VIDHIVANI EDUCATIONAL FORUM INDIA • 348TH WEBINAR

Recent GST Judgments & Key Procedural Issues

A Tax Educational Webinar | In association with Tax Bar Association, Chhatarpur (M.P.) & Narmadapuram–Harda Jila Tax Bar Association

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TIME LIMIT FOR ISSUANCE OF SCN & ORDER U/S 73 & 74 OF CGST ACT, 2017

Financial Year	SECTION 73		SECTION 74	
	SCN	Order	SCN	Order
FY 2017-18	30th Sept 2023	31st Dec 2023	5th Aug 2024	5th Feb 2025
FY 2018-19	31st Jan 2024	30th April 2024	30th June 2025	31st Dec 2025
FY 2019-20	31st May 2024	31st Aug 2024	30th Sept 2025	31st Mar 2026
FY 2020-21	30th Nov 2024	28th Feb 2025	31st Aug 2026	28th Feb 2027
FY 2021-22	30th Sep 2025	31st Dec 2025	30th June 2027	31st Dec 2027
FY 2022-23	30th Sept 2026	31st Dec 2026	30th June 2028	31st Dec 2028
FY 2023-24	30th Sep 2027	31st Dec 2027	30th June 2029	31st Dec 2029

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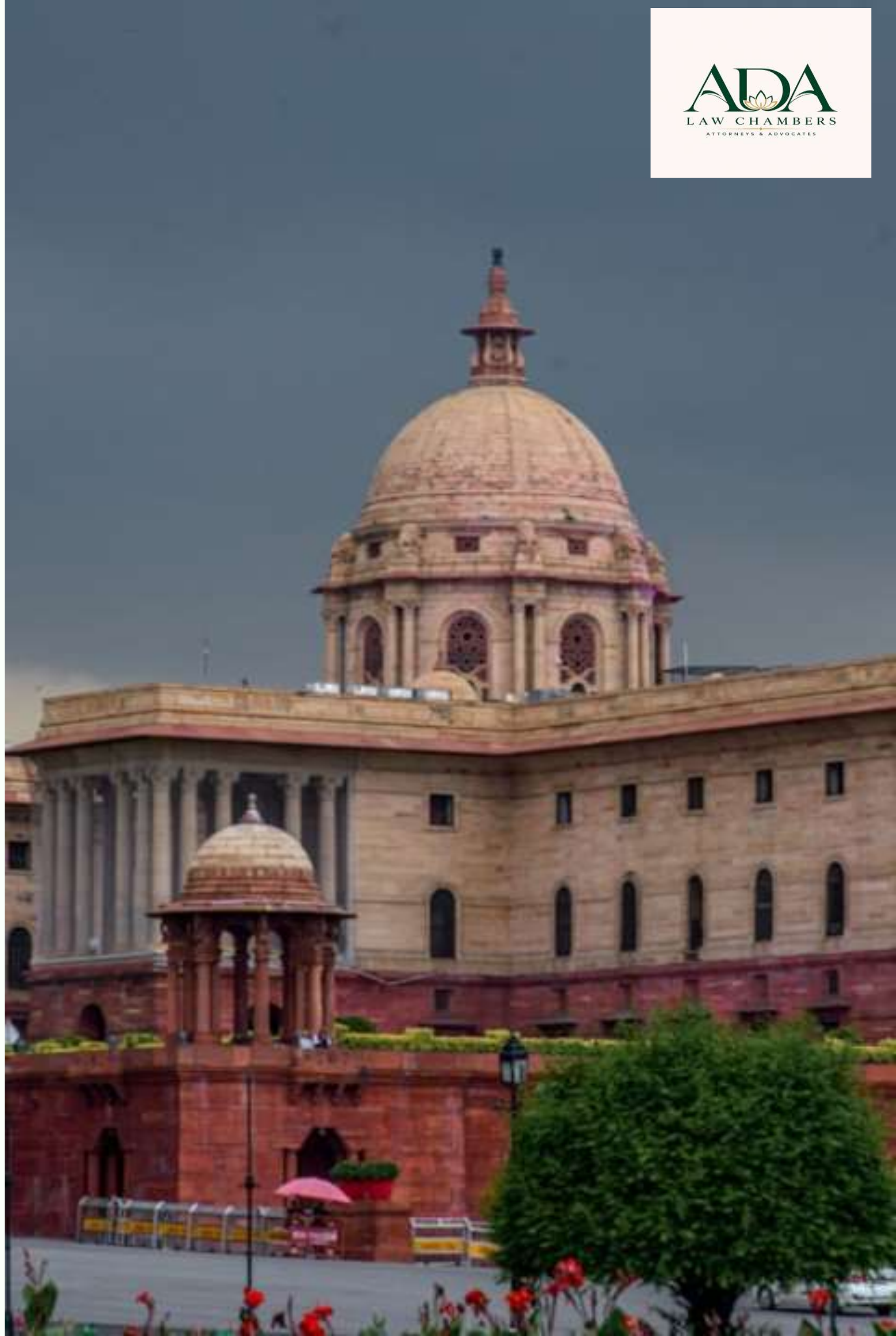

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Section 17(5)(c) & (d) — Blocked ITC

ITC not available — two clauses that decide every real-estate ITC dispute

Sec 17(5)(c) — Works Contract Services for Immovable Property

ITC NOT available on WORKS CONTRACT SERVICES used for CONSTRUCTION OF IMMOVABLE PROPERTY on own account.

Exception 1: ITC IS available if the WCS is used for FURTHER SUPPLY of works contract services (sub-contractor → main contractor).
Exception 2: Plant & Machinery — ITC available even for its construction.

Uses 'plant AND machinery' — defined in the Explanation to Section 17 (excludes land, buildings, civil structures, telecom towers, pipelines).

Sec 17(5)(d) — Goods/Services for Own Construction

ITC NOT available on goods or services received for CONSTRUCTION OF AN IMMOVABLE PROPERTY (other than plant or machinery) on own account — even if used in the course or furtherance of business.

Uses 'plant OR machinery' — deliberately different from clause (c). Not defined in the Act — a broader, factual enquiry.

Buildings are excluded from 'plant and machinery' — but can still be 'plant' for clause (d) if they pass the Functionality Test (Safari Retreats, SC 2024 — next slide).

Chief Commissioner of CGST v. M/s Safari Retreats Pvt. Ltd.

Court & Citation

Supreme Court of India

GIB- SC-2024-06

Coram

Justice Abhay S. Oka & Justice Sanjay Karol

Decided

03 October 2024

Provision in Issue

Section 17(5)(c) and (d) of the CGST Act, 2017 – ITC restriction on construction of immovable property

The Core Dispute

Safari Retreats constructed a shopping mall and accumulated ITC of over **Rs. 34 crores** on inputs – cement, steel, electrical equipment, consultancy services, and architectural services. The company let out mall premises to tenants, attracting GST on rent. When it sought to utilise the accumulated ITC against the output GST on rent, the Department denied the credit under **Section 17(5)(d)**, which bars ITC on goods/services used to construct immovable property "on his own account." The Orissa High Court read down Section 17(5)(d) in the assessee's favour; the Revenue appealed to the Supreme Court.

The Statutory Distinction the Court Relied On

Add this beside the existing Safari Retreats slide — the clauses are not interchangeable.

Section 17(5)(c)

works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

Section 17(5)(d)

goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Note the drafting: clause (c) uses "plant and machinery"; clause (d) uses "plant or machinery".

Supreme Court Language and the Functionality Test

Chief Commissioner CGST v. Safari Retreats Pvt. Ltd., 2024 INSC 756

> *"If it was a drafting mistake, as suggested by learned ASG, the legislature could have stepped in to correct it. However, that was not done. In such circumstances, it must be inferred that the legislature has intentionally used the expression 'plant or machinery' in clause (d) as distinguished from the expression 'plant and machinery', which has been used in several places. As the expression 'plant or machinery' appears to be intentionally incorporated, it is not possible to accept the contention of the learned ASG that the word 'or' in clause (d) should be read as 'and'."*

Functionality Test

A building can qualify as "plant" if it is so essential to the carrying on of the business that it functions as a tool of the trade rather than merely the setting in which the trade is carried on. Mall, hotel, warehouse — each is a question of fact. The Court remanded for that determination.

"Own account"

Construction of a commercial property for leasing or licensing is not "on his own account" in the conventional sense. Even so, ITC still requires the immovable property to qualify as "plant or machinery" under the functionality test.

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The Retrospective Amendment (2025)

- **The Text Change:** The government changed the wording in Section 17(5)(d) from "plant **or** machinery" to "plant **and** machinery".
- **The Date:** This change applies back in time (retrospectively) starting from July 1, 2017—the launch date of GST.
- **Overriding Courts:** A new explanation was added to override past court orders, including the *Safari Retreats* decision.

Safari Retreats — Final Judgment & Key Precedents

Operative Order

The impugned Orissa High Court judgment (which had read down Section 17(5)(d)) was **set aside**. The matters were **remanded** to the High Court of Orissa for the limited purpose of deciding – on facts – whether the shopping mall satisfies the functionality test to qualify as a "plant" under Section 17(5)(d). Separate writ petitions dismissed subject to the Court's interpretation, with petitioners free to raise the issue in appropriate proceedings with fact-finding.

Key Precedents

- **CIT v. Karnataka Power Corporation, (2002) 9 SCC 571** – Three-judge bench; binding authority confining the smaller bench in Anand Theatres to hotels/cinema theatres, and establishing the functionality test for "plant."
- **CIT v. Anand Theatres, (2000) 5 SCC 393** – Provides the verbal formulation: "where a building has been so planned and constructed as to serve an assessee's special technical requirements, it qualifies as a plant." Limited in scope by Karnataka Power Corporation.

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Esnp Property Builder & Developers Pvt. Ltd. v. State Tax Officer

Court & Citation

High Court of Judicature at Madras

GIB-MHC-2026-109

Coram

Justice Senthilkumar Ramamoorthy

Decided

28 August 2026

Core Issue

Assessment orders denied ITC on inputs procured for "construction-cum-leasing services," ignoring the Safari Retreats ratio that construction for leasing is *not* construction "on own account." Separately, recovery was effected by debiting the petitioner's electronic cash and credit ledgers **without the mandatory prior intimation** under Rule 142B of the CGST Rules – within three days of the three-month period expiring, bypassing the compulsory 7-day payment window.

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Esnp — Court Observations & Judgment

Safari Retreats Ratio Applied

The Supreme Court in Safari Retreats held that construction is on a taxable person's "own account" only when for personal use or as the setting from which business is conducted – NOT when intended for sale, lease, or licence. The assessing officer's finding to the contrary – entered without considering this ratio – warranted reconsidering.

Erroneous Finding Below

The proper officer held that "leasing is an independent outward taxable supply" and cannot "retrospectively alter the nature of inward supplies." The Court found this contrary to the Supreme Court's ruling and set aside both assessment orders, remanding for fresh consideration within five months.

Rule 142B Violated

Rule 142B mandates an electronic intimation in Form GST DRC-01D directing the defaulter to pay within **7 days** before any recovery action. Recovery was initiated within three days of the limitation expiring – without issuing this notice. The Court directed **re-credit or refund within two weeks** of Rs. 10,09,208/- (cash ledger) and Rs. 9,52,28,986/- (credit ledger).

Key Precedent: Chief Commissioner of CGST v. Safari Retreats Pvt. Ltd., (2024) 121 GSTR 184 (SC) – Para 32 extracted verbatim; sole basis for remand.

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State of Karnataka v. M/s Ecom Gill Coffee Trading Pvt. Ltd.

Court & Citation

Supreme Court of India

GIB-SC-2023-02

Coram

Justice M.R. Shah & Justice C.T. Ravikumar

Decided

13 March 2023

The Core Dispute

Purchasing dealers claimed ITC on purchases from suppliers who were either de-registered, filed NIL returns, denied having made the sales, or otherwise failed to discharge tax. ITC was allowed by the second Appellate Authority and the High Court on the basis of valid invoices and payment by account-payee cheques alone. The State of Karnataka appealed, arguing that payment by cheque and invoice production do not constitute sufficient discharge of the Section 70 burden of proof under the KVAT Act, 2003.

Ecom Gill Coffee — The Section 70 Burden of Proof Standard

1 Sine Qua Non: Actual Physical Movement

For ITC to be granted, **genuineness of the transaction and actual physical movement of goods are mandatory**. Mere production of invoices or payment by cheque is insufficient to discharge the burden under Section 70 of the KVAT Act. The purchasing dealer must prove the actual movement of goods.

2 Documents Required

The purchasing dealer must furnish: **name and address of the selling dealer; details of the vehicle delivering goods; freight payment particulars; acknowledgement of delivery; tax invoices; and payment particulars.** Producing invoices per Rule 27/29 proves only one element – not the totality required.

3 Burden Cannot Shift to Revenue

Once the Assessing Officer doubts genuineness with cogent reasons – e.g., seller de-registered, NIL returns filed, sales denied – the purchasing dealer cannot fall back on bona fide intent. The burden of proving correctness of ITC rests with the dealer claiming it and does not shift to the Revenue.

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Ecom Gill Coffee — Final Judgment & Key Precedents

Operative Order

The impugned judgments of the Karnataka High Court and the second Appellate Authority – which had allowed ITC solely on invoices and cheque payment – were **quashed and set aside**. The Assessing Officer's orders denying ITC, confirmed by the first Appellate Authority, were **restored**. All appeals were allowed with no order as to costs.

Precedents Distinguished

- **M/s. Bhagadia Brothers v. Addl. CCT, STA No. 4/2018 (Karnataka HC)** – Relied on by the State; SLP dismissed. Stands for the proposition that the Section 70 burden requires proof of actual movement, not mere invoices.
- **On Quest Merchandising India Pvt. Ltd. v. GNCT of Delhi, WP(C) 6093/2017 (Delhi HC)** – Distinguished: that case dealt with Section 9(2)(g) of the DVAT Act and did not address the burden of proof analogous to Section 70 KVAT. Inapplicable.

CASE 4 OF 18

Maruti Enterprise v. Union of India & Ors.

Court & Citation

High Court of Gujarat at Ahmedabad

GIB-GHC-2026-151 | Division Bench

Decided

01 May 2026

Provision in Issue

Section 16(2)(c) of the CGST Act, 2017 – Constitutional validity and prayer for reading down

The Petitioners' Grievance

Purchasing dealers whose suppliers had collected GST but failed to deposit it with the Government challenged Section 16(2)(c) as arbitrary, ultra vires, and violative of Articles 14, 19(1)(g), 265, and 300A. In the alternative, they sought that the provision be read down to apply only to fraudulent or collusive transactions, thereby protecting bona fide purchasers who had no knowledge of or control over their suppliers' defaults.

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Maruti Enterprise — *Court Observations*

ITC Is a Statutory Concession

ITC is not a constitutional or vested right but a statutory concession subject to prescribed conditions. Where the statute provides for reversal and **re-availment of credit** (Rule 37A) once the supplier discharges liability, denial cannot be characterised as double taxation sufficient to invalidate the provision.

Remedies Against Defaulting Supplier Exist

The Revenue is empowered to initiate recovery against the defaulting supplier under **Sections 73 and 74** of the CGST Act. Under Rule 37A, once the supplier discharges liability, the purchasing dealer may re-avail the reversed credit in the immediately succeeding month. Mere hardship does not justify reading down the provision.

No Parity with VAT / DVAT

Section 16(2)(c) CGST cannot be equated with Section 9(2)(g) of the DVAT Act. The GST regime is **destination-based and operates across state lines**; reading down would trigger cascading fiscal consequences. The Tripura High Court's contrary view (following On Quest Merchandising) was expressly disagreed with.

The ECJ's Balanced Approach

The Court endorsed the principle from *Axel Kittel v. Belgian State* (ECJ): ITC may be denied only if the recipient **knew or ought to have known** the purchase was connected with fraudulent evasion. The Court urged the Government to implement real-time technology-driven supplier-payment verification to protect bona fide recipients.

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Maruti Enterprise — *Final Judgment & Key Precedents*

Operative Order

Section 16(2)(c) of the CGST Act was **upheld as constitutionally valid**, clear, and unambiguous when read conjointly with Sections 41(2), 53, and 155 of the CGST Act and Rule 37A of the CGST Rules. The petition for reading down was rejected. The writ petitions were listed for decision on **individual merits** – i.e., whether each petitioner qualifies as a bona fide purchaser.

Key Precedents

- **On Quest Merchandising India (P.) Ltd. v. GNCT of Delhi, [2017] 87 taxmann.com 179 (Del)** – Distinguished; Section 16(2)(c) CGST cannot be equated with Section 9(2)(g) DVAT. Tripura HC's reliance on this case to read down Section 16(2)(c) expressly disapproved.
- **Axel Kittel v. Belgian State & Belgian State v. Recolta Recycling SPRL, ECJ, C-439/04 & C-440/04 (06.07.2006)** – Adopted as the "balanced approach": ITC may be denied only where the recipient knew or ought to have known of a fraudulent evasion.

Bhandari Scrap Traders v. Union of India

Court & Citation

Supreme Court of India

GIB-SC-2026-105

Coram

Justice Sanjay Kumar & Justice Sanjeev Sachdeva

Decided

24 July 2026

Background

These SLPs challenged the Gujarat High Court's judgment in **Maruti Enterprise v. Union of India** (SCA No. 749/2025, decided 01.05.2026), which had upheld the constitutional validity of Section 16(2)(c) of the CGST Act and declined to read it down. The petitioner sought a declaration of unconstitutionality or reading down of Section 16(2)(c), contending parity with bona fide purchasing dealers under the Delhi Value Added Tax Act, 2004.

Bhandari Scrap — Court Observations & Final Judgment

The picture can't be displayed.

No Parity Between CGST & Delhi VAT — Affirmed

The Supreme Court agreed that the distinction between the DVAT Act provisions and the CGST Act provisions – "brought out by way of detailed analysis from paragraph 42 onwards" in the Gujarat HC judgment – "clearly demonstrate that there is no possibility of drawing parity between the provisions of the two enactments, so as to treat a purchasing dealer under the CGST Act on par with a purported bonafide purchasing dealer under the Delhi VAT Act."

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Re-Availment Scheme Acknowledged

The Court affirmed that under Section 41 read with Sections 73 and 74 of the CGST Act, a purchasing dealer is entitled to **re-avail reversed ITC** after the supplier-dealer discharges tax liability – providing an adequate statutory remedy, negating any need for reading down.

The picture can't be displayed.

Gujarat HC Fully Affirmed

"We find ourselves in complete and respectful agreement with the views expressed by the High Court of Gujarat and affirm and uphold the impugned judgment." The SLPs were accordingly dismissed. The Tripura High Court's approach (in Sahil Enterprises) was distinguished as not having undertaken the detailed statutory analysis the Gujarat HC had conducted.

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Suncraft Energy Pvt. Ltd. v. Assistant Commissioner, State Tax, Ballygunge

Court & Citation

High Court of Calcutta, Civil Appellate Jurisdiction

GIB-CHC-2023-03

Coram

Chief Justice T.S. Sivagnanam & Justice Hiranmay Bhattacharyya

Decided

02 August 2023 (Reserved 21.07.2023)

The Grievance

Suncraft Energy had paid tax to its supplier at the time of purchase. However, some supplier invoices were not reflected in the petitioner's GSTR-2A for FY 2017-18. The Assistant Commissioner reversed the ITC availed and raised a demand of **Rs. 6,50,511/-** with interest and penalty – **without conducting any enquiry on the supplier** and without first attempting recovery from the defaulting supplier. The Calcutta HC intra-court appeal examined whether this approach was legally sustainable.

Suncraft Energy — Court Observations

The picture can't be displayed.

GSTR-2A Is Only a Facilitator

Relying on the Supreme Court in *Union of India v. Bharti Airtel Ltd., (2022) 4 SCC 328*, the Court held that **GSTR-2A is a facilitator for self-assessment — not a statutory bar to ITC**. Non-operability of GSTR-2A does not affect the registered person's entitlement to ITC under Section 16 of the CGST Act. At the relevant time, returns were mandated on a self-assessment basis in GSTR-3B.

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First Proceed Against the Defaulting Supplier

Drawing from *Arise India Ltd. v. Commissioner of Trade and Taxes, Delhi* (Delhi HC, SLP dismissed by SC), the Court held: ITC cannot be denied to a bona fide purchasing dealer solely because the selling dealer failed to deposit tax. **The Revenue must first proceed against the defaulting supplier**. Reversal from the buyer is permissible only in exceptional circumstances.

The picture can't be displayed.

CBIC Press Releases Relied Upon

CBIC press releases dated 18.10.2018 and 04.05.2018 clarified: **"There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by seller."** Reversal is an option available to Revenue "only in exceptional situations like missing dealer, closure of business by supplier, or supplier not having adequate assets."

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Suncraft Energy — Final Judgment & Key Precedents

Operative Order

The appeal was **allowed**. The order dated 20.02.2023 passed by the Assistant Commissioner, State Tax, Ballygunge, was set aside. A direction was issued to the appropriate authorities to **first proceed against the supplier (fourth respondent)**; only under the exceptional circumstances described in the CBIC press release (missing/closed/asset-less supplier, or collusion between buyer and seller) could proceedings then be initiated against the appellant-purchasing dealer.

Key Precedents

- **Arise India Limited v. Commissioner of Trade and Taxes, Delhi** – Principal authority: ITC cannot be denied to a bona fide buyer for the seller's default; Revenue must first target the defaulting seller, save in cases of collusion or seller being untraceable/defunct.
- **Union of India v. Bharti Airtel Ltd., (2022) 4 SCC 328** – GSTR-2A is only a tax-payer facilitation tool; its non-operability does not bar the statutory entitlement to ITC under Section 16.

Practitioner's Note: This ruling is significant under the GST regime – the Revenue cannot automatically reverse ITC from the buyer for a seller's default; the first recourse must be to the defaulting seller.

The Assistant Commissioner of State Tax, Ballygunge Charge & Ors. v. Suncraft Energy Pvt. Ltd. & Ors.

Court & Citation

Supreme Court of India

GIB-CHC-2023-03

Coram

Justice B.V. Nagarathna & Justice Ujjal Bhuyan

Decided

14 December 2023

Background

The Assistant Commissioner of State Tax challenged the Calcutta High Court's judgment dated 02.08.2023 in MAT No. 1218/2023 (with CAN No. 1/2023), which had allowed Suncraft Energy's appeal on the GSTR-2A/Section 16 ITC issue. The Revenue filed this SLP together with an application for condonation of delay in refiling.

Supreme Court's Order

Delay was condoned. Having heard senior counsel for the petitioners, the Supreme Court recorded: **"Having regard to the facts and circumstances of this case(s) and the extent of demand being on the lower side, we are not inclined to interfere in these matters in exercise of our powers under Article 136 of the Constitution of India."**

The Special Leave Petitions were dismissed, and pending applications, if any, stood disposed of. No independent reasoning on the GSTR-2A/Section 16 controversy is recorded – the dismissal turned on the low quantum of demand, not the merits of the Calcutta High Court's ratio.

No precedents are cited. The order leaves the Calcutta High Court's ruling in Suncraft Energy undisturbed, but being a dismissal in limine on facts, it does not itself lay down binding precedent on the GSTR-2A/Section 16 question.

Abdul Majid & Ors. v. Assistant Commissioner of Commercial Taxes

Court & Citation

High Court of Karnataka at Bengaluru

GIB-KHC-2026-112

Coram

Justice S. Vishwajith Shetty

Decided

05 August 2026 (Reserved 31.07.2026)

The Grievance

Abdul Majid, Mujaseem Ulla and Awaze T.M. – proprietors of M/s. A.N.Z. Traders, M/s. Z.M.S. Enterprises and M/s. A.F. Trading, dealing in steel and scrap – purchased aluminium scrap from suppliers M/s. KH E-Waste Recyclers and M/s. SKS Traders, whose proprietors were arrested and who had availed ITC of **Rs. 231.70 crore and Rs. 567 crore** respectively. The Revenue alleged the suppliers were fictitious firms issuing concocted invoices without actual supply of goods, with part of the tax amount routed back to the petitioners through hawala transactions, and summoned the petitioners under Section 70 of the CGST Act, **apprehending arrest for an offence under Section 132(1) of the CGST/KGST Act**, after their regular-bail applications before the jurisdictional Sessions Court were dismissed on 19.06.2026.

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Abdul Majid — Court Observations

Custodial Interrogation Is Not the Default

Relying on *Radhika Agarwal v. Union of India, (2025) 6 SCC 545*, the Court held that an arrest cannot be made merely to investigate whether the conditions under Section 132(5) are met – the reasons to believe must rest on evidence, not suspicion alone. Since the offence is compoundable under Section 138 and carries a maximum sentence of five years, **custodial interrogation is neither warranted nor provided for by the statute** in ordinary circumstances.

ITC Cannot Be Denied to a Genuine Purchaser Absent Fraud

The petitioners held valid GST registrations, possessed tax invoices, and had paid the invoice value plus tax to the suppliers through banking channels, filing periodic returns along with copies of the invoices. The Court held that *ITC cannot be denied to the purchaser unless fraud and collusion is proved*, and that subsequent cancellation or non-existence of the supplier's registration is not, by itself, sufficient to deny ITC – **recovery in the ordinary course lies only against the defaulting supplier**, absent exceptional circumstances or prima facie material showing the purchaser's collusion.

Bail Is the Rule, Jail the Exception

Following **Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694**, the Court reiterated that great ignominy and disgrace attach to arrest, that custodial interrogation should be avoided where the accused is cooperating and unlikely to abscond, and that Article 21 requires courts to give real effect to the principle that "bail is the rule while jail is an exception."

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Abdul Majid — *Final Order & Key Precedents*

Operative Order

The petitions were **allowed.** The respondent-authorities were directed to release the petitioners in the event of arrest, subject to conditions including a personal bond of ₹5,00,000 each with two sureties, appearance before the authorities on 10.08.2026 with release by 6:00 p.m. after interrogation, cooperation with the investigation, and surrender of passports, together with **sharing of a live-location pin on Google Maps** so the Revenue may seek cancellation of bail on breach of any condition.

Key Precedents

- **Radhika Agarwal v. Union of India, (2025) 6 SCC 545** – Arrest under Section 132(5) must rest on evidence establishing the statutory conditions, not suspicion; custodial interrogation is not a tool to investigate whether those conditions exist.
- **Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694** – Arrest carries serious, often irreversible consequences for the accused and their family; courts must exercise discretion on the facts, avoiding custodial interrogation where cooperation is shown.

Practitioner's Note: This ruling reinforces that a registered purchaser holding genuine invoices, who has paid consideration and tax through banking channels, cannot be arrested or denied ITC merely because the supplier later turns out to be fraudulent – recourse in the first instance lies against the defaulting supplier, and anticipatory bail conditions (not custody) address the investigation's needs.

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A.M. Marketplaces Pvt. Ltd. v. Union of India & Ors.

Court & Citation

High Court of Judicature at Bombay, Nagpur Bench

GIB-BHC-NAG-2026-05-DB

Coram

Justice Anil L. Pansare & Justice Nivedita P. Mehta

Decided

17 January 2026

The Specific Grievance

A Show Cause Notice was issued under Section 73(2) of the CGST Act on **18 November 2024**; the final assessment order followed on **31 January 2025** – a gap of only approximately **two months and thirteen days**. The petitioner contended that Section 73 mandates a minimum three-month gap between the SCN and the final order, designed to provide a meaningful opportunity for hearing, payment, and adjournment. The State respondents argued the three-month rule applies only when a notice is issued at the outer limit of time.

A.M. Marketplaces — *Court Observations & Judgment*

Three-Month Gap Is Mandatory

The Court rejected the State's contention. The three-month gap between issuance of the SCN under Section 73(2) and the final order under Section 73(10) is **mandatory in all cases** – not only when the notice is issued at the outer time limit. The rationale: multiple activities must occur in the intervening period, including natural justice, payment opportunity, and statutory adjournments.

Why the Gap Exists

Within the three months: **(a)** Section 73(3)/(5) requires a statement with full demand details to be served; **(b)** the assessee has the option to self-assess and pay; **(c)** at least three adjournments for personal hearing must be available. Shortening this period renders Sections 73(3) and 73(5) otiose and violates natural justice.

Outcome

The SCN dated 18.11.2024 and the order dated 31.01.2025 were **quashed and set aside**. The matter was remanded for fresh consideration. The respondent was also directed to remove the lien on the petitioner's current bank account if there was no other legal impediment.

Key Precedents: *C.H. Robinson Worldwide Freight India Pvt. Ltd.* (Delhi HC, applying *Tata Play Limited*) – three-month gap mandatory. *The Cotton Corporation of India* (Andhra Pradesh HC) – same proposition; violation renders the SCN otiose.

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CASE 10 OF 18

M/s G.R. Infra Projects Limited v. State of Madhya Pradesh

Court & Citation

Supreme Court of India

GIB-SC-2026-95

Coram

Justice J.B. Pardiwala & Justice K. Vinod Chandran

Decided

19 August 2026

Core Issue

A Show Cause Notice dated 13.06.2025 was issued for AY 2018-19 purportedly under **Section 74** of the CGST Act (extended five-year limitation – fraud/wilful misstatement/suppression), when Section 73's ordinary three-year limitation had already expired as at **28.02.2025** (after COVID extensions). The notice contained only a bland recital of "fraud or concealment of facts" without disclosing the foundational facts that led to that inference.

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G.R. Infra — Court Observations & Judgment

The picture can't be displayed.

Counter-Affidavit Cannot Rescue Defective SCN

The Court **refused to examine the counter-affidavit** on the trite principle that when a notice or order is challenged for invalidity, its requirements must be contained within the notice or order itself – they cannot be supplanted by a counter-affidavit filed in Court. This principle applies with equal force to SCNs under Section 74.

The picture can't be displayed.

Limitation Under Section 73 Had Expired

After applying COVID-period exclusions (15.03.2020 to 28.02.2022 per the Supreme Court's suo motu order), the extended Section 73 limitation for AY 2018-19 fell on **28.02.2025.** The SCN was issued on 13.06.2025 – clearly beyond this date. Section 74 was therefore invoked solely to escape the expired Section 73 limitation.

The picture can't be displayed.

Mechanical Use of "Fraud" Is Insufficient

"What is required for the extended time to be applied are the allegations which lead to the inference of a fraud or concealment... should emanate from the notice itself. It cannot be a mechanical use of the words 'fraud, willful misstatement or suppression of facts' without listing out the aspects which persuade the assessing officer." The "or" in the SCN revealed the officer was not even sure which ground applied – a telling sign of non-application of mind.

Result: The SCN and the High Court's order upholding it were set aside. The State was directed to desist from any further proceedings under the challenged SCN. Civil Appeal allowed.

M/s Tata Steel Limited v. Union of India

Court & Citation

Supreme Court of India
2026 INSC 920 (Reportable)
GIB-SC-2026-98

Coram

Justice J.B. Pardiwala & Justice K. Vinod Chandran
(Authored by K. Vinod Chandran, J.)

Decided

25 August 2026

Background Facts

Tata Steel was served an SCN under **Section 74** of the CGST Act for FY 2018-19 to 2020-21, ostensibly based on a CAG audit objection regarding ITC mismatch and short payment of tax. The Assessing Officer had placed the matter in the "call book" while the Department contested the audit objection before the Public Accounts Committee – then issued a fresh notice only because limitation was closing, described by the petitioner as a "protective demand," a concept **alien to the GST regime**. The notice carried only a bland allegation of "availing ITC without documentary evidence and suppression of facts."

Tata Steel — Court Observations: The Section 74 Standard

1 Limitation Had Expired Under Section 73

Applying COVID-period extensions, the Section 73 limitation for FY 2018-19 and FY 2019-20 expired on **28.02.2025**; for FY 2020-21 it also ended on **28.02.2025**. The SCN was issued on **13.06.2025** – past all three deadlines. Invoking Section 74 was therefore necessary for the Revenue; but that invocation itself was defective.

2 Officer Must Be Independently Satisfied

Proceedings under Section 73/74 can be initiated only on the **Assessing Officer's own satisfaction**. Even when audit objections are raised, the officer must independently reach satisfaction that there is a mismatch, short payment, and – for Section 74 – that fraud/wilful misrepresentation/suppression caused it. The fact that the Department contested the audit objection before the Public Accounts Committee was evidence of the absence of such satisfaction.

3 Foundational Facts Must Appear in the Notice Itself

"The foundational facts which led to the inference arrived at of fraud/wilful misrepresentation/ suppression should be evident from the notice itself. The mere employment of such words will not indicate an application of mind... The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation." This articulation (Para 14) became the governing standard for Section 74 notices.

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Tata Steel — Final Judgment

Operative Order

The SCN dated 13.06.2025 and the consequential Order-in-Original dated 26.12.2025 were **set aside**. The Court granted liberty: since the extended Section 74 limitation (two additional years) was not yet over, the Department may initiate **fresh proceedings under Section 74 — but only with foundational facts disclosed in the notice itself — and must pass an order before 28.02.2027**. Appeal allowed.

Key Precedent & Significance

In Re: Cognizance for Extension of Limitation, Suo Motu WP (C) No. 3/2020 (SC), order dated 01.01.2022 – applied to exclude the pandemic period 15.03.2020 to 28.02.2022 from limitation computation.

This judgment crystallised – with reportable authority – the rule that a Section 74 SCN must contain the foundational facts, not merely employ the words "fraud" or "suppression." Immediately followed by the Chhattisgarh HC in Shree Hanumant Steel (Case 10).

No "protective demand" exists under the GST Act. A notice issued solely as a protective measure to stop limitation is unsustainable.

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Vodafone Idea Ltd. v. Union of India & Ors.

Court & Citation

High Court of Judicature at Bombay, Civil Appellate Jurisdiction

GIB-BHC-2026-113

Coram

Justice G.S. Kulkarni & Justice Aarti Sathe

Decided

29 April 2026

Background

This Writ Petition under Article 226 challenged an order dated 29.01.2025 demanding ₹363 crore under Section 74 of the CGST Act from Vodafone Mobile Services Ltd. (VMSL) – an entity that had ceased to exist from 30.08.2018 upon its NCLT-sanctioned merger into the petitioner, Vodafone Idea Ltd. The demand concerned a 13.11.2017 slump sale of VMSL's tower business to ATC Telecom Infrastructure, treated by the Show Cause Notice dated 01.08.2024 as an exempt 'transfer of a going concern' ineligible for ITC. The petitioner contended the entire proceeding was a nullity, being directed at a non-existent, already-merged entity.

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Vodafone Idea — Court Observations & Final Judgment

Section 87 Applies Only to the Intervening Period

The Court held that Section 87 of the CGST Act governs only transactions between amalgamating companies during the intervening period – from the date the merger order takes effect till the date of the order – and does not authorise the Department to issue a show-cause notice to, or pass an assessment order against, a company that has already ceased to exist. Reliance on Section 87(2) to justify continuing proceedings against VMSL was accordingly rejected.

Maruti Suzuki Principle Applied to GST

Following **Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd., [2019] 416 ITR 613, and Reliance Industries Ltd. v. P.L. Roongta, [2025] 479 ITR 770**, the Court held that once the Department is informed of an amalgamation, proceedings continued against the non-existent amalgamating entity are void ab initio – participation by the amalgamated entity cannot operate as an estoppel against this settled principle, which the Court held applies equally under the CGST Act, following HCL Infosystems Ltd. v. Commissioner of State Tax, 2024 SCC OnLine Del 8287.

Impugned Order Quashed

"We thus find ourselves unable to read Section 87 as enabling the respondents to either continue to place a non-existent entity on notice or for that matter to pass an order of assessment… against such an entity." The Petition was allowed in terms of prayer clause (a): the impugned Order dated 29.01.2025 was quashed and set aside.

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Union of India & Anr. v. Vodafone Idea Limited

Court & Citation

Supreme Court of India

GIB-SC-2026-106

Coram

Justice J.B. Pardiwala & Justice K. Vinod Chandran

Decided

07 September 2026

Background

The Union of India challenged the Bombay High Court's judgment dated 29.04.2026 in WP No. 6637/2025, which had gone against the Revenue on Vodafone Idea's writ petition. The Union filed this SLP along with an application for condonation of delay.

Supreme Court's Order

Delay was condoned. However, having heard counsel and reviewed the record, the Supreme Court stated: **"We are not inclined to interfere with the impugned order passed by the High Court."**

The SLP was dismissed. No reasoning, factual discussion, or analysis of the underlying GST dispute is recorded in the order – the underlying subject matter of WP No. 6637/2025 is not disclosed in this Record of Proceedings.

No precedents are cited. The order is significant as a refusal of leave – affirming the Bombay HC's decision on the facts – but creates no precedent on any substantive question of GST law.

Shree Hanumant Steel Traders v. Assistant Commissioner, State GST, Raipur

Court & Citation

High Court of Chhattisgarh at Bilaspur

GIB-CGHC-2026-108

Coram

Justice Rakesh Mohan Pandey

Decided

09 September 2026

Core Issue

Notices were issued under **Section 74(9)** of the GST Act on 16.10.2025, alleging that the petitioners had availed ITC by "issuing fake invoices without actual supply of goods." The petitioners challenged the notices on the ground that – following Tata Steel – the foundational facts leading to an inference of fraud/wilful misrepresentation/suppression must be evident from the notice itself, and were absent here. The State contended the notices adequately described foundational facts and that an efficacious appellate remedy under Section 107 was available.

Shree Hanumant Steel — *Court Observations & Judgment*

Notices Lacked Foundational Facts

A careful perusal of the impugned notices revealed that the authority **failed to assign sufficient reasons** while invoking Section 74(9). The notices did not disclose the aspects that persuaded the assessing officer to conclude that fraud, wilful misstatement, or suppression had been employed.

Tata Steel Standard Applied Verbatim

The Court extracted Para 14 of *Tata Steels Ltd. v. Union of India, [2026] 189 taxmann.com 520 (SC)* in full: **"The mere employment of such words will not indicate an application of mind... The words are not to be mechanically recited in the notice to enable recovery outside the normal limitation provided under the statute."**

Notices Quashed; Fresh Notices Permitted

The Section 74(9) notices dated 16.10.2025 were **quashed**. The writ petitions were allowed. However, the respondent authority was at **liberty to issue fresh notices strictly in accordance with law** – i.e., containing the foundational facts in the notice body itself.

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M/s N.R. Builders v. Commissioner of Commercial Taxes, Karnataka

Court & Citation

GST Appellate Tribunal, Bengaluru Bench

GIB-GSTAT-2026-107

Coram

Sh. Prabhakaran P.M. (Judicial Member) &
Sh. Ravi Jesuraj S. (Technical Member)

Pronounced

31 August 2026

The Dispute

For FY 2018-19, the Revenue alleged excess ITC of **₹2,33,502/-** (CGST + SGST) arising purely from a mismatch between GSTR-2A and GSTR-3B. With interest of ₹2,03,730/- and penalty of ₹23,350/-, the aggregate demand was **₹4,60,582/-**. The Appellant explained: the disputed ITC pertained to **FY 2017-18 invoices** availed in FY 2018-19 – within Section 16(4)'s extended deadline per CBIC Order No. 02/2018. Comparing GSTR-3B of one year with GSTR-2A of another produced a false mismatch. No personal hearing was granted; no FORM GST ASMT-10 notice preceded the proceedings.

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N.R. Builders — GSTAT Issues Decided

The picture can't be displayed.

1

Issue 1: GSTR-3B/GSTR-2A Cross-Year Mismatch

GSTR-2A was a facilitation tool at the relevant time, not a statutory bar to ITC. CBIC Circular No. 183/15/2022-GST specifically directs the Proper Officer to **verify — not summarily disallow** – FY 2017-18 credit claimed in FY 2018-19 returns. The Appellate Authority's finding (that non-appearance in GSTR-2A proves supplier non-payment) was an assumption, not a finding after verification. **Answered in favour of the Appellant — demand cannot stand without invoice-wise verification.**

The picture can't be displayed.

2

Issue 2: Absence of Personal Hearing Under Section 75(4)

The SCN's fields for date, time and venue of personal hearing each read "NA." Section 75(4) mandates a hearing whenever an adverse decision is contemplated – **irrespective of whether a request for hearing was made**. The denial of personal hearing before the Order-in-Original is a **clear infirmity** that justifies setting the order aside. **Answered in favour of the Appellant.**

The picture can't be displayed.

3

Issue 3: Absence of FORM GST ASMT-10

Sections 61 and 73 are independent provisions. Proceeding directly under Section 73 without invoking Section 61 does not invalidate the proceedings merely because FORM GST ASMT-10 was not issued. **Answered against the Appellant** – but does not cure the infirmities on Issues 1 and 2.

The picture can't be displayed.

4

Issue 4: Relief

Interest and penalty are compensatory and consequential upon a sustainable principal demand. Since the principal demand requires fresh determination, interest and penalty must abide by that outcome. **Remand, not final decision, is the appropriate relief.**

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N.R. Builders — *Final GSTAT Order*

Operative Order

Both the Order-in-Original (20.04.2024) and the Order-in-Appeal (07.11.2024) were **set aside**. The matter was remanded to the Proper Officer for de novo adjudication, with specific directions to: **(i)** verify FY 2017-18 credit invoice-wise against GSTR-2A, GSTR-1, ITC register, and books of account; **(ii)** examine Section 16(4) eligibility; **(iii)** apply CBIC Circular No. 183/15/2022-GST; and **(iv)** grant a proper personal hearing. A fresh reasoned order to be passed within **twelve weeks**.

Key Precedents

- **Sahara India (Firm) v. CIT, [2008] 169 Taxman 328 (SC)** – Personal hearing under Section 75(4) is mandatory when an adverse decision is contemplated; its denial vitiates the proceedings.
- **Prathibha Processors v. Union of India, 1996 (88) ELT 12 (SC)** – Interest and penalty cannot survive independently of a sustainable principal demand; they are compensatory and consequential respectively.

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Rohit Garg v. Union of India & Ors.

Court & Citation

High Court of Delhi

GIB-DHC-2026-111

Coram

Justice Anil Kshetarpal & Justice Shail Jain

Decided

07 September 2026 (Reserved 20.08.2026)

Scope of the Batch

A batch of writ petitions arising from a DGGI investigation involving **629 firms/entities**, alleged to have issued invoices without actual supply of goods, wrongfully availed or passed on ITC, and committed allied contraventions. The aggregate tax and penalty liability runs into hundreds of crores of rupees – the lead petitioner (M/s Siwon Enterprises) faced a DRC-07 liability of approximately **Rs. 2,27,72,13,235/-**. Multiple overlapping legal issues were raised: validity of Section 122 proceedings, officer competence, natural justice, evidentiary challenges, and pre-deposit requirements under Section 107(6).

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Rohit Garg — Key Legal Issues Decided

Pre-Deposit & Section 107(6) Amendment

Notification No. 16/2025-CT (effective 01.10.2025) introduced an amended pre-deposit requirement for penalty-only orders. Following *Gaurav Jain (2026:DHC:6124-DB)*, the Court held: **the substituted proviso to Section 107(6) does not govern appeals arising from SCNs issued before 01.10.2025.** All petitions in the batch arose from pre-amendment SCNs – governed by the old provision.

Section 122(1) — "Taxable Person" Requirement

Section 122(1) predicates liability on the status of a "taxable person"; Section 122(1A) operates on "any person." Krishan Kumar (a self-described non-taxable individual) challenged retrospective application of Section 122(1A). The Court **left this question open** – pending the Supreme Court's decision in *Mukesh Kumar Garg* (leave granted). Petitioners at liberty to raise it before the Appellate Authority.

Officer Competence — Not a Writ Issue Here

The Court declined to hold that in the absence of a specific assignment under Section 2(91), an officer otherwise empowered under Sections 3 and 5 is denuded of authority. The competence objection does not disclose a **patent or self-evident absence of jurisdiction** warranting Article 226 intervention – the objection may be urged before the Appellate Authority.

Alternative Remedy Under Section 107

Following *Assistant Commissioner of State Tax v. Commercial Steel Limited, (2022) 16 SCC 447*, the Court held that Section 107 provides a **complete and efficacious remedy** and none of the grounds urged (natural justice, officer competence, evidentiary issues) crossed the threshold to justify extraordinary Article 226 jurisdiction given the scale of the investigation and the availability of appeal.

Rohit Garg — Final Judgment

Operative Directions

(1) All writ petitions disposed of – petitioners relegated to the statutory appellate remedy under **Section 107**.
(2) Pre-deposit requirement for appeals from SCNs issued before 01.10.2025 governed by Section 107(6) as it stood on the date of the SCN (per *Gaurav Jain*).
(3) Petitioners may seek exclusion of time spent in writ proceedings for limitation purposes.
(4) Section 122(1) "taxable person" question left open pending the Supreme Court's ruling in *Mukesh Kumar Garg*.
(5) Appellate Authority to decide all grounds on merits, uninfluenced by any observation in this judgment.

Key Precedents

- **Gaurav Jain & Anr. v. Joint Commissioner (Appeals-II), CGST Delhi Zone, 2026:DHC:6124-DB** – Substituted proviso to Section 107(6) (effective 01.10.2025) does not govern appeals from pre-amendment SCNs – the load-bearing precedent on the pre-deposit issue.
- **Assistant Commissioner of State Tax v. Commercial Steel Limited, (2022) 16 SCC 447** – Alternative statutory remedy not an absolute bar to writ jurisdiction; but mere assertion of exceptional circumstances is insufficient – applies to deny writ relief here.

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Kanan International Pvt. Ltd. & Anr. v. Union of India & Ors.

Court & Citation

High Court of Gujarat at Ahmedabad

GIB-GUJHC-2026-110.

Coram

Justice A.S. Supehia & Justice Vaibhavi D. Nanavati

Decided

13 August 2026

The Core Issue

After a refund claim was rejected (03.10.2022), the petitioners filed a rectification application under **Section 161** on 02.01.2023 – within the prescribed 90-day period. The Adjudicating Authority rejected the rectification on 14.09.2023. An appeal was filed on 11.01.2024. The Appellate Authority rejected the appeal as time-barred, computing limitation from the original order date (03.10.2022) rather than from the rectification rejection date (14.09.2023). The question: **from which date does limitation under Section 107 run when a rectification application under Section 161 has been filed within time?**

Kanan International — Court Observations & Judgment

The picture can't be displayed.

Limitation Runs from the Rectification Order Date

The filing and disposal of a rectification application under Section 161 is a **"vital aspect which would directly impact on the calculation of the limitation period provided under Section 107."** When a rectification application is filed within the prescribed 90-day period and is considered and decided by the Adjudicating Authority by a reasoned order, the limitation for the Section 107 appeal must be computed from the date of the rectification order – **not from the date of the original adjudication order.**

The picture can't be displayed.

Appellate Authority Erred in Its Computation

The Appellate Authority was required to examine the appeal on merits – computing limitation from 14.09.2023 (the rectification rejection date). **"It would not be permissible to reject the appeal on the ground of limitation by computing the period from the original adjudication order, when a rectification application under Section 161... has been filed within the prescribed period and has been duly considered and decided... and the appeal against such order had thereafter been filed within the prescribed period calculated from the date of the rectification order."**

Result: Impugned orders of the Appellate Authority quashed; matters remanded for fresh decision on merits within 12 weeks. Rule made absolute.

Key Precedent: *New Kailash Suppliers v. State of Gujarat, SCA No. 9540 of 2025 (Gujarat HC, 29.01.2026)* – Applied extensively (Para 14): limitation for the Section 107 appeal runs from the date of rejection of the rectification application, not the original order date.

New Kailash Suppliers v. State of Gujarat & Ors.

Court & Citation

High Court of Gujarat at Ahmedabad

GIB-GUJHC-2026-06

Coram

Justice A.S. Supehia & Justice Pranav Trivedi

Decided

29 January 2026

The Core Issue

An original order was passed on 12.08.2024. The petitioner filed a rectification application under **Section 161** on 05.11.2024. This should have been decided within three months; it was decided only on **19.03.2025**. The petitioner filed an appeal under Section 107 on 25.03.2025 – just **five days** after the rectification rejection – explaining in Form GST APL-01 that limitation ran from 20.03.2025. The Appellate Authority rejected the appeal as time-barred, computing limitation from the original order date of 12.08.2024 – resulting in a delay of over 225 days which it said it had no power to condone.

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New Kailash Suppliers — Court Observations & Judgment

Rectification Application Tolls Limitation

The appellate authority – and the High Court in Article 226 – cannot condone delay beyond 120 days. But **no delay existed in this case**: limitation ran from 20.03.2025 (the day after rejection of the rectification application), and the appeal was filed within five days. The Appellate Authority ought to have examined the details disclosed in Form GST APL-01 items 16 and 17 before rejecting the appeal on grounds of delay.

Filing & Disposal of Rectification Is a "Vital Aspect"

"The filing and disposal of the rectification application against the order dated 12.08.2024 was a vital aspect which would directly impact on the calculation of the limitation period provided under Section 107 of the Act." The Appellate Authority was required to take this into account; its failure to do so rendered the rejection order unsustainable.

Outcome

The impugned appellate order dated 25.04.2025 was **quashed and set aside**. The matter was remanded to the Appellate Authority (Respondent No. 3) to decide the appeal afresh on merits, after hearing, by a reasoned order in accordance with law. Rule made absolute, no order as to costs.

Key Precedent: *M/s. SPK and Co. v. The State Tax Officer, Madras HC, W.P.(MD) No. 27787 of 2024 (22.11.2024)* – Cited by the petitioner: limitation for the Section 107 appeal must be computed from the date of rejection of the rectification application, not the original order date. Sole case cited.

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Thematic Analysis: Recurring Legal Principles

Reading across all 18 cases, five dominant themes emerge that define the current trajectory of Indian GST jurisprudence.

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Theme 1: Input Tax Credit — Eligibility, Burden & Denial

Construction & The Functionality Test

Safari Retreats establishes that ITC on construction is not categorically barred. Where a building qualifies as a "plant" under the functionality test, Section 17(5)(d) does not apply. This requires case-by-case fact-finding – malls, warehouses, and other specialised structures may qualify.

Physical Movement Is Non-Negotiable

Ecom Gill Coffee settles that under KVAT (and by analogy under GST), ITC eligibility requires proof of actual physical movement of goods – name and address of seller, vehicle details, freight receipts, and delivery acknowledgement – not merely invoices or cheque payment.

Supplier Default — Buyer's Remedy

Maruti Enterprise (affirmed by the Supreme Court in Bhandari Scrap) upholds Section 16(2)(c): ITC is denied where the supplier has not deposited tax. But Rule 37A provides re-availment once the supplier pays; the Revenue's first recourse must be against the defaulting supplier (Suncraft Energy).

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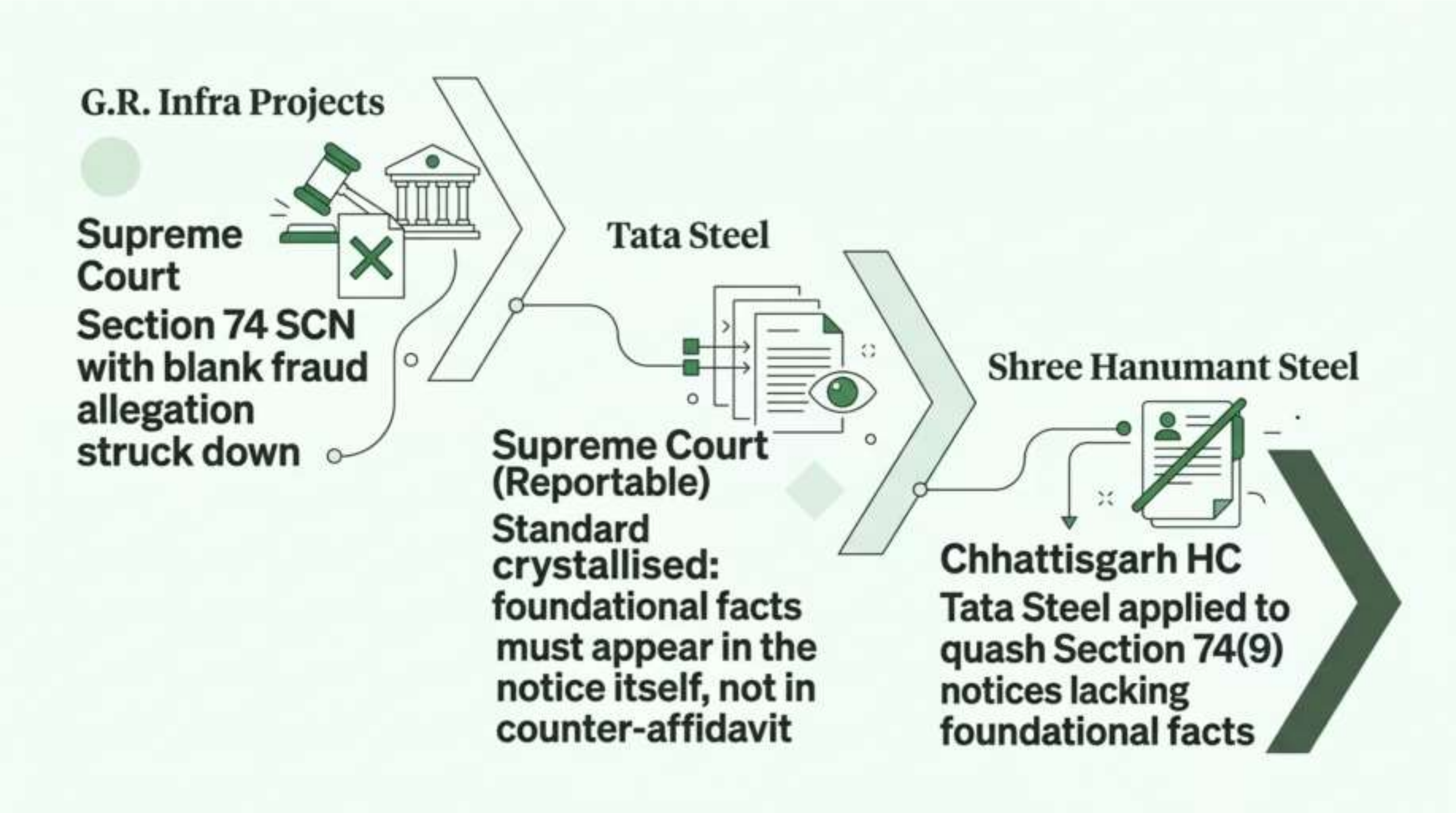
Theme 2: Section 74 — The Foundational Facts Requirement



These three cases together establish an inviolable rule: invoking the extended five-year limitation under Section 74 requires the SCN to disclose – within its own body – the specific facts that led the officer to infer fraud, wilful misstatement, or suppression. Mechanical recitation of statutory words is insufficient.

Theme 3: Procedural Integrity in Adjudication

Three-Month Gap Under Section 73 Is Mandatory

A.M. Marketplaces (Bombay HC) – The gap between the SCN under Section 73(2) and the final order under Section 73(10) is mandatory in all cases, not only when notices are issued at the outer limit. The gap is necessary to allow natural justice, payment, personal hearing (at least three adjournments), and statement service under Sections 73(3)/(5).

Personal Hearing Under Section 75(4) Is Mandatory

N.R. Builders (GSTAT Bengaluru) – Section 75(4) mandates a hearing whenever an adverse decision is contemplated, whether or not the assessee requests one. Marking "NA" in the SCN's personal hearing fields is a clear infirmity that vitiates the Order-in-Original.

Recovery Without Rule 142B Notice Is Invalid

Esnp Property Builder (Madras HC) – Debiting the electronic cash and credit ledgers without first issuing an intimation in Form GST DRC-01D and allowing the mandatory 7-day window is unlawful. Amounts so debited must be re-credited within two weeks.

Counter-Affidavit Cannot Cure a Defective SCN

G.R. Infra Projects & Tata Steel (Supreme Court) – The validity of a notice or order is assessed from the notice/order itself. A counter-affidavit filed in Court cannot supplement or rehabilitate a notice that is otherwise invalid for failure to disclose requisite facts or reasoning.

Theme 4: Limitation — Computation & COVID Extensions

1

Annual Return Due Date

Section 44(1) and successive notifications extended annual return deadlines – the base date from which Section 73/74 limitation is computed.

2

COVID Exclusion (SC Suo Motu)

Period 15.03.2020 to 28.02.2022 excluded from limitation computation per In Re: Cognizance for Extension of Limitation (SC, order 01.01.2022) – applied in G.R. Infra and Tata Steel to push forward Section 73 limitation to 28.02.2025 for multiple assessment years.

3

Section 161 Rectification Tolls Time

New Kailash Suppliers & Kanan International: when a rectification application under Section 161 is filed within 90 days and decided, limitation for the Section 107 appeal runs from the date of the rectification order – not the original adjudication order.

4

Pre-Deposit Amendment (01.10.2025)

Rohit Garg (Delhi HC): substituted proviso to Section 107(6) (effective 01.10.2025) does not govern appeals from SCNs issued before that date – petitioners may appeal under the pre-amendment pre-deposit regime.

Theme 5: Writ Jurisdiction & Alternative Remedies

The General Rule

Courts across these cases consistently hold that Section 107 of the CGST Act provides a **complete and efficacious statutory appellate remedy**. Article 226 jurisdiction is to be exercised only in exceptional cases – breach of fundamental rights, violation of natural justice, excess of jurisdiction, or challenge to statutory vires – and mere assertion of any such ground does not, by itself, warrant bypassing the statutory remedy.

Rohit Garg (Delhi HC, citing Commercial Steel Limited, (2022) 16 SCC 447)

When Writ Courts Have Intervened

- Constitutional validity of statutory provisions – Safari Retreats, Maruti Enterprise
- Clear procedural violations – Esnp (Rule 142B), A.M. Marketplaces (Section 73 gap)
- Mechanical invocation of fraud-based limitation – G.R. Infra, Tata Steel, Shree Hanumant
- Wrong computation of limitation – Kanan International, New Kailash Suppliers
- Failure to follow binding Supreme Court precedent – Esnp (Safari Retreats not considered)

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Quick Reference: 18 Cases at a Glance

Case	Forum	Provision	Key Holding	Result
Safari Retreats	Supreme Court (2024)	s. 17(5)(d)	Functionality test for "plant"; constitutional validity upheld	Remanded
Esnp Property Builder	Madras HC (2026)	17(5)(d); Rule 142B	Safari Retreats ratio not applied; Rule 142B recovery violated	Set aside & remanded; re-credit ordered
Ecom Gill Coffee	Supreme Court (2023)	s70 KVAT	Physical movement of goods sine qua non for ITC	ITC disallowed; AO orders restored
Maruti Enterprise	Gujarat HC (2026)	s16(2)(c)	Section 16(2)(c) constitutionally valid; no reading down	Petitions partly dismissed
Bhandari Scrap	Supreme Court (2026)	s16(2)(c)	Gujarat HC fully affirmed; no CGST/DVAT parity	SLPs dismissed
Suncraft Energy (HC)	Calcutta HC (2023)	s16 CGST / WBGST	Revenue must first proceed against supplier; buyer protected	Order set aside
Suncraft Energy (SC)	Supreme Court (2023)	N/A	Revenue's SLP dismissed; demand held to be on the lower side	SLPs dismissed
Abdul Majid & Ors.	Karnataka HC (2026)	s132(1) CGST/KGST	Arrest not warranted where purchaser holds invoices, has paid via banking channels	Anticipatory bail granted, with conditions
A.M. Marketplaces	Bombay HC (2026)	s73(2)/(10)	Three-month gap between SCN and order is mandatory	SCN and order quashed
G.R. Infra Projects	Supreme Court (2026)	s73/74	s74 SCN without foundational facts invalid; limitation expired under s73	SCN set aside
Tata Steel	Supreme Court (2026)	s73/74	Foundational facts must appear in SCN; no protective demand	SCN and OIO set aside; limited liberty
Vodafone Idea (HC)	Bombay HC (2026)	s87	SCN/order against merged, non-existent entity is void ab initio	Impugned order quashed
Vodafone Idea (SC)	Supreme Court (2026)	N/A	SLP dismissed; Bombay HC upheld	SLP dismissed
Shree Hanumant Steel	Chhattisgarh HC (2026)	s74(9)	Tata Steel applied; notices without foundational facts quashed	Notices quashed
N.R. Builders	GSTAT Bengaluru (2026)	s73/75(4)/s16(4)	s75(4) hearing mandatory; GSTR-2A not a bar; cross-year ITC to be verified	Remanded
Rohit Garg	Delhi HC (2026)	s107/s122	Pre-deposit amendment prospective; s122(1) question left open	Petitioners relegated to s107 appeal
Kanan International	Gujarat HC (2026)	s107/s161	Limitation runs from s161 rectification order date	Remanded for merits hearing
New Kailash Suppliers	Gujarat HC (2026)	s107/s161	Appeal filed within five days of s161 rejection — within time	Appellate order quashed; remanded

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Thank You

Questions & Open Discussion