Legal Communique

Information about important decisions

Department of Goods and Services Tax Government of Maharashtra

MARCH-2026

Presented by :
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Legal Communique Case No. 1

AARTI ENTERPRISE
(Through Savitaben Brindavan Agarwal)
Vs
The State of Gujrat &Anr.

AHMEDABAD HIGH COURT, A.R. R/SPECIAL CIVIL NO. 17409 OF 2025

(Communication ofthe date, time and venue of personal hearing is must while issuing notices)

Facts of the case:

1. Thenotice in Form DRC-01A dated 09.11.2024 passed by the respondent Authority for the Financial Year 2020-21.

2. The respondent authority issued three reminders dated 31/12/2024, 08/01/2025 and 17/01/2025, but the petitioner could not remain present and respond to the notices.

3. Thereafter, the respondent authorities passed an order along with a summary thereof in Form-DRC-07 dated 05/02/2025 confirming the demands of the short reversal of ITC.

Point of Dispute:

This writ petition challenges the system based notice in Form DRC-01A dated 09.11.2024 passed by the respondent Authority No. 2 for the Financial Year 2020-21 indicating that the petitioner has made a short reversal of the Input Tax Credit (ITC) under Section 17(2) of the Gujarat State Goods & Service Tax Act, (for short "GST" Act) 2017 read with Rule 42 of the Gujarat Goods & Service Tax (SGST Rules), 2017, by assuming that the entire ITC availed of by the petitioner during the said period is common ITC and hence the ITC proportionate to the exempted supplies is liable for reversal.

Submission of the petitioner :

1) Advocate of the petitioner has submitted thatthe impugned notice is in violation of principles of natural justice and is also in violation of provisions of Section 75(5) of the G.S.T Act, as though the petitioner was issued the reminders, however, they never intimated the date of personal hearing and in fact, the impugned order has been passed in violation of principles of natural justice and in violation of provisions of Section 75(4) as well as Section 75(5) of the G.S.T Act. Moreover, it has been pointed out that the respondent authorities have not passed a reasoned order and a cryptic order has been passed.

2) He also placed reliance on the judgment dated 03/12/2025 passed by the Court in Special Civil Application No. 7183 of 2025. Thus, it is urged that the writ petition may be allowed by setting aside the impugned order.

Submission of revenue:

1) AGP has submitted that the petitioner, though an opportunity of hearing was offered and issued three reminders as mentioned hereinabove, however, neither the petitioner filed any reply, nor he remained present for personal hearing. Thus, it is urged that the writ petition may not be entertained.

... (2)

Judgement

1) On perusal of the reminders, it is revealed that the petitioner is not intimated of either the date, time or venue of personal hearing and thereafter the impugned order is passed by recording that though an ample opportunity was granted to the petitioner to remain present, he has not remained present.

2) The details of personal hearing are not incorporated in the notice DRC 01, before final order is passed against the assessee, he is required to be intimated the date, time and venue of personal hearing.

3) The impugned order is absolutely an unreasoned order as though, the petitioner has remained absent in the proceedings, however, the same cannot absolve the State Tax Officer in passing the reasoned order after considering all the materials.

4) The impugned order dated 05.02.2025 issued by the respondent No.2 and subsequent proceedings arising from the impugned orders are hereby quashed and set aside. The matter is remanded to the jurisdictional State Tax Officer. He shall pass a fresh order after affording an opportunity of hearing to the petitioner an in accordance with law within a period of 12 weeks from the date of receipt of certified copy of this order. The petition is allowed.

Way forward:

Taxpayers are to be intimated the date, time and venue of personal hearing while issuing notices.

Legal Communique Case No. 2

DAR AL HANDASAH CONSULTANTS
(shair And Partners) India Pvt. Ltd.
Vs
Union Of India

BOMBAY HIGH COURT WRIT PETITION NO.812 OF 2025

(Whether the State GST authorities can demand IGST again on de-bonding of capital goods when such IGST had already been assessed and paid to the Customs authorities at the time of exit from the STP scheme)

Facts of the Case

- Petitioner was operating as a Software Technology Park (STP) unit engaged in export of engineering services.
- Imported capital goods under exemption and later applied for de-bonding while exiting the STP scheme.
- Customs Authorities assessed duty on depreciated value and determined payable Basic Custom Duty (BCD), Social Welfare Surcharge (SWS) and IGST.
- Petitioner paid the assessed duties including IGST and obtained NOC confirming discharge of liability.
- Petitioner availed ITC of the IGST paid at the time of de-bonding.
- GST authorities-initiated proceedings under Section 73 alleging ineligible ITC and short payment of IGST.
- Order-in-Original was passed raising demand of tax, interest and penalty, including re-demand of IGST already paid.
- Petitioner filed writ petition before the High Court challenging the demand.

Points of Dispute: -

Whether the State GST authorities can demand IGST again on de-bonding of capital goods when such IGST had already been assessed and paid to the Customs authorities at the time of exit from the STP scheme and whether the same is eligible as Input Tax Credit (ITC).

Court Observations: -

- The Hon'ble High Court observed that the IGST payable at the time of de-bonding was duly assessed by the competent Customs Authority and the Petitioner had discharged the said liability.
- The Customs Authorities had issued the NOC certifying that the duty liability stood fully discharged.
- In view thereof, the State GST Authorities could not once again demand the very same IGST amount.
- The demand to the extent it sought to re-levy IGST already paid was liable to be quashed and set aside.

... (4)

- However, in respect of the remaining disputed amounts relating to alleged excess/ineligible ITC, the Petitioner was directed to avail the statutory remedy of appeal under Section 107 of the GST Act.
- The Writ Petition was disposed of in the above terms.

Way Forward

- The re-demand of IGST already paid at de-bonding stands quashed.
- The remaining disputed ITC issues are to be decided in statutory appeal under Section 107 of the GST Act.
- The Appellate Authority will examine the matter on merits.

Legal Communique Case No. 3

GAIL (india) Limited
V/s
Odisha State Appellate Authority For Advance Ruling

ORDER NO.: 04/ODISHA-AAAR/APPEAL/2025-26

(Delay beyond the statutory period under Section 107 of the GST Act is non-condonable)

Facts of the Case

The Petitioner, GAIL (India) Limited, a Maharatna Public Sector Undertaking engaged in transmission of natural gas, operates an extensive cross-country pipeline network pursuant to authorization granted by the Petroleum and Natural Gas Regulatory Board (PNGRB).

In furtherance of its business of gas transmission, the Petitioner procured pipes, fittings and availed works contract services for construction and laying of underground cross-country pipelines. Considering the substantial capital investment involved, the Petitioner sought an advance ruling on the admissibility of Input Tax Credit (ITC) under Section 16 of the CGST Act, 2017 in respect of GST paid on such goods and services.

The Odisha Authority for Advance Ruling (AAR) held that ITC was inadmissible under Section 17(5)(c) and (d) of the CGST Act. Aggrieved, the Petitioner preferred an appeal before the Appellate Authority.

Point of Dispute

Whether ITC under Section 16 of the CGST Act, 2017 is admissible on:

- Procurement of goods (pipes, components, fittings), and
- Works contract services used for construction/laying of underground cross-country pipelines for transmission of natural gas;

or

whether such credit stands blocked under Section 17(5)(c) and 17(5)(d) on the ground that the pipelines constitute immovable property and are excluded from the ambit of "plant and machinery."

Submissions by the Petitioner

The Petitioner contended that:

- Section 16 permits ITC on goods and services used in the course or furtherance of business, and the pipeline is indispensable for providing gas transmission services.
- The cross-country pipeline qualifies as "plant and machinery," being apparatus or equipment used for outward supply.
- The exclusion relating to "pipelines laid outside the factory premises" applies only to manufacturing entities. Since the Petitioner is a service provider and does not operate any factory, the exclusion is inapplicable.

... (6)

- The underground pipelines are movable property capable of relocation without substantial damage and therefore cannot be classified as immovable property.
- Judicial precedents under excise and GST jurisprudence, including functional tests, support classification of such pipelines as plant or apparatus necessary for business operations.

Submissions by the Respondent

From the findings recorded, the Revenue's position was that:

Cross-country underground pipelines are embedded in earth with intent of permanence and qualify as immovable property within the meaning of the General Clauses Act and Transfer of Property Act.

Section 17(5)(c) explicitly blocks ITC on works contract services used for construction of immovable property (other than plant and machinery).

Section 17(5)(d) further restricts ITC on goods and services used for construction of immovable property on own account.

The statutory definition of "plant and machinery" specifically excludes pipelines laid outside factory premises. The gas processing terminals where re-gasification occurs qualify as factory premises, and the pipelines in question are laid outside such premises.

In common parlance, a pipeline cannot be construed as apparatus, equipment or machinery.

Judgment

The Odisha State Appellate Authority for Advance Ruling dismissed the appeal and affirmed the ruling of the AAR. The Authority held that:

1. The cross-country pipelines laid by the Petitioner are immovable property, being permanently embedded in earth with the intention of long-term beneficial enjoyment.
2. ITC on works contract services used for construction of such pipelines is barred under Section 17(5)(c).
3. ITC on goods and services used for construction of the pipelines on own account is barred under Section 17(5)(d).
4. The pipelines do not qualify as "plant and machinery" as:
    - Pipelines laid outside factory premises are expressly excluded under the statutory definition; and
    - In common parlance, a pipeline cannot be equated with apparatus, equipment or machinery.

Accordingly, ITC on procurement of pipes and pipeline-laying services was held inadmissible.

Way Forward:

Underground cross-country pipelines laid outside factory premises constitute immovable property and fall within the exclusion clause of Section 17(5) of the CGST Act, thereby rendering the related ITC inadmissible.

Legal Communique Case No. 4

Gopal Metal Stores and Another
Vs
The Assistant Commissioner of State Tax, NS Road and MR Charge and Ors.

CALCUTTA HIGH COURT WPA. No. 18933 of 2025

(Rule 86A is a temporary, preventive provision intended to protect the revenue where there is reason to believe that ITC has been fraudulently availed or is ineligible. Such blocking is clearly an interim measure, Proper Officer must issue a show cause notice and complete adjudication within the timeline under the CGST Act, 2017)

Facts of the case:

- Petitioners Gopal Metal Stores and Anr. filed a writ petition against the Assistant Commissioner of State Tax.
- Proper officer has observed that the petitioner has availed Input Tax Credit (ITC) "On the basis of some mere paper work without any involvement of goods" and passed on "Such ITC" to the petitioners "beneficiaries without supply of goods". Proper officer has blocked Petitioners electronic credit ledger on June 3, 2025
- Petitioners made representations on June 5 and July 16, 2025, seeking unblocking of the ledger and requested for initiation of adjudication proceedings under Sections 73/74 of the CGST/WBGST Act, 2017.
- The Proper Officer rejected the request, stating that the "act of violation is not suitable for adjudication."

Point of Dispute:

Whether the Proper Officer was justified in blocking the electronic credit ledger indefinitely without initiating adjudication proceedings.

Submission by the Petitioner:

The officer acted beyond authority by refusing adjudication.

- Continued blocking of the ledger has financially crippled the petitioner's business.
- The entire disputed sum has already been realized, making further blocking unjustified.

Submission by the Revenue:

- Counsel for the State had no instructions regarding realization of the disputed amount.
- Little resistance was offered to the challenge against the officer's observation that the violation was "not suitable for adjudication."

Judgment:

The Hon. Court observed that Rule 86A is a temporary, preventive provision intended to protect the revenue where there is reason to believe that ITC has been fraudulently availed or is ineligible. Such blocking is clearly an interim measure pending adjudication and cannot replace the adjudicatory mechanism provided under the CGST Act.

TheHon.Court categorically rejected the Proper Officer's reasoning that the "act of violation is not suitable for adjudication," holding that once Rule 86A is invoked, adjudication must necessarily follow. The Proper Officer cannot both block the electronic credit ledger and simultaneously abdicate the statutory duty to adjudicate the allegations by issuing a show cause notice.

It was further observed that the electronic credit ledger of the petitioner had already remained blocked for over seven months, and continuation of such blocking without adjudication would be contrary to the scheme and spirit of the CGST Act, 2017. Blocking the ledger indefinitely without initiating proceedings would effectively paralyse the taxpayer's business and violate principles of natural justice.

The Hon. High Court allowed the writ petition and held that the impugned order was legally unsustainable to the extent it refused adjudication.

Proper Officer is directed to initiate adjudication proceedings by issuing appropriate show cause notice to the petitioner within a week from the date of communication of order.

The Petitioners shall be entitled to file a reply promptly within a week and cannot seek adjournments.

Proper Officer is directed to pass the appropriate order within a period of three weeks from the date of receipt of the petitioner's reply to the show cause notice, in accordance with the law, upon giving an opportunity of hearing to the petitioner.

The Hon. Court further held that if adjudication proceedings are not concluded within the period mentioned in this order, then the proper office shall have to unblock the electronic credit ledger of petitioner.

Writ petition disposed of with no costs.

Way Forward:

The actions as per the provision of Rule 86A of CGST Rule, 2017 is a temporary, preventive provision intended to protect the revenue where there is reason to believe that ITC has been fraudulently availed or is ineligible. Such blocking is clearly an interim measure, Proper Officer must issue a show cause notice and complete adjudication within the timeline under the CGST Act, 2017.

Legal Communique Case No. 5

Kishore Nichani
V/s
Union of India &Ors., 2026-VIL-103-BOM

BOMBAY HIGH COURT Writ Petition No. 4211 of 2025

(Whether, after cancellation of GST registration for non-filing of returns, the authorities are required to revoke the cancellation and restore registration once the assessee has cleared all outstanding tax dues, interest, penalty, and late fees under Sections 29 and 30 of the CGST Act, 2017 read with Rule 23 of the CGST Rules, 2017)

Facts of the Case

- The petitioner was granted GST registration on 19.07.2018.
- Due to illness and inability to manage compliance, the petitioner failed to file GST returns for more than six months.
- A show cause notice was issued, and registration was cancelled retrospectively from 01.07.2017.
- The petitioner subsequently cleared all outstanding GST dues.
- An earlier revocation application was allowed; however, the registration was again cancelled retrospectively.
- The petitioner later cleared all liabilities including tax, interest, and penalty.
- A formal application dated 04.08.2025 seeking restoration/revocation was filed.
- Despite clearance of dues, the authorities did not restore the GST registration.
- Aggrieved, the petitioner approached the Hon. Bombay High Court under Article 226.

Arguments by the Petitioner

- Sections **29 and 30 of the CGST Act** provide for cancellation and revocation of GST registration.
- Under Section 30, once tax dues are cleared and statutory conditions are fulfilled, revocation of cancellation is permissible.
- Rule 23 prescribes the procedure for revocation.
- Cancellation without proper opportunity violates the proviso to Section 29.
- Continued cancellation causes serious prejudice to business and does not benefit revenue.
- Courts have consistently restored registrations in similar circumstances.
- Once dues are cleared, authorities are duty-bound to consider revocation in accordance with law.

Arguments by the Respondent

- The State fairly submitted that since the petitioner had cleared all tax dues, there would be no impediment in allowing the petition.

- It was not disputed that no outstanding GST liability remained.

Discussion and Brief Details

The Hon. Court examined:

- **Section 29 -** providing for cancellation of registration, subject to opportunity of hearing.
- **Section 30 -** providing for revocation of cancellation upon application and fulfillment of conditions.
- **Rule 23 of CGST Rules -** prescribing the procedural framework for revocation.

The Hon. Court observed:

- Cancellation of GST registration has serious civil consequences.
- Authorities must strictly follow statutory safeguards, including granting opportunity of hearing.
- Section 30 empowers authorities to revoke cancellation; they are not powerless.
- Keeping registration cancelled after dues are cleared does not benefit revenue.
- GST law is intended to ensure collection of lawful tax, not to permanently debar an assessee from business.
- Several precedents were cited where courts restored registration upon payment of dues.

The Hon. Court emphasized that in the present case:

" There were no **outstanding GST dues.**

" The petitioner had complied with payment requirements.

" The application for revocation ought to have been allowed.

Failure of authorities to act in consonance with Section 30 read with Rule 23 was improper.

Decision

The Hon. Bombay High Court:

- Held that the petitioner was **entitled to restoration of GST registration.**
- Directed the authorities to **restore the GST registration forthwith.**
- Allowed the writ petition.
- Rule made absolute. No costs.

Way Forward

Once an assessee clears all outstanding GST liabilities and satisfies statutory requirements under Section 30 and Rule 23, the authorities are **duty-bound to consider and grant revocation of cancellation**, as permanent cancellation serves no revenue purpose and causes disproportionate prejudice to business.

Legal Communique Case No. 6

M/s Shilpa Medicare Limited
Vs.
Union of India

ANDHRA PRADESH HIGH COURT 2026 VIL-108-AP

(The tax implications of transferring its entire business undertaking of the Vizianagaram R&D unit, A.P. to the Bangalore unit as a "going concern" for consideration)

Facts of the Case

- The petitioner, Shilpa Medicare Ltd., is a limited company engaged in research and development in the pharmaceutical sector, including active pharmaceutical ingredients, formulation of molecules, and manufacture of formulation products. The company operated two units-one in Vizianagaram, Andhra Pradesh, and another in Bangalore, Karnataka. Both units were separately registered under the GST regime (distinct persons under GST) but the same PAN.
- The petitioner sought an advance ruling to determine the tax implications of transferring its entire business undertaking of the Vizianagaram R&D unit to the Bangalore unit as a "going concern" for consideration.
- Key questions included whether this transfer:
  1. Amounted to supply of goods or services under GST;
  2. Qualified as transfer of business as a going concern and thus exempt; and
  3. Allowed transfer of unutilised Input Tax Credit (ITC) between units across states.
- The Authority for Advance Ruling (AAR) held that the transaction constituted a supply of services and was covered under Notification No. 12/2017-Central Tax (Rate), thereby exempting it from GST. The AAR further ruled that the unutilised ITC available in the Vizianagaram unit could be transferred to the Bangalore unit.
- However, on appeal, the Appellate Authority reversed the AAR's decision. It held that the transaction amounted to a supply of goods and was taxable under the relevant provisions of the CGST/APGST Acts, 2017. The Appellate Authority also held that the petitioner was not entitled to transfer the unutilised ITC from the Vizianagaram unit to the Bangalore unit in Karnataka.
- Aggrieved by the said order, the petitioner filed a Writ Petition before the Hon. High Court.

Issues

1. Whether the transfer of business as a going concern between distinct units of the same company constitutes a taxable "supply" under CGST Act, 2017?
2. If so, whether it is taxable as supply of goods or services?
3. Whether the transfer qualifies for exemption as "transfer of business as a going concern"?
4. Whether unutilised input tax credit can be transferred between units across states under Section 18(3) CGST Act?

... (12)

Court Observations

- Question 1 & 2:Sale of business as a whole is not made taxable even now under the charging provision. It is only the sale of goods which is chargeable under Section 4(1). The definition of the expression 'sale' would apply to a case only if the sale takes place in the course of trade or business, as per Section 2(28). A business in entirety, cannot be sold in the course of trade of business, as there will be no business left thereafter, to deal with. Therefore, the amendment brought forth to the definition of the expression "business" could not have changed the dynamics of the game, when the charging provision and the definition of the expression "sale" remained the same. There was a transfer of the entire R&D Unit, as a going concern, including the assets and liabilities. Such a transaction would be the sale of a business itself and not sale/supply of individual goods. Complete transfer of an entire business does not automatically constitute taxable supply under GST unless properly classified.

- Reliance on pre-GST cases (e.g., Coromandel Fertilizers and Paradise Food Court) supported that **transfer of business as a whole isn't taxable as sale of goods under allied sales taxes** due to definitions requiring sale in the course of business.

- **Question 3:** Though Notification No. 12/2017-CT (Rate) exempts "services by way of transfer of a going concern", the Court noted doubts on whether such services could have been brought within the purview of the GST regime, as the GST Act itself does not provide for taxation of supply of services or to even treat transfer of business as a going concern as a supply of service. The Court left open this question because the exemption, if applicable, benefits the petitioner.

- **Question 4 :** Provision 18(3) states that there could be transfer of unutilized input tax credit when there is a change in the constitution of the registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business. The term "change in the constitution" has been understood, by the appellate authority for advance ruling, to mean that the structure of the registered person has to change from a proprietary firm to a partnership firm or from a partnership firm to a company etc. This construction of the term "change in the constitution of the registered person" does not appear to be correct. In the case of a sale, the transaction would be between a seller and buyer, who are two separate persons or entities. There would not be any change on account of a sale. However, the language of Section 18(3) provides for transfer of input tax credit in cases of sale also. Similarly, in the case of a merger or amalgamation or lease, the registered person who is transferring the business goes out of the picture and it is only the transferee of the business that would be given the benefit of transfer of input tax credit. In such cases also, there would be no change in the constitution of the registered person.

Full meaning and benefit cannot be given to the phrase "change in the constitution of the registered person" if it is understood to mean that there has to be an internalchange, in the registered person, on account of certain forms of transfer/supply or that the businessitself moves from one registered person to another person. Any such interpretation would cut outsame of the forms of transfer such as sale, merger, lease of business etc. To that extent, it wouldhave to be held that change in constitution cannot be taken to be change in the constitution of thetransfer or and that the benefit of transfer of input tax credit would not be available to a transfereewhich is a separate entity. This phrase would have to be understood to mean that there can be transfer of input tax credit from the ledger of the transferor to the transferee.

The input tax credit available, in the ledger of the transferor, arises out ofthe tax component paid on the goods, by the transferor, etc. The input tax so credited has to be used,to discharge further liability, to the tax authorities. This is one of the assets available with thetransferor. In the case of a sale of the entire business, it would only be reasonable that this asset, inthe form of input tax credit, is also transferred. Section 18(3) is giving a statutory basis for suchtransfer.

In the case of transfer, of input Tax Credit, from the APGST Act to the KGST Act, any decision would affect the State of Andhra Pradesh and the State ofKarnataka. However, the State of Karnataka, is not before us. As such, it would be appropriate thatthis issue should be placed before the authorities, under the KGST Act as well as the APGST Act, fora decision, as to the admissibility of such a transfer between the APGST Act and the KGST Act. **The petitioner, may approach the authorities, in this regard and agitate it's rights.**

Decision / Judgment

- The **writ petition** was allowed by setting aside the ruling of the Appellate Authority for Advance ruling, dated 10.11.2020.The Hon. High Court held that the transfer of the business **does not automatically attract GST** as sale of goods or services under CGST provisions because a complete **transfer of an entire business** does not amount to a transaction in the course or furtherance of that business.

- The Hon. Court clarified that as to the admissibility of such a transfer of ITC between the APGST Act and the KGST Actthis issue should be placed before the authorities, under the KGST Act as well as the APGST Act, fora decision.

Legal Communique Case No. 7

Mrs. Anjita Dokania, propritor of
M/s. M I telecom
v/s
The State Tax Officer (GST),
Bureau of Investigation
(South Bengal, Durgapur Zone &ors)

HIGH COURT OF CALCUTTA Write Petition application no. 23839 of 2024

(If the statutory period of one year has long elapsed, blocking of the petitioner's electronic credit ledger cannot be permitted to be continued.)

Facts of the case:

1) This writ petition assails an order dated July 5, 2024 passed under Section 74 of the WBGST Act, 2017/CGST Act, 2017. also the search operation conducted under Section 67 of the said Act of 2017 by the respondent GST Authorities.

2) The petitioner submitted that subsequent to the search operation conducted under Section 67 of the said Act of2017, the petitioner's electronic credit ledger was blocked by the respondent GST Authorities on November 9, 2023 in exercise of powers conferred by Rule 86A of the GST Rules,2017.

3) The Petitioner submitted that in terms of the Rules, blocking of electronic credit ledger could not have continued beyond the period of one year from the date of imposition thereof, but in the case at hand the blocking has continued unabated since November 9, 2023.

4) The Petitioner submitted that the respondent GST Authorities must indicate the reasons for continuous and blocking dehors Rule 86A of the Rules.

5) The Petitioner submitted that the entire search operation that was conducted under Section 67 of the said Act of 2017 is dehors law. Mr. Kanodia submits that in the present case two search operations were conducted. Insofar as the second search operation is concerned, no reasons to believe (that any of the acts mentioned in Section 67 of the said Act of 2017 has been committed), have been indicated to the petitioner. It is, therefore, submitted that the search operation, which forms the basis of the adjudication proceedings is wholly without foundation.

6) The Petitioner submitted that the adjudicating authority in the case at hand being an officer of the Bureau of Investigation lacks jurisdiction to adjudicate upon the proceedings and pass an order under Section 74 of the said Act of 2017

7) The respondent State Authorities submitted that the order impugned has been passed by an officer having jurisdiction. It is further submitted that the petitioner's writ petition in so far as it lays challenge to the search proceedings, should not be entertained in as much as the same is belated.

Rule 86A(3) of the CGST/SGST Rules, 2017 provides as follows:-

- 86-A.(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."

Point of Dispute:

1) Blocking of electronic credit ledger could not have continued beyond the period of one year from the date of imposition thereof, as per Rule 86A(3) of the CGST/SGST Rules,2017.

2) The second search operation is concerned, no reasons to believe (that any of the acts mentioned in Section 67 of the said Act of 2017 has been committed), have been indicated to the petitioner.

3) The adjudicating authority in the case at hand being an officer of the Bureau of Investigation lacks jurisdiction to adjudicate upon the proceedings and pass an order under Section 74 of the said Act of 2017.

Judgment:

1) The Hon. Calcutta High Court delivered its judgement that, The Rule reads in mandatory terms and leaves no room for any confusion that the restriction would cease after one year from the date of its imposition.

2) It is held that, Since the statutory period of one year has long elapsed, blocking of the petitioner's electronic credit ledger cannot be permitted to be continued. Accordingly, the respondents are directed to withdraw the blocking of the electronic credit ledger of the petitioner forthwith.

3) It is held that, since, it is evident that this Court has entertained writ petitions throwing challenge to the authority of an officer of the Bureau of Investigation even in initiating adjudication proceedings and interim orders have been passed restraining the respondents from taking coercive action against the petitioner, as would be evident from order dated December 6, 2021 passed in M/s. ChatterjeeConstructions (supra), therefore there is no reason for this Court to take a divergent view.

4) Accordingly, it is directed that, the respondent GST authorities shall not take any coercive steps on the basis of the adjudication order impugned till the returnable date.

Way Forward:

If the statutory period of one year has long elapsed, blocking of the petitioner's electronic credit ledger cannot be permitted to be continued.

Legal Communique Case No. 8

Omkar Pravin Harlekar
Vs
Deputy Commissioner of Sales Tax and IDBI Bank Limited

BOMBAY HIGH COURT Writ Petition no. 4535 of 2022

(Freezing of a former director's personal bank account by tax authorities)

Gist of the Case

The Hon. High Court of Bombay addressed a petition challenging the freezing of a former director's personal bank account by tax authorities. The authorities sought to recover tax dues from a company that had previously amalgamated into another entity. The Hon. Court ultimately ruled that the recovery action was illegal because it was based on an assessment against a non-existent entity and misapplied statutory provisions regarding director liability.

Facts of the Case

- **Petitioner's Role:** Omkar Pravin Harlekar served as a director of Omkar Specialty Chemicals Ltd. (OSCL) from June 1, 2007, to May 2, 2017.
- **Amalgamation:** Urdhwa Chemicals Company Pvt. Ltd. was amalgamated with OSCL by an order of the National Company Law Tribunal (NCLT) on April 13, 2017, with an effective appointed date of April 1, 2015.
- **Resignation & Reclassification:** The petitioner resigned from OSCL on May 2, 2017. In 2018, he was officially reclassified as a "Public Shareholder" rather than a "Promoter Shareholder" by the NSE and BSE.
- **Tax Action:** On September 22, 2022, the petitioner was notified that his IDBI Bank account was frozen. This action was taken under Section 33(1) of the Maharashtra Value Added Tax Act (MVAT) to recover dues of the erstwhile Urdhwa Chemicals for the assessment periods 2016-17 and 2017-18.
- **Timing of Assessment:** The assessment order justifying the recovery was passed on December 7, 2021-several years after Urdhwa Chemicals had ceased to exist due to the amalgamation.

Point of Dispute

The central dispute was whether the petitioner could be held personally liable for the tax debts of Urdhwa Chemicals, considering the entity had ceased to exist through amalgamation and the petitioner had resigned long before the recovery action was initiated.

Submission by the Petitioner

- Non-Existent Entity: The petitioner argued that Urdhwa Chemicals was a non-existent legal entity at the time of the 2021 assessment, making the recovery action unsustainable.
- No Personal Connection: He maintained that having resigned in 2017, he had no connection to the entity during the period the recovery was sought.

- Wrong Target: It was submitted that any existing tax liability should have been attributed to the amalgamated entity (OSCL), not him personally.
- Procedural Violation: The petitioner claimed the freezing of his account without a prior show-cause notice violated the principles of natural justice.

Submission by the Revenue

- **Statutory Authority:** The Department justified the action using Section 44(6) of the MVAT Act.
- **Director Liability:** They argued that this provision allows the state to recover outstanding tax from directors of private companies (whether existing, wound up, or in liquidation) if the company fails to pay.

Judgment

- **Void Assessment:** The Hon. Court held that an assessment order passed against a non-existent entity is a substantive illegality. It cited Pr. CIT v. Maruti Suzuki India Ltd., which established that there is no warrant in law to proceed against a company that has ceased to exist due to an approved amalgamation.
- **Transfer of Liability:** Upon amalgamation, the tax liability of the transferor (Urdhwa) became the liability of the transferee (OSCL).
- **Misapplication of Law:** The Hon. Court found the Revenue's reliance on Section 44(6) of the MVAT Act was "clearly erred". This section applies to existing or liquidated private companies, but does not extend to companies that have been amalgamated into new entities.
- **Relief:** The Writ Petition was allowed. The Hon. Court ordered the authorities to lift the attachment on the petitioner's bank account and restrained them from further recovery actions against him for these specific dues.

Way Forward

- In case of Amalgamation, dues can be recovered through the amalgamated entity only and not personal property of director.

Legal Communique Case No. 9

Pramod Kumar Nanda
V/s
Union of India

ORISSA HIGH COURT, BLAPL No. 12334 of 2025, 2026-VIL-87-ORI

(Bail is not to be granted mechanically and requires careful judicial scrutiny considering the economic impact, organised nature of the offence and possibility of tampering with evidence)

Background

The petitioner was arrested under Section 69 of the CGST Act, 2017 pursuant to a complaint lodged by the Directorate General of GST Intelligence (DGGI), Rourkela Zonal Unit. The case involved alleged creation and operation of multiple non-existent firms engaged in fake invoicing of cement and steel, resulting in fraudulent availment and utilisation of Input Tax Credit (ITC) amounting to approximately Rs. 15 crores.

Proceedings were initiated under Sections 16(2), 7, 132(1)(b), 132(1)(c), 132(1)(f), 132(1)(i) and 132(5) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017. After completion of investigation and filing of charge-sheet, the petitioner sought bail on the ground of continued incarceration and alleged absence of necessity for further custodial detention.

Core Issues Considered

- Whether an accused in a large-scale GST fake ITC fraud case is entitled to bail after completion of investigation.
- Whether gravity of economic offence and magnitude of alleged revenue loss can justify continued custody.
- The approach to be adopted by Hon. Courts while considering bail in organised economic offences under GST law.

Key Findings of the Hon. High Court

The Hon'ble High Court dismissed the bail application and reiterated that economic offences constitute a distinct class requiring a cautious and guarded judicial approach.

The Hon. Court observed that:

- Offences involving systematic tax evasion, bogus entities, fake invoicing and fraudulent ITC claims have serious implications on public revenue and economic stability.
- Economic offences are committed with deliberate design and calculated intent and therefore stand on a different footing compared to ordinary crimes.
- Reliance was placed on Supreme Court precedents emphasising that economic offences affecting public funds must be viewed seriously while considering bail.
- The prosecution had collected substantial material including GSTN analytics, e-way bills, banking/KYC documents, electronic devices and digital communications indicating a structured fraud.
- Filing of charge-sheet does not automatically entitle the accused to bail, particularly where apprehension of tampering with documentary and digital evidence exists.

Balancing personal liberty with the larger public interest, the Hon. Court held that the gravity, organisednature and scale of the alleged fraud justified rejection of bail at this stage.

Way Forward

GST fake invoicing and fraudulent ITC rackets are treated as grave economic offences affecting public revenue. Bail in such matters is not to be granted mechanically and requires careful judicial scrutiny considering the economic impact, organised nature of the offence and possibility of tampering with evidence.

Legal Communique Case No. 10

M/s. Sea 6 Energy Private Limited
V/s.
Assistant Commissioner of Central Taxes
W.P.(MD) No. 26287 of 2025.

(Whether the expression “relevant period” under Rule 89(4) of the CGST Rules, 2017 can be applied differently for turnover and Net ITC while computing refund of accumulated ITC on zero-rated supplies)

Court's Decision

The Hon. Court held that "relevant period" must be applied uniformly to all components of the refund formula-Net ITC, turnover of zero-rated supply, and adjusted total turnover.

Thepetitioner cannot calculate turnover only for March 2025 while including ITC accumulated for the whole year in the refund claim. Both turnover and ITC must relate to the same "relevant period"; mixing different periods is not allowed.

However, the Hon. Court permitted the petitioner to file a fresh manual refund application, directing the department to recompute refund strictly as per Rule 89(4) and release any eligible amount within eight weeks.

Impact & Way Forward

a) The term "relevant period" under Rule 89(4) must be interpreted consistently for ITC, turnover, and adjusted total turnover.

b) Clarifies that refund provisions must be interpreted uniformly. Selective or beneficial interpretation of components of the formula is impermissible. Taxpayers cannot include accumulated ITC of earlier periods while restricting turnover to a single month.

c) The decision emphasizes strict adherence to the statutory refund formula, reducing interpretational disputes.

d) The Hon. Court said that technical problems in the GST portal should not stop a taxpayer from getting a lawful refund. Therefore, it allowed manual filing so that genuine claims are not rejected due to system issues.

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