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INDIRECT TAX UPDATES

MARCH, 2025

An E - Newsletter

Supreme Court: CBIC V M/s Aberdare Technologies Pvt. Ltd. : SLP (C) Diary No. 6332/2025

[Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business]

Background:

The petitioner, CBIC filed SLP challenging the order of Bombay HC in the case of *Aberdare Technologies Private Limited vs. Central Board of Indirect Taxes and Customs and Ors.*, wherein the BHC had directed Petitioner to open the GST portal to enable Respondent to amend/rectify Form GSTR-1 and GSTR-3B. The Respondent had filed statutory monthly GST returns within the prescribed time but after some time in December 2023, realised that there were certain errors, which would not harm the interest of the revenue authorities.

Decision:

The Supreme court dismissed the SLP directing CBIC to re-examine the provisions/timelines fixed for correcting the bona fide errors. The Apex Court held that time lines should be realist as lapse/defect invariably is realized when input tax credit is denied to the purchaser when benefit of tax paid is denied. It was further observed that that human errors and mistakes are normal, and errors are also made by the Revenue. The Right to correct mistakes in the nature of clerical or arithmetical error is a right that flows from right to do business and should not be denied unless there is a good justification and reason to deny benefit of correction. The Court observed that the decisions of High courts in *Bar Code India Limited v. Union of India and others* (2024) SCC OnLine P&H 13853., and *Yokohama India Private Limited v. State of Telangana* (2023) 108 GSTR do not lay down good law and may be examined in another case.

Kerala HC: Indian Medical Association v. UOI and Ors. 2025:KER: 30517

[Constitutional validity of Section 2(17)(e), Section 7(1)(aa) of CGST Act and its explanation]

Background:

The petitioner challenged the constitutional validity of Section 2(17)(e), Section 7(1)(aa), and its Explanation – treat transactions between clubs or associations and their members as ‘supply’ under GST considering the principle of mutuality where the person cannot make supply to themselves. The Petitioner contended that the aforementioned provisions are ultra vires and goes beyond powers provided under Article 246A and is in conflict with the definition of ‘goods and services’ under Article 366(12A), and also violative Article 265, which states that no tax can be collected without the authority of law.

Decision:

The Hon’ble HC held that supply requires atleast two different persons i.e. a supplier and a recipient. Self-supply or self service like a club with its own members transacting with themselves is not envisioned as “supply” under the constitution.

The 46th Constitutional Amendment 1982 introduced a deeming provisions under Article 399(29A) to treat certain transactions between associations and their members as sales. In contrast, the CGST Act and KGST Act were amended to treat activities between a club and its members as ‘supply’, just by changing the definition of “supply” without amending the Constitution or redefining the term “service.”

The Court found that this approach goes beyond the powers given in the Constitution, particularly Article 246A, Article 366(12A), and Article 265, because the law tries to impose tax on transactions that constitutionally cannot be treated as a supply or service. Therefore, the court held that these provisions of the CGST/KGST Act are unconstitutional, invalid, and void.

Supreme Court: Vineet Jain V UOI

SLP (Criminal) No. 4349 of 2025

[Unless Extraordinary Circumstances exists, bail should be granted for offence under Section 132 of CGST Act, 2017]

Background:

The Appellant was alleged of the offences under Section 132(1) clause (c), (f) and (h) of the CGST Act, 2017. The chargesheet was filed and the Appellant was under custody for nearly seven months. The Trial Court and Rajasthan HC denied the benefit of bail and ultimately Appellant was forced to approach Hon’ble Supreme Court.

Decision:

The Hon’ble SC stated that it is surprising to note that in cases like this the appellant has been denied the benefit of bail at all the levels including by Hon’ble Rajasthan HC and the appellant was forced to approach the Apex Court. Hon’ble Court further stated that these are the cases where in normal course the Trial Court should have granted the bail unless there were some extra ordinary circumstances.

The Supreme Court by setting aside the impugned order of Rajasthan HC granted the bail to the Appellant directing to immediately produced him before the Trial court and directed the Trial Court that it shall enlarge him on bail on appropriate terms and conditions till the conclusion of the trial.

Key Highlights of the 2025 of GST:

GST Instruction No. 04/2025-GST dated 17th April, 2025 : Instructions for processing of applications for GST registration – regarding.

CBIC vide Instruction dated 17.04.2025 has simplified the process of GST Registration by outlining the specific details/documents which can be sought by officer for processing the application. Key guidelines are mentioned below:

- A. Document for proof of principle place of business:** For owned premises any one document like Property Tax Receipt, Electricity/Water Bill, or Khata Copy suffices. For rented premises registered rent agreement along with ownership proof of lessor (no requirement for lessor's ID), if it is not registered, then Rent Agreement alongwith ownership proof and lessor's ID proof. In case of premises via consent/affidavit, Consent letter, Identity proof and ownership proof will be sufficient. In case of shared premises or no Rent Agreement, Specific combinations of consent/affidavit along with utility bills to be accepted and in case of Special Economic Zones submission of relevant Government-issued documents is required.
- B. Issues in respect of Constitution of Business:** In case of Partnership firm, only the partnership deed is required. In case of Other Entities (Trusts, Societies, AOPs, etc, Registration Certificate/ Proof of Constitution is required.
- C. Processing Timelines and Physical Verification:** Officers must scrutinize only the prescribed documents under Form GST REG-01. If application is not flagged as risky and documents are complete, it must be approved within 7 working days of submission of application. If flagged risky or Aadhaar authentication is not completed, or officer decides to inspect, then Physical verification is mandatory. Further, Registration to be granted within 30 days, subject to verification. In case entity is found non-existing, efforts made in respect of locating the said premises, need to be recorded in the physical verification report. If ARN is wrongly assigned to another jurisdiction, it must be reassigned immediately.

GST Notification No. G.S.R 256 (E) dated 24-04-2025

The Ministry of Finance has introduced the Goods and Services Tax Appellate Tribunal (Procedure), Rules, 2025. The rules were published in Gazette Notification No. 256(E) on April 24, 2025, pursuant to Section 111 of Central Goods and Services Tax Act, 2017, for regulating the procedure and functioning of GST Appellate Tribunal. Key highlight of the provisions of GSTAT Rules are mentioned below:

- The appeals in the prescribed form shall be required to be filed online on GSTAT Portal.
- A single appeal in the prescribed form shall be filed by the appellant regardless of number of Show Cause Notices, demands, refunds etc., dealt with in the order appealed against.
- If the documents required to accompany are not produced, or the amendments required are not made within the time-limit allowed, the Registrar of the Tribunal may reject the form of Appeal.
- Procedure for hearing appeals by the Tribunal has been prescribed, *inter alia* outlining the actions to be taken where either the appellant or respondent fails to appear.
- Any notice or communication to be issued by the Tribunal may be served by any of the method specified in Section 169 of the CGST Act. For this purpose, the common portal referred in the said section shall mean the GSTAT Portal.
- Tribunal shall make and pronounce an order immediately or, as soon as practicable thereafter, but not later than 30 days from the final hearing excluding vacations or holidays.
- The proceedings before the Appellate Tribunal shall be open to the public.
- In case of different opinion of members of bench, the appeal shall be referred to larger Bench by the President, as it deems fit, for the disposal of the appeal.

Delhi HC: Gurudas Mallik Thakur V Commissioner of CGST & Anr.: W.P.(C) 5083/2025
[Penalty under Section 122(1A) of CGST Act can be imposed on both Taxable and Non-Taxable Person]

Background

The Petitioners were filed challenging the Impugned order passed by Commissioner of CGST. The Petitioners were the directors of the company engaged in business of manpower recruitment. An investigation was conducted against the company wherein it was alleged that CENVAT credit had been availed by the Petitioners which was inadmissible. The adjudicating authority vide passing the impugned order held that the demands were liable to be paid by the company as also its directors i.e. the Petitioners. Further, penalties were also imposed on the Petitioners. The Petitioners contended that they were not taxable persons under Section 122 and Section 122(1A) of the CGST Act and therefore, no liability can be fastened on the Petitioners.

Department Contention

The respondents submitted that the Petitioners are active directors in the company and place reliance on the decision of Bombay HC in **Bharat Parihar V. State of Maharashtra & Connected Matters; 2023 SCC Online BOM 1310** to argue that the language used in Section 122(1A) of the CGST Act is 'any person' which is also the language used in Section 83 of the CGST Act. The term 'any person' is used in contradictory distinction with 'taxable person' and in the said judgment of the Bombay High Court has clearly held that the phrase 'any person' would include a non-taxable person.

Decision of the Court

The Hon'ble Delhi High Court held that the matter requires closer scrutiny on facts by the Appellate Authority as to who was responsible for running the company and who was taking decisions including relating to generation of invoices, making payments, etc. Directors of a company and others who manage such companies owe a responsibility to ensure that companies do not engage in such fraudulent activity for availment of ITC without actual supply of goods, distribution of ITC to persons who have raised fake invoices and non-filing of GST returns. Such activities would have a greater financial impact on society in general and the economy in particular therefore Section 122 (1A) of the CGST Act has been enacted to also make such persons liable under these circumstances. The court relegated the petitioners at the stage of Appellate Authority for fact findings on the role of the directors.

Our View

This judgement ensures that directors, managers, or decision-makers in companies cannot escape liability. It highlights that every person involved in wrongful GST activities like fake invoicing or claiming ITC without actual supply will be held accountable. This is an important step to stop GST fraud and make sure those in charge follow the rules.



EDITOR'S COMMENTS

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Delhi HC: Daljeet Singh vs. Commissioner of Customs : W. P. (C) 5040/2025 – Delhi High Court

The Petition was filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, seeking issuance of an appropriate writ assailing the detention of the gold kada of the Petitioner detained vide detention receipt which was stated to be a personal asset of the Petitioner. It was submitted that the Petitioner being a Sikh, always wears this Kada. The Petitioner has placed photographs on record as well. The Court held that considering the fact that the gold Kada seized is merely a personal asset of the Petitioner, the detention itself is contrary to law and accordingly the detention of gold Kada was set aside.

Delhi HC: GMT Garments V Union of India and Ors. : WP(C) 5304/2025

The Petition was filed by the Petitioner challenging the appellate order dismissing the appeal of the Petitioner on the ground of delay. Initially the SCN as also the Order were not in the knowledge of the Petitioner for having been uploaded on the additional tab. The Court held that notice if uploaded on the additional notices tab of the portal, the same would not be proper. The Court also relied upon the case of *Satish Chand Mittal (Trade Name National Rubber Products) vs. Sales Tax Officer SGST, Ward 25-Zone 1*. The Court held that the appeal deserves to be condoned and Petitioner should be heard on merits. Accordingly the court restored the appeal filed by Petitioner.

Supreme Court: Commissioner, Commercial Tax, U.P. Lucknow V Samsung (India) Electronics Pvt. Ltd. : Diary No. 20066/2021

The issue in the case arose when Uttar Pradesh Tax department attempted to tax mobile chargers separately at a rate of 14% as an “*unclassified item*” even when they were sold together with mobile phones in a single package. The department relied upon the Supreme Court’s judgment in *State of Punjab V Nokia India Pvt. Ltd.* where it was ruled that charger is an accessory and not a part of mobile phone. The Allahabad HC had distinguished this case and held that charger was included in the package with single price it should be treated as a part of mobile phone and should be taxed accordingly under Entry 28 of UP VAT Act. The Apex court upheld the Allahabad High Court’s decision and held that decision in *Nokia India Ltd.*, does not apply in the cases where the charger and mobile phone are sold together as a single unit. The Supreme court found no reason to interfere with the Allahabad High Court’s ruling and dismissed the State’s Appeal.

- [**GST collections rise 12.6% to an all-time high of Rs 2.37 lakh crore in April**](#)
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- [**India Will Retaliate If EU Imposes Carbon Tax: Union Minister Piyush Goyal**](#)