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VENUE: IMS ENGINEERING COLLEGE, N.H. 24,
NEAR VEDANTA FARM HOUSE, DASNA ROAD, GHAZIABAD.

Advocate Anuj Bansal
Chairman (North Zone)
AIFTP

E-1001, Bestech Park, View Spa,
Sector-47, Gurgaon-122018,
Haryana

anujbansal@vpgco.com
9811565365

Analysis of the Limitation Period prescribed under Section 107 of the CGST Act, vis-à-vis applicability of Section 5 of the Limitation Act, 1963

In the present Article a legal analysis of GST limitation period is made which reveals a complex judicial debate regarding the applicability of Section 5 of the Limitation Act to Section 107 of the CGST Act. Multiple High Courts have conflicting interpretations about whether delays beyond the prescribed four-months' period can be condoned. Currently, most courts restrict extensions, emphasizing strict adherence to statutory timelines. However, the matter is pending with the Hon'ble Supreme Court of India which will ultimately resolve this legal uncertainty, with significant implications for tax dispute resolution.

A. Introduction:

There has been lot of controversy in respect to applicability of Section 5 of the Limitation Act, 1963 in context to limitation period provided under Section 107 of the CGST Act. The limitation period for filing appeals has sparked significant legal debate, particularly, referring to Section 5 of the Limitation Act, 1963, whether delays beyond the prescribed period can be condoned. In the present, article an attempt has been made to provide a detailed analysis of the limitation period under Section 107, the applicability of Section 5, judicial interpretations and the current legal position as on date.

B. Section 107 of the CGST Act:

Section 107 of the CGST Act governs appeals to the Appellate Authority. Key provisions include:

Section 107(1): Any person aggrieved by a decision or order under the CGST Act, may file an appeal within **three months** from the date of communication of the order.

Section 107(4): The Appellate Authority may condone a delay upto **one month,** if sufficient cause is demonstrated by the Appellant for the delay.

Accordingly, the four months limit is provided under the statue to file an Appeal. The strict timeline provided under the statute reflects the legislative intent to maintain certainty in tax administration.

C. Section 5 and Section 29 of the Limitation Act:

Section 5 of the Limitation Act states that an appeal or application may be admitted after a prescribed period, if the Appellant satisfies the court that he had sufficient cause for not preferring the appeal within specified period. Further, as per Section 29(2) of the Limitation Act, Section 5 would be applicable to the statutes, where such section is not expressly excluded in such statute.

Therefore, as per above provisions, the courts may admit appeals filed after the prescribed period, if the appellant shows sufficient cause for the delay. In the context of GST Laws, Section 5 of the Limitation Act is not expressly excluded and therefore, on the plain reading of the provisions, in case the appeal is delayed beyond the time prescribed u/s. 107 of the CGST Act, Section 5 of the Limitation Act can be invoked and delay can be condoned.

D. The Controversy:

The applicability of Section 5 of Limitation Act, in the context to Section 107 of CGST Act, has led to conflicting judicial interpretations, creating uncertainty among taxpayers and legal practitioners. Therefore, the controversy is whether Section 107 is a self-contained code that excludes the Limitation Act.

E. Arguments supporting Application of Section 5 of the Limitation Act:

No Express Exclusion: The CGST Act does not explicitly exclude the application of the Limitation Act. Section 29(2) of the Limitation Act, states that its provisions,

including Section 5, apply to special laws unless expressly excluded.

Access to Justice: Considering condonation of delay in the matters, ensures that genuine cases are not dismissed on technical grounds and justice is delivered. There could be legitimate obstacles, such as medical emergencies or procedural delays, which justify extension of the limitation period.

Judicial Precedents: Courts have applied Section 5 to other special laws without express exclusions, supporting a liberal interpretation to promote fairness.

F. Arguments against Application of Section 5 of the Limitation Act:

Legislative Intent: Section 107 of the CGST Act is a specific provision for a one-month extension indicates that the legislature intended to limit the filing of appeal upto four months, excluding further extensions.

Nature of Tax Laws: Tax statutes require strict timelines to ensure certainty and efficiency in revenue collection. Allowing indefinite extensions could disrupt fiscal administration.

G. Judicial Precedents:

High Courts across India have issued divergent rulings, reflecting the complexity of the issue.

Hon'ble Calcutta High Court:

The Hon'ble Calcutta High Court has consistently held that Section 5 of the Limitation Act applies to Section 107 of CGST Act, allowing delays beyond four months to be condoned if sufficient cause is shown.

In the decision of **S.K. Chakraborty & Sons Versus Union of India & Ors. - 2023 (12) TMI 290 – Calcutta,** wherein the issue came up before the Hon'ble High Court that whether Section 5 read with Section 29(2) of the Limitation Act can be invoked in case of delay in filing an appeal under GST Laws. In respect to the above, the Hon'ble High Court held that since Section 5 of the Limitation Act has not been expressly or impliedly excluded from Section 107 of the CGST Act, Section 5 of the Limitation Act stands attracted. The relevant extract of the above decision reads as follows:

> *"20. Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29 (2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filling the appeal can be extended by the Appellate Authority."*

Therefore, the Hon'ble High Court held that Section 5 of the Limitation Act may be invoked for condoning the delay in filing appeal under GST Laws.

However, the above decision of the Hon'ble High Court has been challenged by the department before the Hon'ble Supreme Court in the case of **Joint Commissioner v. S.K. Chakraborty and Sons [2025] 171 taxmann.com 414 (SC),** wherein, in an interim order, the Hon'ble Supreme Court stayed the operations of the order passed by the High Court. Therefore, the matter is presently sub-judice before the Hon'ble Supreme Court.

We may also state that there are numerous other decisions, wherein it has been held that Section 5 of the Limitation Act can be invoked by the Appellate Authorities and delay can be condoned and the appeal may be admitted beyond the statutory limits prescribed under the law. In respect to the same, following are the decisions, which can be relied upon:

i. Green Filed Agrotech v. State of West Bengal [(2025) 172 taxmann.com 18 (Calcutta)]
ii. Kamala Stores v. State of West Bengal [(2025) 171 taxmann.com 514 (Calcutta)]
iii. Eastern Impex Corporation v. Deputy Commissioner, State Tax [2025) 171 taxmann.com 234 (Calcutta)]
iv. Ashoka India Corporation v. Assistant Commissioner of Revenue, State Tax, GST [(2025) 170 taxmann.com 835 (Calcutta)
v. Anand Kumar Hirawat v. Senior Joint Commissioner of Commercial Taxes & WBGST, Burrabazar [2024) 169 taxmann.com 480 (Calcutta)
vi. Abdul Aziz Sarkar v. Assistant Commissioner of Revenue [2025) 177

taxmann.com 488 (Calcutta)]

vii. Ram Kumar Sinhal v. State of West Bengal [2025) 177 taxmann.com 48 (Calcutta)]

viii. Poddar Car World (P.) Ltd. v. Superintendent of Cost and Central Excise [2025) 174 taxmann.com 92 (Calcutta)]

H. Other Judicial Precedents, wherein it has been held that Section 5 of the Limitation Act cannot be made applicable to CGST Act:

There are several High Courts, where the opposite view is taken, holding that Section 5 of the Limitation Act cannot be invoked in case of GST Laws. In respect to the same, reference can be made to the following decisions:

i. Harsh Deepk Shah v. Union of India [(2026) 182 taxmann.com 185 (Gujarat)]

ii. Tapi Ready Plast v. State of Gujarat [2025) 181 taxmann.com 324 (Gujarat)]

iii. Map Overseas v. Union of India [(2025)177 taxmann.com 859 (Bombay)]

iv. Malhotra Agro Industries v. Deputy Commissioner, State Goods and Service Tax [2025) 176 taxmann.com 427 (Rajasthan)]

v. Addichem Speciallity LLP v. Special Commissioner I, Department of Trade and Taxes [(2025) 171 taxmann.com 315 (Delhi)]

vi. M/s Yadav Scrap Traders Having Office at Pala v. Additional Commissioner and Another [(2024) 2 TMI 1359 – Allahabad High Court]

vii. Parth Enterprises v. Joint Commissioner (Appeals) Office of Commissioner (Appeals) [2025) 172 taxmann.com 172 (Madhya Pradesh)]

In the above decisions, following legal interpretation has been made by the Hon'ble High Courts:

i. There is no provision under the CGST Act to condone the delay beyond the period of one-month prescribed u/s. 107 of the CGST Act.

ii. Limitation Act cannot be invoked under GST Laws and therefore, delay cannot be condoned beyond the period of one-month prescribed u/s. 107 of the CGST Act.

iii. The High Court cannot exercise its jurisdiction under Article 226 of the Constitution of India to condone the delay, as High Court cannot disregard the statutory provisions, which limits the filing of an appeal within four months.

iv. The limitation provided under Section 107 of the CGST Act, implicitly excludes the application of the general limitation provisions i.e. Section 5 of the Limitation Act.

I. Current Legal Position:

On the basis of above, it may be observed that the Hon'ble High Courts of Allahabad, Delhi, Bombay, Madhya Pradesh, Rajasthan and Gujarat held that Section 5 of the Limitation Act does not apply to Section 107 of the CGST Act, which means that appeals must be filed within the four-months period and the delay beyond four-months are unlikely to be condoned. Contrarily, the Calcutta High Court has consistently held that Section 5 of the Limitation Act can be invoked even in case of delay in filing appeals under GST. However, presently, the matter is sub-judice before the Hon'ble Supreme Court of India.

J. Suggestion / Conclusion:

Taxpayers must file appeals within three months or seek a one-month extension with sufficient cause. Delays beyond four months are likely to be rejected.

However, in case, due to any reason, the Appeal is delay beyond four-months, it is suggested that appeal may be filed before the Appellate Authority and a submission shall be made to keep the appeal pending in abeyance, as the matter is sub-judice before the Hon'ble Supreme Court of India. In respect to the same, reference can be made to the decision of **VSN Infratech (P) Ltd. v. UOI [(2025) 172 taxmann.com 483 (Calcutta)]**, wherein it has been held by the Hon'ble High Court that issues related to condonation of delay cannot be decided until the issue is settled finally before the Hon'ble Supreme Court of India.

CA Aanchal Kapoor
GST & Income Tax Consultant and Advisor
Amritsar, Punjab

099886 92699
aanchalkapoor_ca@yahoo.com

"From Search to Seizure: When GST Enforcement Crosses the Line of Law"
Excess Stock, Confiscation and the Supreme Court's Call for Due Process

Prologue: The Day the Shutters Came Down

Imagine a functioning business. Workers are present. Machines are running. Goods are stacked. Orders are getting delivered.

Suddenly, a search team arrives.

Books are seized. Statements are recorded. Stock is eyeballed.

A declaration follows:

"There is excess stock."

No weighing. No reconciliation. No valuation method explained.

And before the dust settles, **Section 130 of the CGST Act is invoked — goods made liable for confiscation.**

This is not fiction. This is the lived experience of many GST taxpayers today.

1: From Search to Seizure: When GST Enforcement Crosses the Line of Law

The keynote issue-*The substitution of adjudication with assumption,* *raising serious concerns of legality, proportionality and deviation from legislative intent under the GST framework.*GST was envisaged as a regime built on transparency, trust and self-assessment. In contrast, search proceedings today increasingly reflect a shift from investigation to instant enforcement, where allegations of excess stock during searches often trigger immediate action by officers without even thorough verification or adjudication. The direct invocation of **Section 130 of the CGST Act, 2017** at

the search stage—resulting in confiscation—paralyses and bypasses the statutory due process.

2: The Dangerous Assumption — "Excess Stock Equals Tax Evasion"

A recurring flaw in GST enforcement is **the presumption that the discovery of excess stock during a search automatically establishes tax evasion.** This assumption disregards commercial and accounting realities, where stock discrepancies may arise for legitimate, non-evasive reasons. ***The conflation of stock discrepancy with mens rea—where, in the absence of verification, scientific measurement, reconciliation and cogent evidence of intent, administrative suspicion is substituted for legal proof.***

3: The Legislative Architecture — What the CGST Act Actually Provides

The CGST Act, 2017 establishes a complete adjudicatory framework to address alleged tax short payment or suppression, embedding procedural safeguards to ensure fairness. **Sections 73, 74 and 74A** mandate prior issuance of a show cause notice, quantification of tax liability, examination of fraud or intent, and opportunity of hearing before any penal consequence follows. This reflects a clear legislative mandate that ***tax determination is a pre-condition to penalty.Section 130 (confiscation) operates in an exceptional domain, intended only for grave, established contraventions involving intent to evade tax, and not as a shortcut or substitute for adjudication under the Act.***

4: Where Enforcement Often Goes Wrong

In practice, GST enforcement often departs from the statutory scheme, with searches culminating in immediate confiscation without any recorded stock verification methodology, reconciliation with books or returns, or quantification of the alleged tax evaded. Most critically, findings on intent to evade tax are frequently absent. ***The premature invocation of Section 130, which disregards the statutory hierarchy under the CGST Act and exposes such actions to judicial scrutiny for arbitrariness and excess of jurisdiction.***

5: Vijay Trading Company — When the Judiciary Restored Balance

The decision in **M/s Vijay Trading Company Versus Additional Commissioner Grade-2 And Another 2024(8) TMI 1039- Allahabad High Court** marks an important reaffirmation of doctrinal discipline in GST inspection /search. The tax authorities, on alleging excess stock during search, bypassed adjudication under Sections 73 and 74 and directly invoked Section 130 for confiscation. The Allahabad High Court categorically held that **excess stock, by itself, does not establish tax evasion** and that search proceedings are investigative, not determinative, in nature. The Allahabad HC quashed GST proceedings initiated under section 130 against a petitioner following discovery of excess stock during an inspection/search u/s 67 at business premises. The court held that when

excess stock is found during searches, proceedings must be initiated under sections 73/74 of the GST Act, not section 130. The HC ruled that section 130 proceedings cannot be invoked for excess stock discoveries, making both the original order and first appellate authority's order legally unsustainable. The petition was allowed and impugned orders were quashed.

The issue in hand has been covered by the judgement of Allahabad Court in Metenere Limited (supra), in which following observations have been made:-

"24. Section 35 (6) of the said Act provides that in the event the person fails to keep their accounts for the goods or the services in accordance with the provisions of Sub-section 1 of Section 35, the proper officer is empowered to determine the amount of tax payable on the goods or the services which are unaccounted for as if such goods or services had been supplied by such person and the provisions of Section 73 or 74 shall mutatis mutandis apply for determination of the said tax.

25. A perusal of the said section 35(6) makes it clear that proper officer is empowered to determine the taxes payable and while determining the said tax payable he is bound to determine the same in accordance with the provisions of Sections 73 & 74 of the Act."***Confiscation proceedings cannot replace adjudication and that determination of tax liability through the statutory mechanism is a condition precedent before resorting to penal provisions.***

Cases Relied upon:

2024 (8) TMI 71 - ALLAHABAD HIGH COURT

S/S Dinesh Kumar Pradeep Kumar Versus Additional Commissioner Grade 2 And Another

2024 (7) TMI 1205 - ALLAHABAD HIGH COURT

M/s Shree Om Steels, M/s Pal Trading Company, M/s Shri Om Krishi Yantra Udyog Versus Additional Commissioner Grade-2 And Another

2023 (3) TMI 1358 - ALLAHABAD HIGH COURT

M/s Maa Mahamaya Alloys Pvt. Ltd. Versus State of U.P. And 3 Others

2020 (12) TMI 790 - ALLAHABAD HIGH COURT

M/s Metenere Ltd. Versus Union of India and Another

6: Supreme Court's Affirmation to High Court Verdict by dismissing SLP

The Supreme Court's dismissal affirms the settled position that adjudication in excess-stock cases should proceed under the provisions for demand and recovery, not the penal/attachment provision. - enforcement cannot override adjudication within the GST framework. Supreme Court maintains Original Ruling, Leaves Door Open for Alternative Legal Strategies. The Supreme Court's affirmation in in **Additional Commissioner Grade-2 & ANR. Versus M/s Vijay Trading Company [2025] 174 taxmann.com 516 (SC)** has settled the legal position beyond dispute. Endorsing the High

Court's reasoning, **the Court was not inclined to interfere with impugned judgement and accordingly SLP was dismissed.**

7. PP Polyplast Private Limited

On the same footings, in **ADDITIONAL COMMISSIONER GRADE 2, (APPEAL) & ANR. Versus M/s. PP POLYPLAST PVT. LTD.**

(SC: 2025 (5) TMI 1442),

dismissed departmental SLP reiterating not to interfere with High Court judgement in case of M/s PP Polyplast Pvt Ltd. Versus Additional Commissioner Grade 2 And Another (2024 (8) TMI 144) – Allahabad High Court, clarifying that detection of excess stock during the search under section 67 of the CGST Act, 2017 merely establishes a factual discrepancy and does not, by itself, justify initiation of confiscation proceedings under section 130. The courts have held that, in the absence of quantification of tax liability and a clear finding of intent to evade tax, resort to confiscation constitutes a jurisdictional error and an impermissible bypassing of the statutory adjudication mechanism prescribed under sections 73, 74 and 74A. Based upon High Court's reasoning, it has settled the principle that confiscation, being a drastic penal measure, must necessarily follow due adjudication and strict satisfaction of statutory conditions, and cannot be founded solely on unquantified excess stock detected during search proceedings.***Excess stock found during search may trigger adjudication under sections 73/74/74A, but cannot, in the absence of quantification and proof of intent, form the basis for confiscation under section 130 of the CGST Act, 2017.***

SHUBHAM AGRAWAL
Advocate
High Court Chamber No. 42

Residence & Chamber:
'GANESHA COTTAGE'
405A/171B, Ashok Nagar
Opposite Durga Puja Park
Prayagraj – 211 001
Mobile No. 09838642297

Recent Trends in GST Litigation

The introduction of the **Goods and Services Tax (GST)** in India on **1 July 2017** marked a historic shift in the country's indirect tax regime by subsuming multiple central and state taxes into a unified framework aimed at enhancing efficiency, transparency, and ease of doing business.

Through a growing body of judgments, the judiciary has addressed fundamental issues such as the scope of input tax credit, procedural fairness, constitutional validity of enforcement powers, refund entitlements, and access to appellate remedies. These judicial pronouncements do not merely settle individual disputes; rather, they reveal emerging trends in GST jurisprudence that have reinforced natural justice, and restraint on arbitrary or disproportionate tax administration. An in-depth analysis of the latest judicial trends in GST law becomes essential to understand how courts are progressively moulding GST into a more equitable, predictable, and mature tax system in India.

Input Tax Credit (ITC)

One of the most prominent and progressive trends emerging from GST-related judicial pronouncements is the judiciary's conscious effort to protect bona fide taxpayers in disputes concerning Input Tax Credit (ITC).

In several cases where ITC was denied due to supplier defaults, such as non-filing of returns, non-payment of tax, or subsequent cancellation of the supplier's registration, courts have firmly held that a recipient who has fulfilled all statutory requirements cannot be penalised for the acts or omissions of another person over whom it has no control. Where the taxpayer has established possession of valid tax invoices, actual receipt of goods or

services, payment of consideration (including tax) through legitimate banking channels, and proper filing of returns, actual movement of goods, the judiciary has ruled that ITC cannot be denied merely because the supplier failed to discharge its tax liability or comply with procedural requirements.

Following case laws can be relied upon by the dealer in case of aforesaid allegations raised by the Department:-

Hon'ble Supreme Court in **State of Maharashtra v/s Suresh Trading Company** [1998] 109 STC 439 (SC) had held as under:-

> "5. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was valid."

Hon'ble High Court of Calcutta in the case of **M/s LGW Industries Ltd. & Others Vs Joint Commissioner of Sales Tax & Others** (Judgment dated 13/12/2021), reported in 2022 UPTC page 251 and 1268, has held that the purchaser cannot be penalized if registration of the supplier is cancelled subsequently with retrospective effect, in absence of collusion.

The ITC will be allowed to the recipient, if the following conditions are satisfied:

(1) Payments on purchases in question along with GST were actually paid to the suppliers;

(2) The transactions and purchases were made before the order of cancellation of registration of the suppliers;

Hon'ble Telangana High Court in the case of **BhagyaNagar Copper Pvt Ltd v CBIC** reported in 2022 UPTC page 261 has held that the GST Act not mandate a dealer to verify the genuineness of the suppliers as the recipient is not required to do the survey of its supplier before purchasing the goods.

Hon'ble Allahabad High Court in the case of ***Commissioner of Central Excise, Customs & Service Tax v Juhi Alloys Ltd***. reported in 2014(302) ELT page 487 has held that ITC will not be denied to a purchaser just on the ground that the invoices issued to the purchaser were fake or the supplier is not registered, as it would be impractical for the purchaser to go behind the records to verify the accounts of the supplier.

Hon'ble Gujarat High Court in the case of **Choksi Export v/s UOI** reported in 2023 UPTC page 428 has held that the recipient is not required to verify the genuineness of the suppliers from whom the purchase has been made by the supplier to the recipient.

Thus a dealer is only concerned with its supplier and not with the supplier in the chain who has earlier supplied the goods to the ultimate supplier, from whom the recipient has purchased the goods. Further Hon'ble Apex court in the case of **State of Karnataka v/s M/s Ecom Gill Coffee Trading Pvt. Ltd.** reported in 2023 UPTC page 521, has held the recipient has to prove actual movement of goods to claim the benefit of ITC. It has been further held that the burden to prove genuineness of the transaction lies on a person claiming ITC and it cannot be discharged merely by filing the invoice and proof of payment being made through banking channel.

Hon'ble Allahabad High Court has followed the judgment of Apex Court in Ecom Gill(supra) in the case of **M/s Malik traders v/s State of UP** in Writ tax no. 1237 of 2021 dated 18.10.23 and also in the case of **M/s Shiv Trading v/s State of UP** in Writ tax no. 1421 of 2022 decided on 28.11.23, wherein it has been held that mere providing the invoice, E-way bill, GSTR-2A and the payment through banking channel are not sufficient documents to prove the actual movement of goods. Proof of payment of freight is also necessary to prove the actual movement of goods for claiming the benefit of ITC.

Thus it is suggested that the dealers must possess and retain the following documents for claiming the ITC:-

Invoice, E-way bill, GSTR-2A, party ledger account, proof of payment through banking channel, GSTN Status of the supplier reflecting the supplier to be active on the date of transaction, toll plaza receipts, proof of payment of freight to the transporter, affidavit of transporter and acknowledgement of receipt.

Further if the goods are agricultural produce then the payment of Mandi fee, Gate Pass and 9R may also be filed to prove the actual movement of goods.

Further the recipient should try to make the payment of freight through banking channel to

demonstrate the actual movement of goods.

Hon'ble Jharkhand High Court in the case of **M/S. Tarapore & Company v. The State Of Jharkhand,** [WP(T) No. 773 of 2018], while interpreting the ITC provisions of Jharkhand Value Added Tax Act, 2005 which are similar to the ITC provisions of CGST Act, held that ITC should not be denied to the purchaser of inputs simply because of the failure of the supplier of the inputs to deposit tax with the Government, as it is not within the competence of the purchaser to compel the supplier to deposit tax with the Government. Hence, even if the seller has failed to comply with the provisions of CGST Act, ITC will not be denied to the purchaser by the tax authorities.

Hon'ble Supreme Court in the case of ***Corporation Bank v. Saraswati Abharansala (2009) 19 VST 84 (SC)*** explained that the selling dealer collects tax as an agent of the Government. Therefore, the *bona fide* buyer cannot be put in jeopardy when he has done all that the law requires him to do. The purchasing dealer has no means to ascertain and secure compliance by the selling dealer.

There is need for the law to distinguish between honest and dishonest dealers, which was acknowledged by the **Punjab and Haryana High Court in *Gheru Lal Bal Chand v. State of Haryana (2011) 45 VST 195 (P&H)***. Purchaser being an honest dealer having admittedly paid the tax amount through banking channel to its supplier, cannot be denied the benefit of ITC in case of doubt of the source of purchases of its supplier. It was held that:

> "In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, law nowhere envisages imposing any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. In the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of Articles 14 and 19 of the Constitution of India. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person

who has paid the tax would be worse, the interpretation would give result to an absurdity. The department can proceed against the defaulter."

Even though CGST Act provides the full machinery and recovery provisions to the respondents to enforce the liability on to the defaulting suppliers and recover the loss of taxes, if any, from such defaulters, yet the purchaser, who has paid the tax to the supplier, is denied credit in the event the supplier fails in payment of GST to the exchequer.

Hon'ble Delhi High Court in case of **On Quest Merchandising India Pvt. Ltd v. Government of NCT of Delhi & Ors., Writ No. 6093/2017, CM No. 25293/2017 and batch of Writs, including W.P. (C) 2106/2015 filed by Arise India Ltd. Decided on 26.10.2017**, quashed demands against purchasing dealers which was raised after denying the ITC due to non-payment of tax by the selling dealer on the basis of the provision of section 9(2)(g) of Delhi VAT Act which is pari-materia to section 16(2)(c) of GST Act and struck down the provisions of section 9(2)(g) of DVAT Act being voilative Article 14 and 19 of constitution of India by observing as under:-

> **"39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have *bona fide* transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish *bona fide* purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a *bona fide* purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.**
>
> **"53. In light of the above legal position, the Court hereby holds that the expression dealer or class of dealers occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression dealer or class of dealers in Section 9 (2) (g) is read down in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution."**

The department had filed SLP No 36750 of 2017 in the case of **Commissioner of Trade and Taxes Delhi Vs Arise India Ltd.** before the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed the SLP on dated 10.01.2018, in one of the petitioner before the Delhi High court decision aforesaid.

In the absence of any evidence about mala fide intention, connivance or wrongful association of the purchaser **with the suppliers, no liability can be imposed upon the** purchasers **on the principle of vicarious liability**.

Each and every registered taxable person is an agent of the Government to collect tax and to deposit the same to the appropriate Government treasury, and buyer of goods or services is liable to pay tax to its seller at the time of purchase.

Hon'ble Madras High Court in the case of **D. Y. Bethell** reported in 2021 UPTC page 553, has held that where the seller has collected the tax and not deposited it in the Government Treasury, then the strict action has to be taken against the seller.

Hon'ble Apex court in the case of **Assistant Commissioner of State Tax v/s Suncraft Energy Private Limited** reported in 2023 (157) taxmann.com pg 352, has dismissed the SLP against the Calcutta high court order, filed by the State, wherein the high court has set aside the reversal of ITC on the ground that the supplier has not paid the tax and ITC was not reflected in GSTR-2A of the recipient.

Section 76(1,2) gives power to the authorities to recover the tax collected by it, but not paid to the Government. Thus authorities ought to first try to initiate recovery from the suppliers to whom registration has been granted by the Department, before initiating reversal of ITC proceedings against the recipient.

A notable illustration of this approach is the decision of the **Delhi High Court in *B Braun Medical India Pvt. Ltd.***, where ITC was denied by the tax authorities due to clerical errors in the supplier's GSTIN details reflected on the invoice. The Court, however, allowed the ITC claim after examining the **substantive facts of the transaction**, including actual receipt of goods, payment of consideration along with tax, and the absence of any allegation of fraud or fictitious supply. The Court categorically held that **clerical or typographical errors**

cannot override the reality of a genuine transaction, especially when all other statutory conditions are satisfied. This judgment reaffirmed that GST is intended to tax real supplies and real consumption, not penalise taxpayers for minor documentation mistakes that do not affect tax liability.

Further strengthening this judicial approach, the **Supreme Court in 2025** underscored that **denial of ITC for genuine clerical or arithmetical errors, in the absence of any revenue loss, is inherently unfair and legally unsustainable**. The Court recognised that the purpose of ITC provisions is to facilitate seamless credit flow and avoid cascading of taxes, and not to impose punitive consequences for unintentional errors. It emphasised that tax authorities must adopt a **practical and reasonable approach** while examining ITC claims, clearly distinguishing between *bona fide mistakes* and *intentional non-compliance or fraud*. Mechanical rejection of credit without considering surrounding circumstances was held to be contrary to both legislative intent and principles of equity.

Reasoned Orders and GST Registration

The issue of **cancellation of GST registration** has attracted significant judicial attention due to its severe consequences for businesses. Registration under GST is a statutory prerequisite for carrying on taxable supplies, and its cancellation—especially with retrospective effect—can effectively bring business operations to a standstill. Recognising this, the **Allahabad High Court** strongly criticised the practice of cancelling GST registrations through **cryptic and non-speaking orders**.

In a series of judgments, the Court observed that repeated or mechanical cancellation of registration without clearly recording reasons amounts to **"economic death"** for a taxpayer. The Court held that **mere assertions such as "non-compliance" or "suspicious activity" without factual elaboration or evidence do not satisfy the requirement of a reasoned order**. Administrative authorities, the Court noted, are bound to disclose the material relied upon and explain how statutory conditions for cancellation are fulfilled. Orders lacking such reasoning were held to be arbitrary, violative of Article 14 of the Constitution, and contrary to settled principles of administrative fairness.

The Court further emphasised that **reasoned orders serve a dual purpose**: they enable the affected taxpayer to understand the basis of the decision and provide higher judicial forums with a clear foundation for appellate or judicial review. As a result, several cancellation orders were quashed and matters remanded for fresh consideration, reinforcing that GST authorities must exercise registration-related powers with caution, transparency, and accountability.

Consolidated Challenges Against Multiple Orders

Judicial forums have also promoted **consolidation of appeals**, particularly where multiple orders arise from a **single set of facts or a common issue of law**. High Courts have permitted taxpayers to **challenge a series of assessment, ITC, or refund orders spanning multiple financial years in a consolidated manner**, rather than pursuing separate, piecemeal litigation for each order.

This approach has several advantages:

1. **Efficiency** – reduces duplication of judicial time and effort.
2. **Consistency** – ensures uniform interpretation of law across related disputes.
3. **Reduced Litigation Costs** – lowers financial and administrative burden on taxpayers.

Courts have observed that allowing consolidated challenges aligns with the **spirit of GST law**, which seeks to simplify compliance and promote a business-friendly environment, without compromising the authorities' ability to protect revenue.

Technical Mismatches Should Not Defeat Refunds

A recurring issue in refund disputes has been **minor mismatches between invoices, shipping bills, or GSTIN details**. The **Bombay High Court** addressed such disputes, holding that **small clerical discrepancies cannot justify denial of refunds for zero-rated supplies**, especially exports. In these cases, exporters had genuinely supplied goods or services abroad and were eligible for ITC-based refunds, but procedural mismatches were being used by authorities to delay or deny claims.

The Court emphasised that **refund entitlement should be determined based on the substance of the transaction, not minor technicalities**, provided that:

1. The goods or services were actually exported.
2. The taxpayer possesses valid invoices and shipping documentation.
3. The statutory conditions for claiming refund under **Section 54 of the CGST Act** are met.

This approach reflects the judiciary's recognition that **exports are essential for economic growth** and that procedural bottlenecks should not frustrate legitimate refund claims. The decision also highlighted the need for **administrative pragmatism**, urging authorities to examine the overall compliance and authenticity rather than deny refunds on purely technical grounds.

Section 74: Practical difficulties and remedies available

Hon'ble Gujarat High Court in the case of **Bhawani Textiles** reported in 2020 UPTC page

1437 has held that undue harassment should not be caused to taxpayer by different authorities under the State and Central jurisdiction on the same subject matter.

Further in the case of **Ajay Verma v/s Union of India** reported in 2022(62) GSTL page 148, High court has held that section 74 proceedings on the same subject matter and for the same subject matter can either be proceeded by the State GST authorities or by the Central GST authorities, as per section 6(2)(b) of the Act. Both the authorities cannot exercise concurrent jurisdiction on the same subject matter over an assessee.

Unless an order under section 73 or 74 is passed, no recovery could be made by the department during the search proceedings.

Service on driver or the service made after cancellation of registration only on the GST portal is invalid.

Giving opportunity of personal hearing is mandatory as per section 75 of the Act, and hence mentioning the date, time and venue of personal hearing in the notice is mandatory.

No new reasons or grounds can be given in the order which are not mentioned in the show cause notice as has been held by Hon'ble Allahabad High Court in the case of **M/s Associated Switch gears and Projects Limited vs State of UP,** in Writ tax no 276 of 2020 decided on 25.1.24.

Order must be aligned with Show Cause Notice as per Section75(7) of CGST Act, 2017, the order should not demand an amount of Tax, Interest, and Penalty that exceeds the amount specified in the notice.

Dealers or their advocates on receiving the notices have to check that 2 notices cannot be issued for the overlapping period, covering the same time period.

Summary DRC-01 notice should also accompany alongwith the reasons and vice-versa. Under Rule 142(1)(a), the proper officer is required to electronically serve a summary of the notice using Form GST DRC-01 along with the Notice.

Following Rule 142(5), an electronic upload of the summary of the order in FORM GST DRC-07 is mandated, specifying the amounts of tax, interest, and penalty as prescribed.

Notice is duly uploaded on the portal and could be downloaded. Reasonable time ought to

be given for filing the reply.

Always select option 'yes', while filing the reply, for giving the option for personal hearing, though it is mandatory to give personal hearing even if the assessee has not opted for it, if the adverse order is to be passed against a dealer.

Hon'ble Allahabad High court in the case of **Bajrang Building Material v/s State of UP** in Writ Tax No. 998 of 2023 decided on 22.8.23, in the case of **Brijesh Kumar Singh v/s State of UP** in Writ Tax No. 200 of 2023 decided on 9.10.23, and also in the case of **Sumit Enterprises v/s State of UP** in Writ Tax No. 167 of 2023 decided on 9.10.23, has set-aside the order passed u/s 74, where the columns for personal hearing have been left blank in the DRC-01 notice.

Order has to be passed on the date fixed in the notice and not on a subsequent date, without intimating the date or adjourning the date. Order cannot be passed on a date which is neither fixed nor communicated to a dealer.

Division Bench of Allahabad High court in the case of **M/s Videocon D2H Ltd. v/s State of U.P.** reported in 2016 UPTC pg 237 and recently this Hon'ble Court in the case of **Bhoora Ali v/s Additional Commissioner**, reported in 2021 UPTC pg 427, has held that if the matter is not decided on the date which was intimated to the assessee, then the next date must be intimated and then only order should be passed. The assessee does not loses its right to be heard before the date of passing the final order.

Dealer has right to seek 3 adjustments under section 75 on plausible grounds.

Best judgment assessment cannot be made u/s 74 of the Act as has been held by Hon'ble Allahabad High Court in the case of **Diamond Steel v/s State of UP**, decided in Writ tax no. 4 of 2022 on 6.4.23. It has been held that best judgment assessment can be made under section 62 and not in section 74 proceedings.

Thus where during the search proceedings account books could not be found, the addition u/s 74 can only be made on the basis of positive evidence found, but no best judgment assessment could be made under the GST Act in section 74 proceedings. GST is a self assessment system. Thus the entry made in the rough register which is not an account book cannot be made the basis to make the best judgment assessment for the whole year on the basis of entries found for a particular period.

In section 74 proceedings dealer has right to seek copy of the documents which has been seized during the search proceedings and also any other evidences or documents relied upon by the authorities in the notice.

Hon'ble Allahabad High Court in the case of **M/s R.M. dairy products vs State of UP,** reported in 2021 UPTC page 1510, has held that no recovery be made for three months of an amount determined under section 74, as per section 78 of the Act.

No tax demand can be raised when investigation is still in progress. The revenue cannot be allowed to put the cart before the horse and collect any tax, interest or penalty before they determine it.

The ineffective service of any notice, order, or communication must be questioned in the initial stage of the adjudication to prove the invalidity of the assessment proceedings

The assessment proceedings will not be acknowledged invalid when the taxpayer has acted on the certain notice, order or communication, or the service has not been called in question at or in the former proceedings started, continued, or finalized concerning the mentioned notice, order, or communication

Under Rule 26(3), all notices, certificates, and orders will be issued electronically via Digital signature certificate.

Circular No. 122/41/2019-GST from the board stipulates that, as of November 8, 2019, no officer under the Board shall issue any search authorization, summons, arrest memo, inspection notices, or letters in the course of an inquiry to a taxpayer or any other person without prominently quoting a computer-generated Document Identification Number (DIN) in the body of such communication.

Conclusion:

India's GST legal landscape is moving toward a judicial ecosystem that harmonizes enforcement with equity, procedural fairness, and commercial pragmatism. This evolution encourages compliance, reduces contentious disputes, and builds confidence in the indirect tax system, ultimately supporting economic growth and legal certainty.

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Adv. Prateek Gupta,
Managing Partner
– Sharnam Legal

DEEMED EXPORTS - Supply of Goods to Export Oriented Units (EOU) under GST

This article provides comprehensive guidance on the procedures, documentation requirements, and precautions for supplying goods to Export Oriented Units (EOU) under the deemed export mechanism as per Section 147 of the CGST Act, 2017. The supplier has two options for tax treatment, each with distinct procedural requirements and implications.

1. LEGAL FRAMEWORK

1.1 Statutory Provisions

Supplies to EOU/EHTP/STP/BTP units are governed by the following provisions:

- Section 147 of the Central Goods and Services Tax Act, 2017 (CGST Act)
- Notification No. 48/2017-Central Tax dated 18.10.2017 - declaring supplies to EOUs as deemed exports
- Notification No. 40/2017-Central Tax (Rate) dated 23.10.2017 - concessional rate for intra-state supplies
- Notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017 - concessional rate for inter-state supplies
- Circular No. 14/14/2017-GST dated 06.11.2017 - procedural guidelines
- Rule 89 of the CGST Rules, 2017 - refund provisions

1.2 Definition of Deemed Exports

Deemed exports refer to supplies of goods manufactured in India which do not leave the country but are treated as exports for the purpose of certain benefits. The payment is received in Indian rupees or convertible foreign exchange. Unlike regular exports, deemed exports are **NOT zero-rated supplies by default** and are subject to levy of GST.

2. SUPPLY OPTIONS AVAILABLE

The supplier has two distinct options for supplying goods to the EOU, each with different tax implications and procedural requirements:

2.1 OPTION 1: Supply under Circular No. 14/14/2017-GST (Full Rate with Refund)

2.1.1 Overview

Under this option, the supplier charges applicable GST at the normal rate and either the supplier or the recipient can claim a refund of the tax paid.

2.1.2 Tax Treatment

- Supplier charges GST at applicable rate (5%, 12%, 18% as applicable)
- CGST + SGST for intra-state supplies
- IGST for inter-state supplies

2.1.3 Refund Mechanism

As per Rule 89 of the CGST Rules, 2017, refund can be claimed by:

- The Supplier: If the EOU recipient does not avail input tax credit on such supplies and furnishes an undertaking to this effect.
- The Recipient (EOU): Can claim refund directly.

CRITICAL DECISION POINT: The supplier and EOU recipient must mutually decide and agree in writing before the supply is made that who will claim the refund.

2.2 OPTION 2: Supply at Concessional Rate (Notification: 40/2017- (Central Tax Rate & Notification: 41/2017 – Integrated Tax Rate)

2.2.1 Overview

Under this option, the supplier can supply goods at a concessional GST rate, provided the recipient (merchant exporter) exports the goods within 90 days. This option is specifically designed for supplies to merchant exporters who will further export the goods.

2.2.2 Tax Treatment

- Intra-state supplies: **0.05% (CGST + SGST combined) instead of full rate**
- Inter-state supplies: **0.1% (IGST) instead of full rate**

2.2.3 Critical Condition

If the registered recipient (merchant exporter) fails to export the goods within 90 days from the

date of issue of tax invoice, the supplier SHALL NOT be eligible for the concessional rate exemption. The supplier will be liable to pay the differential tax.

2.2.4 Applicability to EOU Supplies

These notifications (40/2017 and 41/2017) are primarily designed for supplies to merchant exporters who will physically export the goods. For supplies to EOUs under deemed export category, Circular 14/14/2017-GST (Option 1) is the more appropriate mechanism, as EOU supplies are deemed exports and do not involve actual export of goods outside India. The concessional rate notifications require actual export within 90 days, which may not be applicable to EOU deemed export scenarios.

3. RECOMMENDED APPROACH FOR EOU SUPPLIES

For supplies to Export Oriented Units (EOU), Option 1 is recommended (Circular 14/14/2017-GST) as it is specifically designed for deemed export supplies to EOUs. The detailed procedure is outlined below.

4. DETAILED PROCEDURE FOR EOU SUPPLIES (OPTION 1)

4.1 Pre-Supply Requirements

4.1.1 Verification of EOU Status

Before accepting any order, the supplier MUST verify:

- That the recipient is a genuine EOU/EHTP/STP/BTP unit approved under Chapter 6 of Foreign Trade Policy 2015-20
- Obtain and verify the EOU's GSTIN
- Obtain copy of Letter of Permission (LOP) issued by Development Commissioner
- Verify validity period of the LOP
- Confirm that the goods to be supplied are pre-approved by Development Commissioner under the EOU's LOP

4.1.2 Refund Claim Agreement

Before supply, obtain written agreement from EOU regarding who will claim refund:

- Option A: If supplier will claim refund - Obtain written undertaking from EOU that they will NOT avail input tax credit on this supply
- Option B: If EOU will claim refund - Document this agreement in writing; supplier will not claim refund

4.2 Step-by-Step Procedure

STEP 1: Receipt of Form-A (Prior Intimation)

The EOU recipient MUST send prior intimation in Form-A before supply is made.

1. Form-A must contain:
    a) Running serial number and date
    b) LOP number and validity period
    c) EOU's GSTIN
    d) Details of goods to be procured (tariff description, quantity, value)
    e) Supplier's name, address, and GSTIN
    f) Statement that goods are pre-approved by Development Commissioner
2. Form-A will be sent to three parties simultaneously:
    a) The registered supplier (your client)
    b) Jurisdictional GST officer of the supplier
    c) Jurisdictional GST officer of the EOU

ACTION REQUIRED: Upon receipt of Form-A, verify all details and maintain the original copy safely. Do not proceed with supply until Form-A is received.

STEP 2: Supply of Goods

3. Issue tax invoice with following details:
    a) All mandatory particulars as per GST rules
    b) Recipient's GSTIN
    c) Description of goods matching Form-A
    d) Applicable GST rate and amount
    e) Reference to Form-A serial number and date
    f) Endorsement: *"Supply made under deemed export benefits as per Section 147 of CGST Act, 2017 and Notification No. 48/2017-Central Tax dated 18.10.2017"*
4. Dispatch goods with tax invoice in original

STEP 3: Receipt of Endorsed Tax Invoice

Upon receipt of goods, the EOU will:

5. Endorse the tax invoice acknowledging receipt of goods
6. Send copy of endorsed tax invoice to:
    a) The supplier (your client)

b) Jurisdictional GST officer of the supplier

c) Jurisdictional GST officer of the EOU

The endorsed tax invoice is the proof of deemed export supply. Maintain original endorsed invoice safely for refund claim and audit purposes.

STEP 4: EOU Record Maintenance

The EOU recipient is required to maintain digital records in Form-B containing:

- Receipt details (invoice number, date, description, quantity, value, GST amount)
- Supplier details and GSTIN
- Date of sending endorsed invoice
- Utilization and removal details
- Balance in stock

Note: While the supplier is not required to maintain Form-B, it is advisable to request periodic confirmation from EOU that proper records are being maintained.

5. DOCUMENTS REQUIRED

5.1 Documents to be Obtained from EOU (Before Supply)

1. Form-A (Prior Intimation) - Original
2. Copy of Letter of Permission (LOP) issued by Development Commissioner
3. Copy of GST Registration Certificate
4. Copy of IEC Code
5. Copy of PAN Card
6. Copy of LUT
7. Copy of EOU approval certificate
8. Written undertaking (if supplier will claim refund) - *stating that EOU will not avail input tax credit on this supply*
9. Copy of Purchase Order

5.2 Documents to be Issued by Supplier

10. Tax Invoice (with deemed export endorsement as mentioned in Step 2)

5.3 Documents to be Received from EOU (After Supply)

11. Copy of Endorsed Tax Invoice (acknowledging receipt of goods)

5.4 Documents Required for Refund Claim (If Supplier Claims Refund)

12. Application in Form GST RFD-01
13. Statement containing invoice numbers and dates
14. Copy of Form-A received from EOU
15. Copy of Tax Invoice issued
16. Copy of Endorsed Tax Invoice received from EOU
17. Undertaking from EOU that they have not claimed input tax credit
18. Proof of payment of tax (GSTR-3B, tax challan)
19. Bank account details for refund

6. CRITICAL PRECAUTIONS AND RISK MITIGATION

6.1 Pre-Supply Due Diligence

20. **Verify EOU Status:** Always verify that the recipient is a genuine EOU approved under Foreign Trade Policy. Obtain copy of approval certificate and LOP. Verify on DGFT website if possible.
21. **Verify GSTIN:** Check EOU's GSTIN on GST portal to ensure it is active and valid. Match the GSTIN with the entity name and address.
22. **Verify LOP Coverage:** Ensure that the goods you are supplying are specifically covered and pre-approved by Development Commissioner in the EOU's LOP. Obtain written confirmation.
23. **Check LOP Validity:** Verify that the LOP is valid and has not expired. Do not supply if LOP validity has expired.

6.2 Documentation Compliance

24. **Form-A is Mandatory:** Never proceed with supply without receiving Form-A from EOU. Form-A is not optional; it is a mandatory procedural requirement.
25. **Endorsed Invoice is Critical:** The endorsed tax invoice is the primary proof of deemed export. Without it, refund claim may be rejected. Follow up immediately if not received within reasonable time.
26. **Proper Invoice Endorsement:** Ensure tax invoice clearly mentions deemed export status and relevant notification number. This is crucial for refund processing.
27. **Maintain Complete Records:** Keep all original documents safely for at least 10 years.

Maintain both physical and digital copies.

6.3 Refund Claim Precautions

28. **Clear Agreement on Refund Claimant:** Before supply, have a clear written agreement with EOU specifying who will claim the refund. Both parties cannot claim refund for the same supply.
29. **Undertaking if Supplier Claims:** If supplier will claim refund, obtain notarized undertaking from EOU that they will not avail input tax credit. This is a mandatory requirement.
30. **Time Limit for Refund:** Refund application must be filed within 2 years from the date on which the return relating to such deemed export supplies is to be furnished. Do not delay.
31. **Complete Documentation:** Ensure all supporting documents listed in Section 5.4 are attached with refund application. Incomplete applications lead to rejection or delay.

6.4 Tax Payment and Compliance

32. **Pay Tax on Time:** GST on deemed export supplies must be paid to government through GSTR-3B within due date. Late payment attracts interest.
33. **Proper GSTR-1 Reporting:** Deemed export supplies should be properly reported in GSTR-1.
34. **No Supply under Bond/LUT:** Deemed exports cannot be supplied under bond or Letter of Undertaking (LUT). Tax payment is mandatory.

6.5 Communication and Coordination

35. **Inform Jurisdictional Officer:** Keep your jurisdictional GST officer informed about deemed export transactions. Proactive communication helps in smooth refund processing.
36. **Maintain Contact with EOU:** Establish clear communication channels with EOU recipient. Obtain their jurisdictional GST officer details for sharing documents.
37. **Written Confirmations:** All critical communications and agreements should be in writing (email/letter). Avoid oral agreements.

7. COMPARISON: TWO SUPPLY OPTIONS

Parameter	Option 1: Circular 14/14/2017-GST (Recommended for EOUs)	Option 2: Notifications 40/2017 & 41/2017 (For Merchant Exporters)
Tax Rate	Full applicable GST rate (5%/12%/18%/28%)	0.05% (intra-state) or 0.1% (inter-state)
Applicability	Supplies to EOU/EHTP/STP/BTP units (deemed exports)	Supplies to merchant exporters who will physically export goods
Export Requirement	No actual export required (deemed export)	Goods must be exported within 90

days**Refund Mechanism**Refund of tax paid by supplier or recipientMinimal tax (0.05%/0.1%) paid upfront; no refund mechanism**Risk to Supplier**Refund claim may be delayed or rejected if documentation incompleteHIGH RISK: If goods not exported within 90 days, supplier liable for differential tax**Procedure**Form-A, endorsed invoice, Form-B maintenance by EOUPurchase order, movement tracking, shipping bill details, export proof within 90 days**RecommendationRECOMMENDED for EOU suppliesNOT RECOMMENDED for EOU supplies (designed for merchant exporters)**8. ADDITIONAL COMPLIANCE REQUIREMENTS

8.1 Foreign Trade Policy Compliance

The deemed export benefits under GST are in addition to the terms and conditions under Foreign Trade Policy 2015-20. The supplier must ensure:

- EOU is complying with all conditions of their LOP
- Goods supplied are permitted under Foreign Trade Policy
- Development Commissioner's pre-approval for the supplies exists

8.2 Input Tax Credit Restrictions

As per Rule 96(9) of CGST Rules, 2017:

The recipient of deemed export supplies on which supplier has availed the benefit under Notification 48/2017-Central Tax cannot export on payment of integrated tax. This prevents double benefit.

8.3 Record Retention

Maintain all records for minimum 10 years from the last date of filing annual return:

- Form-A (prior intimation)
- Tax invoices (original and endorsed)
- EOU's LOP and approval documents
- Undertaking from EOU (if supplier claimed refund)
- Refund application and sanction order
- All correspondence with GST department and EOU

9. PROCESS FLOWCHART

The deemed export supply process follows this sequence:**1Pre-Supply Verification:** Verify EOU status, GSTIN, LOP validity, and pre-approval of goods**2Refund Agreement:** Decide and document in writing who will claim refund (supplier or EOU)**3Receipt of Form-A:** EOU sends prior intimation in Form-A to supplier, supplier's GST officer, and own GST

officer**4Supply of Goods:** Supplier issues tax invoice with deemed export endorsement and dispatches goods**5Receipt and Endorsement:** EOU receives goods, endorses tax invoice, and sends copy to supplier and both GST officers**6Tax Payment:** Supplier pays GST through GSTR-3B and reports in GSTR-1**7EOU Record Keeping:** EOU maintains Form-B records digitally and provides monthly copy to GST officer**8Refund Claim:** Supplier or EOU (as agreed) files refund application in Form GST RFD-01 with all supporting documents within 2 years10. COMPLIANCE CHECKLIST

Use this checklist to ensure complete compliance:Compliance ItemDoneN/A Verified EOU status and approval certificate☐☐Obtained and verified EOU's GSTIN☐☐Obtained copy of valid LOP from Development Commissioner☐☐Verified goods are pre-approved in LOP☐☐Decided and documented who will claim refund (supplier/EOU)☐☐Obtained written undertaking from EOU (if supplier claims refund)☐☐Received Form-A from EOU before supply☐☐Verified Form-A details match LOP and GSTIN☐☐Shared copy of Form-A with jurisdictional GST officer☐☐Issued tax invoice with deemed export endorsement☐☐Referenced Form-A serial number in tax invoice☐☐Dispatched goods with original tax invoice☐☐Received copy of endorsed tax invoice from EOU☐☐Shared endorsed invoice with jurisdictional GST officer☐☐Paid GST through GSTR-3B on time☐☐Reported supply correctly in GSTR-1☐☐Maintained all original documents safely☐☐Filed refund application within 2 years (if applicable)☐☐Attached all supporting documents with refund claim☐☐11. KEY TAKEAWAYS

38. **Deemed exports are NOT zero-rated:** Unlike regular exports, deemed export supplies to EOUs require payment of GST. They cannot be supplied under bond or LUT.
39. **Two options available:** Full rate with refund (Circular 14/14/2017) is recommended for EOU supplies. Concessional rate (Notifications 40/41) is for merchant exporters.
40. **Form-A is mandatory:** Never proceed without receiving prior intimation in Form-A from the EOU. This is a critical procedural requirement.
41. **Endorsed invoice is proof:** The endorsed tax invoice received from EOU after delivery is the primary evidence of deemed export for refund claim.
42. **Clear refund agreement:** Decide and document in writing before supply whether supplier or EOU will claim refund. Both cannot claim for same supply.
43. **Pre-supply verification essential:** Always verify EOU status, GSTIN validity, LOP approval, and pre-approval of goods before accepting order.
44. **Complete documentation critical:** Maintain all documents for minimum 10 years. Incomplete documentation leads to refund rejection.

45. **Time limit for refund:** File refund application within 2 years from the date of filing return. Do not delay.

46. **Proactive communication:** Keep jurisdictional GST officer informed. Coordinate closely with EOU recipient for smooth transaction.

47. **Written agreements always:** All critical communications, agreements, and undertakings must be in writing. Avoid oral commitments.

12. CONCLUSION

Deemed export supplies to EOUs under GST require strict procedural compliance and careful documentation. While the mechanism provides for refund of taxes paid, the supplier must follow the prescribed procedure meticulously to avoid rejection of refund claims or disputes with tax authorities.

The key to successful deemed export transactions lies in: (1) thorough pre-supply verification of EOU credentials and approvals, (2) clear written agreement on refund claimant, (3) obtaining and preserving Form-A and endorsed invoice, (4) timely filing of refund application with complete documentation, and (5) maintaining all records for statutory period.

It is strongly recommended that for this one-time supply to the EOU, the client should:

- Conduct complete due diligence before accepting the order
- Obtain all required documents and approvals in writing
- Have a clear written agreement with EOU on refund claim mechanism
- Follow the prescribed procedure step-by-step as outlined in this note
- Keep jurisdictional GST officer informed throughout the process
- Maintain complete audit trail of all documents and communications

Prepared by: Adv. Prateek Gupta, Managing Partner – Sharnam Legal

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DISCLAIMER

This article is prepared based on the GST law, notifications, and circulars as they stand on the date of this article. The information is intended for general guidance only and should not be construed as professional advice. Specific advice should be sought before taking any action based on this article. The tax laws are subject to change, and readers should verify the current position of law before making any decisions.

ANSHUL AGARWAL & COMPANY
Chartered Accountants
5, Advocate Chamber RDC Raj Nagar,
Ghaziabad (UP)
Phone No (O) 2826455 (M) 9968707325

Structure of appeal before Goods and Service Tax Tribunal Appeal Process

Structure of appeal before Goods and Service Tax Tribunal Appeal Process

i.) Adjudicating authority Section 2(4) of the Central Goods and Service Tax Act, 2017.

Appellate authority section 107 of the Central Goods and Service Tax Act, 2017.

GST Appellate Tribunal under section 112 of the Central Goods and Service Tax Act, 2017.

High Court under section 117 of the Central Goods and Service Tax Act, 2017.

Supreme Court under Section 118 of the Central Goods and Service Tax Act, 2017.

i.) Constitution of the GST Tribunal (Section 109)

Principal Bench	Regional/State Benches
a. President	a) 2 Judicial Member
b. 1 Judicial Member	b) 1 Technical Member(State)
c. 1 Technical Member(State)	c) 1 Technical Member(Centre)
d. 1 Technical Member (Centre)	

Note

a. Justice (Retd.) Former Chief Justice of Jharkhand High Court Shri Sanjay Kumar Mishra appointed first president of GSTAT Tribunal at Delhi on 5-5-24.

b. The senior most Judicial Member of State Benches shall act as Vice President.

c. Distribution of responsibilities is managed by the President and vice President

d. Appeals involving taxes or penalties up to 50 Lakhs may be heard by single member

e. If the members of the Bench have different opinions while hearing an appeal the President can refer the case to a larger bench (Rule 50 of GSTAT Rules)

f. Total 16 Circuit Benches and 31 State Bench- In Uttar Pradesh 3 benches at Lucknow Varanasi and Ghaziabad. And 2 Circuit benches at Prayagraj and Agra.

g. Principal Bench at Delhi.

i. Jurisdiction of GSTAT Tribunal

a. The principal bench and state bench will hear cases for orders passed by Appellate authority within their jurisdiction.

b. In following cases the matters will be heard by the Principal bench

i. Place of supply

ii. Anti-profiteering

iii. GSTAT shall also act as National Appellate Authority for Advance rulings i.e to decide on conflicting Advance Rulings so as to adjudicate and decide on conflicting advance rulings pronounced by different State Advance Authorities

iv) General

a. Judgement issued by any bench will be binding on all the benches unless distinguished on law or facts or overturned by a larger bench. The dynamic might changes as members may not want to follow other State bench.

b. Secondly the judgement of any High Court is the law of the land even if the High Court is of another State. If any other High Court gives a contradictory view then Tribunal open to follow either of the views. Relevant case laws decided by the Hon'ble Bombay High Court in Smt Godavaridevi Saraf Tumsar (1978(2) ELT 624.

V. Section 112 of the Appeal to Appellate Tribunal

a. Any person aggrieved by an order passed against him u/s 107 and 108 of the Act file the appeal on line on the GSTAT Portal (wwwgstat.gov.in)

b. Limitation starts from the date on which the order sought to the appealed against is communicated to the person preferring the appeal.

c. Cross appeal If there was no part of order against revenue, the revenue cannot file cross objection. However, cross objection filed can be treated as written submission. If cross objection is not filed, points decided in favour of either party will not be interfered with by Tribunal. Cross objections are treated as separate appeal and are to be disposed off independently. ITO vs Fagoomal Lakshmi Chand 118 ITR 766 (MAD). If one party files appeal against part of the order which is against him, other party can file cross objection in respect of the other part, which is against him, as the entire order comes within the preview of the Appellate Tribunal same shall be dealt by the Tribunal.

Tribunal must consider cross objections even in nature of counter. Cross objections and appeals should be heard together.

a. Limitation for filing of appeal Tax payer Department Memorandum Cross objection

Filing of appeal	3 months	6 months	45 days
Condonation of Delay	3 months	6 months	45 days

i. GST Appellate Tribunal started to accept filing of appeals.

ii. 30-6-2026 shall be the last date for limitation of filing of back log appeals against the appellate order u/s 107 passed upto 1-4-26.

iii. Limitation for filing of memorandum of cross objection starts from the date of receipt of the notice (Section 112(5))

iv. Appeal before GSTAT the day when the order is received should be excluded for the computation of time period (Rule 3 of GSTAT Rules)

v. If the period expires on a day when the Tribunal is closed then such day should also excluded (Rule 3 of the

GSTAT Rules)

vi. Appellate Tribunal has its discretion to admit the appeal for hearing if tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty does not exceed 50,000/- rupees.

vii. No appeal before appellate Tribunal can be admitted unless the appellant paid (Section 112(8)(a) and (b)

viii. Admitted tax, interest, fine, fee and penalty

ix. A sum equal to 10% of the remaining amount of tax in dispute in addition to the amount paid u/s 107(6) subject to maximum of 25 crores A sum equal to 10% of the remaining amount of tax in dispute in addition to the amount paid u/s 107(6) subject to maximum of 25 crores

vi. Controversy on deposit 10% e.g.

Disputed case

IGST demand disputed in first appeal	Rs. 1 crore
Pre-deposit (10%) paid in first appeal	Rs. 10 lakhs
IGST Demand confirmed in first appeal	Rs. 80 lakhs
IGST Demand dropped in first appeal	Rs. 20 lakhs

View point 1	View point 2
Additional 10% of remaining Amount of tax in dispute	Excess pre-deposit on dropped demand of 20 Lakh=Rs.2 lakhs
10% of 80 L=8 Lakhs	Additional pre-deposit= Rs.6 lakhs (8 lakhs-2Lakhs)

Trade Circular No. 09T/2020 dated 26-5-20 issued by Maharashtra on Pre-deposit/GSTAT Appeals to avoid recovery proceedings till the GSTAT becomes functional.

a. Tax payers are required to submit declaration in Annexure 1 to the jurisdictional officer within 15 days from order of Appellate Authority.

b. The declaration indicates an intention to the file an appeal before the GSTAT as and when it is formed

Monetary limit for department appeal

Appellate forum	Monetary Limit (Amount involved in Rs.
GSTAT	20,00,000
High Court	1,00,00,000
Supreme Court	2,00,00,000

vii. Payment of Pre-deposit

Pre-deposit can be paid using Electronic Credit Ledger. Case or circular relied upon.

a. 2024 (10) TMI 1608 –Gujarat- SLP filed by Government against the Judgement of Gujarat decision dismissed by SC – 2025(5) TMI 1614

b. CBIC Circular No. 172 dated 6-7-2022 confirms use of credit ledger for pre-deposit.

viii. Impact of Pre deposit

a. Avoid separate stay application & hearing- Remaining entire demand stayed – Section 112(9)

b. Ensures revenue collection during pendency of matter

c. Ensures frivolous appeals/appeal made to buy time are not filed.

d. Pre-deposit effects higher financial impact under GST, increasing cash flow burden on tax payers.

ix. Fee structure for appeal filing or restoration of appeal before GSTAT

a. Rs.1000/- per lakh

b. Minimum fee Rs. 5,000/-

c. Maximum fee Rs.25,000/-

d. Additional fee Rs.5,000/- for

Application for inspection of record (Rule 67 of GSTAT Procedural Rules.2025)

Interlocutory Applications (Rule 67 of GSTAT Procedural Rules.2025)

Application under any other provisions specifically not mentioned herein above.

e. Rs. 5/-per page fee for obtaining certified true copy of final order passed to parties other than the concerned parties under Rule.

f. No fee for applications before GSTAT for rectification of errors.

g. Fee to be deposited on line.

h. Other important points

i) Filing fees are non-refundable, irrespective of outcome.

ii) Filing fees may be auto-calculated on GSTAT portal.

iii) Department is not required to pay any filing fees

iv) If matter is remended back by GSTAT and again travels back to GSTAT for whatever reason, appeal filing fees will be payable again.

x. Common examples of no demand appeals.

a. Rejection of application for revocation or cancellation of registration.

b. Denial of amendment in registration details.

c. Rejection of refund claim without any6 additional demand.

xii. Procedure for filing of appeal (Rule 18 of (GSTAT) Procedure Rules, 2015

Contents of appeal

a. Appeal should start with a cause title “In the Goods and Service Tax Appellate Tribunal” and mention the order being appealed.

b. The appeal should be divided into numbered paragraphs for each fact or point, include full details of each party at the start- Like name, parentage, GSTIN , and address.

c. It must be ensured that the reasons for the appeal are clearly listed in numbered points and typed in double space on A-4 paper with pages numbered and organized in a separate folder. Every appeal or document must be signed and verified by the appellant or the authorized representative, confirming that all the documents are true copies.

d. All documents should be clear, easy to read, properly paged, indexed and securely tagged.

Number of appeals

a. Irrespective or number of show cause notices or demands if there is one order in original then only one appeal needs to be filed.

b. If the order in appeal has been passed in reference to multiple orders-in original then multiple appeals needs to be filed.

c. If there are multiple people affected then separate appeals must be filed.

Mandatory documents to submit with an appeal for to be annexed

Certified copy (Authenticated by the concerned department) of the order appealed against and required fees on line and will then receive a final acknowledgment through the GSTAT portal.

xii. Scrutiny of petition or appeal or documents by the officers (Rule 24 of GSTAT Rules)

a. If any documents is submitted with a mistake. It will be returned with a notice to fix it within 7 days

b. If not corrected the Registrar may give up to 30 more days. It is not resolved the Registrar can refuse to register it and record the reasons.

c. If after a hearing with the Registrar, the corrections are still unsatisfactory, the case will go before the Bench which will decide whether to accept or reject the appeal.

Registration of admitted appeals and Ex-party amendments (Rule 25 and Rule 26 of GSTAT Rules)

Once an appeal is filed, it will be numbered and registered in index. The Registrar can correct arithmetical, grammatical and clerical errors on their own but no changes can be made ex-parte once respondents have appeared.

Interlocutory Application (Rule 29 of GSTAT Rules and section 124

A request made to file Interlocutory Application in prescribed form GSTAT Form 01 before the GSTAT during an ongoing appeal, may be made in following cases.

Stay

Specific Direction

Rectification in order

Condonation of delay

Early hearing of appeal

Extension of Time prayed for submission of documents

Exemption from production of copy appealed against.

Powers and Functions (Section 111)

The GSTA Tribunal is bound by the Civil Procedure laid down in the Code of Civil Procedure in respect of

issue of notice,

hearing,

Summoning and examining persons on oath,

Requiring, discovery and production of documents,

Receiving evidence on affidavits,

Requisitioning public record or documents (subject to the Bharatiya Sakshya Adiniyam),

Dismissing representation for default or deciding ex-parte,

Setting aside orders of dismissal for default or deciding exparte,

Order of the Tribunal are treated in the same manner as if it is a Decree issued by a Court,

xiii. Inherent powers of the Appellate Tribunal (Rule 10 and 76 of GSTAT Rules)

a. The GSTA Tribunal shall have inherent powers to issue orders or give directions to ensure that the ends of justice are met to prevent abuse of the process.

b. Tribunal can call Amicus Curiae to aid in complex cases, tribunal can appoint external experts to assist bench and Tribunal may form a panel of Authorised representatives, valuers and other domain experts.

xiv. Hearing of appeal (Rule 41,42, and 43 of GSTAT Rules)

a. Hearing usually happens on fixed day or on a day when it is postponed to and the Tribunal may decide to hear the appellant when approached.

b. In case the appellant or respondent misses hearing the appeal the appellate Tribunal will dismiss the appeal or pass an exparte order.

c. The appellate Tribunal may set aside exparte order if appellant gives a valid reason for nonappearance on the date fixed for hearing.

Death of appellant or change in status of company

In case appellant or respondent dies or adjudication as an insolvent or winding of company the appeal or application shall abate unless successor ,executor, receiver, liquidator move application within 60 days of the occurrence of event.

xv. Additional Evidence before GSTA Tribunal (Rule 10 of GSTAT, Rules and Rule 112 of the Central Goods and Service Tax Rules 2017)

Appellant cannot produce any new evidence (oral or documentary) not presented before lower authorities except in following cases:-

a. Evidence was wrongly refused by adjudicating or appellate authority.

b. Appellant was prevented by sufficient cause from submitting evidence relevant to the appeal

c. Insufficient opportunity was given to the appellant to present evidence during the original proceedings.

d. Before admitting or allowing additional evidence by GSTA Tribunal authorites below must be given a reasonable chance to examine the new evidence or cross examination of witness.

e. Application for additional evidence should support the affidavit.

Key Takeaways for professional

Prepare & submit all relevant evidence during adjudication itself. Failure to submit crucial documents at an initial stage can weaken your case irreversibly. The appellate stage is not an opportunity to fill gaps left at initial stage.

xiv) Orders of Appellate Tribunal (Section 113)

a. The Appellate Tribunal may either confirm, modify, remand or annul the orders appealed against.

b. If members differ hearing a case they must state their points of disagreement and present will refer the case for a fresh hearing by third member(larger bench) ie, from a State Bench to another State Bench within the

same State. Or

From the Principal Bench to another Member of the Principal bench or any State Bench (Section 109(9) of CGST Act).

xvi. Rectification of mistakes (Section 113)

a. The Appellate Tribunal can rectify any error which is apparent from the record. It can rectification can be suo moto or upon application of either party to the appeal.

b. Application is to be made within 3 months from the date of order

c. Rectification which may enhance the liability or reduce requires the taxpayers to be heard.

Authorised representative (Section 116 & Rules 116)

a. Authorised representative include relatives, regular employees or practicing advocates, CA CMA or CS , retired Tax department officer who served at least two years as a Group B Gazetted officer, not within one year or retirement and authorised GST practitioners.

b. Persons who are dismissed or removed from government service, convicted of related offences, found guilty of misconduct, insolvent, or disqualified under GST laws.

c. No legal practitioner or authorised representative may appear before the Appellate Tribunal unless they file a vakalatnama, Memorandum of Appearance, or authorised letter, including all details in GSTAT Form -4 duly singed by the party (Rule 72 of GSTAT Rules)

d. The authorised representative must obtain consent from the existing authorised representative before filing a vakalatnama or similar document in pending case.

e. If refused they can seek Tribunal permission after revoking the previous appointment, with the application served on the current counsel.

f. An authorised representative who has advised, prepared pleadings, or acted for a party in a case before the Appellate Tribunal cannot appear for an opposing party in the same or related matter without prior permission from the Tribunal (Rule 74 of the GSTAT Rules)

g. A party who has engaged an Authorised representative to appear on their behalf shall themselves be restricted from appearing before the Appellate Tribunal (Rule 75 of the GSTAT Rules)

Though the GSTAT has already started functioning through its Principal Bench at New Delhi and already pronounced few orders under the provisions of anti-profiteering under 171 of the CGST Act 2017 it is yet to commence proper functioning for dispute resolution through Principal Bench and State Benches. The Principal Bench of GSTAT started taking up appeals against orders passed by the National Anti-Profiteering Authority and is also likely to hear matters remanded by various High Courts on anti-Profiteering disputes.

CA RAJENDRA ARORA
Chartered Accountant
Vice President:
Sales Tax Bar Association, Delhi
+91-9891112120 and mail at gstrfbharat@gmail.com

Analysis of Important Case Laws under GST

In this article three aspects are touched on the basis of jurisprudence established by various high courts of country.

Major issued to be Covered: -

1. Can recovery be made from dead person under GST?
2. Can Penalty be levied on delayed annual return?
3. Extent of Binding of judgments for the department passed by various courts

1. Can recovery be made from dead person under GST?

GST law is a tax on economic transactions which is collected by the business and paid by the end user of goods and services for the government. Business, by and large, works on the going concern concept, which assumes that business is going to remain till perpetuity and would be there to take onus of the transactions undertaken by it.

On the similar corollary, GST law also puts charge over the business for the tax collected or due from it. This demand can be made during continuance or after the cessation of business also. In case of businesses run by proprietors, special provisions in the law and a circular explaining the procedure are in place.

Today's discussion is on around a judgement pronounced by honorable Allahabad high court on the liability of a proprietorship business where proprietor is died and it is run by his legal heir. Author shall discuss the issue basis the content pronounced by the honorable court.

Question which is addressed by the court is, **"Where authorities issued show cause notice and ex parte order against a deceased sole proprietor after registration was cancelled upon information of death, whether such proceedings against non-existent person were valid in law?"**

Facts of the Case

In this case of Ashwani Kumar Pandey v. State of U.P. [2026] 182 taxmann.com 98 (Allahabad) HIGH COURT OF ALLAHABAD,

Petitioner is son of Late Mr. Ram Prasad Panday who was the proprietor of the M/S Pandey Iron Dealer. Mr. Ram Prasad Panday died on February 06, 2021. *Subsequent to his death, Counsel of Mr. Ram Prasad Panday made an application before the Proper Officer for cancellation of the registration which was cancelled on June 27, 2023.*

In spite of having knowledge of the same, the authorities issued a show cause notice dated May 21, 2024, and thereafter, passed an ex parte order dated August 21, 2024, under Section 74 of the Uttar Pradesh Goods and Services Tax Act, 2017

It is clear from the facts that the show cause notice and order both were uploaded on the portal and the same, was accordingly, not known to the legal heirs of the proprietor of the firm. The wife of Mr. Ram Prasad Panday has also expired and the writ petitioner, who is the son of Mr. Ram Prasad Panday, has filed this writ petition challenging the show cause notice and order on the ground that the same were passed against a person who was deceased.

the following prayers have been made by the petitioner: -

"(i) Issue any other Writ, Order or direction in the nature of Certiorari thereby quashing the order dated 24.04.2024, passed by respondent no. 3, under section 50 as well as section 122 of the U.P. G.S.T. Act, 2017 for the tax period April 2018 to March, 2019, by which respondent no. 3 has demand of Rs. 55,42,604.52/- (Tax Rs. 26,64,713.72/- and Interest of Rs. 2,66,471.36) against the dead person namely Ram Prasad Panday, contained as Annexure No. 3 to this affidavit in the interest of justice.

Furthermore, since information had been provided to the authorities with regard to death of the deceased person, the very initiation of the show cause notice was bad in law.

Case of the Petitioner and Judgment made by the court

Learned counsel appearing on behalf of the petitioner has relied upon a Division Bench judgment of this Court presided over by Hon'ble The Chief Justice in the matter of *Amit Kumar Sethia v. State of U.P [2025] 173 taxmann.com 370 (All)/Writ Tax No.917 of 2025 decided on April 2, 2025 [Neutral Citation No. - 2025:AHC:45317-DB]* in support of his case.

The relevant paragraphs of the said judgments are provided below: -

"6. Undisputed facts are that the show cause notice, reminders and determination of tax have been made after the death of the proprietor of the firm.

Provisions of Section 93 of the Act, insofar as relevant, reads as under:

"93. Special provisions regarding liability to pay tax, interest or penalty in certain cases: (1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then - (a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and (b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death."

A perusal of the above provision would reveal that the same only deals with the liability to pay tax, interest or penalty in a case where the business is continued after the death, by the legal representative or where the business is discontinued, however, the provision does not deal with the fact as to whether the determination at all can take place against a deceased person and the said provision cannot and does not authorise the determination to be made against a dead person and recovery thereof from the legal representative.

Once the provision deals with the liability of a legal representative on account of death of the proprietor of the firm, it is sine qua non that the legal representative is issued a show cause notice and after seeking response from the legal representative, the determination should take place.

In view thereof, the determination made in the present case wherein the show cause notice was issued and the determination was made against the dead person without issuing notice to the legal representative, cannot be sustained.

In light of the above settled principle of law, it is inherent that proceedings cannot be initiated against a person who is deceased. Thus, proceedings cannot be initiated against the legal heirs of the deceased or against the estate of the deceased. However, it was open to the authorities to proceed in proper manner against the legal representative/heirs of the deceased proprietor and having failed to do so, the entire proceedings initiated from the stage of show cause notice is bad in law.

Following the principles laid in the judgement of Amit Kumar Sethia (supra), court is of the view that the entire show cause notice and the impugned order passed the Act cannot sustain. Accordingly, the show cause notice dated May 21, 20224 and impugned order dated August 21, 2024 are quashed and set aside with liberty to the respondent authorities to proceed against the petitioner in accordance with law, if so advised.

Consequently, the writ petition is allowed. The order dated 17.11.2023 (Annexure-1 to the writ petition) is quashed and set aside. The respondents would be free to take appropriate proceedings in accordance with law."

Final Word

After careful reading of this judgement, it can be safely inferred that, if liability of the deceased is to be determined then proper procedure for issuance of show cause notice In the name of legal heir is to be followed. SCN can not be issued in the name of deceased proprietor specially when GSTIN of the deceased was duly applied for cancellation and it was accepted by the department also.

2. Can Penalty be levied on delayed annual return?

Industry has recently filed 8th annual return on or before 31st December, 2025. This sphere of gst law has seen many ups and downs in terms of extension of due dates, changes in late fees, amnesty to file pending returns and recently computation of late fees where annual return filed but not reconciliation statement.

It is often advocated in the legal circles that two penalties can not be imposed for the same offence. Here under this segment of compliances, two documents are filed, annual return in form GSTR-9 and reconciliation statement in form GSTR-9C. It is usually perceived that these two forms are different but recently department has clarified this by way of circular that annual return is the primary form and reconciliation statement is the attachment to annual return wherever applicable.

Two provisions of the law are relevant here, section 47 and section 125 of the CGST Act. In this article, author has dwelled on this issue only basis two important judgements passed by the honorable Madras High Court.

***Question which is addressed by the court is, "*Where assessee failed to file annual return and was levied late fee under section 47 of CGST and SGST, whether imposition of additional general penalty under section 125 was permissible since a specific penalty was already provided for same contravention, and so as general penalty was to be quashed and only specific late fee was sustainable?**

Facts of the Case

[2026] 182 taxmann.com 321 (Madras) HIGH COURT OF MADRAS Tvl R P G Traders v. State Tax Officer

Petitioner failed to file annual returns - Department levied late fee under section 47 and general penalty under section 125 - Petitioner contended that as per section 47, only late fee could be levied and further section 125 would apply where no penalty is levied under section 47 - Petitioner submitted that without proper enquiry and verification of records, respondent passed impugned order.

The learned counsel appearing for the petitioner would submit that since the petitioner failed to file its annual returns, the first respondent passed the impugned order by levying the penalty fee of Rs.75,025/- CGST and Rs.75,025 of SGST, totalling to Rs.1,50,050/-along with general penalty of Rs.50,000/-. He further submits that as per Section 47 of the TNGST Act, 2017, only late fee can be levied. Further, the provision under Section 125 of the Act will apply only in the case where no penalty is levied under Section 47 of the Act. He further submits that without proper enquiry and verification of records as contemplated under Section 73 of the GST Act, the 1st respondent has passed the impugned order. Therefore, the impugned order is liable to be quashed.

The learned Additional Government Pleader appearing for the first respondent would submit that since the petitioner failed to file its annual returns, the impugned order has been passed levying the late fee along with general penalty. Therefore, he prays for dismissal of the Writ Petition.

Discussion and Judgement

On a perusal of the records, it is seen that since the petitioner failed to file its annual returns, as per Section 47 of the Act, the first respondent has levied the late fee of Rs.75,025/- CGST and Rs. 75,025/- of SGST, totalling to Rs.1,50,050/-. Further, under Section 125 of the Act, the first respondent has levied the general penalty of Rs.25,000/- CGST and Rs.25,000/- of SGST, totalling to Rs.50,000/-.

In this regard, the petitioner has also produced the order passed by the Principal Bench of this Court in W.P.No.36614 of 2024, dated 04.02.2025/*Tvl. Jainsons Castors & Industrial Products* v. *Assistant*

Commissioner (ST) [2025] 172 taxmann.com 358 (Madras)/[2025] 98 GSTL 110 (Madras).

Relevant para from the case is reproduced here for ready reference-:

7. *In the event of non-filing of the return, the respondent can call upon the petitioner to pay the late fee in terms of Section 47 of the Act, which is independent provision deals with any default or belated filing of return. Therefore, this Court does not find any fault in the show cause notice issued by respondent under Section 47 r/w 73 of the Act. The respondent is entitle to initiate proceedings as per applicable provision for non-filing of return. However, in the present case, the respondent has imposed the late fee under Section 47 of the Act and also penalty under Section 125 of the Act. At this juncture, it is relevant to extract Section 125 of the Act, which reads as follows:-*

"125. Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty five thousand rupees."

A reading of the above would show that in the event no penalty is separately provided in this act, general penalty would apply. *In the present case, penalty was imposed in the form of late fee in terms of Section 47 of the Act. Therefore, general penalty of Rs.50,000/- towards CGST and SGST is not correct and the same is set aside. As far as late fee is concerned, the same is confirmed.*

This Court is of the view that the provision under Section 125 of the Act, apply only in the case where no penalty is levied under Section 47 of the Act. However, in this case, already late fee has been levied under Section 47 of the Act. Therefore, the question of levying general penalty under Section 125 of the Act will not apply.

Therefore, the same is liable to be quashed. Accordingly, the levying of general penalty of Rs.50,000/- is hereby set aside.

Final word

According to both judgements passed by honorable court, it is firmly decided that penalty under section 125 shall only be levied under those situations where no other penalty is prescribed for a particular offence. Here under section 47 of the act, late fees is prescribed for delayed filing of annual return, now if, filing is delayed and late fees charged then section 125 can not be invoked and general penalty can be charged. Ratio laid down by these two judgements wont only apply to annual return matters but other offences also in which late fees or other fine is prescribed and charged.

3. **Extent of Binding of judgments for the department passed by various courts**

As per judgement passed by honorable Allahabad High Court in the matter of M/s Rajdhani Udyog Versus State Of U.P. And 2 Others - 2025 (9) TMI 251 - ALLAHABAD HC made following observations:-

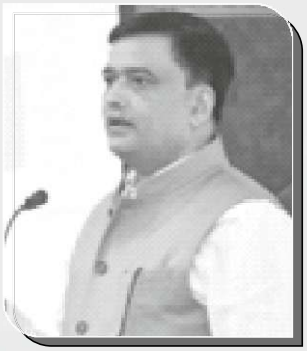
i. failure by tax authorities to comply with binding judicial pronouncements amounts to serious disregard of judicial discipline, and
ii. accordingly imposed costs on the responsible officer of rs. 5000/- out of his salary, with directions for systematic training and dissemination of legal updates to government officers.
iii. Directed the Principal Secretary, Institutional Finance Department, Government of U.P., to file a personal affidavit explaining the officers' conduct and implement a comprehensive, structured roadmap for keeping officers updated on legal developments and judicial pronouncements and adjourned the matter for further hearing, listing it afresh for compliance.

Final word

In this landmark judgement passed by the court, it has reinforced very important judicial discipline which directs all the stakeholders to act according to the binding nature of judicial precedents as per article 141 of the constitution. Therefore, stakeholders can rely upon this judgement to press upon to the executive of GST taxiing system to compulsorily act as per the directions of the judiciary.

About the Author

CA. DHARMENDRA SRIVASTAVA
Chartered Accountant



Corporate Guarantee under GST: Departmental Perspective and the Practical Issues Faced by Taxpayers

I. Introduction

A corporate guarantee is an arrangement where one company undertakes to cover the debt or obligations of another company, usually within the same corporate group. It is commonly provided to lenders as a form of security and places a contingent financial responsibility on the guarantor company in the event the borrower fails to meet its obligations.

The taxability of corporate guarantees issued by a holding company to banks or financial institutions on behalf of its subsidiary or related entity has emerged as a contentious issue under the GST regime. The Department treats the activity of providing a corporate guarantee as a taxable supply of service, whereas taxpayers contend that such activity is a mere obligation without consideration, and therefore falls outside the scope of "supply" under Section 7 of the CGST Act, 2017.

This divergence in interpretation has resulted in GST demands, invocation of Section 74, and prolonged litigation, even though the issue largely involves interpretation of law, revenue neutrality, and the absence of any explicit consideration.

II. Department's Perspective: Why Corporate Guarantee Is Considered Taxable

The Department proceeds on the basis that by providing a **corporate guarantee to a bank on behalf of a related recipient**, the appellant undertakes a **contractual act of assuming the risk of default** of the related entity.

According to the Department:

- This act itself constitutes a **service**;
- The service directly induces **economic benefit** to the related recipient;
- The borrower is able to obtain loans more comfortably with enhanced creditworthiness;
- There is a reduction in lender's risk, leading to lower interest rates and improved group financial stability and enterprise value.

The Department therefore concludes that **the service is provided at the time of issuance of the corporate guarantee**, and not upon invocation, and that such activity is carried out **in the course and furtherance of business**.

Further, since the transaction is between **related persons**, the Department invokes **Schedule I of the CGST Act**, which treats supply between related persons as taxable **even when made without consideration**.

To support taxability, the Department relies on the following:

a) **Notification No. 52/2023-CT, dated 26.10.2023 inserted Rule 28(2) with prospective effect, prescribing deemed valuation at 1% of the guarantee amount per annum** as below-

In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), rule 28 shall be renumbered as sub-rule (1) and after the sub-rule as so renumbered, the following sub-rule shall be inserted, namely:- "(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher."

The Department asserts the insertion of Rule 28(2) does not create a new levy or expand the scope of taxability. According to the Department, the rule merely

standardises the valuation mechanism for an activity which was already taxable as a supply of service under the GST law.

b) Circular No. 225/19/2024-GST dated 11.07.2024 clarifies that for corporate guarantees issued prior to 26.10.2023, valuation was to be done under Rule 28 as it existed earlier, and that Rule 28(2) applies only prospectively for valuation standardization.

c) Services supplied by the Central Government or State Government to PSUs by way of guaranteeing loans are specifically exempted under **Entry 34A of Notification No. 12/2017-CT (Rate).** The Department contends that this exemption itself proves legislative intent that only a limited class of guarantee services is exempt, and all other guarantee services provided by non-Government entities remain taxable.

Circular No. 34/8/2018-GST dated 01.03.2018 clarified the service provided by Central Government/State Government to any business entity including PSUs by way of guaranteeing the loans taken by them from financial institutions against consideration in any form including Guarantee Commission is taxable, and according to the Department, it was crystal clear from the inception of GST that guarantee services are taxable unless specifically exempted.

III. Taxpayer's Perspective: Supply Is Being Assumed, Not Established

From the taxpayer's perspective, the mere existence of economic benefit, improved credit rating, or any commercial advantage arising from a corporate guarantee does not, by itself, create a taxable event under GST.

a) The taxpayer contends that such benefits, howsoever real or commercially relevant, do not fall within the definition of **"consideration" under Section 2(31) of the CGST Act**.GST law taxes only the amounts that are **actually paid or payable** in connection with a supply, and not benefits that are merely **perceived, indirect, or economic in nature**. Accordingly, the presence of commercial advantage alone cannot convert a shareholder support arrangement into a taxable supply. It is worth mentioning that:

- No consideration is charged for issuing the corporate guarantee;
- No guarantee commission or fee is received;

- No invoice is issued under Section 31;
- No monetary or non-monetary flow exists from the subsidiary to the holding company.

As per **Section 7 read with Section 2(31)**, GST is a tax on **supply for consideration**, and not on shareholder obligations or internal business support.

The Department invokes **Schedule I** to treat the transaction as taxable even without consideration. However, it is pertinent to note that:

- Schedule I applies only where goods or services exist;
- It does not deem a mere obligation to be a service;
- It cannot override the foundational requirement of "supply" under Section 7.

Thus, taxpayers face a situation where **taxability is presumed and supply is inferred**, rather than supply being established first.

b) Another major issue faced by taxpayers is the **absence of a workable valuation mechanism during the disputed period**. While the Department asserts that Rule 28 always applied, it is to be noted that valuation under Rule 28(1) requires **open market value**, which does not exist for internally generated corporate guarantees. No comparable third-party transaction is available, and valuation became standardized only after the insertion of **Rule 28(2)**.

Accordingly, it can be argued that **the charging provision cannot survive where valuation fails,** and a circular cannot retrospectively cure such a defect.

c) It is also important to note that even if the activity of providing a corporate guarantee by the company to its subsidiaries or related persons is treated as taxable, the recipient would be **eligible to avail full input tax credit**. Accordingly, the entire transaction is **revenue neutral**, and there is **no loss of revenue to the Government**.

In such cases, the value of supply may be **deemed to be NIL** and treated as the **open market value** in terms of the **second proviso to Rule 28(1) of the CGST Rules**.

Reliance can be placed on **Circular No. 210/4/2024-GST dated 26.06.2024**, which clarifies that where full input tax credit is available, the value declared may be accepted as the open market value and, in appropriate cases, **even a NIL value may be accepted**.

Relevant extract of **Circular No. 210/4/2024-GST dated 26.06.2024 is reproduced for ready reference-**

3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is availableto the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, ***in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.***

IV. Judicial Position: Issue Pending Before Higher Courts

The controversy relating to the taxability of corporate guarantees under GST is **currently pending before various High Courts**, and the legal position is yet to attain finality. The courts have recognised that the issue involves **important questions of law**, including the scope of "supply", the nature of corporate guarantees, valuation principles, and the limits of circular-based clarification.

a) M/s. Sterlite Power Transmission Ltd. v. Union of India [2024] 160 taxmann.com 381 / 103 GST 29 / 16 Centax 469 (Delhi)

In this case, the petitioner filed a writ petition before the Delhi High Court seeking a declaration that the activity of a holding company providing a corporate guarantee to its subsidiary **does not constitute a taxable supply of services under Section 9 of the CGST Act**. The petitioner contended that a corporate guarantee is a **contingent contract**, which does not result in any enforceable obligation unless the guarantee is actually invoked by the lender. Therefore, according to the petitioner, the question of providing any service would arise **only upon invocation of the guarantee**, and not at the time of its issuance. It was further argued that fixing the value of such guarantee at **1% of the guarantee amount** would impose a **substantial and disproportionate burden** on the entity providing the guarantee. The Delhi High Court issued **notice to the Revenue** and granted **stay against any coercive action**, thereby acknowledging the seriousness of the legal issues involved.

b) Acme Cleantech Solutions (P.) Ltd. v. Union of India [2024] 162 taxmann.com 151 / 104 GST 2 / 18 Centax 89(Punjab & Haryana High Court – CWP No. 10249 of 2024)

In this case, the assessee challenged **Circular No. 204/16/2023-GST dated 27.10.2023**, contending that the circular effectively **takes away the adjudicatory powers of the**

Assessing Authority and the Appellate Authority by issuing clarifications that operate in the nature of adjudication.The Punjab & Haryana High Court, in its interim order, **stayed the operation and effect of the impugned circular** to the extent of the challenged clarification. The Court further directed that the Appellate Authority shall decide the case of the assessee **independently and without being influenced by the circular**. This decision reinforces the principle that **circulars cannot override statutory provisions or substitute judicial determination**, especially in matters involving complex questions of taxability.

V. Conclusion:
A Balanced Way Forward

The issue of GST on corporate guarantees is currently **pending before the High Courts**, and the legal position is **not yet settled**. The final decision of the courts will clarify whether such guarantees amount to a taxable supply, how valuation should be done, and how shareholder obligations are to be treated under GST. Until this clarity is available, the matter remains open, and a cautious and balanced approach is required from both taxpayers and the tax authorities.