

LATEST CASE LAWS

- Moni Kanta Das Versus Union Of India And 3 Ors [Gauhati High Court]
- M/S Osr Creation Versus State Of U.P. And 2 Others[Allahabad High Court]
- Star Facilities Management Ltd. Versus Deputy Commissioner Office Of The Deputy Commissioner State Tax [Allahabad High Court]

UPDATES

- GST Circular No. 246/03/2025
- GST Circular No. 245/02/2025-GST

EDITOR'S COLUMN

- Gujrat H.C: The Gujarat High Court ruled that GST is not applicable on the assignment of long-term leasehold rights, as it constitutes the transfer of benefits from immovable property, reaffirming its earlier decision in Gujarat Chamber of Commerce and Industry vs. Union of India.

TAX BITES

- M/S Buddha Resorts Pvt. Ltd. Versus chief Comm. Of GST Zone And Another. - Allahabad High Court
- Cherish India Exports Versus The Assistant Commissioner Of State Tax And Others:2025 Andhra Pradesh High Court
- Star Roofs And Metals Versus The Assistant Commissioner Tax Payer Ernakulam, The State Tax Officer Ernakulam, The Joint Commissioner Of State Tax Appealscochin: 2025 - Kerala High Court



INDIRECT TAX UPDATES

FEBRUARY 2025

An E - Newsletter

Guwahati HC: MONI KANTA DAS V. UOI 2025 (1) TMI 1365

Background: The case of *Moni Kanta Das Versus Union of India* and 3 Ors revolves around the cancellation of the petitioner's GST registration due to non-filing of returns for over six months, as required by Section 29(2)(c) of the CGST Act, 2017. The petitioner, engaged in works contracts under the trade name 'Sri Moni Kanta Das in Duliajan, Assam, received a show cause notice on January 5, 2021, demanding an explanation for his failure to submit returns. Despite the notice, the petitioner did not respond or appear before the authorities, leading to the cancellation of his GST registration effective February 10, 2021. The petitioner attributed his inability to file returns to the adverse effects of the COVID-19 pandemic on his business operations.

Decision: On January 24, 2025, the Guwahati High Court ruled in favor of the petitioner, setting aside the cancellation order. The court noted that similar cases had resulted in restored GST registrations upon payment of outstanding dues. It directed the petitioner to approach the relevant authority within one month to seek revocation of his GST registration. The authority was instructed to inform him of any outstanding statutory dues that needed to be paid for his registration to be restored. The court emphasized that restoring the GST registration was necessary for compliance with tax obligations under the GST regime and to ensure revenue collection for the government.

Allahabad HC: M/S OSR CREATION VERSUS STATE OF U.P. AND 2 OTHERS: 2025 (1) TMI 1311

Background: A writ petition filed by M/S OSR Creation against the State of U.P. and others concerning the imposition of a penalty under Section 129 of the Goods and Services Tax (GST) Act. The petitioner, a proprietorship engaged in manufacturing and trading furniture, sold goods to Lotus Herbal Private Limited on November 21, 2022. Due to a technical error, the e-way bill could not be generated at the time of sale, but it was created shortly before the goods were intercepted by tax authorities. The goods were detained at 6:00 PM on the same day, just after the e-way bill was generated at 4:59 PM. The petitioner contended that they had produced the e-way bill to the authorities before any seizure order was issued. However, despite this evidence, a penalty was imposed, which led to the filing of this writ petition.

Decision: The Allahabad High Court ruled in favor of the petitioner. The court emphasized that since the e-way bill was produced before the seizure order was executed, there was no contravention of GST provisions. The judgment highlighted that previous rulings established that if requisite documents are provided before any seizure action and there is no intent to evade tax, imposing a penalty is unjustified. The court noted that at no point did the authorities identify any discrepancies in the e-way bill presented by the petitioner. Consequently, it quashed the impugned orders and ruled that any amount deposited by the petitioner should be refunded according to law. This decision reinforces the principle that compliance with documentation requirements prior to enforcement actions is critical and protects businesses from unjust penalties when they act in good faith.

Allahabad HC: STAR FACILITIES MANAGEMENT V. DC State Tax 2025 (1) TMI 1309

Background: A writ petition filed by Star Facilities Management Ltd. against an order issued under Section 74 of the Goods and Services Tax (GST) Act, 2017. The order, dated November 5, 2024, raised a demand of ₹90,25,540 based on findings from a Special Investigation Branch (SIB) report for the financial year 2017-18. The petitioner received a show cause notice that referenced the SIB report but did not provide a copy of it. In response to the notice, the petitioner requested access to the SIB report to adequately address the findings outlined in the notice. However, this request was denied by the authorities, who argued that since the petitioner had already appeared before the SIB and was aware of the issues, there was no need to supply the report.

Decision: The Allahabad High Court, ruled in favor of Star Facilities Management Ltd. The court found that the issuance of the show cause notice was fundamentally flawed due to the respondent's failure to provide a copy of the SIB report, which served as the basis for the notice. As a result, the court quashed the impugned order and remanded the matter back to the authorities. It directed them to supply a copy of the SIB report to Star Facilities Management Ltd., allowing sufficient time for a response and ensuring an opportunity for a hearing as mandated by Section 74 of the GST Act. This decision underscored the importance of adhering to principles of natural justice in administrative proceedings.

Key Highlights of the 2025 Circular of GST:

GST Circular No. 246/03/2025 on Late Fee for Delay in Filing FORM GSTR-9C

1. Late Fee Applicability for FORM GSTR-9C Filing Delay

Queries were raised regarding whether late fees under Section 47 of the CGST Act apply when FORM GSTR-9C (reconciliation statement) is filed after the due date of the annual return (FORM GSTR-9).

2. Regulatory Background:

Before 01.08.2021: Registered persons with turnover exceeding ₹2 crore were required to get their accounts audited and submit a certified reconciliation statement (FORM GSTR-9C) along with their annual return (FORM GSTR-9).

After 01.08.2021: The mandatory audit requirement was removed. Now, taxpayers with turnover exceeding ₹5 Crore must submit a self-certified reconciliation statement (FORM GSTR-9C) along with FORM GSTR-9.

3. Clarification on Late Fees:

If FORM GSTR-9C is required but not filed along with FORM GSTR-9, the annual return is considered incomplete.

Late fees under Section 47(2) of the CGST Act will apply from the due date of the annual return until the complete return (both FORM GSTR-9 and FORM GSTR-9C) is submitted.

No separate late fee for delays in filing FORM GSTR-9 and FORM GSTR-9C; it will be calculated based on the complete annual return submission.

4. Waiver of Late Fee for Past Years (Upto FY 2022-23): As per Notification No. 08/2025-Central Tax (dated 23.01.2025), excess late fees for delays in filing FORM GSTR-9C for financial years up to FY 2022-23 have been waived, provided it is filed on or before 31st March 2025. However, no refund will be given for late fees already paid for past delay.

GST Circular No. 245/02/2025-GST Clarifications regarding the applicability of GST on certain services – reg.

1. No GST on Penal Charges by Banks & NBFCs – Penal charges levied by Regulated Entities (REs) as per RBI directions (effective 01.01.2024) are not subject to GST, as they are considered deterrent charges for non-compliance rather than consideration for a service.

2. GST Exemption for Payment Aggregators – RBI-regulated Payment Aggregators (PAs) facilitating transactions up to ₹2,000 through card payments qualify for GST exemption under Sl. No. 34 of Notification 12/2017-CTR, but Payment Gateways (PGs) are not covered under this exemption.

3. Regularization of GST on R&D and Skilling Services – Past GST payments on R&D services (by government entities against grants) and skilling services (by Training Partners approved by NSDC) are regularized for specific periods where interpretational issues arose.

4. GST on Facility Management Services to MCD & DDA's Status – Facility management services provided to MCD (for its HQ upkeep) are taxable as they do not relate to municipal functions. Also, DDA is clarified as not being a 'local authority' under GST law.

5. GST on Renting & Electricity Utility Services Regularized – Renting of commercial properties by unregistered persons to registered taxpayers under composition levy is regularized for the interim period before its exclusion from reverse charge. Similarly, GST on ancillary electricity distribution services (meter rent, testing, connection charges) is regularized for a transition period before exemption was granted.

GUJRAT H.C: M/S. KABIR INSTRUMENT AND TECHNOLOGY VERSUS UOI :2025 (1) TMI 1307. Hon'ble Gujarat High Court ruled that GST is not applicable on the assignment of long-term leasehold rights, as it constitutes the transfer of benefits from immovable property, reaffirming its earlier decision in Gujarat Chamber of Commerce and Industry vs. Union of India (2025 (1) TMI 516).

Background

The case pertains to the imposition of GST on the assignment of long-term leasehold rights. The petitioner sought a declaration that the respondents were not entitled to levy GST on such transactions under the Goods and Services Tax Act, 2017. The petitioner challenged a show cause notice issued by tax authorities, arguing that the assignment of leasehold rights should not attract GST. They referenced a prior ruling by the Gujarat HC in Gujarat Chamber of Commerce and Industries vs. Union of India, which clarified that the assignment and transfer of leasehold rights for consideration do not constitute a taxable supply under GST provisions.

Department Contentions:

The assignment of leasehold rights should be classified as a supply of services under Section 7(1)(a) of the GST Act, thereby attracting GST. They contended that the transfer of leasehold rights constitutes a transfer of an intangible asset, which should be subject to GST similar to sub-leasing or renting. The authorities posited that payments received for such assignments could be classified as "compensation" or "premium," making them liable for taxation under GST. The department maintained that the legislative framework allows for the taxation of services related to immovable property, arguing against the petitioners' claims that these transactions should be exempt from GST. While acknowledging existing stamp duties on property transfers, the department argued that this did not preclude GST applicability, asserting that both taxes serve different purposes.

Decision of the Court

The Gujarat High Court ruled in favor of Petitioner, quashing the impugned show cause notice. The court reiterated that the issue regarding the applicability of GST on leasehold rights had already been settled in previous judgments, affirming that such assignments are not subject to GST as they pertain to benefits arising from immovable property transferred from one party to another. The court disposed of the petition without delving into specific factual details, confirming that the facts surrounding the assignment were undisputed by the respondent authorities. Consequently, it ruled that since GST does not apply to these transactions, any associated input tax credit claims would also be irrelevant. The ruling was made absolute to this extent, with no costs awarded.

Our View

The principle that transactions involving the assignment of leasehold rights should not be subjected to GST, aligning with earlier judicial interpretations. By quashing the show cause notice, the court has provided clarity and certainty for businesses engaged in similar transactions, ensuring they are not unfairly burdened by tax liabilities on assignments that do not constitute a taxable supply. The decision also highlights the importance of adhering to established legal precedents in tax matters, promoting a fair and predictable regulatory environment for businesses. Overall, this ruling is a positive development for stakeholders involved in real estate and lease transactions, as it safeguards their interests against unwarranted taxation.



EDITOR'S COMMENTS

- **Clarity and Structure:** The document clearly presents the case details, but certain sections could be better structured. For example, the case law citation and relevant decisions could be summarized in bullet points or a more structured format to enhance readability.
- **Legal Reasoning and Justification:** While the judgment references previous rulings, a more detailed explanation of why the Gujarat High Court decided to quash the show cause notice would strengthen the argument. Expanding on the reasoning behind the conclusion could provide more clarity.
- **Formatting and Readability:** The document could benefit from improved formatting, such as clearer section headings, better paragraph spacing, and a summary at the beginning for quick reference. This would make it easier for readers to understand the judgment's implications.

M/S BUDDHA RESORTS PRIVATE LIMITED v. Commissioner CGST :2025 (1) TMI 1308 - ALLAHABAD HIGH COURT

The Allahabad High Court, in the case of M/s Buddha Resorts Private Limited vs. Chief Commissioner of GST, LKO Zone, ruled that the impugned revisional order under Section 108 of the U.P. Goods and Services Tax Act, 2017, was not maintainable in either of the two scenarios. If treated as an order dismissing the revision as not maintainable, it contradicted the provisions of Section 108, which does not require an appeal to be filed before invoking revisional jurisdiction. As a result, the High Court quashed the impugned order and restored the revision petition to its original number, directing the Revisional Authority to reconsider the matter afresh in accordance with the law and the court's observations.

CHERISH INDIA EXPORTS VERSUS THE ASSISTANT COMMISSIONER OF STATE TAX AND OTHERS:2025 (1) TMI 1303 - ANDHRA PRADESH HIGH COURT

The Andhra Pradesh High Court upheld the rejection of the petitioner's refund claim on the ground of time limitation under Section 54 of the CGST Act, 2017. The petitioner, engaged in the export of rough granite, filed a refund application on 21.03.2024 for exports made between January and March 2022. However, as per the statutory provisions, the relevant date for calculating the two-year limitation period was determined as 09.03.2022, the date when the vessel carrying the exported goods left Indian shores. Consequently, the deadline for filing the refund application expired on 09.03.2024. The court clarified that while Section 54(3) allows for refund claims at the end of a tax period, the outer limit for filing such claims is governed by Section 54(1), which mandates submission within two years from the relevant date. Since the petitioner's application was filed beyond this prescribed period, the court found no merit in the plea and dismissed the writ petition.

STAR ROOFS & METALS V ACIT GST: 2025 (1) TMI 1302 - KERALA HIGH COURT

The Kerala High Court held that the alleged mistake of availing Input Tax Credit (ITC) under CGST and SGST from IGST does not constitute a wrongful availment warranting a penalty. Referring to the precedent set in Rejimon Padickapparambil Alex v. Union of India & Others, the court reiterated that the electronic credit ledger functions like a wallet with different compartments for IGST, CGST, and SGST, and such an allocation does not justify a tax liability. Consequently, the court set aside the impugned assessment order and directed a reconsideration by the proper officer. It further instructed the closure of the pending appeal and the refund of any pre-deposit made by the petitioner upon application. The writ petition was accordingly allowed.

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