

Recent Rulings by Courts and Authorities

Supreme Court

Royalty not in nature of tax but consideration for enjoyment of mineral rights

A 9 (nine) judges Constitution Bench of the Hon'ble Supreme Court of India ("Supreme Court") in the case of *Mineral Area Development Authority and Anr. vs. Steel Authority of India and Anr.*¹ held that royalty is not in the nature of tax and therefore, States have the authority to impose taxes on mineral rights. The dispute stems from the fact that several States sought to impose taxes on mineral bearing land in pursuance of Entry 49 of List II of the Constitution of India by applying mineral value or royalty as the measure of tax. The SLP² was filed in the Supreme Court on the primary ground that levy of royalty on mineral rights was beyond legislative competence of State Legislatures.

The Supreme Court observed that royalty cannot be equated to a tax, as royalty is consideration paid by a mining lessee to the lessor for enjoyment of mineral rights and to compensate for the loss of value of minerals suffered by the owner of the minerals. The liability to pay royalty arises out of the contractual conditions of the mining lease. The failure of the lessee to pay royalty is considered to be a breach of the terms of the contract, allowing the lessor to determine the lease and initiate proceedings for recovery against the lessee. Further, Section 9 of MMDR Act³ statutorily regulates the right of a lessor to receive consideration in the form of royalty from the lessee for removing or carrying away minerals from the leased area. Further, while royalty is a consideration towards value of minerals, tax is an imposition of a sovereign. It was also observed that royalty is paid in consideration of doing a particular action, that is, extracting minerals from the soil, while tax is generally levied with respect to a taxable event determined by law.

The Supreme Court also emphasised on the fact that the levy of royalty is contractual in nature and flows from the agreement executed between the parties for extraction of minerals whereas tax is imposed by the Government on an event determined by law. Accordingly, royalty would not be comprehended within the meaning of the expression 'taxes on mineral rights'.

The Supreme Court concluded that the States have the legislative power to tax mineral rights and therefore, upheld the levy of tax on royalty paid for enjoying mineral rights.

¹ 2024 (8) TMI 956

² Special leave petition

³ Mines and Minerals (Development and Regulation) Act, 1957

HDPE poly packs sold to distributors are wholesale packages, not subject to Section 4A of the Central Excise Act⁴

In the case of *Commissioner of Central Excise vs. Miraj Products Pvt. Ltd.*⁵, an appeal was filed by the Commissioner of Central Excise (“**Commissioner**”), contesting the CESTAT⁶’s decision on whether the goods sold by Miraj Products Pvt. Ltd. (“**Respondent**”) in HDPE poly packs to distributors should be classified under Section 4 or Section 4A of the Central Excise Act. The dispute originated from SCNs⁷ issued to the Respondent for the period April 2003 to December 2003. These SCNs alleged that the Respondent was not complying with the valuation norms required under the Central Excise Act and was accused of improperly packaging 33 (thirty-three) pouches of chewing tobacco (of 6 (six) grams each) and one pouch of 15 (fifteen) grams into larger HDPE poly packs, with the allegation that these larger packs were intended for retail sale.

The Commissioner, in an order dated July 19, 2005, upheld the SCNs and concluded that the larger poly packs were group packages intended for retail sale. The Respondent’s argument that these were wholesale packages, was disregarded and the Commissioner determined that the inclusion of MRP⁸ on the poly packs indicated an intent for retail sale, thereby, necessitating compliance with Section 4A of the Central Excise Act. The CESTAT, however, reversed this decision, ruling that the poly packs, which were packed in HDPE bags and sold to distributors qualified as wholesale packages.

The Supreme Court upheld the decision of the CESTAT and noted that the smaller packs were indeed bundled into HDPE bags and sold to intermediaries and not directly to consumers. Relying on the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, the CESTAT held that HDPE bags qualify as wholesale packages, which are exempt from the retail price declaration requirements of Section 4A of the Central Excise Act.

High Courts

ITC⁹ denied for breakwater construction

The Bombay High Court (“**Bombay HC**”) in the case of *Konkan LNG Limited vs. The Commissioner of State Tax and Ors.*, evaluated the availability of ITC with respect to construction of breakwater by Konkan LNG Limited (“**Petitioner**”).

The Petitioner imports LNG¹⁰ from various countries using vessels equipped with large cryogenic tanks, for its regassification facility. Tugs tow the carriers to the captive jetty, from where the LNG is transferred to cryogenic storage tanks in the regassification plant through insulated pipelines. Due to the rough weather during monsoons, the Petitioner reconstructed an existing breakwater (a protective wall) near the jetty. The Petitioner filed a writ petition before the Bombay High Court challenging the denial of ITC for the construction of breakwater adjacent to the jetty near the LNG regasification facility.

The Bombay HC dismissed the writ and upheld the rulings of the lower authorities, concluding that the breakwater does not qualify as ‘plant and machinery’ under Section 17(5)(d) of the CGST Act¹¹. The decision of the Bombay HC was based on the following:

1. the breakwater, while essential for protecting vessels during LNG unloading, is not directly used for making outward supplies of goods or services. The breakwater’s primary function is to protect ships and enable safe berthing, rather than participating in the actual regasification process or supply of services; and
2. the breakwater is a civil structure and not an apparatus or equipment.

⁴ Central Excise Act, 1944

⁵ 2024 (7) TMI 476 – Supreme Court

⁶ Customs Excise and Service Tax Appellate Tribunal

⁷ Show Cause Notice

⁸ Maximum Retail Price

⁹ Input Tax Credit

¹⁰ Liquefied natural gas

¹¹ Central Goods and Services Tax Act, 2017

JSA Comment: The ruling emphasises that term 'plant and machinery' for ITC purposes, should only include structures which are directly involved in the production or supply process, even if such structures are crucial for the overall operations. The ruling has significant implications for businesses in the infrastructure and energy sectors, particularly those with auxiliary structures that support their main operations.

ITC cannot be denied to *bona fide* recipients

The Hon'ble High Court of Gauhati ("Gauhati HC") in the case of *National Plasto Moulding vs. State of Assam*¹² ruled upon the requirement of reversal of ITC availed by *bona fide* recipient, in case of default by the supplier. As per Section 16(2)(c) of the CGST Act, tax in respect of which ITC is availed, is required to be paid to the Government of India by the supplier of goods/services. The GST¹³ authorities issued a SCN to National Plasto Moulding ("**Petitioner**"), seeking to reverse ITC on account of violation of conditions prescribed under Section 16(2)(c) of the CGST Act. The Petitioner filed a writ petition before the Gauhati HC challenging the SCN on the ground that he was a *bona fide* purchaser, who had fulfilled all the conditions for availment of ITC which were in his reasonable control.

The Petitioner relied on the judgement of the Hon'ble High Court of Delhi¹⁴, wherein it was observed that purchasing dealer cannot be punished for the act of the selling dealer, in case the selling dealer had failed to deposit the tax collected by it (under the erstwhile value added tax law). Given that the provisions of the Delhi Value Added Tax Act, 2004 are analogous to the provisions of Sections 16(2)(c) of CGST Act, the Guahati HC relied on the judgement and set aside the SCN issued to the Petitioner.

Principles of natural justice must be followed when blocking ITC under Rule 86A of the CGST Rules¹⁵

The High Court of Telangana ("**Telangana HC**"), in the case of *Bhavani Oxides and others vs. The State of Telangana and Ors.*¹⁶, clarified the applicability of principles of natural justice *vis-à-vis* Rule 86A of the CGST Rules, which allows tax authorities to block ITC in a taxpayer's ECL¹⁷. The Telangana HC held that while Rule 86A of the CGST Rules neither expressly nor by necessary implication excludes the principles of natural justice, the principles of natural justice should be read into the provision.

The court's reasoning hinged on the need for consistency within the GST framework. It pointed out that Section 74 of the CGST Act, which deals with similar circumstances of tax recovery and ITC denial, explicitly mandates following principles of natural justice. The Telangana HC argued that interpreting Rule 86A to allow ITC blocking without these safeguards would create an inconsistency with the parent statute. Furthermore, Telangana HC emphasised that this interpretation is crucial to prevent hardship, injustice, and friction in the GST system's operation.

JSA Comment: The ruling is a sign of relief for taxpayers as, it deters the GST authorities from invoking Rule 86A (i.e., blocking ITC in the ECL) of the CGST Rules without providing the taxpayers an opportunity to be heard. This decision strikes a balance between the need for effective tax administration and the protection of taxpayers' rights, ensuring that the principles of natural justice are upheld in the application of CGST Rules.

No GST leviable on personal guarantees extended by managing director

In the case of *Manappuram Finance Ltd vs. Union of India and Ors.*¹⁸ SCN was issued to Manappuram Finance Ltd ("**Petitioner**") seeking to demand (a) GST under reverse charge mechanism on supply of services by the managing

¹² TS-469-HC(GAUH)-2024-GST

¹³ Goods and Services Tax

¹⁴ Quest Merchandising India Private Limited -Vs- Government of NCT of Delhi & Ors [2017 SCC OnLine Del 11286]

¹⁵ Central Goods and Services Tax Rules, 2017

¹⁶ WP Nos.10390, 10425, 10459 AND 12733 of 2024

¹⁷ Electronic credit ledger

¹⁸ TS-451-HC(KER)-2024-GST

director (MD) of the Petitioner by way of providing personal guarantee on loans taken by the Petitioner and (b) GST on supply of services of extending loans by the Petitioner to its subsidiary company. Aggrieved by the issuance of SCN, the Petitioner filed a writ petition before the Hon'ble High Court of Kerala ("**Kerala HC**").

The Petitioner contended that the matter was squarely covered by the clarifications issued by the CBIC¹⁹ *vide* Circular No.204/16/2023-GST dated October 27, 2023, and Circular No.218/12/2024-GST dated June 26, 2024. The Petitioner placed reliance on the said circulars, to argue the following:

1. GST cannot be demanded on personal guarantee provided by the director; and
2. in absence of a procedural requirement for processing the loan, the loan provided by the Petitioner to its subsidiary cannot be equated to loans provide by banks or independent lenders.

Considering the aforesaid arguments, the Kerala HC allowed writ petition by setting aside the SCN.

Payment during search considered involuntary payment, due to lack of Form GST DRC-04 issued by the authorities

In the case of *ATR Malleable Casting Private Limited vs. The Inspector of Central Taxes*²⁰, ATR Malleable Casting Private Limited ("**Petitioner**") paid a sum of INR 30,00,000 (Indian Rupees thirty lakh) during a search by tax authorities and consequently sought a refund thereof, claiming that such payment was made under the threat of arrest, coercion, and undue influence. The GST authorities denied the claims on the grounds that the payment was voluntary.

However, the Madras High Court ("**Madras HC**") noted the absence of Form GST DRC-04 which is a receipt confirming payment of GST under Form GST DRC-03, which is mandatory for voluntary payments under Rule 142(2) of the CGST Rules (this observation has been observed under several judicial precedents). Further, Madras HC observed the discrepancy between the timing of conclusion of the search and the actual payment indicating that the payment could not have been voluntary. The facts suggested that the payment was made under coercion and not voluntarily, as it was recorded after the search concluded. Basis the above, the Madras HC directed the GST authorities to refund the said sum.

JSA Comment: Previously the Hon'ble Delhi High Court in the case of *Vallabh Textiles vs. Senior Intelligence Officer*²¹ had held where payment was made during a search proceeding for which acknowledgment was not issued in Form GST DRC-04, the same was not voluntary and had directed the Department to refund such payment along with interest. The High Court had heavily relied on CBIC *Instruction No. 01/2022-23 [GST – Investigation]* dated May 25, 2022, which clarified the position of making payment during a search, seizure and investigation proceeding.

Issuance of Form ASMT-10 not a pre-requisite for adjudication

In the case of *Mandarina Apartment Owners Welfare Association and Gani Fashion vs. State Tax Authorities*²², the Madras HC ruled on the validity of the GST adjudication proceedings where scrutiny proceedings were issued under Section 61 of the CGST Act read with Rule 99 of the CGST Rules, without issuance of notice in Form GST ASMT-10.

The Madras HC observed that Section 61 of the CGST Act indicates clearly that the obligation to issue notice arises upon fulfilment of following 2 (two) conditions:

1. selection of returns for scrutiny; and
2. discovery of discrepancies on such scrutiny.

¹⁹ Central Board of Indirect Tax and Customs

²⁰ 2024 (6) TMI 1258 – Calcutta High Court

²¹ 2023 (70) G. S. T. L. 3 (Del.)

²² 2024 (7) TMI 1158 – Madras High Court

Based on the above, it was concluded that issuance of Form ASMT-10 is mandatory only if the aforesaid conditions are satisfied.

The Madras HC further observed that as per Sections 61 and 73 of the CGST Act, there is no indication that scrutiny of returns and issuance of notice in Form ASMT-10 constitute a mandatory pre-requisite for adjudication even in cases where returns were scrutinised.

In the present facts, given that the petitioner was not provided the opportunity to be heard, the petitioner was given an opportunity to file a reply to SCN only on the grounds of principles of natural justice.

Notifications and Circulars

Constitution of Principal and State benches of GSTAT²³

Notification No. S.O. 3048(E) - Central GST dated July 31, 2024

The GSTAT is notified to be established with effect from September 1, 2024. The Principal bench is constituted at New Delhi and State benches are constituted at different designated locations in the respective states.

CGST Rules amended to give effect to the recommendations of the 53rd GST Council meeting held on June 22, 2024

Notification No. 12/2024²⁴ dated July 10, 2024 – Central Tax (CGST Amendment Rules²⁵)

The following amendments are introduced to the CGST Rules:

1. Rule 39 of CGST Rules is amended with effect from the date to be notified, whereby the mechanism for distribution of ITC through ISD is prescribed. It may be noted that this mechanism is similar to the mechanism earlier prescribed under Section 20 of the CGST Act (which was omitted *vide* Finance Act, 2024). The following conditions and procedure have been prescribed:
 - a) ITC available for distribution in a particular month should be distributed in the same month;
 - b) the amount of ITC distributed should not exceed the amount of ITC available for distribution;
 - c) an ISD is required to distribute ITC attributable to relevant recipient in the ratio of its respective turnover (including taxable and non-taxable) pertaining to the preceding financial year;
 - d) ITC of IGST to be distributed as ITC of IGST;
 - e) ITC of CGST²⁶ and SGST²⁷ to be distributed:
 - i) If recipient located in same State as that of ISD, be distributed as ITC of CGST and SGST respectively; and
 - ii) If the recipient is located in a State other than that of ISD, be distributed as IGST;
 - f) ISD will issue an ISD invoice for the above distribution.

Sections 2(61) and 20 of the CGST Act were amended *vide* the Finance Act, 2024 (No. 8 of 2024) dated February 15, 2024 (“**Finance Act**”) whereby ISD mechanism was made mandatory. The said date has been notified to be April 01, 2025, by the CBIC²⁸ *vide* Notification No. 16/2024-Central Tax dated August 6, 2024.

²³ Goods and services tax appellate tribunal

²⁴ The amendments are effective July 10, 2024, unless otherwise specified

²⁵ The Central Goods and Services Tax (Amendment) Rules, 2024

²⁶ Central Goods and Services Tax

²⁷ State Goods and Services Tax

²⁸ Central Board of Indirect Taxes and Customs

2. Rule 28(2) of the CGST Rules is amended (effective October 26, 2023) to clarify that the value of supply of services to a related person by way of corporate guarantee on behalf of the recipient, which is deemed to be 1% of the amount of such guarantee or actual consideration, whichever higher, is to be computed per annum. The provision is further amended to state that the invoice value of the aforesaid supply will be deemed to be accepted, if the recipient is entitled to full ITC. Various issues pertaining to taxability and valuation of supply of such services have been clarified *vide* Circular No. 225/19/2024-GST dated July 11, 2024;
3. an optional facility in Form GSTR-1A is prescribed (by amending Rule 59(1) of the CGST Rules) whereby, a taxpayer can amend or furnish additional details of supplies in Form GSTR-1A. The said form can be filed any time between the date of filing Form GSTR-1 and the date of filing Form GSTR-3B, for the relevant tax period;
4. Rule 88B of the CGST Rules is amended to exclude the amount of GST debited from the electronic cash ledger (as available on the due date) while filing the return in Form GSTR-3B, for computation of interest under Section 50 of the CGST Act;
5. Rule 89(1B) of the CGST Rules is inserted to allow exporters to claim a refund of additional IGST paid due to upward revision in price pursuant to export of goods. The said rule also provides for the time limit and mechanism of filing such a claim *vide* Circular No. 226/20/2024-GST dated July 11, 2024;
6. Rule 95B of the CGST Rules is inserted to allow refund of tax paid on inward supplies of goods received by Canteen Stores Department;
7. Rule 96A(1)(b) of the CGST Rules is amended to include the time period allowed under FEMA29 (including any extension of such period as permitted by the RBI30) while computing the timelines for receipt of export proceeds in case of export of goods or services without payment of tax under bond or letter of undertaking; and
8. Rule 142B of the CGST Rules is inserted to provide the manner of recovery of tax and/or interest which is recoverable under the provision of GST Law and the same has remained unpaid by the registered person.

Threshold for filing annual return for FY 2023-24

Notification No. 14/2024 – Central Tax dated July 10, 2024

Every registered person with aggregate turnover upto INR 2,00,00,000 (Indian Rupees two crore) is exempted from filing the annual return in Form GSTR-9 for FY 2023-24.

Reduction in rate of GST collected by the e-commerce operators

Notification Nos. 15/2024 – Central Tax and 01/2024 – Integrated Tax dated July 10, 2024

The Central Government in exercise of the powers conferred under Section 52(1) of the CGST Act has reduced the rate of GST to be collected by e-commerce operators from 0.5% to 0.25% (CGST and SGST) and from 1% to 0.5% (IGST).

Guidelines for handling recovery of outstanding dues in cases where taxpayers could not file an appeal due to non-constitution of GSTAT

Circular No. 224/18/2024-GST dated July 11, 2024

Where taxpayer intends to file an appeal before the GSTAT and is unable to do so due to non-operationalisation of the GSTAT, the recovery of outstanding dues can be stayed if the taxpayer:

²⁹ Foreign Exchange Management Act, 1999

³⁰ Reserve Bank of India

1. makes the necessary pre-deposit on the GST portal; and
2. submits an undertaking with the jurisdictional officer, affirming the intent to file an appeal once the GSTAT is operational.

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This Newsletter has been prepared by:



Manish Mishra

Partner & Head of
Practice - Indirect Tax



Shareen Gupta

Partner



Ruchita Modi

Principal Consultant



Joybrata Misra

Senior Associate



Tanay Vyas

Associate

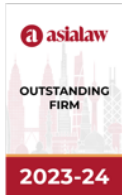


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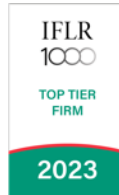
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