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Judgements and Rulings

Supreme Court rules that aluminium shelve for mushroom cultivation is not machinery but, a structure | Supreme Court | Welkin Foods[1]

Issue for consideration:

- Whether aluminium shelving imported for mushroom cultivation can be classified as "parts of agricultural machinery" under Customs Tariff Item (CTI) 84369900 or, is classifiable as "aluminium structures" under CTI 76109010.

Facts

- The Assessee imported aluminium shelving along with a floor drain and an automatic watering system for mushroom cultivation. In the Bill of Entry, all items were declared as parts of agricultural machinery under CTI 84369900, attracting a nil rate of duty.
- While the Customs Department accepted the classification of the floor drains and watering system, it disputed the classification of the aluminium shelves and reclassified them as aluminium structures under CTI 76109010.
- A SCN was issued demanding differential duty along with interest alleging product misclassification leading to short payment of duty.
- The CESTAT relied on the General Rules of Interpretation (GRI) No.3 to classify the goods under CTI 84369900 and overturned the decision of the lower authorities.
- The Revenue filed an appeal before the Apex Court challenging the findings of CESTAT.

Findings of the Court

- GRIs are not treatable as a menu of options that can be invoked randomly but rather are a legal framework that dictates a precise and sequential methodology for classification and GRIs must be applied sequentially.
- In terms of relevant domestic and foreign jurisprudence, the 'common parlance' test must be applied restrictively to ascertain the common or commercial meaning of a term found within a tariff heading or its defining criterion.
- 'Use' of a commodity can be considered as a relevant factor for classification, only if the concerned tariff heading allows for consideration of 'use' or 'adaptation', either explicitly or implicitly.
- Goods in the present case have not met the two-part criterion to be classified under chapter heading 7610 *viz.* (i) these must be made of aluminium, and (ii), these must be a structure or part thereof.
- Chapter Heading 7610 is an *eo-nomine* (which designates goods by name) and makes no reference to use in any manner.
- Chapter Heading 7610 would cover all forms of aluminium structures, except for prefabricated buildings of heading 94.06 (specifically excluded).
- Chapter Heading 8436 and the relevant chapter, section, and explanatory notes indicate that, the use test must be one of 'principal use', not 'use' simpliciter.
- It is essential that the product's objective characteristics and design clearly demonstrate that it is principally intended for use in agricultural purposes.
- The aluminium assemblies are mere structures and their classification as 'machinery' defies common sense and is patently absurd.
- The 'mushroom growing apparatus' cannot be classified as agricultural machinery as it does not qualify as a composite machine or a single functional unit.

Conclusion

- Applying the common parlance test, the product, which is merely structures and, not in the nature of 'machinery' is classifiable under HS Code 7610 9010 as aluminium structures.
- These shelves do not contribute to the operation of machinery but, merely serve as a surface for the devices to perform their functions.
- All the machines (i.e. the head filling machine, the automatic, watering system and the compost spreading equipment) do not appear to work together towards a single, clearly defined function. Rather, each machine performs its own independent task.
- The only common element is that they are all a part of the items required for broader mushroom cultivation process, which is different from fulfilling a specific, unified function.

Dhruva Comments

The judgment offers important guidance on classification under the HSN-based tariff regime, reaffirming that

[1]Commissioner of Custom (import) v. Welkin Foods, TS-2-SC-2026-CUST

classification must be determined strictly in accordance with the statutory tariff and the General Rules for Interpretation.

The decision narrows the reliance on common parlance test, end-use test or industry-specific nomenclature.

Supreme Court quashes customs duty on supply of electricity from SEZ | Supreme Court | Adani Power Ltd.[2]

Issue for consideration

- Whether supply of electricity from a Special Economic Zone (SEZ) to the Domestic Tariff Area (DTA) constitutes an "import into India" so as to attract customs duty under Section 12 of the Customs Act, 1962 read with Section 30 of the SEZ Act, 2005.

Facts

- The Petitioner operates a large coal-based power plant inside SEZ. The electricity generated at the plant in the SEZ is partly consumed within SEZ and substantially supplied to the DTA.
- Under Section 30 of the SEZ Act, 2005, while goods removed from an SEZ to the DTA are chargeable to customs duty "as if imported into India"; electricity has always attracted NIL customs duty.
- To maintain overall fiscal neutrality, Rule 47(3) of SEZ Rules, 2006 required recovery of duty benefits on proportionate inputs (imported coal, etc.) used for generation of electricity supplied to the DTA.
- In 2010, the Central Government issued Notification No. 25/2010-Cus [3], imposing 16% customs duty retrospectively from June 26, 2009, on electricity supplied from SEZ to DTA.
- This notification was challenged by the Petitioner before the Gujarat High Court in 2015 and the Division Bench held that:
  - Electricity generated in an SEZ in India and supplied to buyers in the DTA is not an "import into India." Although SEZs are treated differently for fiscal purposes, they are not foreign territory. The "as if imported" fiction under Section 30 of the SEZ Act is only meant to determine the applicable duty rate and does not turn a domestic supply into an import. Therefore, no customs duty can be levied under Section 12 because there is no actual import or charging event.
  - Section 25 of the Customs Act allows exemption, not creation of a new tax.
  - Notification No. 25/2010-Cus though couched as an exemption, in substance imposed a new levy, making it ultra vires.
- The Revenue Department-Union's appeal and review application against the 2015 judgment were dismissed by the Supreme Court.
- However, the Government continued collecting duty under Notification No. 91/2010[4] which altered duty to ₹0.10/unit and Notification No. 26/2012[5] prescribing duty to ₹0.03/unit.
- The petitioner filed a fresh writ petition in 2016 seeking a declaration that no duty was payable for later periods under subsequent Notifications (No. 91/2010-Cus and No. 26/2012-Cus.) and claimed refund of amounts already paid.
- However, the above challenge was dismissed by the Gujarat High Court (in 2019) holding that the 2015 judgment only dealt with Notification No. 25/2010-Cus. and thus, is inapplicable to the other notifications and, upheld the levy of duty.
- The Court observed that, unless the validity of those later notifications was specifically challenged, no refund could be ordered and declined to extend the protective declaration of 2015 into the later period.
- Against the above judgment, the Petitioner filed a civil appeal before the Supreme Court.

Findings of the Court

- The 2015 judgment was a declaration of law that went to the root of the taxing power, holding that no customs duty could be levied at all on SEZ-to-DTA electricity under the existing statutory framework. The levy was held *ultra vires* as there was, in substance, no "import into India" that could trigger the charge under Section 12 of the Customs Act.
- The ruling did not decide a technical irregularity but held that the taxable event did not exist in law which is a jurisdictional defect.

[2] Adani Power Ltd vs. UOI, TS-1-SC-2026-CUST
[3] Notification No. 25/2010- Customs dated February 27, 2010
[4] Notification No. 91/2010-Customs dated September 6, 2010
[5] Notification No. 26/2012- Customs dated April 18, 2012

- The ruling was not confined to one notification or cut-off date. Once a levy is declared *ultra vires*, successive notifications continuing the same levy fall automatically.
- Section 30 of the SEZ Act does not create a new custom levy but merely provides that if goods attracted customs duty, then same incidence will apply when those goods move from the SEZ.
- The law remained unchanged and imported electricity continued to attract nil customs duty.
- The differential treatment of nil rate on import and levy under the later notification changing the rate is violative of Article 14.
- Section 25 allows exemption, not creation of a tax. The act of using the exemption notifications to impose duty amounts to colourable exercise of delegated power and is constitutionally impermissible.
- Rule 47(3) of the SEZ Rules, 2006 already neutralised the situation by seeking customs duty on inputs (coal). Imposing customs duty again on electricity output caused a double burden, violating Article 14 of the Constitution.
- Where a levy is declared *ultra vires* under a notification in the absence of any new statutory basis, new notifications do not create a new cause of action. The Apex Court held that a court is entitled to grant effective relief without insisting upon separate challenges to each such notification.
- When a levy is declared *ultra vires*, the Government ought to conform accordingly, however successive notifications continuing the same levy results in defiance of constitutional discipline.

Conclusion

- Customs duty on electricity supplied from a SEZ to the DTA is illegal, whether imposed retrospectively or prospectively and at any rate.
- Any notification imposing such duty is without the authority of law.
- The High Court in its later judgement (2019) incorrectly whittled down the earlier judgment of 2015. Such a course was impermissible.
- Customs duty collected from the Petitioner for the period September 16, 2010, to February 15, 2016, ought to be refunded without any interest.
- No further demand can be enforced against the Petitioner in respect of customs duty on electrical energy cleared from its SEZ unit to the DTA for the period covered in this appeal as the levy is unsustainable.

Dhruva Comments

The Supreme Court has conclusively held that customs duty cannot be levied on electricity supplied by SEZ power generators to the DTA, opening the door for refunds of unlawfully collected duties.

It reaffirms the principle that a tax or levy once declared *ultra vires* cannot be resurrected through subsequent notifications and further, clarifies that the executive cannot use the power to grant exemptions (under Section 25 of the Customs Act) as a power to impose a tax.

High Court sets aside demand of Cess for failure to consider annual return and un-availed ITC | Calcutta High Court | Bidyut Autotech Private Limited[6]

Issue for consideration

- Whether the appellate authority erred in confirming demand of Cess without considering the disclosures made in the annual return (Form GSTR-9) when proceedings under Section 74 of the CGST Act/WBGST Act were held as not sustainable.

Facts

- The Petitioners are motor vehicle dealers who, during FY 2017–18, paid GST and Cess on inward supplies of motor vehicles, which was duly reflected in GSTR-2A.
- While making outward supplies, the petitioners collected Cess from customers but did not disclose the same in Form GSTR-3B, believing that no Cess was payable by the petitioners as the petitioners had sufficient accumulated Cess on the inward supplies and the same would off-set the disclosure in GSTR 3B.
- Upon finalization of accounts, the omission was identified and the entire Cess was disclosed in the annual return filed in Form GSTR-9.
- A show cause notice was issued under Section 74 alleging suppression and proposing demand of Cess with interest and penalty. An adjudication order followed, raising tax, interest and penalty demands.

[6] Bidyut Autotech Private Limited and another vs. The Assistant Commissioner of State Tax [TS-1004-HC(CAL)-2025-GST]

- On appeal, the appellate authority accepted that there was no fraud, suppression or wilful misstatement and converted the proceedings from Section 74 to Section 73.
- However, the appellate authority while passing the order ignored the disclosure in Form GSTR-9 and denied adjustment of accumulated/un-availed Cess credit.
- Aggrieved, the petitioners filed the writ petition challenging the appellate order, which upheld the demand of Cess.

Findings of the Court

- Disclosure of Cess liability in the annual return (Form GSTR-9) could not be ignored, particularly when the petitioners asserted that they had not availed ITC on Cess paid on inward supplies and had paid the differential amount, rendering the situation revenue neutral.
- Ignoring the effect of GSTR-9 and un-availed ITC, while demanding Cess on outward supplies, would offend the mandate of Article 265 of the Constitution of India, which requires that tax be levied and collected strictly in accordance with law.
- Section 44(2) of the CGST Act/ WBGST Act, as amended by the Finance Act, 2023[7], introducing a prohibition on late filing of annual returns is prospective and inapplicable to the petitioners, who had filed Form GSTR-9 on August 28, 2023 prior to the amendment.
- Under the pre-amended Section 44(2), there was no absolute bar on late filing of annual returns; the presence of a late-fee provision under Section 47 further indicated that delayed filing was contemplated by the statute.

Conclusion

- The matter was remanded to the appellate authority with a direction to revisit the matter.

Dhruva Comments

The judgment makes the point that GST adjudication must align with constitutional principles, particularly Article 265, and cannot mechanically ignore subsequent statutory disclosures such as GSTR-9.

Even where initial returns contain errors, revenue-neutral situations supported by annual returns and un-availed ITC claims must be meaningfully examined.

The ruling also clarifies the prospective operation of the amended Section 44(2) of the CGST Act, protecting taxpayers from retrospective denial of the right to file annual returns.

Notification clarifying place of supply of pharmaceutical R&D services is retrospective | Karnataka HC | Iprocess Clinical Marketing[8]

Issue for consideration

- Whether Notification No. 04/2019–Integrated Tax dated 30.09.2019, issued under Section 13(13) of the IGST Act clarifying the place of supply of pharmaceutical R&D services (including clinical trials) as the location of the foreign recipient, is clarificatory and retrospective in nature, and consequently whether GST demand raised for the prior period is sustainable.

Facts

- The petitioner is engaged in conducting clinical trials and pharmaceutical R&D services for foreign clients, including entities located in the USA, under contractual arrangements.
- For the period April 2018 to March 2019, the tax authorities-initiated adjudication proceedings and raised GST demands, treating the services as taxable in India by applying Section 13(3)(a) of the IGST Act (place of supply being place of performance).
- The Adjudicating Authority and the Appellate Authority, while acknowledging that the petitioner was engaged in clinical trial services and that the service recipients were located outside India, nevertheless held that Notification No. 04/2019-IGST dated 30.09.2019 was prospective and therefore inapplicable to the subject period.
- Aggrieved, the petitioner approached the High Court challenging the adjudication and appellate orders.

Findings of the Court

- The Court observed that the impugned orders themselves acknowledged that the petitioner's services fell within the category of clinical trials/pharmaceutical R&D services and that the service recipient was located outside India.

[7] Effective from 01.10.2023

[8] Iprocess Clinical Marketing Pvt Ltd vs. Asst. Commissioner of Commercial Taxes [TS-1047-HC(KAR)-2025-GST]

- The Court noted that the 37th GST Council meeting specifically deliberated on the lack of clarity regarding export treatment of pharma R&D services and recommended issuance of a notification under Section 13(13) of the IGST Act to treat such services as supplied at the location of the foreign recipient. The recommendation explicitly included clinical trials.
- The Court held that Notification No. 04/2019-IGST was issued pursuant to this recommendation and merely clarified the correct legal position, namely that such services are not governed by Section 13(3)(a) and qualify as export of services.
- Applying settled principles of statutory interpretation laid down in Vatika Township [9], the Court held that clarificatory, declaratory and beneficial notifications operate retrospectively, particularly where they remove ambiguity and prevent unintended tax burdens.
- The Court further relied on Suchitra Components Ltd[10]. to reiterate that clarificatory notifications and circulars must be applied retrospectively, unlike oppressive provisions.
- Accordingly, the finding of the authorities that the notification was prospective was held to be erroneous and unsustainable.

Conclusion

- Notification No. 04/2019–IGST dated 30.09.2019, which clarifies the place of supply of pharmaceutical R&D services (including clinical trials) as the location of the foreign recipient, is clarificatory and retrospective in nature.
- The petitioner's clinical trial services provided to foreign recipients qualify as export of services.
- GST demand raised for the period prior to September 30, 2019 is unsustainable.
- The impugned adjudication order and appellate order were set aside, and the writ petition was allowed.

Dhruva Comments

The decision reaffirms the principle that clarificatory notifications cannot be applied selectively to the detriment of taxpayers.

It relieves the pharma industry and research-driven entities engaged in cross-border R&D arrangements including clinial trials, while also helping mitigate GST disputes/ demands for pre-2019 period which have held such services as liable to tax.

Consolidated show cause notice covering multiple financial years is without jurisdiction | Bombay High Court | Paras Stone Industries[11]

Issue for consideration

- Whether a show cause notice issued under Section 74 of the CGST Act, 2017, clubbing multiple financial years/tax periods into a single consolidated notice, is without jurisdiction and liable to be quashed.

Facts

- Petitioner was issued a show cause notice in September 2023 under Section 74 of the CGST Act alleging suppression of taxable value and short payment of GST for FYs 2017–18, 2018–19 and 2019–20. The notice clubbed multiple financial years into a single composite proceeding.
- Petitioner challenged the notice by way of a writ petition, contending that clubbing of different tax periods is impermissible under the CGST Act and goes to the jurisdiction of the authority.
- Reliance was placed on the decisions of the Bombay High Court in M/s Milroc Good Earth Developers[12] of and Rite Water Solutions (India) Ltd[13].
- Revenue opposed the petition, relying on the Delhi High Court decision in Mathur Polymers[14].

Findings of the Court

- The Division Bench in Milroc Good Earth Developers and Rite Water Solutions has categorically prohibited clubbing of multiple tax periods, and these decisions are binding on authorities within the State.
- Revenue's argument that the law laid down by the Delhi High Court should be followed by ignoring the law laid down by this Court contradicts the settled law that a

[9] Vatika Township Private Limited vs. CIT [TS-573-SC-2014]
[10] Suchitra Components Ltd. vs. Commissioner of Central Excise, (2006) 12 SCC 452
[11] Paras Stone Industries vs. Union of India, [TS-09-HC(BOM)-2026-GST]
[12] Milroc Good Earth Developers vs. UOI & ors, [TS-871-HC(BOM)-2025-GST]
[13] Rite Water Solutions (India) Ltd. vs. Joint Commissioner, CGST & Central Excise, Bombay HC, W.P. No. 466/20225
[14] Mathur Polymers vs. UOI & Ors. [TS-746-HC(DEL)-2025-GST]

judgment of a High Court is binding on the authorities of the State, within whose jurisdiction the authorities are working.

- Moreover, Bombay High Court decisions were rendered subsequent to the Delhi High Court ruling.
- Since this Court has, subsequent to decision of the Delhi High Court, taken a different view, the authorities below will be bound by the subsequent judgments which has neither been stayed nor overruled by the Supreme Court.
- It is well settled that despite alternate remedy, the writ petition is maintainable, in four contingencies, (i) enforcement of a fundamental right protected by Part – III of the Constitution of India, (ii) a violation of the principles of natural justice (iii) the order/ proceedings are wholly without jurisdiction or (iv) challenge to the vires of a legislation.

Conclusion

- The show cause notice of September 2023 issued under Section 74 of the CGST Act, clubbing multiple financial years, was quashed and set aside as being without jurisdiction.
- The objection regarding alternate remedy is not maintainable and the judgment of the Jharkhand High Court[15] as relied upon by the Revenue is wholly irrelevant.

Dhruva Comments

This judgment firmly reinforces the principle that GST demands must strictly adhere to the statutory framework of tax periods and limitation. By invalidating consolidated show cause notices under Section 74, the Bombay High Court has provided significant procedural protection to taxpayers and underscored that jurisdictional defects can be challenged directly in Writ proceedings notwithstanding alternate remedies. The ruling also clarifies the binding nature of High Court precedents on authorities within the State, ensuring certainty and uniformity in GST administration.

Mere uploading of order in the GSTN portal does not qualify as constructive service for determination of limitation | Allahabad High Court | Bambino Agro[16]

Issue for consideration

- Whether mere upload of GST notices and adjudication orders on the GST portal (without actual communication to the taxpayer) amounts to valid "service/communication" under Section 169 of the CGST/SGST Acts for computing the limitation period for filing an appeal under Section 107.

Facts

- The petitioner, M/s Bambino Agro Industries Ltd., along with similarly placed taxpayers, challenged adjudication orders and related GST notices issued by the State of Uttar Pradesh, on the ground that they were not effectively communicated.
- The authorities had issued show-cause/adjudication orders by uploading them on the "Additional Notices and Orders" tab of the GST portal, without any physical or direct communication to the petitioner.
- The petitioner contended that it did not receive any intimation regarding such uploaded notices/orders and only came to know of them when recovery proceedings were initiated.
- Consequently, the petitioner argued that limitation under Section 107 for filing appeals had not commenced because there was no valid communication of orders, and thus the appeals could not be time-barred.
- Revenue contented that once the notices and orders were uploaded on the portal, service was complete in law, and this should trigger the three-month limitation period for filing an appeal under Section 107.

Findings of the Court

- The Court held that service by making SCN and Order available on the common portal or dispatch through electronic mode is permissible and valid procedure in law
- However, it was held that the legislature has consciously not used the word 'served' or 'received' in Section 107 of the State/Central Act. Rather, it has used the word 'communicated'. Which mandates that all facts contained in the notice or order shall be 'communicated' to the recipient.
- For the condition of "communication" to be fulfilled, actual or constructive service of the show cause notices

[15] Star India Industries vs. The State of Jharkhand & Ors. [W.P. (T) No. 622/2024

[16] Bambino Agro Industries Ltd vs. State of Uttar Pradesh and Anr. [TS-1033-HC(ALL)-2025-GST]

and the orders, is necessary, strictly in terms of Section 169 of the State/Central Act

- State's argument that availability of the order on the portal creates a legal presumption of service is not tenable.
- Merely uploading the documents in the common portal is not enough communication or service for the purpose of Section 107 of the CGST Act.
- There is no mechanism to generate automatic acknowledgement or receipt of document downloaded or retrieved or viewed by the taxpayer from the common portal.
- All that is available with GSTN and to the revenue authorities, is the knowledge of actual dispatch or uploading of a document, by the revenue authorities, only.
- No inference may be drawn as to the actual date and time of such service, in terms of section 12 and 13 of the IT Act, for the purpose of Section 107 of the CGST Act.
- Deeming fiction under Section 169(2) and (3) and Section 12 and 13 of the Information Technology Act cannot be enlarged to benefit the Revenue.

Conclusion

- Related orders to the extent that they were held to have been communicated only by upload on the GSTN portal without valid service, are set-aside.
- Matter remanded to the adjudicating authorities for fresh proceedings, after valid communication of notices/orders in accordance with statutory requirements.
- Limitation for filing appeals would commence only upon proper communication of orders under Section 169 of the CGST/SGST Acts.

Dhruva Comments

This taxpayer-friendly judgment recognises effective and meaningful communication as an integral component of the GST framework, addressing the recurring issue of taxpayers' discovering orders only at the recovery stage after limitation period under Section 107 has lapsed.

By emphasising proper communication in the digital GST regime, the ruling provides an important safeguard against ex-parte demands and protects taxpayers' appellate rights.

ITC denied on electrical works executed for expansion of a manufacturing factory under Section 17(5) | Tamil Nadu AAAR [17] | Shibaura Machine India Private Limited[18]

Issue for consideration

- Whether Input Tax Credit (ITC) is admissible on electrical works (including LT Panels, Busducts, LT Electrical Works, Lightning Protection Systems, Light Fixtures and associated civil works) executed for expansion of a manufacturing factory?

Facts

- The Appellant constructed a new factory and entered into a contract with SMCC Construction India Limited for design, supply, installation, testing and commissioning of electrical works for the new factory.
- The scope of the contract comprised LT Panels, Busducts, LT Electrical Works, Lightning Protection Works, Light Fixtures, and associated miscellaneous civil works such as excavation, backfilling and laying of heavy-duty pipes.
- The Appellant filed an application for Advance Ruling seeking clarification on the ITC eligibility on electrical works carried out for expansion of the factory; and the timeline for availing ITC on invoices raised towards the advance component of the contract and its subsequent adjustment.
- The Tamil Nadu AAR [19] held that ITC on the electrical installation works is blocked under Section 17(5)(c) and 17(5)(d) of the CGST/TNGST Acts and declined to answer the secondary question on the timeline for availing ITC.
- Aggrieved by the said ruling, the Appellant filed an appeal before the Tamil Nadu AAAR[20].

Findings of the Appellate Authority

- The eligibility of ITC under Section 16 of the CGST Act is expressly subject to the restrictions prescribed under Section 17(5).
- To qualify as "plant and machinery", the conditions of the Explanation to Section 17 must be fulfilled.
- Electrical installations and associated civil works do not qualify as equipment or machinery and also do not fall

[17] Appellate Authority for Advance Ruling
[18] Shibaura Machine India Private Limited, 2026 (1) TMI 1053

[19] Authority for Advance Ruling
[20] Appellate Authority for Advance Ruling

within the meaning of "apparatus", as they are generic in nature and intended for multiple purposes such as power distribution, lighting, protection and operation of machinery.

- Since the electrical installations do not qualify as "plant and machinery", the question of examining whether they are directly or indirectly used for making outward supplies does not arise.
- The contract itself characterises the executed work as "Permanent Work", indicating the intention of permanent annexation to the immovable property.
- Applying the tests of nature of annexation, object of annexation, intention of the parties, permanency, functionality and marketability, the electrical installations are intended for permanent beneficial enjoyment of the land/building.
- The fact that the electrical installations may be detachable or movable is not determinative; their object and intendment establish that they form part of the immovable property.
- Circular No. 219/13/2024-GST allowing ITC on the ducts and manholes used in network of Optical Fibre Cables (OFCs) for providing telecommunication services is inapplicable.
- The decision of Supreme Court[21] in Bharti Airtel Limited and the Gujarat Authority for Advance Ruling [22], is inapplicable.

Conclusion

- The electrical installations when attached to earth, or when fastened to anything attached to earth like wall, roof, etc., become part of immovable property, even if such items can be detached and moved, because they do not have an independent existence.
- ITC on electrical installation works undertaken for expansion of the factory is not admissible, as such supplies constitute works contract/construction of immovable property and do not qualify as "plant and machinery" under the Explanation to Section 17(5) of the CGST Act.

Dhruva Comments

The ruling reiterates the narrow construction of Section 17(5), clarifying that functional necessity, statutory compliance or safety considerations alone do not make infrastructure eligible for ITC. Only assets strictly meeting the statutory test of "plant and machinery" qualify for ITC.

By focusing on the object and intent of annexation, the decision aligns with the consistently conservative approach of the GST authorities in denying ITC on factory-linked installations.

GST payable under RCM on reimbursed legal fees paid for international patent filing | West Bengal AAR | Medtrainai Technologies Pvt. Ltd. [23]

Issue for consideration

- Whether GST is payable under the Reverse Charge Mechanism (RCM) on consideration-amounts paid by an Indian company as reimbursement of fees to the foreign patent attorneys (Japan/USA/UK) for filing patent applications abroad.

Facts

- The applicant engaged Seenergi IPR (India)(supplier) to coordinate filing of patent applications in Japan, USA, and UK for an invention owned by one of its directors.
- Seenergi IPR raised invoices comprising two components:
  - Part A: Reimbursement of fees paid to foreign patent attorneys and patent offices.
  - Part B: Seenergi IPR's own professional fees.
- GST was not charged by Seenergi IPR, which advised the applicant to discharge GST under RCM on the entire invoice value.
- The applicant accepted GST liability on Part B but disputed GST on Part A, contending that it was mere reimbursement, incurred outside India, provided no business benefit in India, and qualified as exempt legal service.
- The applicant sought an advance ruling on whether GST under RCM was payable on such reimbursements.

Findings of the Authority

- Reimbursement can be subjected to tax if established as consideration paid for goods or services.
- Value of supply in term of Section 15 includes any amount charged for anything done by the supplier in respect of the

[21] Commisioner GST Appeal vs. Bharti Airtel, 2025-VIL-62-SC
[22] Elixir Industries Private Limited [2024 (7) TMI 982]
[23] Medtrainai Technologies Pvt Ltd [TS-1035-AAR(WB)-2025-GST]

supply including incidental expenses except services provided as 'pure agent'.

- Based on the evaluation of transaction, there is no written contractual agreement authorising Seenergi IPR to act as a pure agent under Rule 33 of the CGST Rules.
- The applicant actually received legal services directly from foreign patent attorneys (Japan, UK, USA), classifiable under SAC 998213 – Legal documentation and certification services concerning patents and IP rights.
- Applying Section 13(2) of the IGST Act, the place of supply of such legal services is location of the recipient, i.e., India, since legal services do not fall under the exceptions in Sections 13(3) to 13(13).
- The exemption under Entry 45 of Notification No. 12/2017–CT (Rate) does not apply to the present case as:
  - The exemption applies only to advocates as defined under the Advocates Act, 1961, i.e., advocates enrolled in India.
  - Foreign attorneys do not fall within the scope of "advocate" or "senior advocate" under the notification.
- The argument that patent filing was not in the course or furtherance of business is a dubious claim as protection of intellectual property is inherently a business activity.
- Since the legal services were taxable and supplied by foreign attorneys to an Indian business entity, tax is payable under a reverse charge basis[24].

Conclusion

- GST is payable under RCM on reimbursement of foreign patent filing expenses.

Dhruva Comments

The ruling clarifies that foreign patent filing expenses qualify as import of legal services and are liable to GST in India under RCM, irrespective of whether they are structured as reimbursements. Accordingly, companies incurring overseas IP protection costs must factor in RCM liability and ensure compliance.

[24] Section 9(3) of the CGST Act read with Entry 2 of Notification No. 13/2017–CT (Rate)

Regulatory Updates

CBIC Notification [25] | Introduces RSP-based valuation for tobacco products

- The Government has notified Rule 31D in the CGST Rules, 2017, prescribing RSP based valuation for specified tobacco and tobacco substitute products.
- The value of supply shall be deemed as a notified percentage of the RSP.

Ministry of Finance Notification and FAQ| Notifies Health Security Cess

- The Government has notified the Health Security Cess Rules, laying down the manner of levy, assessment, collection, and refund of the cess[26]
- The Rules prescribe procedural requirements, including returns, recovery, and interest provisions[27].
- Further an FAQs[28] clarifying the provisions of the Health Security (HSNS) Cess Act and Rules explaining the scope of levy, rate applicability, valuation, exemptions, and procedural aspects of HSNS Cess has also been released.

Department of Revenue Notification [29] | imposes provisional ADD [30] on metallurgical Coke

- The Government has imposed provisional ADD on imports of Metallurgical Coke originating in or exported from specified countries
- The duty has been imposed following preliminary findings of dumping and consequent injury to the domestic industry.
- The provisional ADD shall remain in force for a period not exceeding six months.

GSTN Advisory[31] | Issues advisory and FAQs on e-credit reversal, re-claim and ITC statement

- GSTN has issued an Advisory along with FAQs detailing the procedure for electronic reversal and re-claim of ITC through the GST portal.
- The Advisory explains the functionalities of ITC reversal, re-credit, and generation of ITC statements, including common errors and resolutions.

CBIC Notification & Circular [32] | Extends deadline for compliance under transitional provisions of SCMTR

- CBIC has extended the deadline for compliance with transitional provisions under the SCMTR (Sea Cargo Manifest and Transhipment Regulations) till March 31.
- The extension has been granted to facilitate smoother transition and address operational challenges faced by trade and stakeholders.

Customs Public Notice [33] | Prescribes list of documents and procedure for MOOWR registration

- CBIC clarifies on a uniform, integrated application process for obtaining a private bonded warehouse licence under section 58 and permission for manufacture/other operations under Section 65 read with MOOWR[34].
- A single application form with mandated declarations/undertakings and a consolidated document checklist, thereby standardising approvals and due diligence is prescribed.

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[25] Notification No. 20/2025-Central Tax dated December 31, 2025
[26] Ministry of Finance Notification dated December 31, 2025
[27] Notification No. 1/2026-HSNS Cess dated January 1, 2026
[28] Frequently Asked Question dated January 2, 2026
[29] Notification No. 41/2025-Customs (ADD) dated 31st December 2025
[30] Anti-Dumping Duty (ADD)
[31] Advisory and FAQs on e-credit reversal, re-claim statement & RCM dated December 29, 2025
[32] Notification No. 79/2025-Customs (N.T) and Circular No. 30/2025-Customs, both dated December 31, 2025
[33] Public Notice No. 8/2025-Customs dated 10th December 2025
[34] Manufacturing and Other Operations in Warehouse Regulations, 2019

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