* v. *State of Chhattisgarh* – 2025 VIL 1070 CHG]

GST Returns of third parties cannot be disclosed under RTI

The Bombay High Court has held that GST returns of third parties are exempt from disclosure under Section 158(1) of the CGST Act, 2017, and Section 8(1)(j) of the RTI Act, 2005, unless the limited exceptions under Section 158(3) are applicable. The petitioner had sought GST return details of six private entities under the RTI Act, alleging misuse of public funds. The authorities denied the request, citing confidentiality and lack of public interest. The Court was of the view that Section 158(1) of the CGST Act overrides the RTI Act, being a special and later enactment, and prohibits disclosure of GST returns except under specific circumstances listed in Section 158(3). Further, the High Court also noted that Section 8(1)(j) of the RTI Act bars disclosure of personal information unless a larger public interest is demonstrated. The Court also observed that the Authorities had not provided information of GST returns as there was no larger public interest involved in the matter. [*Adarsh S/o Gautam Pimpare* v. *State of Maharashtra & Ors.* – 2025 VIL 1080 BOM]

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Interest is payable on refund of IGST on ocean freight, as tax was collected without authority of law

The Bombay High Court has held that interest is payable on the refund of IGST collected on ocean freight under reverse charge, as the levy was declared unconstitutional by the Court in the petitioner's earlier case which was premised on the judgment of Supreme Court in the case of *Mohit Minerals Pvt. Ltd.* The petitioner had paid IGST on ocean freight between July 2017 and April 2019 under Notification Nos. 8/2017 and 10/2017-IT (Rate), which were later struck down. Though the refund was granted, the Department denied interest, citing that the refund was processed within 60 days of the application under Section 54 read with Section 56 of the CGST Act. Rejecting the Department's reasoning, the Court noted that Section 54 applies only to tax paid under the CGST Act, and not to instances where the tax was not payable at all in law. It was thus of the view that the 60-day limit under the said provisions was not relevant. Doctrines of restitution and unjust enrichment were also noted in here. [*West India Continental Oils & Fats Pvt. Ltd.* v. *Union of India & Ors.* – 2025 VIL 1084 BOM]

Payment made during search when not voluntary under CGST Section 74(5)

In a case where the assessee had paid some amount during the course of search and inspection proceedings at its principal place of business, the Karnataka High Court has held that the payment was not made voluntarily by the assessee. The Court, for this purpose, noted the following.

- Absence of any notice or proceedings to ascertain, adjudicate or determine the tax, interest and penalty payable, prior to the search and inspection.
- Absence of any acknowledgment in Form GST DRC-04 as per Rule 142(2) of the CGST Rules, 2017.
- Absence of any details, material particulars, quantification etc., of the alleged self-ascertainment and voluntary payment.
- No payment was made by the assessee towards interest or penalty and the relevant columns in Form GST DRC-03 were shown as 'Nil'.
- The assessee would not voluntarily make payment thereby exposing himself to the risk of admitting guilty of the allegations contemplated in Section 74.
- The assessee was not in a position to do self-ascertainment, as the account books, desktops, server

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disks, mobile phones, hard disks, laptop etc., of the assessee were seized by the Department.

- It was highly improbable and physically / humanly impossible for the assessee, who is already under pressure on account of search, to do scrutiny of accounts, calculation of discretionary rate of interest, etc.
- Payment was contrary to the directions issued by the CBIC in Instruction No.1/2022-23 dated 25 May 2022.

[*Sri J Ramesh Chand* v. *Union of India* – 2025 VIL 1093 KAR]

Printing of content furnished by customers with own paper and ink is a composite supply with supply of service being predominant

The Kerala High Court has held that the printing of photographs and other similar things based on the content furnished by the customers would amount to composite supply, where the predominant element would be supply of services. Further, according to the Court, the nature of supply of such service will fall within SCN 998386, which is meant for printing photographic and videographic processing services liable to GST @ 18%. Assessee's plea of classification as predominant supply of goods under HSN 4911 and thus liable to GST @ 12%, was thus rejected.

Observing that there was no transfer of title in goods from the customers to the assessee initially, the Court was of the view that when printed material was supplied to the customers by the assessee after completing the printing process, no transfer of title takes place, since the title never passed on to the assessee. Also, the Court observed that the paper used for printing was only a material or means used for printing the actual property, which is the photographs, figures etc., furnished by the customer. It was therefore held that the activity of printing amounted to the predominant element of the composite supply while the supply of paper was an ancillary activity. [*Stark Photo Book* v. *Assistant Commissioner* – 2025 VIL 1053 KER]

Joint Development Agreements – Supreme Court stays GST demand

The Supreme Court has stayed a GST demand on a real estate project under Joint Development Agreement ('JDA'). As per *ET Legal World* news report, as available **here**, the Department had sought to classify the transfer of land development rights under JDA as a taxable supply of service, while the assessee had challenged it arguing that the deal ultimately involve transfer of land, which is outside the purview of GST law..

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Customs and FTP

Notifications and Circulars

- Customs notifications simplified – 31 notifications merged in one with effect from 1 November 2025
- Voluntary Revision of Entries in Bill(s) of Entry and Shipping Bill(s) – Mechanism notified
- Yellow peas – BCD and AIDC increased for B/L issued from 1 November 2025

Ratio decidendi

- FSSAI provisions are not applicable for export goods unless specifically mentioned in FTP – *Supreme Court*
- Customs clearance cannot be withdrawn without due process – DRI Officer's action of recalling goods back held not correct – *Bombay High Court*
- Valuation – Royalty paid for technical know-how when not includible in value of components – *CESTAT New Delhi*
- Valuation – Proforma invoices recovered from phone of Director when cannot be relied upon – *CESTAT Kolkata*
- EOU – 'Export of service' to be interpreted as per definition under Foreign Trade (Development and Regulation) Act – *CESTAT Hyderabad*
- PCB cards and modules used in optical transport network equipment are classifiable as 'parts' under TI 8517 70 10/90 and not as independent equipment – *CESTAT New Delhi*

Notifications and Circulars

Customs notifications simplified – 31 notifications merged in one with effect from 1 November 2025

The Central Board of Indirect Taxes and Customs (CBIC) has merged 30 standalone notifications issued from time to time with Notification 50/2017-Cus. New Notification 45/2025-Cus., dated 24 October 2025 (effective from 1 November 2025) has thus been issued superseding Notification No. 50/2017-Cus. and 30 standalone notifications. Further, as per FAQs released on the same day, this is a trade friendly measure and all existing customs duty/IGST exemptions/concessions notified under various notifications have been continued barring two minor changes. Consequential changes have also been made by Notification No. 44/2025-Cus., also dated 24 October 2025 in other notifications relating to Agriculture Infrastructure and Development Cess (AIDC), Health Cess and Social Welfare Surcharge (SWS), i.e., Notifications Nos. 11/2018-Cus., 8/2020-Cus., 11/2021-Cus., and 52/2017-Cus.

Voluntary Revision of Entries in Bill(s) of Entry and Shipping Bill(s) – Mechanism notified

After the insertion of Section 18A in the Customs Act, 1962 and few consequential changes in Sections 27 and 28, by the Finance Act, 2025, the Ministry of Finance has now notified the mechanism to give effect to voluntary revision of entries in bill(s) of entry and shipping bill(s). Accordingly, Customs (Voluntary Revision of Entries Post Clearance) Regulations, 2025 has been notified by a Notification No. 70/2025-Cus. (N.T.) dated 30 October 2025. Further, Notification No. 71/2025-Cus. (N.T.) dated 30 October 2025 prescribes certain exceptions which bar an application for revision from being entertained. Notification No. 69/2025-Cus. (N.T.) provides that every application for revision shall be accompanied along with a fee of INR 1000. The CBIC has also issued Circular No. 26/2025-Cus. on 31 October 2025 providing guidelines for giving effect to these notifications.

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Yellow peas – BCD and AIDC increased for B/L issued from 1 November 2025

The Ministry of Finance has increased customs duties on import of yellow peas [Tariff Item 0713 10 10] in respect of the goods where the Bill of Lading is issued on or after 1 November 2025. As per Notification No. 46/2025-Cus., dated 29 October 2025, which is effective from 1 November 2025, the BCD of 10% and AIDC of 20% will be applicable on such goods. Earlier Notification No. 64/2023-Cus., as amended, provided for full exemption (both BCD and AIDC) to goods for Bill of Lading issued till 31 March 2026. This notification has also been amended now by Notification No. 47/2025-Cus., also dated 29 October 2025, to reduce the time till 31 October 2025, i.e., the exemption will be available only for goods where the Bill of Lading is issued till 31 October 2025.

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Ratio Decidendi

FSSAI provisions are not applicable for export goods unless specifically mentioned in FTP

The Supreme Court has upheld the CESTAT Chandigarh decision which had in turn upheld the plea of the exporter-assessee that provisions of FSSAI are not applicable in respect of goods to be exported unless specifically mentioned in the Foreign Trade Policy. Dismissing the appeal filed by the Customs department, the Court was of the view that there was no good reason to interfere with the CESTAT order.

The Tribunal had, in its decision dated 4 July 2025 [2025 VIL 1071 CESTAT CHD CU], noted that no statutory provision/ authority/ notification / circular, etc., stipulating applicability of FSSAI provision for export of basmati rice, was brought on record by the Department. Earlier, samples tested by the CRCL were found to not confirm with two of the parameters i.e. average length-breadth ratio and average cooked rice length, as prescribed by the FSSAI. The goods (rice) were hence held by the Department as not basmati rice and thus liable to export duty. Taking note of the functions of FSSAI (as laid down in Section 16 of the Food Safety and Standards Act, 2006), i.e., to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food, the Tribunal had observed that 'export' was not mentioned in the said Act. It was also noted that adherence to Sl. No. 57 of ITC (HS) - Schedule-2 - Export Policy, was not disputed by the Department. [*Commissioner* v. *Hightop Trading Private Limited* – TS 703 SC 2025 CUST]

Customs clearance cannot be withdrawn without due process – DRI Officer's action of recalling goods back held not correct

The Bombay High Court has held that goods cleared under Section 47 of the Customs Act, 1962 cannot be recalled without following the due legal process. According to the Court, any such action must comply with statutory provisions and principles of natural justice. The petitioner had imported dry dates, which were duly cleared by Customs after verification, including NOCs from the Ministry of Agriculture and FSSAI. However, based on intelligence alleging origin of goods as Pakistan, hence being prohibited goods, DRI officer allegedly coerced the customs broker and transporter to return the cleared goods to the CFS.

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Allowing the importer's plea, the Court noted that clearance under Section 47 is a statutory order and hence any reversal must follow legal procedures such as issuance of show cause notice. It was also of the view that Section 106 (power to stop and search conveyances) was inapplicable here, as the goods had already been cleared, had left customs custody, and there was no 'reason to believe' as reflected either in some order or at least through notes in the file, or any other contemporaneous records. According to the Court, the principles of natural justice were also violated, as the importer was not given an opportunity to be heard before the goods were recalled. [*Make India Impex* v. *Union of India & Ors.* – 2025 VIL 1079 BOM CU]

Valuation – Royalty paid for technical know-how when not includible in value of components

The CESTAT New Delhi has held that royalty payment made by the importer to its parent foreign company for technical know-how was not includible in the assessable value of imported components under Rule 10(1)(c) of the Customs Valuation (Determination of the Value of Imported Goods) Rules 2007, as such payment was not a condition of sale of the imported goods and pertained to post-importation activities. The Tribunal, for this purpose, accepted the contention of the importer that since the Technical Agreements did not stipulate that payment of royalty was a *sine qua non* for import of components, royalty for technical know-how will not automatically become a 'condition of sale' merely because it was inclusive of the value of imported components. It was noted that royalty was paid for technical know-how used in the manufacture and assembly of finished goods in India and thus pertained to post importation activities. Allowing importer's appeal, the Tribunal also noted that the importer-manufacturer in India sourced components from both related and unrelated suppliers, and the royalty was paid irrespective of the source of components. ***The importer was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Ericsson India Pvt. Ltd. & Ors.* v. *Additional Director General (Adjudication)* – 2025 VIL 1698 CESTAT DEL CU]

Valuation – Proforma invoices recovered from phone of Director when cannot be relied upon

The CESTAT Kolkata has held that Department's reliance on unauthenticated proforma invoices recovered from the mobile phone of a Director of the importer was not legally tenable, as the requirements of Section 138C(2) of the Customs Act, 1962 for admissibility of electronic records were not complied with. The Tribunal, for this purpose, observed that though the concerned documents could not be equated with computer

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print-outs and were not listed in either Section 138C or Section 139 as specified documents, satisfaction of the requirements of Section 138C(2) is mandatory to admit any document recovered from an electronic device as evidence. The Tribunal also observed that proforma invoices are merely quotations and do not constitute a valid basis for alleging undervaluation, also because the description of the goods imported was different as compared to the description available in the proforma invoices. It was also noted that there was no evidence of payment of extra money as per the proforma invoices. [*Vivek Ply & Veneers Pvt. Ltd. & Ors.* v. *Principal Commissioner* – 2025 VIL 1684 CESTAT KOL CU]

EOU – 'Export of service' to be interpreted as per definition under Foreign Trade (Development and Regulation) Act

The CESTAT Hyderabad has held that 'export of service' for the purpose of availing of exemption under Notifications Nos. 52/2003-Cus. and 22/2003-C.E., by an EOU, must be interpreted in terms of the Foreign Trade (Development and Regulation) Act, 1992, and not by reference to the Export of Service Rules, 2005 under the Finance Act, 1994. The EOU imported and procured capital goods and raw materials duty-free under the said notifications. The Department however denied the exemption, alleging that the EOU-assessee had not exported 'Technical Testing and Analysis' services as required, since the services were not performed outside India.

Allowing assessee's appeal, the Tribunal noted that the notifications do not define 'export of service', nor do they mandate reliance on the Export of Service Rules, 2005, while under Section 2(e) of the FTDR Act, export of service includes supplying services from India to a recipient abroad, which the assessee had done. It was noted that foreign exchange was received, and the service recipients were located outside India, satisfying the FTP definition of export. The Tribunal was thus of the view that the reliance on Export of Service Rules by the adjudicating authority was misplaced, as the issue pertained to exemption under Customs and Excise notifications, and not service tax liability. [*Laxai Avanti Life Sciences Pvt. Ltd.* v. *Commissioner* – 2025 TIOL 1565 CESTAT HYD]

PCB cards and modules used in optical transport network equipment are classifiable as 'parts' under TI 8517 70 10/90 and not as independent equipment

The CESTAT, New Delhi, has held that imported Printed Circuit Board (PCB) cards and modules used in Optical

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Transport Network (OTN) equipment are classifiable as 'parts' under Customs Tariff Item (CTI) 8517 70 10/90, and not as independent apparatus or machines under CTI 8517 62 90 as contended by the Department. The Tribunal applied the twin tests—(i) no separate identifiable function, and (ii) incapacity for independent operation—to determine whether the imported goods were 'parts' or 'equipment'. It noted that the cards and modules did not possess independent functionality and were engineered to operate only when installed in specific slots of the OTN chassis, while also lacked autonomy, as they relied on the main equipment for power, control, and signal processing. It was also noted that the goods were functionally interdependent, forming an integral part of the signal transmission and switching architecture of the OTN system. The Tribunal also upheld the importer's classification of routers under TI 8517 69 30 for the period 2016–2019, noting that this entry was omitted only from 1 January 2020. [*Fiberhome India Pvt. Ltd.* v. *Principal Commissioner* – 2025 VIL 1674 CESTAT DEL CU]

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Central Excise, Service Tax and VAT

Ratio decidendi

- Delhi VAT – Purchasing dealer entitled to ITC despite seller's default in tax payment – *Supreme Court*
- Appellate Authority does not become functus officio after dismissing appeal for non-deposit of mandatory pre-deposit – *Jharkhand High Court*
- EOU – DTA clearance – Similar goods – Pharmaceutical product for treating one disease is similar to other pharma product which treats different disease – *CESTAT Mumbai*
- Dredger used for providing dredging service is eligible for Cenvat credit as 'input' – *CESTAT Hyderabad*
- Partial Completion Certificate is at par with Completion Certificate for exemption from service tax on sale of residential premises – *CESTAT Kolkata*

Ratio Decidendi

Delhi VAT – Purchasing dealer entitled to ITC despite seller's default in tax payment

The Supreme Court has upheld the Delhi High Court's decision allowing Input Tax Credit (ITC) to *bona fide* purchasing dealers who had paid VAT to registered selling dealers, even though the latter failed to deposit the tax with the Government. The Court, for this purpose, noted that the selling dealers were registered at the time of transactions, and neither the transactions nor invoices in questions had been doubted based on any inquiry into their veracity. The Court in this regard noted that the Delhi High Court's decision in the case of *On Quest Merchandising India Pvt. Ltd.*, which read down Section 9(2)(g) of the Delhi VAT Act, 2004, was earlier not interfered with by the Apex Court. [*Commissioner* v. *Shanti Kiran India (P) Ltd. & Ors.* – TS 691 SC 2025 VAT]

Appellate Authority does not become functus officio after dismissing appeal for non-deposit of mandatory pre-deposit

The Jharkhand High Court has held that the Appellate Authority does not become '*functus officio*' when it dismisses an appeal for non-payment of mandatory pre-deposit for hearing the appeal. Thus, according to the Court, the Appellate Authority has power to decide the appeal on merits later, once the pre-deposit is made subsequently. The High Court in this regard noted that once the appeal had not been decided on merits but had, in fact, not been entertained, there was no question of the Authority becoming 'functus officio' after the deposit of 7.5% of the duty amount. The appeal was thus restored to its original number. [*Maa Kalyani Electrical* v. *Union of India* – 2025 VIL 1057 JHR]

EOU – DTA clearance – Similar goods – Pharmaceutical product for treating one disease is similar to other pharma product which treats different disease

The CESTAT Mumbai has answered in affirmative the question as to whether vaccines for Hepatitis and similar vaccines for other diseases, injections and other pharmaceutical formulations were 'similar goods' for the purpose of granting exemption under Notification No. 23/2003-C.E. to EOU on its DTA clearances. The Tribunal in this regard observed that it would be travesty of justice to contend that a pharmaceutical product for treating one ailment/disease is not 'similar goods' to other pharmaceutical product, which is for treatment of some other

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disease. The Tribunal was also of the opinion that if the goods cleared for DTA are held to be 'similar goods' to those exported to determine compliance with the provisions relating to EOU under the Foreign Trade Policy (FTP), then such decision would also apply for the purpose of customs/central excise inasmuch as the basis for ITC (HS), customs and central excise tariff are the same. It was also observed that since Heading 3002, covers all types of pharmaceutical products, it is not feasible to treat the goods covered under single heading as other than 'similar goods'. ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Wockhardt Limited* v. *Commissioner* – 2025 VIL 1785 CESTAT MUM CE]

Dredger used for providing dredging service is eligible for Cenvat credit as 'input'

The CESTAT Hyderabad has held that a self-propelled dredger used for providing dredging services qualifies as an 'input' under Rule 2(k)(iv) of the Cenvat Credit Rules, 2004, and is thus eligible for Cenvat credit of CVD paid at the time of import. Department's argument that the dredger, being capitalized and depreciated, could not be treated as an 'input', was thus rejected. It was held that accounting treatment under other laws (e.g., Income Tax Act) is irrelevant for determining eligibility under the Cenvat Credit Rules. Allowing the appeal, the Tribunal observed that since the dredger was used directly in providing output services, and was not excluded under Rule 2(k), credit was rightly availed. It was noted that dredgers do not fall within the definition of 'capital goods' under Rule 2(a), and what is not to be treated as capital good under Rule 2(a) can also not be treated as capital good for the purpose of Rule 2(k). ***The assessee was represented by Lakshmikumaran & Sridharan Attorneys here.*** [*Dredging Corporation of India* v. *Commissioner* – 2025 VIL 1700 CESTAT HYD ST]

Partial Completion Certificate is at par with Completion Certificate for exemption from service tax on sale of residential premises

The CESTAT Kolkata has held that partial completion certificate can be considered at par with the certificate issued after completion of the building and hence the exemption from service tax can be granted to such sales effected after issue of the said partial completion certificate. The Tribunal in this regard observed that Clause (b) of Section 66E of the Finance Act, 1994 does not distinguish/ differentiate between a Partial Completion Certificate (PCC) and a Completion Certificate (CC). It was noted that the PCC was applied for by the assessee when certain finishing works remain pending, though the construction was complete otherwise in all material respects and the project was

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in a habitable condition. It was also noted that as per Rule 29 of Kolkata Municipal Corporation Rules, the developer was entitled to apply for a PCC and that there is no difference between PCC and CC in respect of the level of completion. [*Smifs Capital Markets Limited* v. *Commissioner* – 2025 VIL 1651 CESTAT KOL ST]

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