Dimensions

Indirect Taxes Bulletin

Part I – GST

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Judgements and Rulings

Section 74 SCN cannot rest on mechanical/bland invocation of fraud or suppression; extended period of limitation is unavailable absent specific allegations | Supreme Court | G.R. Infra Projects Limited[1] and Tata Steel Limited[2]

Issue for consideration

- Whether a show cause notice ('SCN') issued Section 74 of the CGST Act with a bland statement of "fraud or concealment of facts" without any mention of how fraud was inferred or concealment of facts were detected is sustainable?

Facts

In GR Infra Project Limited:

- SCN, was issued under Section 74 of the CGST Act, alleging "fraud or concealment of facts."
- The MP High Court had dismissed the writ, holding that once an SCN is issued under Section 74 of the CGST Act, a writ court cannot examine whether the officer erroneously invoked it absent actual fraud/misstatement.
- Revenue sought to justify the invocation by elaborating fraud/suppression allegations in its counter-affidavit before the Supreme Court.

In Tata Steel Limited:

- SCN, was issued under Section 74 of the CGST Act, pursuant to an audit objection on ITC mismatch. The Assessing Officer ('AO') had earlier placed the matter in the "call book" (kept in abeyance), and the Department had separately contested the same audit objection before the Public Accounts Committee indicating the AO's own lack of satisfaction with the objection.
- A fresh notice was issued on July 01, 2025, reviving the earlier notice as a "protective measure".
- The assessee argued that the three-year limitation under Section 73 of the CGST Act had already expired and that the SCN disclosed no foundational facts to justify invoking Section 74's extended period.

Findings of the Supreme Court

- In both matters, the Court held that mere employment of the words "fraud/wilful misrepresentation/suppression" does not indicate application of mind. The foundational facts giving rise to such an inference and the specific acts of concealment relied upon must be evident from the SCN itself, not left to inference or supplied later.
- In *GR Infra projects*, the Court refused to look at the counter-affidavit, reiterating that the validity of a notice/order must be judged from its own contents, not supplemented by a later counter-affidavit.
- In *Tata Steel*, the Department's own conduct parking the matter in the call book and separately disputing the audit objection was held to demonstrate the AO's own lack of satisfaction regarding suppression, reinforcing that the "satisfaction" required for invoking Section 74 of the CGST Act was never genuinely formed.
- The Court clarified that the limitation under Section 73(10) of the CGST Act governs the order, not the notice, rejecting Revenue's argument in *Tata Steel* that timely issuance of notice cures a delayed order. In the *G.R. Infra*, matter, the Court independently found that even a Section 73 of the CGST Act demand for FY 2018-19 after accounting for the extended annual-return due date and the Court's own COVID limitation-exclusion order had expired on February 28,2025 and thus the SCN dated June 13, 2025, was time-barred even under Section 73.

Conclusion

- In *G.R. Infra*, the SCN and the High Court's order were set aside on the ground that Section 74 of the CGST Act was mechanically invoked without foundational allegations, and the Revenue was directed to desist from further proceedings pursuant to that SCN.

[1] TS-631-SC-2026-GST

[2] TS-640-SC-2026-GST

- In *Tata Steel*, the Supreme Court allowed the appeal, quashing the SCN and the consequential Order-in-Original ('OIO'), while granting Revenue liberty to initiate fresh Section 74 of the CGST Act proceedings with foundational facts disclosed in the notice itself since time limit to invoke extended period had not lapsed.

Dhruva Comments:

The two rulings reinforces from the top court the proposition that Section 74 of the CGST Act cannot be invoked upon a template recitation of "fraud, wilful misstatement or suppression"; the notice must itself disclose the specific facts grounding such an inference; guidance the CBIC has laid out in Instruction No. 05/2023-GST issued post **Northern Operating Systems**[3]. The statutory position continues in Explanation 2 to Section 74A, which supersedes Section 74 of the CGST Act, 2017.

Together, the two Supreme Court decisions in civil appeals, within weeks of each other leave little room for Revenue to argue that a mere assertion of fraud/suppression (without any underlying supporting facts or documentary evidence) would suffice. Taxpayers, on their part, must be far more vigilant and circumspect of all notices under Section 74 or 74A of the CGST Act, and challenge rigorously the allegations of fraud, suppression, and wilful misstatement.

Supreme Court dismisses supplier's SLP against the Karnataka HC ruling which held that direct delivery to port / registered warehouse is necessary to avail merchant export GST rate concession | Supreme Court | Time Technoplast Ltd[4].

Issue for consideration

- Whether the concessional IGST rate of 0.1% under Notification No. 41/2017-Integrated Tax (Rate) is available to a supplier where goods are delivered not directly to the registered merchant-exporter (recipient) or a registered warehouse, but to the premises of a third-party chemical manufacturer at the recipient's instance, before eventual export by the merchant exporter?

Facts

- Time Technoplast Ltd. manufactures HDPE drums. On purchase orders from merchant exporters, it delivered the drums not to the merchant exporter but, to the premises of a chemical manufacturer (a third party), who packed ethyl alcohol in the drums and thereafter supplied the packed goods to the merchant exporter for export.
- The Authority for Advance Ruling and the Appellate Authority for Advance Ruling both held the concessional rate under the Notification was unavailable since the goods were not moved directly to the registered recipient or a registered warehouse as required.
- The petitioner argued that "warehouse" (undefined under the Act) should be read to include any "place of business" as per the recipient's instructions and relied on the minutes of the 22nd GST Council meeting to argue for a purposive interpretation.

Findings of the High Court

- The Court held that the scheme of the Notification contemplates only two parties, the "registered supplier" and the "registered recipient." Conditions (v), (vi) and (vii) of the Notification require goods to move directly from the supplier either to the port/ICD/airport/land customs station, or to a registered warehouse from where they are exported.
- Since the goods were supplied to a third-party chemical manufacturer and not the merchant exporter or a registered warehouse, in the present case, the conditions were not satisfied. The petitioner's own submission that "warehouse" could include any place of business at the recipient's instruction was rejected as impermissibly diluting the Notification's conditions.

[3] TS-216-SC-2022-ST

[4] TS-579-SC-2026-GST

- Applying the ratio of **Dilip Kumar & Co.**[5] and **Krishi Upaj Mandi Samiti**[6], the Court held exemption/concessional notifications must be strictly construed, and with any ambiguity in the text resolved in favour of the Revenue. It found the Notification's language clear and unambiguous and dismissed the Writ Petition.

- The Petitioner filed an SLP against the Karnataka High Court's judgment before the Supreme Court.

Findings of the Supreme Court

- The Supreme Court recorded that it found "no good ground to interfere with the impugned judgment in exercise of our jurisdiction under Article 136" and dismissed the SLP, without recording independent reasons on merits.

Conclusion

- The SLP was dismissed, leaving the Karnataka High Court's ruling that the concessional rate is unavailable where goods are delivered to a third party rather than directly to the merchant exporter/registered warehouse.

Dhruva Comments:

The Supreme Court's dismissal of the SLP against the High Court's order is not by a speaking order, and this does not constitute a declaration of law binding under Article 141. That said, it leaves the Karnataka High Court's strict-construction ruling as the operative law within Karnataka, and persuasive elsewhere: and removes any live prospect of near-term relief for suppliers in comparable scenarios.

Suppliers in case of job-work/toll-manufacturing arrangements, where goods are routed through a processor before reaching the merchant exporter should ensure due compliance with conditions (vii)–(viii) of the merchant export exemption Notification, rather than relying on the recipient's instruction to deliver to a third party's premises, in order to sustain eligibility for the concessional 0.1% rate. If a merchant exporter insists on routing packaging materials or components directly to a third-party contract manufacturer/processor rather than a port or registered warehouse, the supplier *must* refuse to apply the 0.1% rate unless a formal tripartite or sub-contracting agreement recognizes that third-party facility as an authorized, registered storage/aggregation warehouse of the exporter for that specific transaction sequence.

Referral charges from banks/insurers are taxable (Service Tax) as Business Auxiliary Service | Supreme Court | TVS Motor Company Limited[7]

Issue for consideration

- Whether "referral charges" earned by an automobile dealer for referring customers to banks/insurers for loans and insurance policies are taxable as Business Auxiliary Service ('BAS') under Section 65(105) (zzb) of the Finance Act, 1994?

- Whether penalty under Section 78 of the Finance Act, can be sustained where the entire tax liability was discharged prior to issuance of the Show Cause Notice ('SCN'), even though the extended period of limitation was invoked?

Facts

- TVS Motor Company Limited, an automobile dealer, received "referral charges" from HDFC Bank, ICICI Bank and Oriental Insurance Company for referring its customers who availed vehicle loans and insurance policies through these institutions.

- The Department alleged this was taxable as BAS and issued an SCN for the period 2003-04 to 2006-07, invoking the extended period of limitation on the ground of suppression (non-disclosure of this income as BAS in returns).

- The assessee had already deposited the entire tax liability before the SCN was issued.

[5] (2018) 9 SCC 1
[6] (2022) 5 SCC 62
[7] TS-272-SC-2026-ST

- The Tribunal, relying on the Larger Bench ruling in **Pagaria Auto Center**[8] upheld taxability of referral charges.

Findings of the Supreme Court

- On taxability, the Court agreed with the Tribunal and the Larger Bench's ruling that the agreements with the banks/insurer showed a close nexus between the assessee's activity and the promotion/marketing of the financial institutions' services, squarely amounting to BAS.

- On penalty, the Court held that Section 73(3) of the Finance Act mandates that where duty short-paid is deposited prior to issuance of SCN, the Department cannot issue an SCN to impose penalty. Noting that there was genuine "confusion" on taxability and that the tax was paid well before the SCN, the Court set aside the penalty imposed on the taxpayers, despite the extended period being invoked in the proceedings and affirmed by Larger Bench of the Tribunal.

- Accordingly, penalty under Section 78 of the Finance Act (which the Tribunal had upheld) was set aside, in addition to penalty under Section 76 of the Finance Act previously set aside by the Tribunal.

Conclusion

- The Supreme Court, on merits, upheld taxability of referral charges as BAS, but set aside penalty under both Sections 76 and 78 on account of the action of pre-SCN payment of tax by the taxpayer.

Dhruva Comments:

This ruling reaffirms the **Pagaria Auto Center** ruling. The significant aspect is the findings on imposition of penalty, ordinarily, once the extended period (premised on suppression in the present case) is invoked and upheld, penalty under Section 78 is expected to follow as a corollary. The Court granted immunity under Section 73(3) which is available only in "non-fraud" cases under Section 73(1), not where suppression is alleged and sustained; the Court effectively extended the benefit of pre-notice payment to delete the penalty even in an extended-period case, acknowledging that there existed genuine "confusion" in the law at the relevant time. Thus, the ruling appears to have an inherent contradiction.

Corporate guarantee without consideration between related persons is a taxable supply under GST, but valuation cannot exceed ascertainable actual consideration and Rule 28(2) cannot apply retroactively | Gujarat High Court | Torrent Power[9]

Issue for consideration

- Whether a corporate guarantee furnished without consideration by a holding company for its subsidiary constitutes a taxable "supply of service" under Section 7 of the CGST Act read with Schedule I and Schedule II?

- Whether Rule 28(2) of the CGST Rules (mandating a deemed valuation of 1% of the guaranteed amount per annum, or actual consideration, "whichever is higher") and Section 15(4) of the CGST Act are constitutionally valid, or excessive/arbitrary delegated legislation?

- Whether Rule 28(2) of the CGST Rules, inserted with effect from October 26, 2023, can be applied to corporate guarantees executed prior to that date?

- Whether the CBIC Circulars dated October 26, 2023, and July 11, 2024, travel beyond the scope of Section 168 of the CGST Act?

- Whether proceedings under Section 74 of the CGST Act (fraud/wilful misstatement/suppression) can be sustained against taxpayers who did not pay GST on corporate guarantees on a bona fide belief of non-taxability?

Facts

- The petitioners, a batch of eleven holding companies had furnished corporate guarantees without consideration to banks/financial

[8] 2014 (33) STR 506 (Tri-LB)

[9] TS-592-HC(GUJ)-2026-GST

institutions on behalf of their subsidiaries, to facilitate the subsidiaries' access to credit.

- The Revenue sought to levy GST on such guarantees under Rule 28(2) of the CGST Rules, deeming the value at 1% of the guaranteed amount per annum, or actual consideration, whichever is higher for periods both before and after the Rule's insertion on October 26, 2023.
- In one matter, guarantees were furnished for foreign subsidiaries (recipients located outside India) for FY 2010-11/2011-12, with demand raised for the period July 2017-March 2020, entirely pre-dating Rule 28(2).
- In another matter, the Revenue invoked Section 74 and imposed a penalty of over INR. 17 crores for guarantees executed between 2012–2018.
- The petitioners challenged the vires of Rule 28(2) and Section 15(4) as violative of Articles 14, 19(1)(g) and 265 of the Constitution, and challenged the validity of CBIC Circulars dated 27.10.2023 and 11.07.2024.

Findings of the High Court

- Taxability: The High Court held that a corporate guarantee furnished without consideration by a holding company for its subsidiary is a taxable supply of service. Relying on Sections 126, 127, 140 and 145 of the Indian Contract Act, 1872, the Court found that the bank's advance of credit to the subsidiary itself constitutes legal "consideration" flowing to the guarantor under Section 127 of the Contract Act, thereby satisfying Section 2(102) of the CGST Act. The transaction was held to fall within Section 7(1)(c) read with Entry 2 of Schedule I (related-person supply) and Entry 5(e) of Schedule II (agreeing to do an act), following the Supreme Court's expansive, supply-centric interpretation of Section 7 in **Gameskraft Technologies**[10]. The Court rejected the petitioners' "actionable claim" argument, holding that definition of "debt" under Article 366(8) of the Constitution is confined to constitutional contexts and cannot be imported into the Transfer of Property Act, 1882, and that a guarantor's liability being secondary and contingent is not equivalent to a direct, assignable claim to a debt.
- Validity of statutory provisions: The Court upheld the vires of Section 15(4) and Rule 28(2), stating that the common statutory requirement of GST Council recommendation was satisfied. On vires of Rule 28(2), in particular, the Court, following **Gameskraft's** treatment of the analogous Rule 31A (online gaming valuation), held that these provisions are validly traceable to Sections 15(4), 15(5), 164 and 2(87) of the CGST Act. However, applying **Wipro Ltd**[11] and its own earlier ruling in **Munjaal Manishbhai Bhatt**[12], the Court held that the expression "whichever is higher" in Rule 28(2) is arbitrary and violative of Article 14, since it mandates a fictional 1% value even where actual, lower commission is ascertainable. The Court read down this expression, holding that valuation should be based on actual ascertainable consideration, with the 1% figure applying only as a fallback where actual value cannot be determined.
- Retroactive application: Distinguishing "retrospective" from "retroactive" application (following **Newtech Promoters and Developers Pvt. Ltd**[13]), the Court held that applying Rule 28(2) to guarantees executed before its insertion creates a new fiscal burden on already-completed transactions and is harsh, unfair, and violative of Articles 14 and 19(1)(g). The levy was held permissible only prospectively, for guarantees that continue to subsist beyond that date.
- Validity of Circulars: The Circulars were held not to independently create the levy but were set aside to the extent inconsistent with the Court's reading down of Rule 28(2) and the conclusion on no-retroactive application.
- Section 74: Applying the Supreme Court's ruling in **Uniworth Textiles**[14] the Court quashed the Section 74 proceedings, holding that a *bona fide*,

[10] TS-391-SC-2026-GST
[11] (2015) 14 SCC 161
[12] 2022 (5) TMI 397.
[13] 2021 (18) SCC 1
[14] 2013 (9) SCC 753

genuinely disputed question of taxability does not meet the threshold of "wilful suppression" required to invoke the extended-period fraud provision.

Conclusion

- The High Court allowed the writ petitions in part, holding that corporate guarantees between related persons are taxable supplies under GST even without consideration, upholding Rule 28(2) and Section 15(4) as constitutionally valid subject to reading down "whichever is higher," restricting the levy to guarantees executed on or after October 26, 2023 (or continuing beyond that date), setting aside the Circulars to the extent inconsistent with this ruling, and quashing the Section 74 proceedings and orders. Excess GST deposited, if any, was directed to be refunded.

Dhruva Comments:

Conflict: This ruling conflicts with the Bombay High Court's decision in **D.P. Jain & Co**[15] which relied on **Edelweiss Financial Services Ltd.**[16] to hold that corporate guarantees without consideration are not taxable, a view expressly differed with by the Gujarat High Court here.

Valuation: The reading down of "whichever is higher" is consistent with, and a natural extension of, **Wipro Ltd.** and the jurisdictional precedent in **Munjaal Manishbhai Bhatt** both of which similarly held that a mandatory deemed value cannot override ascertainable actual value. Taxpayers with demonstrably lower actual guaranteed commissions should be able to rely on this to defend against the flat 1% levy.

On Supply: On Entry 5(e) of Schedule II, the ruling distinguishes from the Bombay High Court's reasoning in **Tata Sons Pvt. Ltd.**[17] (which required the transaction to first fall within the scope of "supply" under Section 7 before Entry 5(e) could be invoked). Here, the Court held that the relationship between the holding and subsidiary company, read with contract law provisions, satisfies the test of "supply," suggesting the issue remains fact specific.

On retroactivity: The ruling aligns with settled Supreme Court authority that retrospective tax legislation, while permissible, cannot impose a wholly new burden on completed transactions. This is a taxpayer-favourable outcome likely to benefit numerous legacies guarantees pre-dating October 2023, though continuing guarantees remain exposed from that date onward. While the ruling comes with a mixed bag of favourable outcomes both for the Revenue Department and the taxpayers, the battle is far from being over.

Advocates acting as Insolvency Professionals liable to GST under forward charge, not the reverse charge applicable to legal services | Delhi High Court | Kanwal Chaudhary[18]

Issue for consideration

- Whether an Advocate, enrolled with the Bar Council, who acts as an Insolvency Professional ('IP')/Interim Resolution Professional ('IRP') under the IBC, is governed by the "reverse charge mechanism" ('RCM') applicable to Advocates for legal services, or the "forward charge mechanism" ('FCM') applicable to IPs as a category, for payment of GST?

Facts

- The Petitioner, an Advocate enrolled with the Bar Council of Delhi since 1995 and also a registered Insolvency Professional, was appointed IRP for a corporate debtor by the NCLT.

- On a dispute over release of his professional fee, the Resolution Professional called upon him to raise GST-compliant invoices. The Petitioner contended he was exempt/not required to register, being covered under the RCM applicable to Advocates (Notification Nos. 12/2017 and 13/2017-Central Tax (Rate), as clarified by the corrigendum dated September 25, 2017, and

[15] TS-333-HC(BOM)-2026-GST
[16] TS-136-SC-2023-ST
[17] 2026 (5) TMI 126
[18] LSI-1241-HC-2026-(DEL)

orders of the Delhi High Court in **J.K. Mittal & Co**[19].)

- The matter was referred to the Insolvency and Bankruptcy Board of India ('IBBI'), which clarified that "insolvency and receivership services" are not covered under RCM, and directed the Petitioner to furnish GST-compliant invoices as an IRP. This order was challenged in the writ petition.

Findings of the High Court

- Examining the three relevant strands of GST implications on Advocates, on IP's as a category, and on Advocates acting as IRP, the Court held that services by Advocates are governed by RCM per Notification No. 13/2017-CT(Rate) (as corrigenda), while services by IP's, not being separately listed under the RCM notification, fall under the default FCM rule of Section 9(1) of the CGST Act.

- Under the Scheme of Classification of Services, "insolvency and receivership services" fall under a distinct, specific entry (998241), co-ordinate with and not subordinate to the general "legal services" entry (99821).

- Applying the principle that a specific entry prevails over a general one replying on **Moorco (India)**[20] and **A.R. Thermosets**[21], the Court held that it is the nature of the service rendered, not the underlying professional qualification of the service provider, which determines classification.

- The Court held that even though only 6% of registered IPs are Advocates (283 out of 4,558, per IBBI's data), and Regulation 5(c) of the IBBI Regulations recognises Advocates as merely one of several eligible categories for IP registration, this does not alter the position that IRP as a category cannot be treated differently merely because a particular IP happens to be an Advocate. The Bar Council of India's own affidavit affirmed this position.

- Importantly, the Court clarified this conclusion is confined to services rendered in the capacity of an IP; legal services rendered by the same person in their capacity as an Advocate continue to be governed by RCM.

Conclusion

- The writ petition was disposed of upholding the IBBI's clarification and concluding that the Advocates acting as IPs must obtain GST registration and comply under FCM for their IP-capacity services, while their advocacy services remain under RCM.

Dhruva Comments:

The Court's classification-driven approach, applied the "specific-over-general principle" as laid down in the context of Customs and VAT laws in **Moorco (supra)** and **A.R. Thermosets (supra)** The ruling squarely rejects the "qualification-based" argument that anything an Advocate does remains a "legal service." The ruling has implications beyond Advocate-IPs as the same reasoning would apply to other scenarios such as an Advocate acting as an arbitrator, mediator, or independent director. Co-mingling legal advisory fees (subject to RCM) and insolvency professional fees (subject to FCM) on a single invoice will invite systemic audits. The ruling endorses the position that GST in such cases will be a function of the role (scope of work) performed, not the professional qualification of the supplier. Advocates presently maintaining RCM position for their IP assignments should register under GST and issue forward-charge invoices going forward and should review past IP-capacity billings for potential exposure, since the Court's reasoning would apply retrospectively to the correct legal position rather than prospectively only. Also, practitioners who billed under RCM for historical IP assignments should evaluate remedial actions, if necessary.

Opportunity of hearing mandatory before rejecting CA certificate contrary to self-

[19] W.P. (C) 5709/2017
[20] 1994 Supp (3) SCC 562
[21] (2016) 16 SCC 122

declaration in budgetary support claims | Sikkim High Court | Cipla Limited[22]

Issue for consideration

- Whether a budgetary support claim can be finally determined by relying solely on the Petitioner's original declaration, where a CA certificate obtained at the Department's own direction reflects a lower, conflicting ITC figure?
- Whether the absence of an express statutory mechanism for revising a filed declaration relieves the Department from affording an opportunity to the Petitioner to explain an apparent discrepancy?

Facts

- Cipla's Sikkim unit declared eligible ITC of INR.15 Cr. (approx.) in its budgetary support declaration under the budgetary support notification issued to the units located in the certain states including Sikkim.
- On the Department's directions, a CA certificate was furnished, certifying actual eligible ITC of only INR.10 Cr. (approx.) , i.e. a difference of INR. 5 Cr. (approx.) from the original declaration.
- The claim was finalised by the order accepting the higher (declared) figure without reference to the CA certificate or affording any opportunity for hearing to the Petitioner to explain the discrepancy.
- The Petitioner challenged the Order before the High Court; however, the HC remanded the matter directing the department to pass fresh order after granting personal hearing('PH')
- The department in accordance with the HC's direction granted a PH but nonetheless refused to entertain the discrepancy between the declaration and the CA certificate, holding there was no provision for *post-facto* revision of a declaration. Aggrieved by this, the Petitioner again filed the current writ petition before the High Court.

Findings of the High Court

- The High Court held that fairness is the touchstone of such proceedings; a discrepancy apparent on the face of the record between a self-declaration and a certificate procured at the Department's own instance cannot be resolved unilaterally against the Petitioner.
- Absence of a specific revision mechanism does not dispense with the duty to act fairly, and the Petitioner must be given a reasonable opportunity to explain and substantiate an alleged error before the claim is finally concluded.
- Impugned order set aside to the extent challenged and respondent was directed to decide afresh within 8 weeks after affording a hearing and considering the reason for discrepancy between the value declared and CA certificate.

Conclusion

- The writ petition was allowed and the order set aside; the Respondents were directed to afford the Petitioner (taxpayer) a personal hearing and consider the CA certificate before re-determining the budgetary support claim within 8 weeks.

Dhruva Comments:
This ruling applies the settled fair-hearing/*audi alteram partem* standard applied in GST to the budgetary-support/incentive-scheme,
Claimants under area-based schemes (J&K, Uttarakhand, HP, North-East) who have inadvertently declared incorrect ITC particularly where the discrepancy surfaces *via* a departmentally directed CA certificate now have a clear precedent to seek a hearing before final rejection, notwithstanding absence of an express revision clause in the scheme.

Purchaser's ITC entitlement being subject to Section 16(2)(c) unaffected by supplier's insolvency under IBC | Rajasthan High Court (Jodhpur) | Shree Karni Electrovision[23]

[22] 2026 (8) TMI 1585

[23] TS-639-HC(RAJ)-2026-GST

Issue for consideration

- Whether Section 16(2)(c) of the CGST Act requiring actual payment of tax by the supplier as a precondition for the purchaser's ITC is *ultra vires* for imposing an impossible verification burden on the purchaser (*lex non cogit ad impossibilia*)?
- Whether initiation of IBC proceedings against the defaulting supplier dispenses with the purchaser's Section 16(2)(c) obligation?

Facts

- The petitioner procured electronic goods from Techno Kart India Limited (Videocon Group) and availed ITC on the basis that the supplier had paid the tax.
- The supplier subsequently went insolvent under the IBC, but Revenue did not lodge its tax claim in the IBC proceedings, and the unrecovered liability was instead instituted upon the petitioner under Section 16(2)(c) of the CGST Act.
- Petitioner challenged the *vires* of Section 16(2)(c) of the CGST Act and also argued that once the insolvency proceedings had been initiated against the supplier, the tax liability of the supplier was required to be dealt with in accordance with the provisions of the IBC and the petitioner cannot be compelled to reverse ITC in this regard reliance was placed on **Ghanashyam Mishra.**[24]

Findings of the High Court

- Section 16(2)(c) of the CGST act is a clear, mandatory condition requiring actual payment of tax by the supplier as a precondition to ITC; a purchaser who avails ITC without ascertaining such payment does so at its own risk, and recovery from the purchaser is permissible.
- Relying on the Gujarat HC ruling in **Maruti Enterprise**[25] (which upheld the validity of Section 16(2)(c), read clauses (a)-(d) conjointly, and placed the Section 155 burden on the purchaser), the Court rejected the impossibility argument, noting Section 41(2)/Rule 37A already provide a reversal-and-re-availment mechanism.
- The Court held that **Ghanashyam Mishra** (*supra*) was inapplicable as it governs the binding effect of an approved resolution plan on extinguished claims and not the statutory ITC eligibility condition under Section 16(2)(c).

Conclusion

- The writ petition was dismissed; Section 16(2)(c) was upheld as a valid, mandatory condition unaffected by the supplier's insolvency under the IBC, and the petitioner remained liable to reverse the ITC availed on tax not actually paid by the supplier.

Dhruva Comments:

While decisions of the Calcutta High Court's ***Suncraft Energy***[26] and subsequent rulings from the Allahabad and Gauhati High Courts shielded *bona fide* purchasers, estopping valid invoices-holders from ITC reversals, the landscape is slowly but surely tilting, following the Supreme Court's order in **Bhandari Scrap**[27].

In **Bhandari Scrap**, the Supreme Court passed a speaking dismissal order and expressly recorded that it affirmed the Gujarat High Court's stance in **Maruti Enterprise**. The Apex Court formally held that **Section 16(2)(c) of the CGST Act is constitutional and mandatory**, establishing that actual tax payment by the supplier is a strict prerequisite for claiming ITC. Crucially, the Supreme Court **rejected any parity between pre-GST VAT regimes** (such as Delhi VAT in **On Quest Merchandising**[28]) and the CGST framework, ruling that the architectures are distinct and do not inherently protect a purchaser from supplier defaults.

Consequently, the Rajasthan High Court's stricter approach in this case mirrors the Supreme Court's line of reasoning.

Thus, the "*bona fide* buyer" argument under **Suncraft Energy** may not serve as a blanket

[24] LSI-216-SC-2021(NDEL)
[25] TS-312-HC(GUJ)-2026-GST
[26] TS-653-SC-2023-GST
[27] (SLP (C) No. 23931 of 2026, order dated 24.07.2026)
[28] TS-314-HC-2017(DEL)-VAT

shield against tax demands. The balance of convenience now lies against the buyer, who must instead leverage the built-in statutory reversal-and-re-availment mechanism under Section 41 read with Rule 37A once the default is cured. Businesses must insist on strict commercial protections, including tight supplier-payment-verification workflows and robust tax-indemnity clauses in all procurement contracts.

Refund payable in cash, not to be re-credited to Electronic Credit Ledger, where business closed or registration discontinued | Allahabad High Court | Vossloh Cogifer Turnouts India[29].

Issue for consideration

- Whether a sanctioned GST refund, earlier directed to be re-credited as ITC into the Electronic Credit Ledger ('ECrL'), can instead be paid in cash where the assessee has permanently discontinued its business and surrendered/cancelled its GST registration, rendering the ECrL non-functional?

Facts

- The assessee had mistakenly paid GST of INR. 1,38,91,287 under the wrong tax head and subsequently discharged the correct liability under the appropriate heads; a refund application was filed accordingly.
- The Refund Sanction Order dated May 06, 2026, directed that a portion of the sanctioned amount be re-credited as ITC into the ECrL (with the balance paid in cash), notwithstanding that the assessee had by then permanently discontinued its business and surrendered its GST registration.
- The assessee contended that re-credit to a non-functional ECrL was wholly nugatory and did not amount to a genuine refund, seeking cash disbursal instead.

Findings of the High Court

- The assessee was no longer carrying on business and had surrendered its GST registration; consequently, the ECrL had ceased to be functional and had no practical, commercial, or legal utility.
- There is no express prohibition under the GST Act against paying in cash an amount otherwise directed to be re-credited as ITC.
- The Court directed the Revenue to disburse the sanctioned refund in cash or to the assessee's bank account, along with applicable interest, within eight weeks.

Conclusion

- The High Court allowed the writ petition, holding that a sanctioned refund cannot be reduced to an illusory credit where the taxpayer's ECrL is defunct, and directed cash disbursal, with interest.

Dhruva Comments:
The Court observed that routing a sanctioned refund back through a defunct ECrL is an empty formality that renders the remedy entirely illusory. Crucially, the origin of this dispute stems from an erroneous tax-head payment rather than an accumulation of regular ITC. Since the Department itself chose to route a portion of this rectified tax entry back into the ECrL via Rule 92(1A), forcing it into a deactivated ledger would unjustly enrich the State. The Court purposively read Section 54 to hold that in the absence of an explicit statutory prohibition (despite the absence of a specific-enabling provision); cash disbursal is the only effective way to execute a sanctioned refund for a closed entity to render justice, on the merits of this case.

Departmental monetary-limit circulars not binding on GSTAT; Rule 43 duty credit scrip exclusion is prospective; Section 74 needs positive proof of fraud/suppression | GSTAT Kolkata | Power Tech Global Private Limited[30]

[29] TS-590-HC(ALL)-2026-GST

[30] 2026 (8) TMI 1116

Issue for consideration

- Whether CBIC's monetary-limit Circular No. 207/1/2024-GST bars Revenue's appeal before the GSTAT?
- Whether the 2022 amendment to Explanation 1, Rule 43 (excluding duty credit scrip value from "exempt supplies" for ITC-reversal computation) applies retrospectively to 2017-20 transactions?
- Whether Section 74(1) of the CGST act could be invoked absent specific, evidenced allegations of fraud/wilful misstatement/suppression?

Facts

- The taxpayer availed ITC of goods and services for outwards supply of goods and services, while also availing exemption on sale of MEIS duty credit scrips for the FYs 2017-20. The taxpayer did not reverse ITC under Rule 42 and 43 on the reasoning that Notification No. 14/2022 effective July 05, 2022, amended Rule 43 to exclude duty scrips from the value of exempt supply; Revenue alleged excess/ineligible common ITC of INR. 74,75,604 and invoked Section 74 of the CGST Act alleging wilful suppression in GSTR-3B.
- The adjudicating authority confirmed the demand with equal penalty; the first appellate authority reversed it, holding that Notification No. 14/2022 was clarificatory/curative/beneficial and hence retrospective, relying on **Sedco Forex**[31], **Hitendra Vishnu Thakur**[32], **Suchitra Components**[33] and **Allied Motors**[34].
- Revenue appealed to GSTAT on all three issues.

Findings of the GSTAT

- Monetary-limit circulars bind departmental officers under Sections 120(1)/168(1) of the CGST Act but have no binding force on the Tribunal (relying on **Dow Chemical International**[35]); the composite-order and recurring-issue exclusions in the circular itself in any event took the case outside the threshold.
- The rule framers had power under Section 164(1) of CGST Act to give retrospective effect to the amendment however consciously made the amendment prospective. Thus, Rule 43 amendment in 2022 was prospective as it conferred a new benefit rather than clarifying an ambiguity, and ITC being concessional cannot be claimed retrospectively as a vested right.
- Section 74(1) requires specific material establishing fraud/suppression with intent to evade tax, regular filing of returns with full disclosure of duty scrip transactions negated suppression. Matter remanded for determination under Section 75(2)/Section 73(1).

Conclusion

- Revenue's appeals were held maintainable despite the monetary-limit circular; the Rule 43 amendment excluding duty credit scrips was held prospective (the Revenue Department succeeded on this point), but the Section 74 SCN was held unsustainable, with the matter remanded for redetermination under Section 75(2) read with Section 73(1).

Dhruva Comments:

The decisions signal a hardening judicial position that the Revenue department must build the allegation of fraud in the SCN, not make a bald averment or retrofit it later, for the valid invocation of Section 74 of the CGST Act.

On Rule 43 of the CGST Rules, the Tribunal did not entertain the principle of "clarificatory amendment applies retrospectively" to the present case and held that the amendment was prospective.

For exporters, the takeaway is that MEIS/duty credit scrip exemption benefits for the pre-July 2022 period entail ITC-reversal.

Refund of erstwhile CENVAT credit u/s 142(3) appealable before the CESTAT;

[31] AIR 2006 Supreme Court 428
[32] (1994) 4 SCC 602
[33] (2006) 12 SCC 452
[34] (1997) 224 ITR (SC) 677
[35] 2026-VIL-26-GSTAT-DEL

Jurisdiction of the GST Appellate Tribunal, Thane Bench | Asish Kumar Pati[36]

Issue for consideration

- Whether, on the issue of refund of unutilised CENVAT credit availed under the erstwhile Cenvat Credit Rules, 2004 and claimed in terms of Section 142(3) of the CGST Act, 2017, the appeal lies before the GST Appellate Tribunal ('GSTAT') or before the CESTAT (Customs, Excise and Service Tax Appellate Tribunal), where both the OIO and the first appellate order were passed under the erstwhile Central Excise Act, 1944?

Facts

- The respondent had claimed a cash refund of accumulated/unutilised CENVAT credit under Section 11B of the Central Excise Act, 1944, read with Section 142(3) of the CGST Act, 2017; both lower orders were passed under the erstwhile Central Excise Act.

- The first Appellate Authority allowed the assessee's appeal and set aside the OIO; the Revenue preferred an appeal before the GSTAT, Thane Bench.

- The GSTAT raised a maintainability query. The Revenue's Authorised Representative contended the appeal was maintainable before GSTAT since the refund issue arose under Section 142(3) of the CGST Act; the Respondent (taxpayer) contended that jurisdiction lay with the CESTAT since both lower orders were passed under the Central Excise Act, 1944 and the impugned order's own preamble directed appeal to CESTAT.

Findings of the Tribunal

- Section 142(3) of the CGST Act itself provides that every refund claim of CENVAT credit, duty, tax, or interest paid under the existing law "shall be disposed of in accordance with the provisions of existing law" i.e., Section 11B of the Central Excise Act, 1944.

- The mere fact that the refund was processed with reference to Section 142(3) of the CGST Act does not, by itself, confer appellate jurisdiction on the GSTAT.

- Relying on the CESTAT's Larger Bench ruling in **Bosch Electrical Drive India**[37], which held that appeals against refund/credit-rejection orders passed under Section 142(3) lie before the CESTAT, the GSTAT held it lacked jurisdiction to prosecute this issue.

Conclusion

- The GSTAT dismissed the Revenue's appeal as not maintainable, granting liberty to it to approach the CESTAT, as the appropriate forum.

Dhruva Comments:

This appears to be among the first rulings of the GSTAT, squarely applying the CESTAT Larger Bench's jurisdictional ruling in **Bosch Electrical Drive India** and it resolves what could otherwise have become a fresh source of forum-shopping now that GSTAT benches sit in parallel with CESTAT.

The Larger Bench in **Bosch Electrical Drive** settled the maintainability/forum question, that transitional Section 142(3) refund appeals lie before the CESTAT because the provision mandates disposal "in accordance with the provisions of existing law". The present GSTAT ruling confirms this forum allocation continues to hold even with a dedicated GSTAT now operational: what matters is which statute governed the original and first-appellate orders, not the CGST provision invoked for disposal. Taxpayers and Revenue with pending or contemplated transitional-credit refund disputes should route appeals to CESTAT rather than GSTAT wherever the underlying orders were passed under the erstwhile regime.

[36] TS-578-GSTAT-2026-ST

[37] 2024 (390) E.L.T. 652 (Tri.-LB)

Regulatory Updates

CBIC Instruction[38] | Coordination with State Mining Authorities

- The instruction stems from the Draft Performance Audit Report of the Comptroller and Auditor General ('C&AG') on "Assessment, Levy and Collection of GST on Minerals", which noted that State Mining Authorities detect numerous instances of illegal mining, illegal transportation and seizure of minerals/vehicles, cancellation/suspension of mining leases and other violations carrying potential GST implications (such as suppression of taxable supplies, non-registration, undervaluation or non-payment/short payment of tax), and observed that no structured or institutional mechanism existed for such information to be periodically shared with CGST field formations, leaving this enforcement intelligence unutilised.
- The Instruction aims to help GST officers cross-verify data with mining departments to detect tax evasion linked to illegally extracted/transported minerals.
- Directs field formations to coordinate with State Mining Authorities for sharing information relating to illegal mining and unauthorised transportation of minerals.
- Field formations have been asked to establish formal information-sharing mechanism with the respective State Mining Authorities in their jurisdiction.
- Periodic meetings to be held to review the effectiveness of the mechanism and resolve any operational issues.

CBIC Office Memorandum[39] | Working Group on Centralised Administration of Multi-GSTIN Taxpayers

- Office Memorandum issued by the GST Policy Wing, constitutes a Working Group to examine centralised administration for taxpayers having the same PAN but multiple GSTINs registered under various Central Tax jurisdictions, with a view to streamline GST administration, promote ease of doing business, and enhance administrative efficiency.
- The Group is tasked with examining difficulties arising from multiple tax administrations and studying the erstwhile Centralised Registration and Large Taxpayer Unit (LTU) mechanisms under Central Excise and Service Tax, along with international best practices.
- It must recommend whether centralised administration should be optional or mandatory, determine eligible taxpayer coverage, and lay down principles for identifying the administering jurisdiction factoring in annual turnover, head-office location, balanced workload, taxpayer convenience, and manpower availability. GSTINs administered by State/UT tax authorities remain outside the proposal's scope.
- The Group must also recommend administrative, legal, and system-level changes, including implications for CBIC's organisational structure and manpower deployment.
- The Group is required to submit its report, implementation roadmap, and draft proposals within 30 days of issuance of the Office Memorandum

[38] Instruction No. 01/2026-GST dated August 3, 2026.

[39] F. No. 20019/2/2026-GST

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