

GST ALERT AUGUST, 2025

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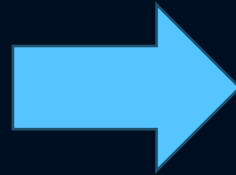


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BELATED REPLY TO SCN

The Calcutta High Court in the case of *Nanda Kishor Saha Vs. The Union of India & Ors./TS-676-HC(CAL)-2025-GST* set aside the Order passed without considering the reply filed by the Petitioner and remanded the proceedings.



The Court held that the reply filed by the Petitioner prior to the disposal of the proceedings, although beyond the time provided for reply in the Show Cause Notice, ought to have been considered by the Respondent.

GSTAT-ANTI PROFITEERING

- Section 171 of the CGST Act, 2017 which contains provisions in relation anti-profiteering was amended vide the FA(No.2), 2024 to bestow powers on the GST Appellate Tribunal (GSTAT) to hear anti-profiteering matters.
- Notification was issued empowering the Principal Bench of GSTAT to adjudicate Section 171 matters.
- The GSTAT, Principal Bench, New Delhi in the case of ***DGAP Vs Urban Essence (Subway Franchisee) [TS-703-GSTAT(DEL)-2025-GST]*** found the restaurant to have profiteered and Ordered that the profiteered sum along with Interest be deposited to the consumer welfare fund created by Centre and State of Maharashtra.
- The issue pertains to reduction of GST rate from 18% to 5% on restaurant services and the allegation was that the benefit was not passed on.
- In the absence of sufficient evidence to indicate an increase in the prices of the products due to other factors, the Tribunal concluded that the restaurant had indeed profiteered by failing to pass on the benefit of reduction of GST rates to the consumers, who actually bear the burden of the tax.

NO GST ON CERC/DERC LICENSE FEE

- License fee was paid to Central Electricity Regulatory Commission.
- GST Authorities were of the view that it is a supply of service and liable to GST.
- Delhi High Court in the case of ***Central Electricity Regulatory Commission vs Union of India & Ors [TS-11-HC(DEL)-2025-GST]*** held that the amounts were not taxable as it was in discharge of statutory functions.

On appeal by the Revenue, the Supreme Court in the case of ***Additional Director Directorate General Of GST Intelligence (DGGI) & Anr Vs Central Electricity Regulatory Commission [TS-649-SC-2025-GST]*** held that

- The SCNs have been rightly quashed by the High Court
- Regulating Tariff and issue of licenses is discharge of statutory obligations and does not fall under 'business' to constitute a taxable supply.
- There is no distinction between regulatory and adjudicatory functions in the Electricity Act, 2003.
- CERC is a Tribunal and falls under Schedule III of the CGST Act.
- No GST on Tariff and License Fee collected by CERC.

OVERLAP OF SECTION 73 AND SECTION 74

- Show Cause was issued under Section 74 for certain issues and orders passed.
- Subsequently for the same period, SCN was issued under Section 73 for some issues and few issues overlapped with those under Section 74.
- Writ Petition was filed and it was contended that once SCN was issued under Section 74, there cannot be an SCN under Section 73 for the same period.
- The Calcutta High Court in the case of **Sayan Biswas vs. Deputy Commissioner of Revenue [TS-675-HC(CAL)-2025-GST]** held that
 - Show Cause under Section 73 and Section 74 are issued on distinct and different basis.
 - Revenue cannot be faulted for issuing two notices for the same period as the basis was different.
 - Relief granted to the assessee whereby overlapping demands based on issues decided in the previous proceedings under Section 74 were quashed.

MISMATCH – 3B vs. 2A – CA CERTIFICATE

Circular No.183/15/2022-GST dated 27.12.2022 provides for a CA Certificate where there is mismatch between GSTR-2A and GSTR-3B under certain circumstances.

Recipient had a mismatch scenario and filed a detailed reply explaining its inability to obtain a declaration from the supplier since the supplier was liquidated. Recipient produced a CA certificate from their end.

The Madras High Court in the case of *JIT Auto Comp Vs Assistant Commissioner [TS-628-HC(MAD)-2025-GST]* held that the assessing officer should have considered the Certificate of the recipient CA since the supplier stands liquidated and remanded the matter.

MERGER - TRANSFER OF ITC

- Section 18(3) of the CGST Act provides for transfer of ITC on account of merger / demerger, etc.
- Rule 41 contemplates Form ITC-02.
- There were practical challenges with the portal not permitting transfer of ITC when the transferee company was located in another State.
- The Bombay High Court in the case of *Umicore Autocat India Private Limited Vs UOI & ors [TS-639-HC(BOM)-2025-GST]* considered a case of rejection of transfer of ITC between two amalgamating companies by the GST portal, where the transferor company was located in Goa and the transferee company was located in Maharashtra. The GST Portal also displayed a error message that “Transferee and Transferor should be of the same State/UT”.
- The Department contended that ITC earned in one State should be utilized only in that State and cannot be transferred.
- The High Court held that no such restriction on transfer of un-utilised ITC between amalgamating companies situated in two different states could be gathered from Section 18(3) of the CGST Act,2017 and Rule 41 of the CGST Rules,2017 and permitted the transfer of ITC.
- The Court also suggested that the GST Council and the GSTN Network provide a mechanism to deal with such contingencies, when the ITC is sought to be transferred from one State to another or from one State to any Union Territory by updating its network to deal with such a situation.

ONE SCN COVERING MULTIPLE FINANCIAL YEARS

- The Madras High Court in the case of *R A and Co Vs The Additional Commissioner of Central Taxes, South Commissionerate [TS-644-HC(MAD)-2025-GST]* set aside the composite Order covering multiple financial years and held that :

“any period”, for the purpose of issuance of show cause notice, includes, “monthly tax period” or “yearly tax period” and the GST Act will not permit for issuance of show cause notice beyond such period and thus, no show cause notice could be issued for the period of more than one financial year.

Issue of composite SCN raising tax demands covering multiple financial years without separate adjudication per year frustrates the scheme of limitation and prevents the Assesseees from giving year-specific rebuttals, which results in jurisdictional overreach rendering such Orders *void ab initio*.

ONE SCN COVERING MULTIPLE FINANCIAL YEARS

- The Kerala High Court in the case of **Lakshmi Mobiles** and the Karnataka High Court in the case of **Bangalore Golf Club** have held that there cannot be one show cause notice covering multiple financial year
- The Delhi High Court in the case of **Ambika Traders vs. Additional Commissioner, Adjudication, DGGSTI [TS-683-HC(DEL)-2025-GST]** held that in matters involving allegations of wrongfully availed ITC, the SCN can relate to 'a period' and need not to be for a specific financial year.

Author's comments

With due respect, the view of the Madras, Kerala and Karnataka High Courts appear to be an appropriate interpretation of the law for the following reasons:

- *FA (No.2) 2024 has introduced a new mechanism of SCN under Section 74A pertaining to **Financial Year 2024-25 onwards**.*
- *Section 73(12) has been inserted to provide that Section 73 would be applicable for determination of tax pertaining to the period **upto FY 2023-2024**. Similar amendments to Section 74(12).*
- *Minutes of 53rd GST Council indicate intention to implement Section 74A from Financial Year 2024-25 onwards.*
- *Design and intention clearly refers to financial year.*
- *Section 10 deals with turnover in a preceding financial year.*
- *Section 44 read with Rule 80 contemplates GSTR 9C reconciling value of supplies in a return for a financial year with the audited financial statement for every financial year.*

SECONDMENT

The Karnataka High Court in the case of ***Alstom Transport India Ltd. vs. Commissioner of Commercial Taxes & Ors. [TS-647-HC(KAR)-2025-GST]*** set aside the Orders demanding IGST on RCM basis on secondment of Employees by the Petitioner's Overseas group entity.

The Court found factors like full integration of the employees into organizational framework of the petitioner and the salaries and statutory employment benefits under Indian labour laws being paid by the Petitioner to be indicative of a genuine employer-employee relationship and thereby excluded from IGST by Entry 1 of Schedule III to the CGST Act, 2017.

The Court also held that the Valuation mechanism provided vide second proviso to Rule 28 (1) of CGST Rules, 2017 and Circular No.210/4/2024-GST dated 26.06.2024 shall be applicable and the value of supply shall be NIL and shall be deemed to be the open market value when full ITC is available to the recipient and no invoice is raised.

MOBILE TOWERS-MOVABLE PROPERTY

The Supreme Court in the case of Commissioner, CGST Appeal-1 Vs M/s Bharti Airtel Ltd SLP (Civil) Diary No. 35416/2025 dismissed the SLP filed by the Department against the decision of the Delhi High Court in the case of *M/s Bharti Airtel Ltd Commissioner, CGST Appeal-1 [2024] 169 taxmann.com 390 (Delhi)*.



The Delhi High Court had held that telecommunication towers would constitute movable property and also be eligible for ITC under GST as they did not qualify the test of permanency as they were not 'attached to earth', could be dismantled and moved and were never erected with an intent of conferring permanency and their placement on concrete bases was only to protect against vagaries of nature.

PAYMENT IN INSTALLMENTS

- The Assessee was willing to pay the GST dues but were unable to pay owing to the huge business losses incurred during the period of the Assessee's ill health and was before the Court seeking time to make payment of GST dues.
- Section 80 of the CGST Act, 2017 permits the payment of GST liability in monthly installments along with interest on application by the Assessee.
- The Allahabad High Court in the case of *Surendra Prasad Jaiswal Vs Union of India (2025) 33 Centax 53 (All.)* directed the Assessee to submit an application to the Commissioner under Section 80 of the CGST Act, 2017 to pay the GST dues in installments.

PARALLEL PROCEEDINGS

- The Supreme Court in the case of *Armour Security (India) Ltd. Vs. Commissioner, CGST* has interpreted the scope and ambit of Section 6(2)(b) of the Central and State GST Acts and held that
 - Section 6(2)(b) bars initiation of any proceedings on the same subject matter.
 - Action arising from audit or detailed scrutiny of returns must be initiated by the tax administration to which the tax payer is assigned.
 - Intelligence based enforcement action can be initiated by any one of the Central or State tax administration even though the tax payer may have been assigned to the other administration.
 - Parallel proceedings should not be initiated by other tax administration when one of the tax administration has already initiated intelligence based enforcement action.
 - Action initiated as a measure for probing an inquiry or gathering of evidence or information do not constitute 'proceedings' within the meaning of Section 6(2)(b).



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