THE GST INSIDER

JULY 25 EDITION

(15th July to 31st July)

CA. SAMARPIT SHARMA

>>> PREFACE <<<

Welcome to our latest issue of **"The GST Insider"** meticulously compiled by **CA Samarpit Sharma**. As we navigate through the ever-evolving landscape of the Goods and Services Tax (GST), our aim is to bring you the most recent and pertinent updates, including circulars, notifications, press releases, relevant case laws, advance rulings, and other essential documents.

This Newsletter is designed to serve as a comprehensive resource for enhancing your understanding of GST regulations. Each edition is carefully structured to present complex legal content in an accessible and engaging format. Through the use of explanatory visuals and simplified explanations, we strive to make the material not only easier to comprehend but also more interesting to read.

It is important to note that the information provided herein is intended solely for knowledge sharing purposes and should not be utilized as a basis for any form of professional advice. For specific GST-related advice, we recommend consulting with qualified experts.

By integrating visual aids and reformulating the legal text into reader-friendly formats, we hope to enrich your learning experience and keep you updated on significant GST developments. Enjoy the read, and may it spark both your interest and understanding of GST.

Thank you for trusting "The GST Insider" as your go-to source for GST updates. We hope you find this edition both informative and easy to comprehend.

Thank You!

CA. SAMARPIT SHARMA

AUTHOR

> *Success doesn't come from what you do occasionally, it comes from what you do consistently*

NEWSLETTER

THE GST INSIDER

TOP UPDATES & CASE LAWS OF THE MONTH

MANDATORY ISSUANCE OF SPEAKING ORDER UNDER SECTION 129(3) OF CGST ACT DESPITE VOLUNTARY PAYMENT

SUPREME COURT

READ MORE

The Supreme Court directed issuance of a reasoned order under Section 129(3) in Form MOV-09 with a hearing, and its summary in Form DRC-07 within one month, reaffirming the need for due process even in summary GST proceedings.

.... Cont. on Page 14

READ MORE

The Authority held that the applicant is eligible to claim ITC on the rooftop solar plant as input, capital goods, or input services, subject to conditions under Section 16 of the CGST Act.

.... Cont. on Page 23

ITC ALLOWED ON ROOFTOP SOLAR POWER PLANT AS CAPITAL GOODS/INPUT SERVICES, SUBJECT TO SECTION 16 COMPLIANCE

AAR, MAHARASHTRA

2025 AUGUST

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6	7	8	9
GSTR7 (JUL 2025) GSTR 8 (JUL 2025)	GSTR1 (JUL 2025)	12	GSTR1/IFF (JUL 2025)	14	15	16
17	18	19	GSTR 3B (JUL 2025) GSTR 5A (JUL 2025)	21	22	23
24 31	25	26	27	GSTR11 (JUL 2025)	29	30

HIGHLIGHTS

Gst Updates HIGHLIGHTS

GST NEWS AND UPDATES

CA. SAMARPIT SHARMA

GST PORTAL IS NOW ENABLED TO FILE APPEAL AGAINST WAIVER ORDER (SPL 07).

Jul 16th, 2025

1.Taxpayers who have filed waiver applications in Forms SPL 01/SPL 02 are receiving orders from the jurisdictional authorities:

Acceptance Order in SPL 05 or
Rejection Order in SPL-07.

2.The GST Portal has now been enabled to allow taxpayers to file **Appeal applications(APL 01)** against **SPL 07 (Rejection) Order**.

3.Please use the Navigation below to file Appeal Application against SPL-07 orders:

- ***Go to: Services → User Services → My Application***
- ***Select Application Type as: "Appeal to Appellate Authority"***
- ***Click on New Application***

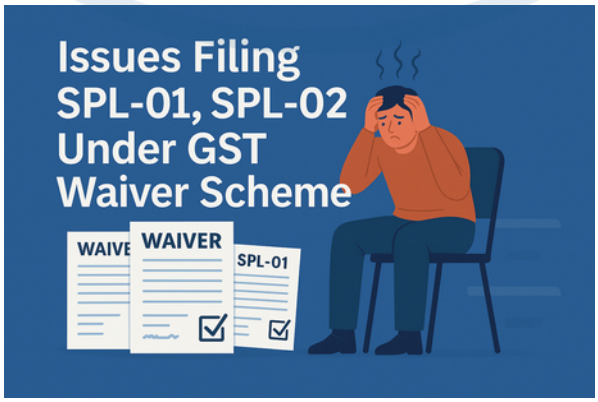
4.In the application form, under **Order Type**, select: **"Waiver Application Rejection Order"** and enter all the relevant details. After entering the details, Please proceed with filing of appeal.

5.It may be noted that the option to withdraw appeal applications filed under the waiver scheme is not available on the GST portal. Taxpayers are therefore advised to exercise due caution while filing such appeals.

6.Also, if any taxpayer does not want to file appeal against "waiver application rejection order" but want to restore the appeal application (filed against original demand order) which was withdrawn for filing waiver application can do so by filing undertaking. The option for filing of undertaking is available under "Orders" section in "Waiver Application" case folder.

7.In case of any difficulty or technical issue, taxpayers shall raise a ticket on the GST Helpdesk at: https://selfservice.gstsystem.in

Thanks,
Team GSTN



TAXPAYER ADVISORY ON UPCOMING SECURITY ENHANCEMENTS

Jul 17th, 2025

The GST System is being continuously enhanced to strengthen data security and improve transparency to the taxpayers.

In this effort, the below mentioned enhancement shall be shortly introduced to provide transparency and control to the taxpayers who interact with the GST System using Application Suvidha Providers (ASP). The ASP use GST System authorised API channel partners that are called GST Suvidha Providers (GSP). The role of a GSP is to provide API access between GST System and ASP.

1. Email and SMS notification service to inform taxpayer upon every successful OTP consent access provided by taxpayer to the ASP. The taxpayers authorized signatory shall receive notification via email and/or SMS whenever ASP successfully obtains their consent, by providing OTP from the GST System, to access their data over APIs. The notification would have following details:

- Name of the ASP and the underlying GSP
- Date and Time of the OTP Consent
- Validity Period of the consent

2. The GST Common Portal is being further enhanced to provide view of current & historic access gained by ASP / GSP and enable taxpayer with an option to revoke any active consent. The taxpayer shall be able to access this after logging to their GST Common Portal dashboard.

The exact dates, when the above functionalities will become available, shall be published vide respective advisories.

Thanks,
Team GSTN

ADVISORY: REGARDING GSTR-3A NOTICES ISSUED FOR NON-FILING OF FORM GSTR 4 TO CANCELLED COMPOSITION TAXPAYERS

Jul 20th, 2025

As per the provisions of Section 39(2) of the Central Goods and Services Tax (CGST) Act, 2017, read with Rule 68 of the CGST Rules, 2017, **notices in Form GSTR-3A are required to be issued in cases of non-filing of Form GSTR-4**. However, it has come to notice that, due to a system-related glitch, such notices have been inadvertently issued in certain cases where they were not applicable including instances involving taxpayers whose registrations had been cancelled prior to the Financial Year 2024–25.

2. The issue is currently under active examination, and the technical team is implementing appropriate corrective measures to ensure that such instances do not recur. In the meantime, taxpayers who have either duly filed the relevant return or whose registrations were cancelled prior to the Financial Year 2024–25 are advised to ignore these notices, as no further action is required on their part in such cases.

3. For any other issues or concerns, taxpayers are advised to raise a grievance through the Self-Service Portal available on the GST Portal, along with all relevant details, to facilitate prompt and effective resolution.

Regards,
Team GSTN

Case LAWS

CA. SAMARPIT SHARMA

JURISDICTION UNDER SECTION 73 OF GST ACT CANNOT BE INVOKED SOLELY ON E-WAY BILL AND GSTR-9 MISMATCH.

(MC BAUCHEMIE INDIA PVT LTD & ANR. VERSUS UNION OF INDIA - GUJARAT HIGH COURT)

In this petition filed under Article 227 of the Constitution of India, the petitioner challenged the validity of the show-cause notice dated 27.12.2023 and the consequential Order-in-Original dated 10.03.2024 issued under Section 73 of the GST Act for the financial year 2018–19. Additionally, the petitioner also contested the rejection of its rectification application on 12.03.2025 and the dismissal of its appeal on 23.10.2024 on the ground of limitation. The petitioner, a private limited company engaged in the manufacture and supply of building chemical products, was served a system-based scrutiny intimation under Form DRC-01A on 26.12.2023, proposing a liability of ₹78.74 lakhs based on (i) a mismatch in turnover between E-way bills and GSTR-9, (ii) excess ITC due to non-reconciliation, and (iii) ineligible ITC under Section 17(5). Without allowing the petitioner to respond to DRC-01A, a show-cause notice under DRC-01 was issued the next day. The petitioner replied on 04.01.2024, explaining that any mismatch was due to inadvertent E-way bill generation errors and that all taxes on actual sales had been duly paid. It also argued the ITC was availed correctly and legally.

Despite this, and without granting a personal hearing as mandated under Section 75(4) of the GST Act, respondent no. 3 passed the Order-in-Original raising a demand of ₹27.68 lakhs along with interest and penalty. A rectification application citing non-consideration of submissions and breach of natural justice was rejected. The subsequent appeal was dismissed for being time-barred. The petitioner argued that the jurisdiction assumed under Section 73 was erroneous, since Section 73 applies only when tax shortfall occurs without fraud, willful misstatement or suppression, and no such allegation existed in this case. Further, it was submitted that E-way bills merely reflect intended movement of goods and not necessarily a taxable supply. Therefore, discrepancies between E-way data and GSTR-9 do not automatically indicate tax evasion or short-payment. The petitioner also emphasized that the order lacked reasoned analysis, violating principles of natural justice, and relied on the Supreme Court judgment in Siemens Engineering v. Union of India which mandates quasi-judicial authorities to provide clear reasoning.

The respondents defended their action stating that the turnover discrepancy was sufficient to trigger jurisdiction under Section 73 and that the petitioner failed to seek personal hearing. However, the Court held that mere difference in E-way bill and GSTR-9 turnover, in absence of any indication of fraud or suppression, was insufficient to invoke Section 73 jurisdiction. The Court observed that provisions of Section 68 and Rule 138 merely mandate E-way bill generation for movement of goods but do not serve as conclusive proof of taxable supplies. It emphasized that for invoking Section 74 (fraud-based cases), authorities must undertake a preliminary inquiry to

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establish prima facie case of fraud or misstatement, which was not done. Since the present case did not involve any such allegation, even assumption of jurisdiction under Section 73 was found to be without legal basis.

Consequently, the Court allowed the petition and quashed the show-cause notice dated 27.12.2023, the Order-in-Original dated 10.03.2024, the rectification rejection order dated 12.03.2025, and the appellate order dated 23.10.2024. It held that in absence of jurisdictional foundation, the entire proceedings were vitiated and liable to be set aside. The Court, however, refrained from commenting on other procedural lapses like denial of hearing or absence of reasoning, as the primary ground of lack of jurisdiction was sufficient to decide the matter.

PVC RAINCOATS CLASSIFIED AS PLASTIC ARTICLES, NOT TEXTILE GARMENTS: GST @18% APPLIES.

(M/S DOLLAR INDUSTRIES LIMITED - AAR, WEST BENGAL)

>>> FACTS OF THE CASE

M/s. Dollar Industries Limited, a company engaged in the manufacture and supply of raincoats primarily composed of polyvinyl chloride (PVC), approached the West Bengal Authority for Advance Ruling (WBAAR) under Section 97 of the GST Act to seek clarification on the applicable classification and GST rate for their product. The key queries raised by the appellant were: (i) whether PVC raincoats fall under HSN Code 3926 (plastic articles) or HSN Code 6201 (textile garments); and (ii) whether the raincoats, if priced below ₹1000, would attract a concessional GST rate of 5%.

The WBAAR, through its order dated 27.02.2025, held that the PVC raincoat manufactured by the appellant did not qualify as a textile item. The authority concluded that the product was a non-woven article made by thermally or chemically bonding PVC sheets, which are synthetic and plastic in nature. As a result, the WBAAR classified the product under HSN 3926 and held that it attracts GST at 18% under Entry No. 111 of Schedule III of Notification No. 01/2017-Central Tax (Rate), as amended.

Aggrieved by this classification and tax rate, the appellant filed an appeal on 30.04.2025 before the Appellate Authority for Advance Ruling (AAAR), also seeking condonation of delay citing the complex and research-intensive nature of the ruling. The appellant argued that the product should be classified as a textile garment under HSN 6201, attracting GST at 5% if priced below ₹1000. Several Supreme Court judgments were cited to support their case, including Porritts & Spencer, India Waterproofing & Dyeing Works, and Wood Craft Products Ltd., highlighting that the functional use, commercial understanding, and classification principles like “common parlance” should be prioritized over the raw material composition.

>>> FINDINGS OF THE CASE

The Appellate Authority first allowed the condonation of delay, acknowledging that the delay was caused by genuine research and interpretational complexities. It then proceeded to examine the core issue: whether PVC raincoats should be classified as articles of plastic or textile garments.

The Authority began by reaffirming that GST rates are entirely dependent on the classification of goods under the Harmonized System of Nomenclature (HSN). Both Chapters 62 (textile garments) and 39 (plastic articles) include “raincoats” in their scope, but their applicability depends upon the composition and manufacturing process of the item.

Upon reviewing the HSN explanatory notes, the Authority noted that Chapter 62 applies only to garments made of woven textile fabrics. The explanatory notes clearly exclude from Chapter 62 any article that falls under headings 3926, 4015, etc.

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PVC RAINCOATS CLASSIFIED AS PLASTIC ARTICLES, NOT TEXTILE GARMENTS: GST @18% APPLIES.

(M/S DOLLAR INDUSTRIES LIMITED - AAR, WEST BENGAL)

The notes to Chapter 62 also lay out specific material-based sub-headings such as garments made of wool, cotton, man-made fibres, or other textile materials — all of which necessitate a woven base fabric.

In contrast, Chapter 39, specifically HSN 3926.20, includes “articles of apparel and clothing accessories made by sewing or sealing sheets of plastics,” explicitly listing items like raincoats. The Authority found that the PVC used by the appellant was a synthetic polymer formed by chemical bonding (not weaving), and the finished raincoat was manufactured by sealing sheets — a process falling squarely within the explanatory notes of Chapter 39.

Although the appellant relied on various judicial precedents, including the apex court’s interpretation of "textiles" and the principle of common parlance, the Authority found that these judgments were either not directly applicable or distinguishable based on the facts. For instance, the court in Porritts & Spencer emphasized woven fabrics as essential to qualify as textiles, whereas the appellant’s product was clearly non-woven.

The Authority also addressed the argument regarding the exclusion of “plastic raincoats” from certain entries by amendment and held that such deletion from one tariff heading does not ipso facto mean inclusion under another unless the technical classification supports it. Moreover, since PVC is a well-defined plastic polymer under HSN Chapter 39, raincoats made of PVC could not simultaneously be considered textile articles.

>>> RULING

The Appellate Authority upheld the ruling of the WBAAR dated 27.02.2025. It concluded that raincoats made from polyvinyl chloride (PVC) are not articles of textile, as PVC is a synthetic plastic polymer, and the product is created by sealing sheets rather than weaving. The classification of such raincoats, therefore, rightly falls under HSN Code 3926, specifically 3926.20, which pertains to plastic apparel and accessories.

Accordingly, the supply of PVC raincoats is liable to GST at the rate of 18% under Entry No. 111 of Schedule III of Notification No. 01/2017-Central Tax (Rate), dated 28.06.2017, read with the corresponding West Bengal Notification No. 1125-F.T.

ASSESSMENT ORDER SET ASIDE AS NOTICE WAS ONLY UPLOADED UNDER 'ADDITIONAL NOTICES' TAB.

(TVL. V.K.D. STORES VERSUS STATE TAX OFFICER/COMMERCIAL TAX OFFICER, NANDAMBAKKAM ASSESSMENT CIRCLE, CHENNAI - MADRAS HIGH COURT)

The writ petition was filed challenging the assessment order dated 12.04.2024 for the financial year 2018–19, passed under the Goods and Services Tax Act, 2017. The petitioner, a registered taxpayer, had filed returns and paid taxes for the relevant year. However, during scrutiny under Section 61 of the GST Act, a mismatch between GSTR-3B and GSTR-2A was noted. A show-cause notice in Form DRC-01 was issued on 29.12.2023, followed by a reminder and a scheduled personal hearing on 10.04.2024. The petitioner neither filed a reply nor attended the hearing. It was submitted that the petitioner was unaware of the proceedings as the notices and order were uploaded only on the GST portal under the "additional notices and orders" tab and not served physically or via RPAD. Citing the decision in M/s K. Balakrishnan, Balu Cables v. Assistant Commissioner of GST (W.P. No. 11924/2024), the petitioner requested that the matter be remanded back with a chance to submit objections. The respondent had no serious objection, and both parties consented to a remand. Consequently, the High Court set aside the impugned assessment order, directing the petitioner to deposit 25% of the disputed tax amount within four weeks. If any amount has already been paid or recovered, the same shall be adjusted. The assessing authority was directed to intimate the balance, if any, to be paid, and the petitioner was granted another three weeks for such balance payment. Upon compliance, any recovery actions such as bank attachment or garnishee proceedings would be lifted, and the original assessment order would be treated as a show-cause notice. The petitioner must file objections with supporting material within four weeks thereafter. If the 25% deposit or objections are not submitted within the stipulated periods, the original assessment order would stand restored. The petition was thus disposed of without costs, and all connected miscellaneous petitions were closed.

MANDATORY ISSUANCE OF SPEAKING ORDER UNDER SECTION 129(3) OF CGST ACT DESPITE VOLUNTARY PAYMENT.

(M/S ASP TRADERS VERSUS STATE OF UTTAR PRADESH - SUPREME COURT)

The present appeal was filed by a registered dealer of Red Arecanut from Karnataka, aggrieved by the judgment of the Allahabad High Court dated 18.07.2022 in Writ Tax No. 955 of 2022. The dispute arose when the appellant's consignment of Arecanut, comprising 255 bags weighing 17,850 kg and valued at over ₹51 lakhs, was being transported from Karnataka to Delhi and was intercepted at Jhansi, Uttar Pradesh. During transit, the goods were shifted to another vehicle, but 7 bags went missing. The Mobile Squad detained the vehicle and issued a notice under Section 129(3) of the CGST Act, 2017, pointing to discrepancies including the missing bags and raising doubt on the existence of the consignee, M/s. Diamond Trading Company, Delhi.

The appellant submitted a detailed reply denying all allegations, but due to urgent business requirements, paid the demanded tax and penalty of ₹7,20,440/- via Form GST DRC-03 on 27.01.2022 to secure the release of the goods, which was then done through Form GST MOV-05. No final adjudication order under Section 129(3) was issued thereafter. When the appellant followed up requesting such an order to avail the right to appeal, the department responded that since the penalty had been paid and no further objection remained, the proceedings were deemed concluded under Section 129(5), and hence no formal order was necessary.

The High Court upheld this view, stating that payment under DRC-03 led to closure of proceedings under the legislative scheme of Section 129(5) read with Rule 142(3), and therefore, no writ could be issued to compel further action. Aggrieved, the appellant approached the Supreme Court, arguing that the issuance of a reasoned order under Section 129(3) is mandatory once a notice is issued, and such an order is crucial to preserve the statutory right of appeal under Section 107. The appellant stressed that payment was made under protest and that CBIC's Circular No. 41/15/2018-GST mandates the issuance of a final order in Form GST MOV-09 and uploading of summary in Form GST DRC-07. It was argued that the deeming fiction under Section 129(5) does not override the officer's duty to adjudicate when objections have been filed.

In contrast, the department argued that the appellant voluntarily paid the tax and penalty, and no formal adjudication was necessary since the objections were orally withdrawn and proceedings stood concluded. They also relied on Rule 142(3) and the principle of literal interpretation of taxing statutes, citing the Supreme Court judgment in Dilip Kumar & Co.

The Supreme Court examined the relevant provisions of the CGST Act and the CGST Rules, especially Section 129 and Rule 142, and the binding CBIC circular. It held that once a notice under

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MANDATORY ISSUANCE OF SPEAKING ORDER UNDER SECTION 129(3) OF CGST ACT DESPITE VOLUNTARY PAYMENT.

(M/S ASP TRADERS VERSUS STATE OF UTTAR PRADESH - SUPREME COURT)

Section 129(3) is issued and objections are filed, the proper officer is duty-bound to pass a reasoned, speaking order regardless of whether payment is made, especially when payment is made under protest. The Court observed that treating such payment as voluntary merely because it was routed through DRC-03 (which lacks an option to record protest) would unjustly curtail a taxpayer's appellate rights and violate Article 265 of the Constitution.

Print e-Way Bill / Slip

e-Way Bill

e-Way Bill No:	5652 XXXX 6583
e-Way Bill Date:	07/09/2021 06:47 PM
Generated By:	18AAB CU960 3R1ZA, Ram Enterprises
Valid From:	07/09/2021 06:47 PM (3000kms)
Valid Until:	10/09/2021

Part - A

GSTIN of Supplier:	19DEFCZ1234G1Z7
Place of Dispatch:	Tamil Nadu
GSTIN of Recipient:	29HIJCJ5678K1Z9
Place of Delivery:	West Bengal
Document No:	83472
Document Date:	08/09/2021
Value of Goods:	₹5,85,546
Reason for Transportation:	Outward Supplier
Transporter:	Vaahan Logistics

Part - B

Mode	Vehicle No	From	Entered Date	Entered By
Road	TN 01 ZK 1234	Tamil Nadu	08/09/2021	18AAB CU960 3R1ZA, Ram Enterprises

The Court further clarified that waiver or abandonment of rights must be express or strongly implied, and cannot be assumed merely because a payment was made under commercial compulsion. The absence of a speaking order, despite pending objections, deprives the taxpayer of the right to challenge the levy through statutory appeal. Upholding principles of natural justice and fairness, the Court held that the High Court erred in dismissing the writ petition and overlooking the requirement for a final adjudicatory order.

Accordingly, the Supreme Court allowed the appeal, set aside the High Court's order, and directed Respondent No. 3 (the Mobile Squad Officer) to pass a final reasoned order under Section 129(3) in Form GST MOV-09 after granting an opportunity of hearing, and to upload a summary thereof in Form GST DRC-07 within one month. This would enable the appellant to exercise their legal remedies, including appeal, as provided under the CGST Act. The Court reiterated that due process must be followed even in summary proceedings under the GST regime.

GST EXEMPTION ON DREDGING SERVICES PROVIDED TO STATE GOVERNMENT FOR GANGA SAGAR MELA.

(M/S VENKATESHWARA HATCHERIES PRIVATE LIMITED - AAR, WEST BENGAL)

>>> FACTS OF THE CASE

The applicant, a registered service provider, was awarded a contract by the Irrigation & Waterways Directorate, Government of West Bengal, for carrying out dredging work using Cutter Suction Dredger (CSD) in various channels of the Muriganga River prior to the Ganga Sagar Mela 2025. The objective of the work was to ensure navigability and smooth ferry operation during the Mela by removing silt and ensuring minimum water levels throughout tidal fluctuations. The scope included not only dredging but also dumping the extracted material in designated areas through pipelines. The applicant filed an application before the West Bengal Authority for Advance Ruling (WBAAR) seeking clarity on whether this supply qualified as a "pure service" and hence eligible for GST exemption under Serial No. 3 of Notification No. 12/2017–Central Tax (Rate) dated 28.06.2017. The applicant argued that the services rendered relate to functions entrusted to Panchayats under Article 243G of the Constitution, particularly entries related to waterways and minor irrigation (Entries 5 and 13 of the Eleventh Schedule).

>>> FINDINGS OF THE CASE

The Authority examined the nature of services, constitutional provisions, and applicable notifications in detail. It observed that the dredging activity qualifies as a "pure service" since it involved no supply of goods or works contract component. It was also established that the service was rendered to a department of the State Government. Further, the dredging was undertaken to ensure river navigability, especially for ferry services during Ganga Sagar Mela, which falls squarely under Entry 13 of the Eleventh Schedule to Article 243G — covering "roads, culverts, bridges, ferries, waterways and other means of communication". Thus, the second and third conditions of the notification (service to government and function entrusted to Panchayat) were also satisfied. The Authority also clarified that the applicant had erroneously referred to Notification No. 9/2017–Integrated Tax (Rate), which pertains to inter-State supply, while the correct notification was No. 12/2017–Central Tax (Rate) applicable to intra-State transactions. No tangible supply of goods or material involvement was noted in the contract; therefore, it remained a pure service falling under SAC 9986/9987.

>>> RULING

The West Bengal Authority for Advance Ruling concluded that all three necessary conditions under Serial No. 3 of Notification No. 12/2017–Central Tax (Rate) dated 28.06.2017 were met.

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GST EXEMPTION ON DREDGING SERVICES PROVIDED TO STATE GOVERNMENT FOR GANGA SAGAR MELA.

(M/S VENKATESHWARA HATCHERIES PRIVATE LIMITED - AAR, WEST BENGAL)

Accordingly, the dredging and desilting service provided by the applicant to the Irrigation and Waterways Directorate, Government of West Bengal, qualifies as a "pure service" in relation to a function entrusted to a Panchayat under Article 243G of the Constitution. Hence, such supply is exempt from GST. **The applicable GST rate on the said supply is therefore NIL.**

REFUND CANNOT BE DENIED FOR PRE-18.07.2022 PERIOD MERELY DUE TO POST NOTIFICATION FILING.

(M/S. KUSH PROTEINS PVT. LTD. & ANR. VERSUS UNION OF INDIA - GUJARAT HIGH COURT)

The Gujarat High Court, in this writ petition filed under Article 226 of the Constitution, examined the legality of two impugned orders dated 31.03.2023 and 29.02.2024 passed by the Assistant Commissioner and the appellate authority respectively, rejecting the refund claims of the petitioner under Section 54 of the CGST Act, 2017. The petitioner, engaged in the manufacturing and trading of edible oils and allied products falling under Chapter 15 of the Customs Tariff, had consistently accumulated Input Tax Credit (ITC) due to an inverted duty structure, as the input tax on raw materials was higher than the output tax on final products. Relying on Section 54(3) and Notification No. 5/2017 dated 28.06.2017, the petitioner contended that refund was admissible for periods prior to 18.07.2022, as their goods were not covered under the restriction list until Notification No. 9/2022 was issued, which was made effective only from 18.07.2022.

The refund applications, though filed on 23.01.2023, pertained to periods prior to 18.07.2022 and were filed well within the statutory time limit of two years prescribed under Section 54(1). However, the adjudicating authority rejected the claims ex parte via order dated 31.03.2023, citing Circular No. 181/13/2022 dated 10.11.2022, which stated that refund applications filed after 18.07.2022 were not eligible for refund even if the claim period was earlier. The appellate authority upheld this reasoning. The petitioner argued that this interpretation was ultra vires, discriminatory, and contrary to the plain language of Notification No. 9/2022, which was explicitly prospective in effect. The Court noted that the issue was squarely covered by its earlier decision in Patanjali Foods Ltd. v. Union of India, where it held that refund claims for prior periods could not be denied merely because the applications were filed after the notification date, so long as they were filed within the two-year limitation under Section 54(1). The Court also referred to Ascent Meditech and found that creating a class of assessees based on filing date, despite identical refund periods and statutory compliance, was arbitrary, violative of Article 14 of the Constitution, and beyond the scope of the parent legislation.

The Court observed that once a refund application has been adjudicated in favour of the taxpayer and refund sanctioned, and no appeal or revision was filed against the same, the department could not later seek to nullify the refund by issuing a show cause notice and passing a contradictory order under Section 73. It concluded that both the initial refund rejection order and the appellate order were contrary to settled law and deserved to be quashed. Accordingly, the Court allowed the writ petition, struck down the impugned orders dated 31.03.2023 and 29.02.2024, and declared the circular-based denial as illegal and without jurisdiction.

SECTION 128A WAIVER CANNOT BE DENIED FOR SYSTEM ERROR IN TAX LEDGER.

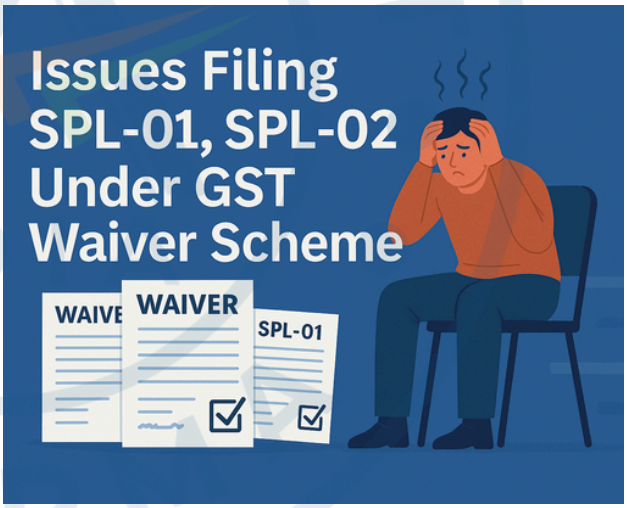
(SAMITA PANDA VERSUS THE COMMISSIONER OF CT & GST - ORISSA HIGH COURT)

The petitioner challenged two orders dated 09.06.2025 and 10.06.2025 passed by the State Tax Officer, Jajpur Circle, rejecting their application under Section 128A and rectification petition under Section 161 of the Odisha and Central GST Acts. The petitioner had been assessed under Section 73 for the period July 2017 to March 2018, where a total demand of ₹3,97,356 was raised towards tax, interest, and penalty. However, due to an error in the GST portal system, the tax component was erroneously reflected as "zero" in the Electronic Liability Ledger. Relying on this, the petitioner filed an application in Form GST SPL-01 seeking waiver of interest and penalty under Section 128A, which was rejected on the ground that the petitioner had not paid the basic tax, a mandatory requirement for availing the waiver.

The petitioner also filed a rectification application under Section 161, arguing that the system error was departmental in nature and that they should not be penalized for a tax liability that was not reflected online, even though the assessment order clearly indicated the tax amount. The tax officer admitted the system error in a show cause notice but still rejected the waiver application and rectification petition.

The Court, after hearing both sides, noted that the assessment order had indeed raised a clear demand including tax, which the petitioner acknowledged during the hearing. The petitioner also expressed willingness to now deposit the tax component. Given this, the Court held that the rejection of the application under Section 128A on the basis of non-payment of tax, when the petitioner was not at fault for the system error, was not justified.

Accordingly, the Court set aside both impugned orders and directed the petitioner to deposit the tax amount within one week. Upon such deposit, the GST officer was instructed to reconsider the waiver application afresh on merits. If the petitioner failed to deposit the tax within the stipulated time, the earlier rejection orders would remain valid, and the authorities could proceed as per law.



WRIT PETITION DISMISSED IN FAKE ITC CASE.

(UTKARSH ARORA PROP OF M/S AURA INTERIOR HARDWARE V/S ADDITIONAL COMMISSIONER CGST, DELHI NORTH WARD 20 - ZONE 2, NEW DELHI AND ANR. - DELHI HIGH COURT)

In the present case, the petitioner, Utkarsh Arora, proprietor of M/s Aura Interior Hardware, challenged an Order-in-Original dated 27.01.2025, which raised a demand of ₹1,14,114 along with penalty for alleged fraudulent availment and passing of Input Tax Credit (ITC) based on non-existent transactions. The impugned order, dispatched on 01.02.2025, arose out of a broader investigation initiated by the CGST Department against 23 fake supplier firms, orchestrated by one Mr. Vijay Prakash Sharma and his associates, who operated a network of bogus entities issuing goods-less invoices to pass on ineligible ITC. The petitioner's firm appeared at serial no. 174 in the impugned order among the 291 noticees.

The petitioner contended before the High Court that he had not received a show cause notice or been granted an opportunity for a personal hearing. However, the Court, on perusal of the order, found that multiple dates for personal hearing were granted, and the petitioner had failed to appear. Consequently, the adjudication was done ex parte. The petitioner also claimed that the order pertained only to FY 2017–18, whereas the impugned order clearly covered the period from 2017 to 2023.

The Court, relying on its earlier decision in Mukesh Kumar Garg v. Union of India, emphasized that writ jurisdiction should not be exercised in cases involving fraudulent ITC claims due to the serious implications on the GST framework. The High Court observed that fraudulent use of ITC distorts the system and leads to significant revenue losses. The impugned order was detailed, based on substantial records, and the petitioner's claim that it was passed beyond the limitation period was rejected as the order was passed and dispatched within the permissible timeframe.

Further, the Court noted that the petitioner had failed to file a statutory appeal within time and only approached the Court belatedly under Article 226. Given the factual complexity, the Court declined to invoke writ jurisdiction and dismissed the petition. However, as a measure of procedural fairness, it permitted the petitioner to file an appeal within one month from the date of order along with the required pre-deposit, and directed that such appeal, if filed within time, shall be heard on merits and not dismissed on grounds of limitation.

ITC TRANSFER CANNOT BE DENIED IN INTER-STATE AMALGAMATION MERELY DUE TO GSTN PORTAL LIMITATION.

(UMICORE AUTOCAT INDIA PRIVATE LIMITED VERSUS UNION OF INDIA - BOMBAY HIGH COURT)

The writ petition filed by Umicore Autocat India Private Limited arose out of a genuine merger scenario where the petitioner company, registered in Maharashtra, had been amalgamated with Umicore Anandeya India Private Limited, a transferor entity registered in Goa, pursuant to a scheme approved by the National Company Law Tribunal (NCLT), Mumbai Bench, on 26.05.2020 under Sections 230–232 of the Companies Act, 2013. The appointed date for the merger was 01.04.2019, and as part of the merger, all assets and liabilities—including unutilized Input Tax Credit (ITC)—stood transferred to the petitioner company. The transferor company, which had ceased operations, had closing ITC balances in its electronic credit ledger, comprising IGST of ₹3,69,586, CGST of ₹3,52,84,105, and SGST of ₹1,39,285.

In line with the procedure prescribed under Rule 41 of the CGST Rules, 2017, the transferor company attempted to file Form GST ITC-02 to transfer this credit to the petitioner company. However, the GST portal displayed a system-generated error: "Transferee and Transferor should be of the same State/UT." Despite raising support tickets and making representations to the State Tax Officer, the issue remained unresolved. The petitioner withdrew an earlier writ filed in the Bombay High Court and re-approached the High Court in Goa, seeking judicial intervention to allow the transfer of ITC, stating that neither Section 18(3) of the CGST Act nor Rule 41 of the CGST Rules imposes any restriction based on State boundaries.

The petitioner argued that the statutory framework under GST explicitly permits transfer of unutilized ITC in cases of sale, merger, demerger, or amalgamation, provided there is a specific clause for transfer of liabilities. It was further contended that GST is a destination-based, credit-driven tax system introduced through the 101st Constitutional Amendment, with the core objective of eliminating cascading taxes and facilitating seamless flow of credit. Articles 269A and 279A, and provisions of the CGST and IGST Acts, were cited to show the integrated nature of GST, where taxes are apportioned between Centre and States based on consumption, not origin.

In opposition, the learned Advocate General representing the State of Goa, as well as counsel for the Revenue, argued that the GST law treats every registration in a State as a "distinct person" as per Section 25(4) of the CGST Act, 2017. They relied on Circular No. 133/03/2020-GST and emphasized that the system architecture of GSTN restricts ITC-02 filing to intra-State entities only. The Revenue also feared revenue loss to the State of Goa if SGST credits were allowed to be used in Maharashtra. Additionally, they placed reliance on the MMD Heavy Machinery case decided by the Madras

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High Court to justify non-transfer of credit in such cross-State situations.

The Court, however, rejected these arguments. It found no express restriction in Section 18(3) or Rule 41 that would prohibit the transfer of ITC across States in genuine cases of amalgamation. It emphasized that statutory benefits cannot be denied merely because of technical system limitations. The Court carefully distinguished the MMD Heavy Machinery case, noting that it related to CENVAT Credit under the earlier regime, involved a shutdown factory, and lacked a sanctioned merger; hence, it was not applicable in the present scenario.

The Court further examined the statutory scheme of GST in detail, including Sections 2(62), 16, 18, and 25 of the CGST Act, and emphasized that the GST framework intends seamless credit availability to registered persons for furtherance of business. It held that once a merger has been approved by the NCLT, and liabilities have been transferred, the transferee is legally entitled to receive the corresponding unutilized ITC. The Court acknowledged that while SGST is a State revenue, and its cross-State utilization may impact a State's share, the petitioner had voluntarily given up the claim to SGST (₹1,39,285), and only sought CGST and IGST transfer—both components under the Centre's purview.

It was held that the denial of transfer based solely on a system-generated error message undermines the legislative intent behind the ITC provisions. The Court thus directed that CGST (₹3,52,84,105) and IGST (₹3,69,586) credits be transferred to the petitioner by physical adjustment for the time being, and called upon the GST Council and GSTN to create a technical mechanism to enable such cross-State transfers in the future.

In conclusion, the writ petition was made absolute, with directions to effect the ITC transfer within six weeks. The judgment affirmed the principle that procedural or technical limitations, such as system design, cannot override substantive statutory rights, especially in genuine cases of business restructuring approved by statutory authorities like NCLT. The decision thus has far-reaching implications for ensuring seamless credit flow in inter-State mergers under the GST regime.

ITC ALLOWED ON ROOFTOP SOLAR POWER PLANT AS CAPITAL GOODS/INPUT SERVICES, SUBJECT TO SECTION 16 COMPLIANCE.

(M/S. RAYMOND LIMITED - REALTY DIVISION. - AAR, MAHARASHTRA)

>>> FACTS OF THE CASE

Grand Centre Mall, a registered partnership firm, is engaged in providing taxable services such as renting of immovable property and common area maintenance (CAM), which includes air-conditioning, lighting, CCTV surveillance, security, lift/escalator operation, UPS, and other infrastructure services. These are billed monthly to tenants under SAC codes 997212, 998599, and 998366 at 18% GST. To support these services, the firm installed a 500 KW rooftop solar power plant over the mall's roof and parking area. The electricity generated is exclusively used for powering the mall's common facilities and not supplied or billed to tenants. Instead, tenants are billed separately by the Kerala State Electricity Board (KSEB) for their individual energy consumption. The solar-generated electricity is consumed only by the mall for operational support of taxable CAM services. The applicant sought an advance ruling to determine whether the GST paid on the procurement and installation of this solar plant is eligible for Input Tax Credit (ITC) under Sections 16 and 17 of the CGST Act, 2017.

>>> FINDINGS OF THE CASE

The Authority for Advance Ruling examined the eligibility of ITC under Sections 16 and 17 of the CGST Act. It was observed that the solar power plant was installed solely for use in the course or furtherance of business, specifically to provide taxable outward supplies in the form of CAM services. The plant, comprising solar panels, inverters, and consumables, was bolted to structural supports without involving civil construction and was capitalized in the books of accounts (excluding GST). Therefore, it met the criteria of "plant and machinery" under the Explanation to Section 17(6) and "capital goods" under Section 2(19) of the Act. The installation did not fall within the categories of blocked credit under Sections 17(5)(c) or (d), since it neither involved construction of immovable property nor works contract services for such property. Further, as the electricity was used internally for CAM services and not supplied to tenants, there was no exempt supply involved, thereby making Section 17(2) (which deals with proportionate ITC reversal for exempt supplies) inapplicable. Past rulings such as Unique Welding Products Pvt. Ltd. and KLF Nirmal Industries Pvt. Ltd. were cited in support of the applicant's position.

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>>> RULING

Based on the comprehensive examination of the facts, legal provisions, and the nature of the solar power installation, the Authority for Advance Ruling concluded that Grand Centre Mall is eligible to claim full Input Tax Credit (ITC) on the procurement, installation, and commissioning of the 500 KW rooftop solar power plant under the provisions of Sections 16 and 17 of the CGST Act, 2017. The Authority held that the solar power plant is used exclusively in the course or furtherance of business, specifically for providing taxable Common Area Maintenance (CAM) services, which include lighting, air-conditioning, CCTV surveillance, UPS support, and escalator operations—all forming part of the outward taxable supplies rendered by the applicant to its licensees.

The plant was found to be securely fixed to the rooftop and parking area through bolting and anchoring techniques, without reliance on any civil construction, thereby meeting the statutory definition of "plant and machinery" as per the Explanation to Section 17(6). Since the solar power plant was capitalized in the applicant's books of accounts (excluding the GST component), it also qualified as "capital goods" under Section 2(19) of the Act. Furthermore, the Authority clarified that the installation does not attract the restrictions under Section 17(5)(c) or 17(5)(d), which block ITC for construction of immovable property or for works contract services related thereto. This is because the solar plant is not classified as an immovable structure and does not involve any works contract activity related to construction.

Additionally, the Authority considered the relevance of Section 17(2) of the CGST Act, which mandates reversal of ITC where goods or services are used for both taxable and exempt supplies. It was explicitly found that the electricity generated by the solar plant is not sold or supplied separately to tenants but is entirely used by the applicant in-house for maintaining common facilities that form part of taxable CAM services. Hence, no exempt supply arises, and the provisions requiring proportionate reversal of credit do not apply.

In arriving at this ruling, the Authority relied on analogous advance rulings such as M/s. Unique Welding Products Pvt. Ltd. and M/s. KLF Nirmal Industries Pvt. Ltd., which upheld the eligibility of ITC on rooftop solar installations not classified as immovable property and used for business operations.

Accordingly, the Authority ruled that the applicant is fully entitled to claim ITC on the rooftop solar power plant as input or capital goods or input services, subject to compliance with the other general conditions prescribed under Section 16 of the CGST Act, 2017. The installation is deemed to be legally compliant and functionally integrated with the business, and therefore qualifies for full input tax credit under GST law.

MORE INFORMATION ABOUT US

The GST Insider: Stay Informed, Stay Compliant

As we conclude this edition of **The GST Insider**, we hope the insights and updates have provided valuable knowledge to our readers. Our commitment remains steadfast in delivering timely, accurate, and relevant information to help you navigate the complexities of the GST landscape. We have explored significant developments and shared expert opinions to help you stay compliant and maximize benefits.

We are grateful for your continued support and engagement. Your feedback and suggestions are invaluable as we strive to make "The GST Insider" a trusted resource for all your GST-related needs.

Until the next issue, stay informed, stay compliant, and keep thriving in your business endeavors.

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