GST Compendium

A monthly guide

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Editor's Note

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As the world undergoes a wave of economic reset, shifts in trade policy and legal interpretations are leaving their mark on India's indirect tax landscape. This month's edition of our GST Compendium brings you the pulse of global and domestic developments that matter.

A major twist came from the US, where the Court of International Trade struck down the controversial 'Liberation Day' tariffs introduced by Trump, calling them an overreach of executive power. However, the story is far from over — an appellate court has now temporarily granted a stay on the ruling, meaning the tariffs remain (for now), even as the legal battle continues.

In a positive development, the US and China have agreed to a temporary truce in their long-standing trade dispute. The deal, announced in Geneva on May 12, 2025, puts a 90-day pause on new tariffs and introduces a dialogue mechanism to de-escalate tensions. While this may ease global supply chain disruptions, it could also mean more pressure on Indian exporters, especially as China regroups and gears up its manufacturing engine.

Back home, GST collections in May reached an impressive INR 2.01 lakh crore, up 16.4% from the same period last year, a strong indicator of economic resilience and improved tax compliance.

On the judicial front, we've seen some impactful Supreme Court (SC) verdicts. First, the apex court settled a much-debated issue by allowing the use of the electronic credit ledger to pay the mandatory pre-deposit in GST appeals, a relief that aligns with Gujarat High Court's earlier view.

Meanwhile, in a significant reaffirmation of taxpayer rights, the SC has dismissed the Revenue's review petition in the Safari Retreats case, upholding its earlier view on the functionality-based classification of buildings as 'plant.' While this verdict supports ITC entitlement in specific scenarios, the shadow of retrospective amendments looms large, raising concerns about legislative certainty and judicial sanctity. A constitutional showdown could well be on the horizon.

Another significant development to note is that the SC has validated the concurrent levy of service tax and state entertainment tax on DTH services, drawing a fine distinction between economic overlap and constitutional validity. While the judgement brings clarity, it may trigger more litigation due to its retrospective implications.

On the policy front, the DGFT has reinstated RoDTEP benefits for advance authorization holders, SEZs, and EOUs, effective June 1, 2025, providing a welcome boost to exports.

In a forward-looking move aimed at accelerating green mobility, the government of Maharashtra has notified the Maharashtra Electric Vehicle Policy, 2025, effective April 1, 2025. The policy is designed to position the state as a national leader in electric vehicle adoption, manufacturing, and innovation.

On the direct tax side, the CBDT has notified various Income-tax return forms which will be applicable for AY 2025-26 and also notified income-tax return form ITR-U for updated tax returns which will be effective from 19 May 2025. On judicial front, the Special Bench of Mumbai Tribunal has held that surcharge is chargeable at slab rates on income-tax payable by private discretionary trusts. Further, in another decision Mumbai Tribunal has held that 'Debt and equity funds' and 'shares' are two separate type of assets"

Lastly, this edition unpacks the purpose, impact, and relevance of the newly introduced Section 74A of the CGST Act, while drawing a comparative lens with Sections 73 and 74, which previously dealt separately with non-fraud and fraud-related adjudication.

We hope this issue not only provides a deeper context and actionable insights for your business decisions but also helps you make informed choices.

1. Important amendments/ updates

A. Key updates under the GST and erstwhile indirect tax laws

GSTN issues update on invoice-wise reporting functionality in Form GSTR-7

Earlier, Form GSTR-7 required TDS deductors to furnish GSTIN-wise details of supplies, payment amounts, and TDS deducted. Pursuant to the recommendations of the 53rd GST Council meeting and as notified vide Notification No. 12/2024–Central Tax dated 10 July 2024, the form has been amended to mandate invoice-wise reporting, including the invoice number, date, and value. Consequently, Table 3, Table 4, and instructions have been revised to incorporate this requirement.

Subsequently, Notification No. 09/2025–Central Tax dated 11 February 2025 has notified that these amendments will be effective from 1 April 2025.

In this regard, the GSTN has announced that while invoice-wise reporting in Form GSTR-7 has been mandated from the April 2025 return period, the requisite functionality on the GST portal is currently under development and testing. The feature will be deployed shortly, and taxpayers will be duly notified.

(https://www.gst.gov.in/newsandupdates/read/599)

GSTN updates refund filing process for exports, SEZ supplies, and deemed exports

- The GSTN has made important changes in the refund filing process for the following categories:
- Export of services with the payment of tax
- Supplies made to the SEZ unit/SEZ developer with the payment of tax
- Refund by the supplier of the deemed export.

Key updates:

- Selecting a specific tax period ('From' and 'To') is no longer required. Taxpayers may now directly select the relevant refund category and initiate the application by clicking "Create Refund Application."
- All returns (GSTR-1, GSTR-3B, etc.) due till the date of filing the refund application must be filed.
- The refund process has shifted from tax period-based filing to invoice-based filing. Taxpayers can upload eligible invoices in the following statements:
  - Statement 2 – Export of services with the payment of tax
  - Statement 4 – SEZ supplies with the payment of tax
  - Statement 5B – Deemed exports (applications by supplier)
- Invoices uploaded with a refund application will be locked and can only be amended if the refund application is withdrawn or a deficiency memo is issued.

Accordingly, taxpayers are advised to comply with the revised process to ensure the accurate and timely processing of refund claims.

(https://www.gst.gov.in/newsandupdates/read/600)

GSTN issues advisory on appeal withdrawal under the waiver scheme

The GSTN has issued an advisory regarding the procedure for appeal withdrawal in the context of the waiver scheme under Section 128A of the CGST Act, 2017, which is as below:

- **Withdrawal before issuance of APL-02:** Where a withdrawal application (APL-01W) is filed before the issuance of the final acknowledgement (APL-02) by the Appellate Authority, the appeal application (APL-01) is automatically withdrawn by the system. The status of the appeal changes from "Appeal submitted" to "Appeal withdrawn".
- **Withdrawal after issuance of APL-02:** If the withdrawal application is filed after the issuance of APL-02, it is subject to approval by the Appellate Authority. Once approved, the status of the appeal is likewise updated to "Appeal withdrawn."

Under the waiver scheme, it is mandatory that no appeal should remain pending before the Appellate Authority for the demand in question. The above procedures ensure compliance with this requirement in both scenarios.

Under the waiver scheme, it is mandatory that no appeal should remain pending before the Appellate Authority for the demand in question. The above procedures ensure compliance with this requirement in both scenarios.

Taxpayers are advised to upload a screenshot of the appeal case folder showing the status as "Appeal withdrawn" while filing the waiver application or, in cases where the waiver application has already been filed, to update the same accordingly.

(https://www.gst.gov.in/newsandupdates/read/602)

GSTN advisory - Edit option in Table 3.2 of GSTR-3B retained until further notice

The GSTN in its earlier advisory, had proposed making Table 3.2 of Form GSTR-3B non-editable from the April 2025 tax period onwards. However, in response to various taxpayer representations, it has now been decided that Table 3.2 will continue to remain editable until further notice.

Taxpayers are advised to review, amend, and report entries in Form GSTR-3B as required to ensure accurate return filing.

The GSTN will issue a separate communication once the proposed non-editable functionality is implemented on the portal.

(https://www.gst.gov.in/newsandupdates/read/604)

GSTN updates refund filing process for recipients of deemed export

The GSTN has introduced changes in the refund filing process under the category "On account of refund by recipient of deemed export"

- **No chronological order:** Taxpayers are no longer required to select "From" and "To" tax periods while filing refund applications.
- **Return compliance:** Ensure all returns (GSTR-1, GSTR-3B etc.) are filed up to the date of the refund application.
- **Revised refund table:** The format of the table "Amount eligible for refund" has been modified as follows:
  - **Col. 1:** Balance in ECL at the time of filing of refund application – Auto-populated to reflect the available balance under each head (IGST, CGST, SGST, UTGST) in the ECL at the time of filing of application.
  - **Col. 2:** Net ITC of deemed exports (as per uploaded invoices) – Auto-populated ITC claimed under respective heads based on invoices reported in Statement 5B.
  - **Col. 3:** Refund amount as per the uploaded invoices—This field reflects the total ITC claimed under all heads as per the invoice uploaded in Statement 5B; it is downward editable.
  - **Col. 4:** Eligible refund amount – Auto-calculated to indicate the maximum refundable ITC, in accordance with the order of debit prescribed in Circular No. 125/44/2019-GST dated 18 November 2019.
  - **Col. 5:** Refund amount not eligible due to insufficient balance in the ECL – Displays the difference between the ITC claimed and the available balance in the ECL under each head.
- **Improved functionality:** The functionality has been improved to maximise the refund claim based on uploaded invoices, by allowing the total ITC claimed under all heads to be matched against the total ITC available in the ECL, irrespective of individual head-wise balances.
- **Grievance redressal:** GST portal grievance link.

(https://www.gst.gov.in/newsandupdates/read/601)

Government of Maharashtra notifies the Maharashtra Electric Vehicle Policy-2025

The Government of Maharashtra has notified the Maharashtra EV Policy, 2025. The policy is a strategic initiative to position Maharashtra as India's leading hub for EV adoption, manufacturing, and innovation. Aimed at accelerating EV penetration across personal, commercial, public, city utility, and agricultural segments, the policy sets ambitious environmental targets, including a reduction of 325 tonnes of PM2.5 and 1 million tonnes of GHG emissions by 2030. It also focuses on establishing a robust and inclusive charging infrastructure across urban, rural, and highway networks, promoting a circular economy through battery recycling and reuse, and encouraging indigenous R&D, innovation, and skill development in the EV ecosystem.

Key features:

Policy period: The policy is effective from 1 April 2025 till 31 March 2030.

Policy targets:

- 30% of all new vehicle registrations in Maharashtra to be electric by 2030.
- Ambitious targets for EV penetration by segment:
  - 40% for two-wheelers and three-wheelers
  - Up to 30% for electric four-wheelers (personal and goods)
  - 20–25% for heavier goods vehicles
  - 10% for agricultural vehicles and equipment
  - 40% of all state/urban transport buses in major cities to be electric
  - 50% electrification targets for city utility and fleet vehicles in Maharashtra's six largest urban areas

Key Incentives:

Conditions

- Subsidies applicable only to EVs sold and registered in Maharashtra.
- Subsidies also available for battery lease/swapping models (ownership not required at purchase).

10% subsidy on ex-factory cost

- Electric two-wheelers (L1, L2)
- Electric three-wheelers (L5M)
- Non-transport four-wheelers (M1)
- State/urban transport corporation buses (M3, M4), etc

15% subsidy on ex-factory cost

- Electric three-wheeler goods carriers (L5N)
- Transport four-wheelers (M1)
- Light/heavy electric goods vehicles (N1, N2, N3)
- Electric agricultural tractors and combined harvesters

Maximum subsidy per vehicle

- INR 10,000 (Electric two-wheelers)
- INR 30,000 (Electric three-wheelers)
- Up to INR 2,00,000 (Cars, buses, certain goods vehicles)

Supply-Side Incentives

Mega project incentives for manufacturing (EVs, batteries, components), regardless of location in Maharashtra.

Exemption from Motor Vehicle Tax

All EVs during policy period get:

- 100% exemption from motor vehicle tax.
- Full exemption from registration certificate and renewal fees.

Toll Waivers

All EVs during policy period get:

- 100% exemption from motor vehicle tax.
- Full exemption from registration certificate and renewal fees.
- Full toll exemption for passenger EVs on key expressways like Mumbai-Pune Expressway, Mumbai-Nagpur Samruddhi Mahamarg, Atal Setu (Mumbai Trans Harbour Link).
- Toll waivers on other highways to be phased in, as per state Steering Committee recommendations.

Charging infra incentives

Up to 15% of cost of charging station only (does not include land and any ancillary cost to set up charging station) as Viability Gap Funding (VGF) for DC fast charging stations (with funding caps for different power levels, as per policy table).

R&D corpus

INR 15 crore under the “CM EV R&D Grant”

B. Key updates under the Customs/FTP/SEZ laws

CBIC notifies adjudication framework for EOUs where customs and excise duties are involved

The CBIC has issued Notification No. 35/2025-Customs (N.T.) dated 16 May 2025, designating adjudicating authorities for remanded cases involving both customs duty and central excise duty relating to 100% EOUs. This realignment follows the earlier transfer of jurisdiction over EOUs from Central Excise authorities to Customs officers, as implemented through Notification Nos. 52/2003-Customs and 79/2018-Customs.

Where a notice demanding both customs duty and central excise duty, originally adjudicated by Central Excise officers, is remanded for de novo adjudication, it shall now be adjudicated by Customs officers having jurisdiction over the concerned EOU, as follows.

Aggregate duty involved	Adjudicating authority
Up to INR 5 lakh	Deputy Commissioner or Assistant Commissioner of Customs
Above INR 5 lakh and up to INR 50 lakh	Additional Commissioner or Joint Commissioner of Customs
Above INR 50 lakh	Principal Commissioner or Commissioner of Customs

(Notification No. 35/2025-Customs (N.T.) dated 16 May 2025)

DGFT notifies restoration of RoDTEP scheme for AA holders, SEZs, and EOUs and alignment of RoDTEP schedule with Customs tariff changes

The DGFT has issued Notification No. 10/2025-26 and Notification No. 11/2025-26 dated 26 May 2025, notifying key updates concerning the RoDTEP scheme:

- **Alignment of RoDTEP Schedule (Notification No. 10/2025-26):** Pursuant to the amendments made to the First Schedule of the Customs Tariff Act, 1975, through the FA, 2025, DGFT has aligned the RoDTEP Schedule (Appendix 4R) with the revised tariff structure, effective 1 May 2025. The updated HS codes, along with revised RoDTEP rates and value caps, are available on the DGFT portal.
- **Restoration of RoDTEP benefits for AA/SEZ/EOU (Notification No. 11/2025-26):** The DGFT has also notified the restoration of RoDTEP benefits for the following categories with effect from 1 June 2025:
  - AA holders
  - SEZs
  - EOUs

The applicable rates for these categories are now reflected in the updated Appendix 4RE, which incorporates the newly aligned HS codes as per the Customs Tariff amendments.

Exporters are advised to check the updated schedule and ensure the correct application of RoDTEP rates in their shipping bills and refund claims based on the applicable period.

(Notification No. 10/2025-26 and Notification No. 11/2025-26 dated 26 May 2025)

2. Key judicial pronouncements

A. Key rulings under the GST and erstwhile indirect tax laws

I. Key rulings under the GST laws

Supreme Court dismisses review petition in Safari Retreats case, upholds relief on input tax credit

In a significant development, the SC has dismissed the Revenue's review petition in the case of Safari Retreats Pvt. Ltd (Diary No.1188 of 2025), thereby reaffirming the relief granted to the taxpayer.

The SC had earlier upheld the constitutional validity of Sections 17(5)(c) and (d) of the CGST Act and clarified that the classification of a building as a 'plant' depends on its functionality and role in business operations. It observed that buildings like malls or warehouses, which are actively involved in business activities, may qualify as a 'plant' if they serve an essential role in business operations. (link of tax alert attached)

Thereafter, the FA, 2025, introduced a retrospective amendment to Section 17(5)(d), replacing the term 'plant or machinery' with 'plant and machinery', effective from 1 July 2017, aligning it with the definition and reinforcing the ITC restriction on immovable property.

While the SC's dismissal of the review petition upholds the relief granted to Safari Retreats, the retrospective amendment curtails its practical applicability.

Our comments:

The SC's dismissal of the review petition reaffirms the importance of the functionality test and the commercial use of immovable property in determining the ITC eligibility. However, the retrospective amendment[2] raises concerns around policy certainty, sanctity for settled judicial interpretation, and its impact on taxpayer confidence.

This divergence between judicial relief and legislative override could lead to new constitutional challenges. Although the amendment is yet to be notified, it remains to be seen whether it will be subjected to judicial scrutiny. Taxpayers should closely monitor future developments, particularly any litigation that could shape the contours of ITC entitlement in similar fact patterns.

SC upholds Gujarat HC's ruling allowing utilisation of electronic credit ledger for payment of mandatory pre-deposit under GST appeals

The SC has upheld the Gujarat HC's ruling allowing the utilisation of the ECrL for discharging the mandatory 10% pre-deposit required for filing an appeal[1]. Dismissing the Revenue's SLP, the SC found no grounds to interfere with the Gujarat HC's judgement.

The HC had held that tax arising out of adjudication qualifies as 'output tax' under Section 49(4) of the CGST Act, which may be discharged using ITC. The court relied on the Bombay HC's decision in the Oasis Realty case and the CBIC Circular No. 172/04/2022-GST, which clarifies that output tax, whether self-assessed or determined through adjudication, may be paid using the ECrL.

Before the SC, the Revenue contended that SLPs had been admitted in the cases of Flipkart Internet Pvt. Ltd. and Summit Digital Infrastructure Ltd., where a contrary view was taken by the HC. However, the SC distinguished those matters as being initiated by assessees and held that such reliance did not justify admission of the department's petition.

Background:

- The petitioner, Yasho Industries Limited, a public limited company, is engaged in the manufacture and export of specialised chemicals, for which it has been availing a refund of IGST paid on exports under Section 16(3)(b)[2] of the IGST Act, 2017, from February 2018 to January 2021.
- Simultaneously, the petitioner has been availing duty-free import benefits, i.e., IGST exemption under Notification No. 79/2017-Customs dated 13 October 2017 against valid advance authorisation licences.
- With the introduction of Rule 96(10) of the CGST Rules[3], the petitioner became ineligible to claim a refund of the IGST paid on exports in cases where imported goods were procured under the customs duty exemption.
- An investigation was conducted at the petitioner's premises, concluding with issuing a SCN seeking recovery of IGST refunds, along with interest and penalty, which was subsequently confirmed by an order dated 20September 2022.
- Aggrieved by the order, the petitioner has filed a statutory appeal before the Commissioner (Appeals) and deposited the mandatory pre-deposit amounting to INR 3.36 crores by debiting its ECrL vide Form GST DRC-03.
- However, the department directed the petitioner to pay the pre-deposit through the ECL.

Issues before Gujarat HC:

Whether the mandatory pre-deposit under Section 107(6)(b) of the CGST Act can be discharged through ECrL?

Was the department justified in rejecting the debit from the ECrL and insisting on payment only through the ECL?

Gujarat HC's observations and judgement (R/Special Civil Application No. 10504 of 2023, Order dated 17 October 2024):

Validity of ECrL for pre-deposit under Section 107(6)(b)

- The HC examined the scope of Section 107(6)(b), which mandates the payment of 10% of the disputed tax amount as a pre-deposit for filing an appeal and observed that the section merely uses the term 'paid' and does not prescribe any specific mode of payment.
- It held that the provision does not mandate the exclusive use of the ECL for making the pre-deposit. Further, the court found that the statutory framework permits using ECrL to discharge the pre-deposit, provided the liability qualifies as output tax.

Classification of tax arising from adjudication as 'Output Tax'

- The court observed that tax determined through adjudication qualifies as 'output tax' under Section 49(4) of the CGST Act and can be discharged through the ITC available in the ECrL.
- It referred to Rule 86(2) of the CGST Rules and Section 2(82) defining 'output tax,' to support its conclusion that such tax is not confined to self-assessed liabilities and includes tax determined through adjudication proceedings.

Reliance on Bombay HC's ruling and CBIC circular

- The Gujarat HC relied on the Bombay HC in the case of Oasis Realty[4] , wherein it had been held that the term 'paid' under Section 107(6)(b) includes payment made through either the ECrL or the ECL, provided the liability qualifies as output tax. Accordingly, pre-deposit may be validly discharged using the ITC available in the ECrL.
- The court also referred to the CBIC circular (supra), which clarified that the payment of output tax, including the tax arising from adjudication proceedings, can be discharged using the ECrL.
- The HC rejected the contrary view taken by the Orissa HC in the case of Jyoti Construction[5] and reaffirmed that circulars issued under Section 168 of the CGST Act are binding on tax authorities.

1. Section 107(6)(b) of the CGST Act
2. as it stood prior to its omission vide the FA,2021
3. vide the Notification No. 54/2018-Central Tax dated 9 October 2018
4. WP (ST) No. 23507 of 2022
5. W.P.(C) Nos.23508, 23511, 23513, 23514 and 23521 of 2021

SC's observations and judgement (SLP(C) Diary No. 17547/2025, order dated 19 May 2025):

No interference with the order of Gujarat HC

- The Revenue's SLP, challenging the Gujarat HC's decision, was dismissed by the SC, which held that reliance on the admission of SLPs in the cases of Flipkart Internet Pvt. Ltd.[6] and Summit Digital Infrastructure Ltd.[7], both initiated by assessees, did not justify admission of the department's petition.
- The SC noted the respondent's submission that Rule 96(10) of the CGST Rules, 2017, has been omitted prospectively.
- Finding no merit in the Revenue's petition, the SC declined to interfere with the HC order and dismissed the SLP, thereby affirming the permissibility of utilising the ECrL for payment of the mandatory pre-deposit under Section 107(6)(b) of the CGST Act

Our comments:

The issue of whether the mandatory 10% pre-deposit under Section 107(6)(b) of the CGST Act can be discharged through the ECrL has become contentious, owing to conflicting interpretations by different HCs.

The Bombay HC, in the case of Oasis Realty, and the Gujarat HC, in the case of Yasho Industries Ltd., had held that the tax arising from adjudication qualifies as 'output tax'[8] , and may, therefore, be discharged using the ITC available in the ECrL. These rulings referred to the CBIC Circular, which clarifies that output tax, whether self-assessed or determined through adjudication, can be paid through the credit ledger.

In contrast, the Orissa HC, in the case of Jyoti Construction, and the Patna HC, in the case of Flipkart Internet Pvt. Ltd.,had held that such pre-deposit falls within the scope of 'any other amount' under Section 49(3) of the CGST Act[9] and must be discharged only through the ECL.

The Gujarat HC, in the case of Shiv Crackers, also upheld the validity of using the ECrL for pre-deposit, which was subsequently tagged by the SC with the Flipkart matter, which reflects the contrary position.

Although the SC dismissed the Revenue's SLP in the Yasho Industries case, thereby affirming the Gujarat HC's view, the legal position remains unsettled in light of the pending Flipkart case.

SC rejects Revenue's SLP, upholds Delhi HC ruling disallowing negative blocking of ITC under Rule 86A

The SC has dismissed the SLP filed by the Revenue against the Delhi HC ruling, which held that blocking the ITC under Rule 86A of the CGST Rules cannot exceed the credit available in the ECrL, thereby disallowing the negative blocking of ITC.

Facts of the case:

- The petitioners in the batch of writ petitions, including Raghav Agarwal ("the petitioner"), challenged orders passed by the Commissioner/authorised officer under Rule 86A, which blocked the ITC amount that exceeded the actual credit balance available in the petitioner's ECrL, resulting in an artificial negative balance.
- As a result, the petitioners were unable to utilise their ITC for tax payments until the negative balance in their ECrL was offset by new credits, effectively limiting usage to the net amount available after such set-off.

Issues before Delhi HC:

- Whether Rule 86A of the CGST Rules empowers the Commissioner (or authorised officer) to block an amount exceeding the credit available in the ECrL at the time of issuance of the order?

Petitioner's contentions :

- Rule 86A permits blocking only the ITC available in the ECrL at the time of the order. Further, a taxpayer has a vested right to use the ITC available in the ECrL for tax payments or refunds, and such credit can only be blocked only as expressly permitted under Rule 86A, which must be strictly interpreted.

Respondent's contentions:

- Rule 86A allows blocking the ITC equivalent to the amount fraudulently availed or ineligible, with no express limitation confining it to the credit available on the date of the order.
- The use of the phrase "equivalent to such credit" in Rule 86A, rather than "available credit," shows legislative intent not to limit the blocking to the ITC currently available in the ECrL.
- ITC is not a vested right but a legal interest or privilege, and while taxpayers may have a beneficial claim, it cannot be enforced beyond the prescribed framework. Further, any ambiguity in Rule 86A should be resolved in the Revenue's favour.

6. SLP (C) No. 25437/2023
7. SLP (C) No. 324/2024

Delhi HC's observations and ruling [W.P.(C) 15380/2023, Order dated 24 September 2024]:

- The power under Rule 86A can only be exercised if the Commissioner or an authorised officer forms a "reason to believe" that the ITC currently available in the ECrL has been wrongly availed. It does not impose any condition on the taxpayer for availing the ITC.
- Blocking under Rule 86A is confined strictly to the credit that is available in the ECrL at the time of the order. If no ITC is available, the conditions for invoking Rule 86A(1) are not satisfied.
- The rule does not permit blocking based on the ITC that was availed and utilised in the past. A direction that requires a taxpayer to replenish previously used ITC would effectively amount to a recovery action, which is beyond the scope of Rule 86A.
- The Revenue contended that the phrase "amount equivalent to" in Rule 86A(1) should not be restricted to the ITC currently available in the ECrL. However, the court rejected this argument, stating that it overlooks the opening language of Rule 86A(1), which clearly limits its application to the credit available at the time of the order. The expression "amount equivalent to such credit" refers specifically to the ITC presently lying in the ECrL that is suspected to be fraudulently availed or ineligible, and not to credit already utilised or refunded.
- The court reinforced that under Sections 41 and 49 of the CGST Act, the ITC becomes available once credited to the ECrL through self-assessed returns. Rule 86A cannot override this scheme by blocking credit that no longer exists in the ledger.
- Rule 86A is not a machinery provision for recovery or assessment under the CGST Act. It is a temporary, protective mechanism invoked to safeguard revenue by restricting the use of the ITC that is suspected to be fraudulently availed or ineligible.

Delhi HC sets aside GST demand on internal services; directs reconsideration of circular

The Delhi HC, in its recent case of M/s KEI Industries Ltd. v. UOI & Ors., has remanded a matter where the IGST demand was raised on services provided by a head office (HO) to its branch offices without cross-charging expenses. The demand was based on the proviso to Rule 28 of the CGST Rules, 2017, without considering the Circular No. 199/11/2023-GST dated 17 July 2023 (circular).

Facts of the case:

- M/s KEI Industries Limited ("the petitioner"), a public limited company, incurred certain common expenses at the HO level, which were not cross-charged to its branch offices. A SCN was issued, and the demand was confirmed by the adjudicating authority.
- The petitioner relied on the circular and the judgement in the case of Metal One Corporation India Pvt. Ltd., wherein the HC held that if no invoice is issued and the recipient is eligible for full ITC, the value may be deemed nil, and tax demand would not arise.
- The Revenue relied on the case of Filatex India Ltd., where the court directed the petitioner to approach the appellate forum in a similar issue.

Issues before Delhi HC:

- Whether IGST was payable on expenses incurred by the petitioner, which were not cross-charged to other entities?

Delhi HC's observations and judgement [W.P.(C) 6919/2025 & CM APPL. 31310/2025, order dated 22 May 2025]:

- The court noted that the second proviso to Rule 28 was applied without considering the clarification provided by the circular.
- It was evident from the orders that there was no cross-charging of expenses with other entities.
- Accordingly, the adjudicating authority remanded the matter for fresh consideration, considering the Circular and the Metal One Corporation judgement.

II. Key rulings under the erstwhile indirect tax laws

SC upholds levy of service tax and entertainment tax on DTH broadcasting services

The SC has upheld the simultaneous levy of service tax (by the centre) and entertainment tax (by states) on DTH broadcasting services and affirmed that such state taxes are constitutionally valid under Entry 62 of List II (State List) of the Seventh Schedule. It emphasised that these taxes represent distinct aspects of the same activity, enabling different legislatures to levy taxes under separate entries in various lists. The activity comprised two aspects: relaying signals (taxable as a service) and providing entertainment to subscribers (taxable by states). While the centre can tax the broadcasting service under Entry 97 of List I, the states are constitutionally permitted to tax the entertainment aspect under Entry 62 of List II.

The DTH operators argued that they were mere intermediaries and only liable for service tax, claiming their role lacked any separate entertainment aspect. The SC disagreed, holding that entertainment could not reach viewers without DTH providers enabling signal transmission and decryption via set-top boxes and viewing cards. It concluded that DTH operators play a direct and essential role in delivering entertainment.

Background of the case:

- This batch of cases arose from disputes over state-level taxes on cable TV and DTH service providers across India. Several states – including Kerala, Tamil Nadu, Odisha, Uttar Pradesh, and others – had earlier enacted or amended laws to impose either an entertainment tax or a luxury tax on cable and DTH television services subscriptions.
- The Kerala FA, 2006, introduced a luxury tax of INR 5 per cable TV connection for operators with 7,500 or more subscribers, exempting smaller operators.
- Asianet Satellite Communications Ltd., along with DTH operators like Tata Sky, Dish TV, Sun Direct, and Bharti Telemedia (the assessees), contended that the state taxes were beyond the states' legislative competence and also alleged that the tax schemes were often discriminatory.
- While the Kerala HC initially upheld the provision, the SC remanded the matter for reconsideration under Article 14.
- On remand, the HC held that the exemption for smaller operators was discriminatory and struck down the provision. The state subsequently removed cable operators from the tax's ambit w.e.f. 1 April 2011, confining the dispute to 2006–2010. The state of Kerala appealed this finding before the SC.
- In several HC rulings, including those from Delhi[1] and Madras[2], the petitions filed by the DTH and cable operators challenging the validity of state entertainment or luxury taxes were dismissed, thereby upholding the states' legislations.
- Parallel to these proceedings, DTH operators also questioned the constitutional validity of the service tax imposed by the Union under the FA, 1994—particularly under Section 65(105)—arguing that if "entertainment" falls solely under the state List, then the Parliament lacked the legislative competence to levy service tax on DTH/broadcasting services.
- Considering these overlapping federal and double taxation concerns, the SC granted certiorari, consolidating the batch of matters, including state appeals (such as Kerala's) against adverse HC rulings and industry appeals by operators like Tata Sky, Dish TV, and Bharti Telemedia challenging the upholding of state or central levies.

Issues before SC:

- Whether states could levy entertainment/luxury tax on cable/DTH services under Entry 62 of List II despite the Union taxing the same services under the FA, 1994?
- Did the service tax and state entertainment tax amount to double taxation on the same transaction?
- Whether selective exemptions violate Article 14 of the Constitution?

Assessee's contentions:

States lacked legislative competence

- The DTH and cable operators contended that states lacked legislative competence to impose entertainment or luxury tax on DTH/cable services, as these services are essentially "communication and broadcasting" governed exclusively by the Parliament under Entry 31, List I.

1. Bharti Telemedia Ltd. (W.P.(C) No. 4935/2011)
2. Tata Sky Limited (C.A. No. 1580/2020)

- It was emphasised that DTH services are classified as "broadcasting" under Section 65(105)(zk) of the Finance Act and have been subjected to central service tax pursuant to Parliamentary regulation. Reliance was placed on the order of the Ministry of Information and Broadcasting[3], which permitted DTH broadcasting, demonstrating the field's occupation by Union law.
- Reference was made to various precedents[4] to support the argument that the entire field of broadcasting and its taxation is intended to be governed by the Parliament, being of national importance.
- Invoking Article 248(2)[5] , they claimed that only the Parliament could tax such services under its residuary powers.
- They further argued that expanding Entry 62 (entertainment) to cover broadcasting would amount to an unconstitutional overlap and a colourable exercise of power by states.

Double taxation of single transaction is impermissible

- The assessees asserted that both the state entertainment tax and the central service tax are triggered by the identical taxable event, namely, television content provision to subscribers for consideration. Thus, the same subscription revenue cannot be subjected to tax twice by different governments.
- Heavy reliance was placed on cases to argue that, in law, taxation on the gross value is impermissible, and the value of entertainment cannot be subsumed into the value of service or vice versa. The lack of any statutory machinery in most state enactments (other than Delhi, Gujarat, and Assam) to bifurcate the value of entertainment from that of the service was also criticised, relying on an SC ruling[6].
- The "aspect theory" was challenged, with the petitioners submitting that it only applies when both Union and state legislatures have competence—a condition not satisfied here, as the Parliament has already occupied the field and declared intent to tax DTH services since 2001.
- The assessees urged that the double taxation of a single transaction is constitutionally impermissible and especially onerous, given the wide penetration of basic TV services into lower-income segments.

DTH/cable services do not constitute an 'entertainment' or 'luxury' in the constitutional sense

- The assessees disputed the classification of DTH/cable services as "entertainment" or "luxury" within the meaning of Entry 62, List II. It was argued that the private viewing of television at home is distinct from "public entertainment," which connotes public spectacle or admission to an event.
- Reliance was placed on precedent[7] , to contend that "entertainment" refers to public activities and that the mere provision of a DTH service does not equate to selling a ticket for admission to entertainment.
- They highlighted that their activity is confined to the transmission of signals, with no control over content. The service often includes informational and educational programming, lacking a necessary element of entertainment.
- It was further argued that, in the contemporary context, basic TV service is necessary for information and education and should not be subjected to luxury or entertainment tax, reinforcing the narrow constitutional interpretation of these terms.

Article 14 – discriminatory application

- The assessees (especially in Kerala) emphasised the discriminatory and arbitrary application of state luxury tax schemes, wherein cable operators with more than 7,500 connections were subject to tax. At the same time, those below the threshold—and DTH providers—were exempted.
- This unequal treatment was asserted to amount to hostile discrimination in violation of Article 14 of the Constitution, lacking rational basis or reasonable classification, especially as both DTH and cable operators delivered substantially similar content to subscribers.
- The Kerala HC's findings striking down the impugned provision as discriminatory were noted, with the assessees urging the SC to uphold this view as consistent with established constitutional jurisprudence on equality and fiscal legislation.

States' contentions:

States' power to tax the consumption of entertainment content squarely covered under Entry 62:

- The states submitted that the pith and substance of the impugned levies is taxation on entertainment—a matter specifically and unambiguously allocated to the states under Entry 62, List II of the Seventh Schedule to the Constitution.
- When a subscriber, whether via cable or DTH, watches television content, they are engaging in the act of "being entertained"; this consumption of entertainment is being taxed, irrespective of the medium or technology deployed.

3. dated 15 March 2001
4. Association of Leasing & Financial Service Companies v. Union of India (2011) 2 SCC 352 and Special Reference No.1 of 2001, n Re: Association of Natural Gas (2004) 4 SCC 489
5. Residuary powers of legislation
6. CIT, Bangalore v. B.C. Srinivasa Setty (1981) 2 SCC 460
7. Geeta Enterprises v. State of U.P. (1983) 4 SCC 202

- The states contended that the evolution of entertainment delivery—from live performances and cinema halls to television, cable, DTH, and now streaming—does not alter the essential character of the legislative field. The states' power is to tax the consumption of entertainment content, not the underlying telecommunication infrastructure or signal transmission service.
- In response to the operators' emphasis on the telecommunication aspect, the states stressed that the constitutional text nowhere confines "entertainments" to public events or spectacles. Instead, entertainment enjoyment, even if consumed privately in the home, constitutes a taxable event within the meaning of Entry 62, as affirmed by multiple HCs' and the SC.
- Reliance was placed on the legislative history and purposive construction of Entry 62 to argue that the field encompasses all forms of entertainment, whether public or private, collective or individual. The shift in the delivery medium does not abrogate or diminish the state's taxing power in this regard.

Concurrent taxation justified under aspect theory

- The states invoked the aspect theory, contending that a single transaction can involve multiple distinct aspects, each taxable by different governments if done within their constitutional bounds.
- The states clarified that the service aspect—i.e., the transmission or broadcasting of signals—is taxed by the Union under the FA, 1994, while the entertainment aspect—i.e., the enjoyment of content by viewers—is taxed by the states as entertainment or luxury tax.
- They emphasised that the tax is on the act of being entertained, not on availing a service. Citing the SC's ruling[8], the states argued that double taxation is not per se unconstitutional if the taxes are imposed on different aspects by separate legislative authorities.
- They further submitted that the Union's levy of service tax does not preclude states from taxing a separate, entertainment-related facet of the same transaction.

Reliance on judicial precedents

- Heavy reliance was placed on the three-judge bench decision in the case of Purvi Communication Pvt. Ltd.[9] by the SC, wherein it upheld the validity of entertainment tax on cable television, holding that there was a sufficient nexus between cable services and the concept of entertainment under Entry 62.
- They stressed that Purvi Communication is directly on point and remains binding authority for the proposition that cable/DTH-based entertainment taxes are constitutionally valid.
- It was further contended that the assessees' reliance on Geeta Enterprises[10] was misplaced, as that case was factually and legally distinguishable, dealing with video parlour games and a statute tied to "admission to an entertainment" and did not pronounce any general limitation on the state's power to tax new or evolving forms of entertainment.
- The states underscored that Purvi Communication post-dated the introduction of service tax on cable broadcasting (Union's levy in 2001), and the SC did not find this central imposition to oust or negate the state tax.

No discrimination under Article 14

- In response to Article 14 claims, particularly those raised regarding the original Kerala regime, the states contended that any initial disparity in the scope of the tax (e.g., cable operators with fewer than 7,500 connections being exempted or DTH providers initially not covered) had been addressed and rectified through subsequent legislative amendments.
- For example, the state government of Kerala explained that the temporary exemption for smaller cable operators was justified to protect tiny local enterprises, and DTH operators were excluded due to complexities related to central licensing and operational realities. These were reasonable and non-arbitrary classifications at the time.
- By the time the matter reached the SC, the Kerala law had been amended to bring both cable and DTH providers within the ambit of the luxury tax, thereby establishing a uniform regime. This rendered the earlier claim of discrimination moot, and, in any event, the appropriate remedy was a legislative correction, not judicial invalidation of the entire tax.
- The states contended that minor implementation disparities are not sufficient to strike down the core taxing power of the state, and the evolution towards a level playing field affirmed the commitment to the principles of equality and fair classification.

8. Bharat Sanchar Nigam Ltd. v. Union of India (2006) 3 SCC 1
9. Purvi Communication Pvt. Ltd. v. State of West Bengal, (2005) 3 SCC 711
10. ibid

SC's observations and ruling [Civil Appeal No.9301 Of 2013 and Ors. dated 22 May 2025]:

Legislative competence and demarcation of powers

- The SC began by reaffirming the constitutional scheme of federalism in taxation, emphasising the careful demarcation of legislative fields in the Seventh Schedule. Entry 62 of List II expressly empowers the states to tax "luxuries, including entertainments, amusements, betting and gambling."
- The court held that the impugned state imposts—whether styled as entertainment tax or luxury tax—fell squarely within the ambit of Entry 62, so long as their true character was to tax the enjoyment of entertainment by the end consumer.
- The states' competence under Entry 62 was contrasted with the Parliament's exclusive regulatory and fiscal powers over telecommunications and broadcasting, conferred by Entry 31 of List I. However, the court clarified that the challenged state laws did not seek to regulate broadcasting or telecommunications (e.g., through licensing, content regulation, or technical standards) but rather imposed a tax solely on the act of being entertained by the content delivered via DTH or cable.
- The court cited the case of Purvi Communication Pvt. Ltd., to affirm the principle that technological advancements in entertainment delivery do not erode the states' power to tax the enjoyment of such content.
- The service tax on DTH/cable services, as levied under the FA, 1994, was held to be traceable to the Parliament's residuary powers under Article 248 and Entry 97 of List I (in the absence of a notified Entry 92C), validating the Union's competence in this sphere.

Application of aspect theory – No double taxation overlap

- The court undertook a detailed analysis of the "aspect theory," explaining its established use in Indian jurisprudence not to expand legislative competence artificially but to discern each tax's true nature.
- The judgement observed that the taxable event under state law is the enjoyment of entertainment by the subscriber. In contrast, the Union's service tax is imposed on the activity of broadcasting or transmission of content for a fee.

- The court concluded that there is no constitutional overlap in fact or in law between the two levies. What may appear as double taxation is, in substance, two taxes on two distinct taxable happenings—each within the respective government's constitutional competence.
- The argument of unconstitutional double taxation was, therefore, decisively rejected. The court cited the case of Bharat Sanchar Nigam Ltd. and other precedents to reiterate that some degree of economic double taxation is constitutionally permissible, so long as each tax targets a separate aspect and is within legislative competence.

Reconciling judicial precedents on entertainment tax

- The SC rejected the assessees' plea to declare Purvi Communication per incuriam due to its alleged conflict with Geeta Enterprises, affirming it as good law.
- The court held that the case of Purvi Communication directly addressed the validity of cable TV entertainment tax amid the co-existing service tax, while Geeta Enterprises was confined to the specific language of the U.P. Act and a different context (video parlours).
- It further clarified that Geeta Enterprises did not lay down a general requirement of "public" entertainment and that private, home-based entertainment falls within Entry 62.

Article 14 and rationalisation of the tax scheme

- The SC noted that while the Kerala HC had flagged the arbitrary exemption of small cable operators and the exclusion of DTH providers as violative of Article 14, it erred in its remedy.
- Instead of invalidating the entire tax provision, the proper course would have been to strike down only the discriminatory exemption and uphold the levy uniformly.
- By quashing the whole provision, the HC wrongly granted relief to larger operators, thereby "treating unequals as equals." Therefore, the SC set aside the relevant paragraph of the HC's order (2012), dismissed the assessee's writ petition, and allowed the state's appeal.

Conclusion and disposition

- Considering the above reasoning, the SC allowed the appeals of the state of Kerala and other state authorities, upholding the validity of the respective state entertainment/luxury tax statutes as they apply to cable and DTH services.
- The court simultaneously dismissed the petitions and appeals that DTH operators and others brought, which sought to invalidate either the state taxes or the Union's service tax.
- The court concluded that the Union's service tax under the FA, 1994 was valid under Entries 97/92C and Article 248, and the state taxes were within the permissible legislative domain, thus confirming that both levies co-exist without constitutional overlap.

Our comments:

The SC's ruling conclusively settles the long-standing debate on the simultaneous levy of service tax by the centre and entertainment tax by the states on DTH and cable TV services. It affirms that dual taxation is constitutionally permissible when distinct aspects of a single transaction fall under separate legislative fields.

The court reinforces the principle that legislative competence, not economic overlap, governs tax validity by articulating the relationship between the 'aspect theory' and the 'pith and substance' doctrine. Notably, the judgement adopts a clear, India-specific constitutional approach while aligning with prior rulings, such as those in the cases of Purvi Communication and Geeta Enterprises, thereby ensuring doctrinal consistency.

Though the decision pertains to the pre-GST regime, its reasoning remains relevant under GST — especially for assessing the validity of residual levies and addressing concerns around overlapping taxation. It underscores that potential double taxation must be viewed through the lens of legislative authority rather than its economic effect.

While the ruling provides much-needed legal certainty, a review petition cannot be ruled out. Furthermore, retrospective implications may prompt industry concerns and potential litigation.

Engineering and technical service fees paid to local agent includible in assessable value - SC affirms CESTAT's ruling

The SC held that the engineering and technical service charges paid by the appellant's subsidiary to Voltas Ltd., acting as the foreign supplier's agent, were a mandatory pre-importation payment directly linked to the sale of the imported goods. Since this payment was a condition of sale and facilitated the importation process, it was rightly includible in the assessable value under Section 14(1) of the Customs Act read with Rule 9(1)(e) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (Valuation Rules). The court distinguished the appellant's cited precedents, noting they involved unrelated post-importation charges. The appeal was dismissed, affirming the orders of the lower authorities.

Facts of the case:

- Coal India Ltd. (CIL or the appellant), through its subsidiary Central Coalfields Ltd. (CCL), imported spare parts for P&H Shovels from a foreign supplier, Harnischfeger Corporation (USA).
- CCL engaged Voltas Ltd. (the Indian agent/distributor of the foreign supplier Harnischfeger Corporation (USA)) for product support services, including technical and engineering support.
- Under the contract, CCL was required to pay Voltas Ltd. an 8% engineering and technical service fee in Indian rupees on a pro-rata basis per shipment, separately from the FOB price paid to the foreign supplier.
- The foreign supplier shipped the spare parts , and the goods were received by CCL after a provisional assessment by the customs authority.
- The Customs authorities, during finalisation of provisional assessments, held that the engineering and technical service fees paid to Voltas Ltd. constituted agency commission or charges and should be added to the assessable value of the imported goods, resulting in a short levy of INR 64.47 lakhs.
- The appellant challenged the inclusion before the Commissioner (Appeals), then CESTAT, wherein the appeal was rejected, and it was ruled that:
  - Voltas Ltd. acted as an agent/distributor of the foreign supplier.
  - The 8% payment was not linked to specific post-import services but was a pre-condition for the sale.
  - Payments to Voltas Ltd. had a direct nexus to the value of the imported goods.
- Aggrieved by the decision, CCL filed an appeal before the SC under Section 130E of the Customs Act.

Issues before SC:

- Whether the engineering and technical service fees (8% of FOB value) paid to Voltas Ltd. were includable in the assessable value of the imported spare parts as per the Customs Valuation Rules read with Section 14(1) of the Customs Act?

Appellant's contentions:

- The 8% engineering and technical service charges paid to Voltas Ltd. were for post-importation activities such as maintenance, technical support, and product support services to ensure smooth operation of the P&H Shovels, and therefore, should not be included in the assessable value of the imported spare parts.
- Rule 9(1)(e) could only be invoked for payments made as a condition of sale if such payments were not already covered by Clauses (a) to (d) of Rule 9. In this case, the payment was not a condition of sale but a separate charge for the post-import services. The note to Rule 4 of the Customs Valuation Rules, which has statutory force, clearly excludes from the assessable value any charges for maintenance or technical assistance undertaken after importation.
- While citing various precedents, the appellant submitted that Voltas Ltd. acted as an independent service provider, not as a buyer's agent or a party fulfilling the seller's obligations, and no contractual obligation required the payment as a condition of sale.

Respondent's contentions:

- The respondent contended that Voltas Ltd. was the agent/distributor of the foreign supplier, and services provided by them were a condition of sale, and the payment to Voltas Ltd. was a pre-importation charge directly connected to the sale of the imported goods.
- The services rendered by Voltas Ltd. were to identify the requirement of the spares to be imported, and therefore, the payments so made had a direct nexus to the imported goods. As the local agent, services were pre-importation activities and aimed at making the sale of spares by the foreign supplier effective.
- Rule 9(1)(e) covered the payment, as it was made as a condition of sale to a third party to satisfy the seller's obligation.

SC's observations and ruling [Civil Appeal No. 8028 of 2010 dated 1 May 2025]:

- The court analysed the purchase order and the quotation from Harnischfeger Corporation and noted that the 8% engineering and technical service charges were an obligatory payment to Voltas Ltd., separate from and not deductible from the FOB value.

- Voltas Ltd.'s services included identifying spare part requirements, assisting with customs clearance and insurance surveys, coordinating replacements, and addressing supply discrepancies.
- The court concluded that these services were not independent or post-importation activities but were directly linked to the sale and importation of the goods.
- Voltas Ltd. was acting as an agent/distributor of the foreign supplier, not as an independent service provider. There was no separate agreement between CCL and Voltas Ltd. for providing post-import services. The 8% payment was tied to the imported goods as a pre-condition of sale, not a separate or optional post-sale service charge.
- Section 14(1) requires the assessable value to include payments forming part of the price of imported goods. Under Rule 9(1)(e), payments made by the buyer to a third party to fulfil the seller's obligation must be added to the assessable value.
- The 8% payment met these criteria, as it was mandated by the foreign supplier, a condition of sale, and directly linked to the sale and importation of the goods.
- The appellant had cited Essar Gujarat Ltd., Tata Iron & Steel Co. Ltd., J.K. Corporation Ltd., and Ferodo India (P) Ltd. to argue that post-importation charges should be excluded. The court clarified that those cases involved post-importation or unrelated technical fees, whereas in the present case, the payment to Voltas Ltd. was a mandatory pre-importation payment directly tied to the sale. Thus, the facts were distinguishable, and the cited precedents did not apply.
- The court held that the lower authorities correctly included the 8% payment in the assessable value; the payment was a condition of sale, not a separate service fee.
- Accordingly, the appeal was dismissed, affirming the orders of the Assistant Commissioner, Commissioner (Appeals), and CESTAT.

SC limits jurisdiction of Nokia ruling and upholds validity of PVAT amendment extending reassessment period

The SC upheld the constitutional validity of the 2013 amendment to Section 29 of the Punjab VAT Act, 2005, allowing retrospective extension of the reassessment period from 3 to 6 years. The court held that such retrospective changes are permissible to protect revenue and cure procedural defects, without violating Articles 14 or 19. The court also confined the applicability of its earlier ruling in the Nokia India Pvt. Ltd. (2014) case to VAT matters in Punjab and Chandigarh only, allowing contrary HC decisions (e.g., Samsung and Intex cases) to operate independently in other jurisdictions.

Facts of the case:

- Initially, Section 29(4) of the PVAT Act, 2005 allowed assessments within 3 years, extendable to 6 years through a specific order by the Commissioner.
- Due to administrative constraints like staff shortages and procedural lapses, several extension orders were struck down by the courts, causing revenue leakage.
- To resolve this, the Punjab government introduced the Second Amendment Act, 2013, replacing Section 29(4) to generally allow a 6-year limit, removing the need for Commissioner's orders. Additionally, Explanation (2) and Section 29(10A) were inserted with a non-obstante clause to validate past extension orders and shield them from judicial invalidation.
- M/s. Naresh Kumar Gupta and others (the appellants) challenged the reassessment orders passed beyond the original 3-year limitation period before the P&H HC, which upheld the validity of the amendment, placing reliance on the Amrit Banaspati decision. Aggrieved by the above, the appellant has appealed before the SC.
- Further, the connected batch of appeals and transferred cases involved disputes over VAT liability arising under the state enactments of Punjab and the Union Territory of Chandigarh.
- The Revenue relied on the SC's judgment in the Nokia case, which upheld the state's interpretation of VAT liability on bundled transactions involving mobile handsets and SIM cards.
- The appellants argued that the Nokia ruling should not apply to their cases and relied on contrary HC decisions from other jurisdictions, including Samsung (India) Electronics Pvt. Ltd. (Allahabad HC) and Intex Technologies India Ltd. (Karnataka HC), which had been affirmed by the SC.

Issues before the SC:

- Whether the amendment to Section 29 of the PVAT Act, retrospectively extending reassessment limitation and validating past orders, is constitutionally valid?
- Does the Nokia judgment apply as a binding precedent across states?

SC's observations and ruling [Civil Appeal No.4033/2025 and Civil Appeal No.4044/2025 with ors. dated 1 May 2025]:

- The SC noted that the amendment aimed to safeguard the Revenue and address delays in assessment caused by practical constraints, and that retrospective tax legislation is constitutionally permissible.
- It upheld the HC's view that Explanation (2) did not invalidate past judgements but rather removed the basis on which such judgements were rendered. The court held that sub-section (10A) validly cured procedural defects and did not violate the principles of natural justice.
- Relying on the Jyoti Traders (1999) case, the court held that the extension of limitation through retrospective amendment was permissible even in cases where the original period had expired. Accordingly, the appeals were dismissed, and the validity of the amendment was upheld.
- The SC held that the applicability of its judgement in the Nokia (supra) case would be confined only to VAT matters concerning the state of Punjab and the Union Territory of Chandigarh. It directed the appellants to pay only the principal amount of tax due and exempted them from any liability to pay interest and penalties.
- Liberty was granted to appellants and state authorities in other jurisdictions to argue independently whether the Nokia (supra) case applied to their respective enactments by relying on contrary rulings of the Allahabad and Karnataka HC.

Our comments:

The SC, in the case of Nokia India Private Limited, held that a mobile charger sold along with a mobile phone is an accessory and not an integral part of the handset, and can be taxed separately under state VAT laws. In contrast, the Allahabad HC, in the case of Samsung India Electronics Private Limited, ruled that when a mobile phone and charger are sold as a single package with one MRP, the transaction constitutes a composite sale and cannot be artificially split for separate VAT levies. This decision was further upheld by the SC, reinforcing the dominant intent test for interpreting bundled contracts under VAT. A similar view was given by the Karnataka HC in the case of Intex Technologies.

The SC's ruling in the Naresh Kumar Gupta case reinforces the divergence in judicial approaches to composite supply taxation under state VAT laws. By expressly limiting the precedential value of its earlier decision in the case of Nokia India Pvt. Ltd. to the states of Punjab and Chandigarh, the court has effectively upheld the legitimacy of contrary HC decisions.

Himachal Pradesh HC rules cellphone chargers taxable separately at higher VAT rate under HP VAT Act, 2005

- The Himachal Pradesh HC upheld the separate taxation of cellphone chargers bundled with cellphones, recognising them as accessories rather than integral parts of mobile phones, thus aligning its judgement with the precedent set by the SC in the Nokia India Private Limited case. The court reversed the HP Tax Tribunal's order, ruling that cellphone chargers attract the residual VAT rate of 13.75%, not the concessional 5% applicable to cellphones under the HP VAT Act, 2005. Consequently, the state's revision petition was allowed, affirming the separate taxable identity of cellphone chargers and clarifying their tax treatment under state VAT laws.

Facts of the case:

- The state of Himachal Pradesh (the State) filed a revision petition against the order of the Himachal Pradesh Tax Tribunal, which allowed the appeal of M/s Micromax Informatics Limited (the assessee), treating cellphone chargers bundled with cellphones as taxable at 5%, the concessional rate applicable to cellphones.
- Initially, the Deputy Excise & Taxation Commissioner had issued an assessment order under Sections 16 and 60 of the HP VAT Act, 2005, raising additional VAT liability, including interest, for the financial years 2013-14 and 2014-15.
- The dispute centred on chargers supplied in retail packs with cellphones; the tax authority treated these chargers separately, taxable at a higher residual VAT rate of 13.75%, instead of the cellphone rate of 5%, adopting a valuation of INR 48 per charger.
- The assessee successfully challenged this assessment at the Tribunal level, arguing that chargers were integral to cellphones and not separate taxable accessories.
- The state relied heavily on the SC's judgement in Nokia India Pvt. Ltd., which held cellphone chargers as accessories taxable separately from cellphones at higher rates.
- The assessee cited contrary judgements from other jurisdictions, particularly in the cases of Samsung (India) Electronics Private Limited and Intex Technologies India Limited.
- The assessee also referenced a Government of India Office Memorandum suggesting that chargers compulsorily bundled with mobiles attract identical duty rates as the main product.
- The state argued that Entry 60(f)(vii) of Part-II A, Schedule-A of the HP VAT Act was closely identical to those interpreted by the SC in Nokia's case, mandating adherence to the SC ruling.

Issue before Himachal Pradesh HC:

- Whether cellphone chargers sold bundled with cellphones should be treated as integral parts or accessories for VAT purposes?

Himachal Pradesh HC's observations and ruling [Civil Revision No. 11 of 2023 dated 10 April 2025]:

- The HC observed that the SC had conclusively determined in the Nokia India Pvt. Ltd. case that mobile chargers are not integral to cellphones but rather distinct accessories independently marketable and taxable at higher residual rates.
- It emphasised the similarity between HP VAT Act provisions (Entry 60(f)(vii)) and Punjab VAT Act provisions examined by the SC, affirming the mandatory applicability of the SC ruling as a binding precedent.
- The court held that cellphone chargers have separate HSN codes and distinct commercial identities, confirming their separate taxation.
- Rejecting the Tribunal's use of the "dominant intention test," the court clarified that this test applies exclusively to composite contracts involving goods and services, or works contracts, and not to pure sale transactions involving bundled goods alone.
- The HC noted that the central government's office memorandum advising similar treatment for bundled chargers was prospective and non-binding under the statutory framework of the HP VAT Act.
- It dismissed the assessee's reliance on the judgements of Allahabad and Karnataka HCs as inapplicable due to differences in statutory provisions and context, explicitly distinguishing the HP VAT Act's entries from those Acts.
- The court highlighted that interpreting bundled products as single entities without a clear statutory basis would encourage misuse by companies attempting to evade residual taxation.
- Conclusively, the HC overturned the Tribunal's ruling, stating explicitly that cellphone chargers should be separately taxed at the higher residual VAT rate of 13.75%, rectifying the misapplication of the SC precedent by the Tribunal.

B. Key judicial pronouncements under Customs/FTP/ SEZ laws

SC holds that CBEC circular on AIR duty drawback is applicable retrospectively; exporters entitled to customs drawback prior to 20 September 2010

The SC set aside the Madhya Pradesh HC's order, holding that CBEC Circular No. 35/2010-Cus., clarifying eligibility for 1% AIR duty drawback on exports of SBM, even where central excise rebates had been availed, is clarificatory and must be applied retrospectively. The court found that the circular did not introduce a new benefit but merely clarified existing notifications, reaffirming that the customs duty drawback was always available irrespective of the CENVAT benefit. Consequently, the appellant is entitled to the benefit of 1% AIR customs duty drawback on exports from 2008 onwards, and the restrictive interpretation adopted by the HC was overturned, restoring the benefit as intended under the scheme.

Facts of the case:

- Suraj Impex (India) Pvt. Ltd.(the appellant), engaged in the export of SBM, claimed entitlement to a 1% AIR duty drawback under successive Customs Notifications and contended that such a drawback was available irrespective of whether the CENVAT facility was availed.
- The Customs authorities withheld drawback benefits to the appellant and similarly placed merchant exporters, taking the view that the AIR drawback was not available if the exporter had already claimed a rebate of central excise duty under Rule 18 or procured inputs under Rule 19(2) of the Excise Rules.
- The CBEC issued Circular No. 35/2010-Cus. dated 17 September 2010, clarifying that the AIR drawback towards the customs portion is available even if an excise duty rebate has been availed. However, the circular became effective prospectively on 20 September 2010.
- The appellant sought retrospective benefit for exports prior to 20 September 2010, arguing that the circular was clarificatory, not substantive, and did not create new rights but clarified existing entitlement under earlier notifications.
- The HC of Madhya Pradesh dismissed the appellant's writ, holding the circular to be prospective, and also dismissed the review petition. The appellant challenged this before the SC.

Issue before the SC:

- Whether Circular No. 35/2010-Cus. dated 17 September 2010, issued by the CBEC, clarifying the availability of 1% AIR customs duty drawback irrespective of availing CENVAT credit, is clarificatory and thus applicable retrospectively?

SC's observations and ruling:

- The SC held that Circular No. 35/2010-Cus. is clarificatory and declaratory, resolving ambiguity in prior notifications, and did not introduce any substantive change or create new rights or liabilities.
- The court examined the text and intent of the circular and earlier notifications, noting uniformity in their language and that the benefit of 1% AIR customs duty drawback for SBM exporters was intended to be available with or without availing the CENVAT.
- It observed that a clarificatory circular, especially when beneficial and not imposing new burdens, should be given retrospective effect to achieve uniformity and fairness, unless it is arbitrary or oppressive.
- The court clarified that the circular did not deprive exporters of the benefit before 20 September 2010 and that the CBEC's interpretation restricting the benefit to a prospective date was unjustified.
- They relied on Income Tax dicta in the case of Vatika Vatika Township to state that the substratum of a beneficial legislation is to ensure that when such a benefit to one person does not inflict any undue burden on the other, the purposive construction can be considered to be given a retrospective effect.
- The doctrine of "contemporanea exposition" was applied, emphasising that administrative clarifications should be interpreted in a manner that gives effect to the original objective and intent of the parent notifications.
- The HC's reasoning was found to be cursory, focusing only on the stated effective date without examining the underlying statutory framework and intent.
- The impugned HC orders were set aside, and the appellant was held entitled to the benefit of 1% AIR customs duty drawback on exports of SBM for the period prior to 20 September 2010 as well, by giving retrospective operation to Circular No. 35/2010-Cus. dated 17 September 2010.
- The appeal was allowed; all pending applications were disposed off.

SC upholds Delhi HC; custodian liable for duty on pilfered goods even if goods are later confiscated under Customs Act

The SC upheld the Delhi HC 's ruling that Container Corporation of India Ltd., acting as a custodian under Section 45(1) of the Customs Act, is liable to pay customs duty under Section 45(3) for goods pilfered from its custody, even if the same goods are later subject to confiscation proceedings under Sections 111(l) and (m). The Court held that the occurrence of pilferage in the customs area before clearance triggers a statutory liability on the custodian to pay duty, which is not nullified by subsequent confiscation.

Facts of the case:

- Container Corporation of India Ltd. (CONCOR or the appellant) is a Central Public Sector Undertaking and was appointed as a custodian under Section 45(1) of the Customs Act and is responsible for the safe custody of imported goods at the Inland Container Depot.
- Certain goods were imported into India and placed under the custody of CONCOR in the customs area. However, before clearance and delivery to the importer, the goods were pilfered from the premises. In parallel, the customs department-initiated proceedings for confiscation of the said goods under Section 111(l) and Section 111(m) of the Customs Act on the grounds of misdeclaration and importation in contravention of legal restrictions.
- Subsequently, customs authorities invoked Section 45(3) of the Customs Act, which provides that in cases where goods are pilfered after being unloaded in a customs area, and before clearance, the custodian is liable to pay the customs duty on such goods.

Issue before the SC:

- Whether the custodian (CONCOR) is liable to pay customs duty on goods that were pilfered while in its custody under Section 45(1), and later confiscated under Sections 111(l) and 111(m)?

Delhi HC's observations and ruling [CUSAA No. 70 of 2024 dated on 28 August 2024]:

- The Delhi HC had rejected appeallant's argument and held that the goods were admittedly unloaded in the customs area and were thus imported goods within the meaning of Section 2(25) of the Customs Act.
- Once the goods were placed in the custody of CONCOR and subsequently pilfered, the conditions of Section 45(3) stood attracted. The subsequent confiscation proceedings did not extinguish the duty liability arising from pilferage.
- Accordingly, the High Court held CONCOR liable to pay customs duty on the pilfered goods under Section 45(3).

SC's order [Civil Appeal No. 333 of 2025, dated on 10 January 2025]:

In appeal, the SC reviewed the contentions of CONCOR and the findings of the HC. After considering the matter, the SC dismissed the appeal and affirmed the HC's decision, holding that there was no reason to interfere with the well-reasoned judgment of the HC.

Unjust enrichment doesn't bar refund of encashed bank guarantee - SC

- The SC allowed the appeals, set aside the Gujarat HC's order, and held that the department was not justified in applying the unjust enrichment bar or insisting on compliance with Section 27 in case of encashment of bank guarantees. The court clarified that coercive encashment of bank guarantees is not a "payment" under the Customs Act, and thus, a refund in such cases cannot be denied on technical grounds. The SC reinforced judicial discipline in refund matters and upheld procedural fairness when a duty is secured through court-ordered guarantees.

Facts of the case:

- M/s. M.P. Glychem Industries Ltd., later merged into Ruchi Soya (now Patanjali Foods or the assessee), imported crude degummed soyabean oil in 2002.
- The Customs Department refused to clear the goods under Section 14(1) of the Customs Act and demanded duty based on tariff value under a notification issued under Section 14(2).
- The importer challenged this on the ground that the notification was not published or made available for sale at the time of import.
- The Gujarat HC admitted the petition and allowed clearance of goods upon furnishing bank guarantees for the differential duty. Eventually, the HC dismissed the writs in 2012, following which the department encashed the bank guarantees in January 2013.
- Later, the SC, in the Param Industries Ltd. (2016) case, held that such notifications that were not made available for sale could not be enforced, thereby upholding the importer's stand. Relying on this decision, Patanjali Foods sought a refund of the amount recovered via encashment of the bank guarantees.

Issue before the SC:

- Whether encashment of bank guarantees by the Customs Department can be considered as "payment of duty" under Section 27 of the Customs Act?
- Does the doctrine of unjust enrichment apply to such a case where the duty was not voluntarily paid but recovered by encashment of security?

SC's observations and ruling [Civil Appeal Nos. 3833-3835 of 2025 dated 19 May 2025]:

- The court held that encashment of a bank guarantee given under court direction is not equivalent to payment of duty. Hence, Section 27 and the doctrine of unjust enrichment do not apply.
- It distinguished the facts from the DCW Ltd. case, where encashment followed a judicial order, unlike here, where the department acted unilaterally.
- It emphasised that the test of unjust enrichment under Section 27 is triggered only when there is a voluntary payment of duty, which was not the case here.
- The SC, while citing the Oswal Agro Mills and Somaiya Organics (Constitution Bench) case, held that recovery via bank guarantees cannot be treated as payment attracting refund provisions under Section 27.
- The department's act of encashing guarantees despite the pending SC appeal in the Param Industries case was termed "arbitrary and in extreme haste."
- Accordingly, the court ordered a full refund with 6% interest from the date of encashment till repayment.

Delhi HC seeks update on Revenue's SLP in writ against IGST levy on re-import of aircraft parts

- In a landmark ruling in the InterGlobe Aviation Limited [W.P. (C) 934/2023] case, the Delhi HC held that the imposition of additional customs duty under Section 3(7) of the CTA on re-imported aircraft parts after repairs abroad is unconstitutional where the transaction is already classified as a "supply of service" under GST laws. The court struck down Notification No. 36/2021-Customs and Circular No. 16/2021 as ultra vires, holding that they sought to override GST's classification and expand the scope of customs duty by administrative fiat.
- InterGlobe Aviation Ltd. (IndiGo or the petitioner) argued that the re-import of aircraft parts post-repair constitutes an import of service under Entry 3 of Schedule II to the CGST Act, attracting IGST under Section 5(1) of the IGST Act. Since IGST was already paid, no further customs duty could be levied via Section 3(7) of the CTA, which is not an independent charging provision but merely a machinery for collection. The HC agreed, rejecting the Revenue's reliance on the Hyderabad Industries ruling and aspect theory, holding that dual levies on the same transaction (once as a service and again as import of goods) violate the GST framework and constitutional provisions under Articles 246A and 269A.
- Following this, in a subsequent writ petition filed by IndiGo (dated 27 May 2025), the Delhi HC has sought an affidavit from the Revenue, detailing the status of its SLP filed before the SC against the March 2025 judgement. The matter has now been listed for further hearing on 9 September 2025.

Our comments:

This case reaffirms the primacy of GST classification in determining tax treatment. The Delhi HC's firm stance that the IGST on service imports must be governed solely by the IGST Act and not recast as goods imports under the CTA prevents undue expansion of tax liability. The ruling not only protects aviation operators from dual taxation but also clarifies the limited scope of customs machinery provisions in the post-GST regime. The pending SLP in the SC will now be key in determining whether this principle holds nationally.

Orissa HC upholds entitlement to interest on delayed refund of excess customs duty recognising inordinate delay in assessment

The Orissa HC upheld entitlement to interest on the delayed refund of excess customs duty, recognising that the 14-year delay in finalising the assessment and refund was inordinate and unjustified. However, the court modified the Tribunal's order by reducing the interest rate from 12% to 6% per annum, aligning it with the statutory rate prescribed under Notification No. 75/2003-Cus. (N.T.) as applicable under Section 27A of the Customs Act. Accordingly, the appeal was partly allowed, granting interest at 6% while affirming the right to interest for the prolonged refund withholding.

Facts of the case:

- Vedanta Ltd. (the assessee) imported goods under provisional assessment as per Section 18 of the Customs Act, and the duty was paid accordingly. Later, it was found that the classification and applicable duty were incorrect, and the company was eligible for a refund due to excess duty paid.
- Despite acknowledging the refund, the customs authorities unreasonably withheld the excess amount, and the adjudication spanned for nearly 14 years.
- Eventually, the Appellate Authority and the CESTAT directed the payment of interest at 12% per annum on the refunded amount from the date of the first assessment order.
- Aggrieved by the above, the department has appealed before the HC, contending that such compensatory interest is beyond the powers conferred under Section 129B and Section 27A of the Customs Act.

Issue before Orissa HC:

- Is interest payable on the delayed refund of the excess duty due to inordinate delay in finalising the provisional assessment, and if so, at what rate?

Orissa HC's observations and ruling [OTAPL No. 29 of 2025 dated 9 May 2025]:

- The HC acknowledged excessive delay of over 14 years in finalising the provisional assessment and the unjustified retention of excess customs duty by the department.
- It was noted that Chapter VII of the CBIC Manual of Instructions mandates finalisation of provisional assessments within 6 months.
- The court relied on Jharkhand HC's decision in the case of Bihar Foundry & Castings Ltd., which held that interest could be awarded where provisional assessments were not finalised within the time mandated under the CBIC's instructions. It also referred to other HC judgements that quashed delayed final assessments for lack of justification or court-imposed stay.
- The court held that higher forums in the adjudicatory hierarchy are empowered to ensure substantial justice even where technical statutory timelines are invoked by the department. Accordingly, there is no restriction on the Tribunal's jurisdiction under Section 129B to grant compensatory interest in cases of undue delay.
- While upholding the Tribunal's authority to award interest, the HC reduced the interest rate from 12% to 6% per annum, in accordance with Notification No. 75/2003-Customs (N.T.). Accordingly, the appeal was disposed of with partial modification to the CESTAT's ruling.

3. US Reciprocal Tariffs - Key developments

Court of International Trade invalidates Trump's 'Liberation Day' tariffs, citing overreach of powers under IEEPA

- A three-judge panel of the United States Court of International Trade (CIT) has set aside the tariffs imposed by US President Donald Trump, invoking emergency powers under the International Emergency Economic Powers Act of 1977 (IEEPA), as being illegal. The court has held that the IEEPA does not delegate unbounded authority to the President to impose tariffs on goods from virtually all countries. The regulation of foreign trade falls solely within the authority of the Congress and the President had overstepped constitutional limits by invoking emergency legislation to impose the tariffs. The court determined that the statutory language of the IEEPA, read considering constitutional principles, particularly the non-delegation and major questions doctrines, does not authorise the Executive to levy broad-based or unlimited tariffs in the absence of clear legislative standards.

Facts of the case

- This consolidated litigation involved two sets of plaintiffs: (i) various private importers and business entities (V.O.S. Selections, Inc., Genova Pipe, MicroKits, LLC, Fish USA Inc., Terry Precision Cycling LLC) and (ii) a coalition of 12 US states, challenging tariffs imposed by the President and implemented by the US Customs and Border Protection and related federal agencies.
- The US President, on 20 January 2025, declared national emergencies, targeting cartels and alleged threats at the southern and northern borders, and imposed "trafficking tariffs" on imports from Mexico, Canada, and China (with rates of 25% and later 20% for Chinese products).
- On 2 April 2025, a "Worldwide and Retaliatory Tariff" of 10% on all imports (with higher rates for certain countries) was imposed, purportedly to address persistent trade deficits and alleged economic threats.
- Plaintiffs alleged that the imposition of these tariffs exceeded the statutory authority granted by the IEEPA and contravened constitutional limitations, particularly as the Congress holds the exclusive power to "lay and collect taxes, duties, imposts and excises," and to "regulate commerce with foreign nations".
- Plaintiffs sought declaratory and injunctive relief, arguing both statutory overreach and constitutional violations.

Issue before the Court

- Does the IEEPA confer authority upon the President to impose unlimited or broad-based tariffs on imports from virtually all countries without clear congressional standards?
- Does the imposition of the challenged tariffs, as a response to declared national emergencies, violate the non-delegation doctrine or constitute an unconstitutional transfer of legislative power?

Plaintiff's contentions

- The plaintiffs asserted that the language of the IEEPA—granting the President authority to "regulate . . . importation" of property in which a foreign country has an interest—does not, either expressly or by necessary implication, authorise the imposition of unlimited tariffs.
- They contended that such a broad reading would raise serious constitutional concerns and contravene the "intelligible principle" standard required for valid congressional delegations, citing past rulings1.
- It was argued that an interpretation of the IEEPA permitting the President to unilaterally set tariffs—without clear standards, limitations, or purposes—would violate the non-delegation doctrine.
- They also invoked the major questions doctrine, contending that the decisions of "vast economic and political significance" (such as setting import tariffs on a worldwide basis) require explicit congressional authorisation2.
- The present case is different from past instances like Yoshida II3, emphasising that the challenged tariffs were of far greater scope and lacked the temporally and substantively limited characteristics upheld in prior precedents.
- They also highlighted procedural shortcomings, arguing that the tariffs were implemented without the findings, investigations, or public process required by other statutes (such as Section 301 of the Trade Act of 1974), and thus fell outside the permissible bounds of delegated power.
- Plaintiffs reaffirmed the Congress's exclusive constitutional role in setting tariffs and regulating commerce, arguing that the Executive's actions usurped this legislative function.

1. Mistretta v. United States, 488 U.S.361, 372 (1989) (quoting J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928)).
2. West Virginia v. EPA, 597 U.S. 697, 721 (2022) (quoting FDA v. Brown & Williamson Tobacco Co., 529 U.S. 120, 159–60 (2000))
3. United States v. Yoshida Int'l. Inc., 526 F.2d 560, 584 (C.C.P.A. 1975) ("Yoshida II")

Governments' contentions

- The government contended that the IEEPA's authorisation to "regulate . . . importation" is broad, as interpreted in Yoshida II and consistent with the Trading with the Enemy Act (TWEA), includes the power to impose tariffs, particularly in the context of a declared national emergency.
- The government maintained that the IEEPA's requirements—declaration of a national emergency, findings of "unusual and extraordinary threat," annual review, and limitation to property in which a foreign national has an interest—constitute adequate limiting principles, ensuring that the delegation does not violate the non-delegation doctrine.
- The government cited historical examples where the Congress delegated substantial discretion to the President in the field of international trade, with courts generally upholding such delegations where the Congress retained oversight, and the Executive acted in furtherance of national security or emergency purposes.
- Court's observations and ruling [Slip Op. 25-66. dated 28 May 2025]
- The court emphasised that the Constitution expressly vests the Congress with exclusive authority to impose tariffs and regulate foreign commerce. Delegation of tariff-setting power to the Executive is permissible only where the Congress provides clear and meaningful limitations[4].
- The court found that the IEEPA's delegation of authority to "regulate . . . importation" lacks substantive and procedural limits and could not be construed to confer unbounded tariff-imposing authority on the President.
- The court invoked both the non-delegation doctrine and the major questions doctrine, noting that such an interpretation would be constitutionally suspect, as the Congress must "speak clearly" when delegating decisions of vast economic and political significance.
- While prior cases such as Yoshida II5 upheld specific emergency surcharges, the court distinguished the present tariffs as "unlimited," "broad-based," and not cabined by adequate standards or findings tailored to the declared emergency. Therefore, neither the statutory text nor the legislative history of the IEEPA supported the Executive's assertion of such vast powers.
- The court held that the IEEPA authorities "may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared and may not be exercised for any other purpose", and that the challenged tariffs did not meet this condition.
- The court granted summary judgment to the plaintiffs, set aside the challenged tariffs as ultra vires and not authorised under the IEEPA, and denied pending motions for preliminary injunction as moot.

Our Comments:

Just ahead of the July 8 deadline for reciprocal tariffs and a potential interim trade deal with the US, a major legal twist has altered the equation. The US Court of International Trade has ruled that President Trump lacked authority under the International Emergency Economic Powers Act (IEEPA) to impose certain tariffs—invalidating key elements of his "Liberation Day" tariff orders. While duties on steel, aluminum, and auto parts (imposed under other laws) remain unaffected, the ruling eases pressure on India to negotiate under looming tariff threats.

With reciprocal tariff concessions now off the table, India is in a stronger position to push for better market access and revisit its stance on sensitive issues like data localisation. For US businesses and consumers, the ruling may offer relief from tariff-driven costs, though industries previously shielded by these duties could face renewed competition.

This decision marks a significant legal precedent reinforcing that tariff powers lie with the Congress, not the President, and curbing future unilateral actions under the IEEPA. It also sends a strong message globally, potentially encouraging trade partners to challenge US tariff actions through the WTO or other legal avenues.

The US government has challenged the ruling with the case potentially heading to the Supreme Court. In the meantime, the court has directed the administration to amend the tariff orders within 10 days. Although the tariffs are currently suspended during the appeal, customs authorities continue to collect duties as per existing instructions.

Meanwhile, all major economies are in discussions with the US on tariff matters. Although each country operates under its own legal framework for trade and tariffs, none possess executive powers as expansive as those historically exercised by the US. Notably, the US remains the only country to have imposed reciprocal tariffs of this scale, with others opting for dialogue over retaliation.

4. Mistretta v. United States, 488 U.S.361, 372 (1989) (quoting J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928))
5. ibid

US Court of Appeals for the Federal Circuit grants stay; Trump's tariffs temporarily reinstated

The United States CIT, vide its order dated 28 May 2025, had struck down tariffs imposed by US President Donald Trump invoking emergency powers under the IEEPA. A three-judge panel determined that the IEEPA does not confer unrestricted authority on the President to unilaterally impose tariffs on imports from nearly all countries. The court held that such broad trade regulation falls squarely within the legislative powers of the Congress. Interpreting the statute in light of constitutional doctrines—specifically the non-delegation and major questions doctrines—the judges concluded that the Executive Branch exceeded its constitutional bounds by invoking emergency powers without clear statutory limits to justify the tariffs.

Following the CIT's decision, the US government filed an appeal and requested a stay of the judgement and injunction.

On 29 May 2025, the United States Court of Appeals for the Federal Circuit issued a non-precedential order temporarily staying the CIT's ruling and associated injunction. This administrative stay preserves the tariffs' effect while the appellate court considers the government's request for a full stay pending the outcome of the appeal.

The court directed that one set of briefs be submitted for both appeals. Plaintiffs (appellees) have been granted time till 5 June 2025 to file responses to the stay motion, and the government is allowed to file a consolidated reply by 9 June 2025.

This procedural development means that the contested tariffs remain in effect temporarily, pending further judicial review.

Our comments:

The stay postpones the enforcement of a lower court's ruling, which could have widespread repercussions for the limits of presidential authority under emergency statutes like the IEEPA. The stay avoids immediate trade flow and market pricing disruption, especially for import-dependent businesses that would have otherwise benefited from the tariff rollback.

Many companies that had planned to adjust supply chains or pricing structures in response to the CIT decision now face renewed uncertainty, potentially delaying investment and procurement decisions.

The stay underscores the ongoing tension between expansive executive action in trade policy and the constitutional requirement for clear legislative mandates. If upheld on appeal, the CIT's ruling could mark a significant reining in of presidential discretion under emergency powers.

For now, the temporary stay reinforces that Trump's "Liberation Day" duties shall remain in effect. While this development temporarily bolsters the White House's stance, legal experts foresee an extended court battle ahead. If the appeal is ultimately unsuccessful, the Trump administration will likely explore other legal avenues.

US-China – Initial trade deal

Following years of punitive tariffs and intermittent talks, trade tensions between the US and China surged in early 2025. Citing trade imbalances and concerns over fentanyl, the US imposed sweeping new tariffs, reaching up to 145%, under emergency powers. China retaliated with matching tariffs of up to 125% and additional non-tariff barriers, effectively halting bilateral trade worth nearly USD 600 billion.

Amid growing economic and political pressure, both sides returned to the negotiating table in Geneva on 10-11 May 2025. The resulting joint statement outlined immediate tariff rollbacks and a renewed commitment to ongoing dialogue.

Key changes announced:

The US and China have formally concluded an initial trade deal in Geneva, announced on 12 May 2025, following months of heightened trade tensions. This development marks a significant, albeit temporary, de-escalation of the bilateral trade war that has disrupted global supply chains since 2018.

The deal introduces a 90-day tariff truce that came into force on 14 May 2025. It establishes a bilateral dialogue mechanism and aims to restore market confidence while deferring the resolution of core structural issues.

Highlights of the deal:

- **Temporary tariff reduction:** The US will suspend 115 percentage points of additional tariffs on Chinese goods, reducing the duty rate from 145% to 30% for a period of 90 days (effective 14 May to 12 August 2025). In parallel, China will reduce its retaliatory tariffs on US goods from 125% to 10% for the same period. The relief covers a broad spectrum of exports, including US agricultural products and manufactured goods, and is expected to facilitate renewed trade flows.
- **Non-tariff barriers:** China has agreed to lift certain non-tariff counter-measures introduced in April 2025, notably export restrictions on rare earth minerals and regulatory obstacles affecting US firms. The deal introduces a 90-day moratorium on new tariff actions, providing short-term certainty for global supply chains.
- **Sectors not covered by the truce:** Core security and technology-related tariffs, such as US Section 301 tariffs (7.5–25% on ~USD 370 billion of Chinese goods), Section 232 tariffs on steel and aluminium, and the 20% fentanyl-precursor tariff, remain entirely in effect. Existing Chinese retaliatory duties on US high-value goods and agricultural exports (imposed since 2018-19) remain essentially unchanged.
- **Dialogue mechanism:** The parties will establish a new bilateral forum for ongoing economic and trade discussions, co-chaired by China's Vice Premier He Lifeng and US Treasury Secretary Scott Bessent/USTR Jamieson Greer. This mechanism is intended to facilitate the resolution of remaining issues, with meetings alternating between countries or in third-country venues.

Our comments:

The May 2025 Geneva agreement between the US and China marks a key but temporary de-escalation in a major trade conflict. By partially reversing the April 2025 tariff hikes and reopening negotiations, it offers short-term relief to exporters, importers, and global markets, especially in agriculture, manufacturing, and consumer goods. The deal also suspends new tariffs and removes some non-tariff barriers, aiding trade normalisation.

However, many tariffs from earlier phases remain, particularly in tech and security-sensitive sectors. Key levies like the 20% fentanyl-precursor tariff and Section 301/232 duties are untouched, keeping costs high for affected firms.

The agreement includes a 90-day window for further progress. Suspended tariffs will return on 12 August 2025 without a follow-up deal, risking renewed tensions. Businesses should use this relief period strategically while preparing for multiple outcomes.

In essence, the deal pauses, not ends, the trade war. Its long-term impact hinges on the success of upcoming negotiations.

Although the tariff pause allows China to regroup and strengthen its domestic manufacturing and export sectors, it may intensify competitive pressure on Indian producers in international markets.

4. Experts’ column

Section 74A: The new era of GST adjudication

Contributed by:

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Why Section 74A stands out

Tax compliance has long been a cornerstone of efficient governance. With the introduction of the GST, India embarked on an ambitious journey to unify its indirect tax landscape. While the GST regime aimed to bring transparency and uniformity, it also introduced its own set of challenges, particularly around adjudication and enforcement.

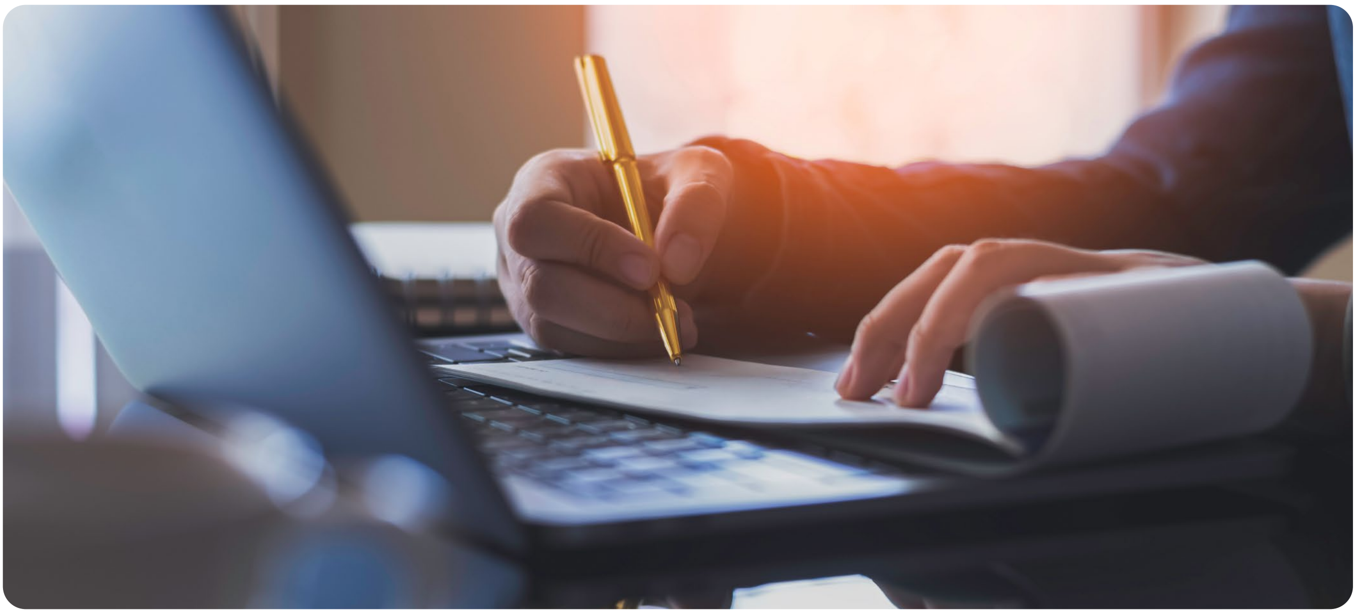
In response, the 53rd GST Council meeting marked a pivotal moment with the introduction of a new provision - Section 74A, vide the Finance Act 2024, now notified and effective from 1 November 2024. This new section redefines the contours of GST adjudication by merging procedures for fraud and non-fraud cases under one unified framework.

This article explores the intent, implications and significance of Section 74A, providing a comparative perspective with Section 73 and 74, which independently governed the adjudication of non-fraud and fraud cases, respectively, and also touching upon how similar issues are handled in other countries.

Background

Historically, the distinction between fraud and non-fraud cases has been a key facet of tax enforcement in India. Under the erstwhile service tax regime and GST, separate procedures, timelines, and penalties were prescribed for cases involving fraud (willful misstatement, suppression of facts) as against the non-fraud cases (errors, negligence without intent to evade tax). Even under the Income Tax Act, the adjudication procedures for fraud1 and non-fraud2 cases are different, reflecting the seriousness of fraudulent activities in comparison to mere negligence or errors. However, this bifurcation also led to complexities in enforcement, with tax authorities needing to classify cases as either fraud or non-fraud before proceeding with investigations and penalties, resulting in inordinate delays and, in some cases, allowing taxpayers to contest the classification to avoid harsher penalties.

Recognising this bottleneck, Section 74A was introduced with the intent to align the procedures for both fraud and non-fraud cases.



1. Section 147
2. Section 143(1) r/w Section 143(3)

Comparative analysis

Basis of comparison	Section 73	Section 74	Section 74A
Applicability	Till 31 March 2024		From 1 April 2024
Scope	Non-payment, short payment, erroneous refund or the ITC wrongly availed or utilised for reasons other than fraud or wilful misstatement	Non-payment, short payment, erroneous refund or the ITC wrongly availed or utilised due to fraud or wilful misstatement	Non-payment, short payment, erroneous refund or the ITC wrongly availed or utilised for any reason
Time limit for issuance of notice (SCN)	3 months prior to the issuance of the order (generally, 33 months)	6 months prior to the issuance of the order (generally, 54 months)	Within 42 months from the due date of furnishing the annual return for the financial year or date of erroneous refund
Time limit for issuance of order (Order)	Within three years from the due date of furnishing annual return for the FY	Within five years from the due date of furnishing the annual return for the FY	Within 12 months from the date of issuance of the notice (extendable by 6 months)
Penalty waiver prior to issuance of SCN	No penalty if tax is paid along with interest	15% penalty applicable if tax is paid along with interest	Similar provisions of Section 73 and 74 maintained for payment
Penalty waiver period	30 days	30 days	60 days
Penalty waiver if tax is paid within 30/60 days of issuance of SCN	No penalty if tax is paid along with interest payable under Section 50	25% penalty applicable if tax is paid, along with interest, within 30 days of the SCN	Similar penalty provisions for both fraud and non-fraud cases; the timeline is extended to 60 days
Penalty in case of issuance of order	10% penalty applicable if tax is paid, along with interest, within 30 days of the order	50% penalty applicable if tax is paid, along with interest, within 30 days of order	Similar penalty provisions for both fraud and non-fraud cases; the timeline is extended to 60 days

Why Section 74A stands out

One of the most significant changes introduced is the clear and precise definition of the term ‘suppression’, which until now was often subject to varied interpretations. Under the new provision, ‘suppression’ is explicitly defined as the non-declaration of facts or information that a taxable person is required to disclose in any return, statement, report, or document submitted under the Act or its rules. Additionally, it includes the failure to furnish any information upon receiving a written request from the proper officer. This clarity eliminates ambiguity and sets a firm boundary on what constitutes suppression for GST compliance purposes.

Consequently, if a taxpayer fails to accurately disclose transactions during GST compliance, such an act is now clearly classified under the category of ‘fraudulent conduct’. However, it is important to note that errors or incorrect disclosures made without intent to evade tax may still be treated differently and protected under non-fraud provisions, offering taxpayers a safeguard against unintentional mistakes.

Historically, GST authorities have often tended to classify a wide range of cases as fraudulent, leading to disputes primarily centred around the applicability of the extended period of limitation. This frequent categorisation has resulted in prolonged litigation and administrative complexities. From a taxpayer’s perspective, Section 74A reinforces the vital importance of maintaining transparency and accuracy in tax filings and compliance, whereas for tax authorities, this section acts as a powerful enforcement tool that ensures penalties are imposed fairly, consistently, and without the need for convoluted classifications or drawn-out investigations.

Further, another notable development and taxpayer-friendly measure is that of extending a 60-day window for settling disputes by paying the full demanded amount, along with applicable interest, in exchange for a reduced penalty benefit. It reflects a move towards a more facilitative and less adversarial tax environment.

On the ITC front, the earlier position restricted the ITC availability when tax was paid under Section 74 in fraud-related cases. With the introduction of Section 74A, taxpayers are now eligible to claim the ITC irrespective of whether the case involves fraud or not.

A global lens

India's approach of merging fraud and non-fraud GST investigations under a single procedural framework is quite unique. Globally, tax authorities typically distinguish between fraudulent and non-fraudulent cases, recognising the greater severity of intentional tax evasion compared to unintentional errors. This distinction is reflected in the different limitation periods for reopening assessments, with non-fraud cases generally having shorter timelines, while fraud cases benefit from significantly extended and sometimes indefinite time limits.

- In the United Kingdom, the standard limitation period for VAT assessments is four years, but it extends up to 20 years in cases involving fraud.
- In the United States, most states impose a three-year statute of limitations for sales tax audits, which can extend up to six years in cases of substantial misrepresentation, such as underreporting taxable sales by over 25%.
- Germany allows a 4-year limitation for VAT assessments, extended to 10 years when tax evasion is established.
- Canada's GST law prescribes a four-year limitation period for non-fraudulent assessments, with no time limit for cases involving fraud or misrepresentation.

Notably, even under India's new income tax regime, different time limits apply for reassessment, with longer periods allowed in cases involving fraud or misrepresentation.

Conclusion

Section 74A provides a clear definition of 'suppression', effectively addressing long-standing ambiguities, enhancing transparency and consistency in GST compliance. However, by placing honest taxpayers and deliberate defaulters on the same adjudication timeline, it presents a complex challenge. While it grants authorities greater power and extended time to investigate and enforce, it also risks treating genuine errors and fraud on an equal footing. Striking a balance between empowering tax authorities and protecting honest taxpayers will be key to ensuring a fair, efficient and credible GST regime going forward.

(Ajay Jha, Assistant Manager – Tax, Grant Thornton Bharat, has also contributed to this article)

5. Issues on your mind

What are the features of the GSTN e-Services app?

- The GSTN e-Services app is designed for ease of use. It does not require any user login credentials or authentication process. Users can freely view available information based on the input provided. The only requirement is a compatible smart phone. Visit the Google Play Store (for Android) https://play.google.com/store/apps/details?id=com.gstn.eservicesapp and App Store (for iOS) https://apps.apple.com/in/app/gstn-e-services/id6736352933 and search for GSTN e-Service app. Download and install the app on your mobile device free of charge.

Features of the GSTN e-Service app:

- Search business details: Search for registered businesses using GSTIN or PAN and view the return filing history to check the return filing status.
- B2B e-Invoice verification: Taxpayers and other stakeholders can report issues/complaints, check the ticket status, and call support to indicate issues or problems they face for quick grievance redressal while working on the GST portal.
- Help: The taxpayers and other stakeholders can report issues/complaints, check the ticket status, call support to indicate issues or problems faced by them for quick redressal of grievances while working on the GST portal.
- History: Search for registered businesses using GSTIN or PAN and view the return filing history to check the return filing status.

How to scan/verify the QR code through the GSTN e-Services app?

- Use the 'Verify e-Invoice' QR button to scan the QR code on an e-Invoice. The app will verify and display the embedded information from the QR code. To go back, click the cross sign (X) to return to the main screen. Details will be displayed after scanning. Please verify these details carefully. In case of discrepancies, contact the seller. Click the cross sign (X) to return to the main screen.
- After the successful scanning of the QR code on the e-Invoice, the GSTN e-Services app will display the following details: 1. Supplier GSTIN, 2. Recipient GSTIN, 3. Document Number, 4. Document Date, 5. Document Type, 6. Total Invoice Value, 7. No. of Line Item, 8. Main HSN Code, 9. IRN, 10. IRN Generation Date, 11. Issued By

How do you check the live status of the IRN on the GSTN e-Services app?

- On the QR Code Details screen, click the e-Invoice Verify button. The app will display the IRN's live status, whether it is active or cancelled.

What is IGCR, and what is the process flow for claiming the benefit of IGCR?

IGCR stands for Import of Goods at Concessional Rate of Duty. IGCR refers to provisions and rules under Indian Customs law that allow certain importers (usually manufacturers or specific industries) to import goods at a concessional (reduced) customs duty rate, provided the goods are used for specific purposes, such as manufacturing or production, as specified by the government.

The process flow that needs to be followed for claiming the IGCR benefits is explained below in brief:

Step 1: Access the IGCR Dashboard on ICEGATE and generate an IIN (IGCR Identification Number). The user can generate multiple IINs for the same IEC and GSTN, as there may be multiple units in the same GSTN. Fill out the prior intimation form and select the relevant notification number under which the benefit will be claimed. IGCR Dashboard can be accessed by logging into ICEGATE and clicking on 'IGCR' using the 'Services' menu. You will be redirected to the IGCR Dashboard in the old ICEGATE portal (https://www.icegate.gov.in/)

Step 2: After submission of the Prior Intimation form and generation of the IIN, select 'Bond/BG Details' in the IGCR Dashboard for execution of a new bond.

Step 3: After submission of the online request for bond execution on ICEGATE, submit a physical copy to the Jurisdictional EPC Customs Officer.

Step 4: After receiving the physical copy and the scanned copy of the bond, the EPC Customs Officer will forward the request to the Bond Officer (using the e-office system) for approval of the bond and generation of the bond number. The bond number is allotted after the request is approved.

Step 5: The IGCR bond should have been submitted first in offline mode to the officer, and after his acceptance and entry in the ICES, only then will it get auto-populated in ICEGATE for linking with IIN.

Step 6: The user can file a Bill of Entry and quote the IIN therein for claiming the benefit of IGCR.

What is the process to file Form 3 (Quarterly Return) and Form 3A (Intra-Quarterly Returns) under IGCR, and what are the requirements for selection, auto-population, and filing? Are the returns to be filed port-wise?

Accessing the forms: After logging into the ICEGATE 2.0 portal, go to the Services tab, where the IGCR option is available.

- Select your IIN (Importer Identification Number).
- You can then choose either the IGCR Form 3A (Intra-Quarterly Returns) or IGCR Form 3 (Mandatory Quarterly Return) widgets to file your returns.

Period selection:

- **For Form 3A (Intra-quarterly return):** You must select the period of the current running quarter. Selecting a period from a previous quarter will result in an error at the time of submission.
- **For Form 3 (Quarterly return):** You may select previous quarters. However, returns must be filed consecutively. All previous pending Form 3 returns (starting from January to March 2025) must be filed before filing the Form 3 return for the next quarter.

Filing requirements:

- Form 3 and 3A must be filed IIN-wise (irrespective of the port of import).
- If you have multiple IINs, you must file separate Form 3/3A for each IIN.

Auto-populated details:

- The BE for the selected IIN will be available in a drop-down menu.
- You may select one or multiple BEs for which there has been receipt or consumption during the quarter.
- After selecting the BE number and date (via webform or Excel utility), all invoices and item details pertaining to that BE will be shown to you.

Special notes for EOUs:

- EOUs may have imported materials under the EOU scheme before 25 September 2024 (the date IGCR was introduced to EOUs).
- Since those imports were not under the IGCR, receipt and consumption of goods not imported under the IGCR (using IIN) should not be included in the IGCR returns.
- The unit should continue to file the Form-A return as prescribed under the relevant notification for those imports/Bills of entry until the inputs, capital goods, or materials are fully consumed.
- Goods imported under one IIN in the IGCR will continue to be declared in Form 3/3A returns (regardless of the financial year in which they were imported) until they are completely consumed.

6. Important developments under direct taxes

CBDT notifies various amended ITR forms

The CBDT, w.e.f. 1 April 2025*, has notified the following ITR forms, which are applicable as under:

Form No.	Applicability		Applicable AY
	Type of taxpayer	Other conditions	
ITR-1 (Sahaj)	Individuals being a resident (other than not ordinarily resident)	– Total income up to INR 50 lakh – Income from salaries, one house property, other sources (Interest, etc.) – Having LTCG under Section 112A of the IT Act up to INR 1.25 lakh or agricultural income up to INR 5,000 – Not for an individual who is either a Director in a company or has invested in unlisted equity shares, or in the case where TDS has been deducted under Section 194N of the IT Act, or if income tax is deferred on ESOP, or has assets (including financial interest in any entity) located outside India	2025-26
ITR -2	Individuals and HUFs	Should not have income from PGBP	2025-26
ITR -3	Individuals and HUFs	Should have income from PGBP	2025-26
ITR-4 (Sugam)	Resident Individuals, HUFs and firms (other than LLP)	– Total income up to INR 50 lakh – Should have income from business and profession that is computed under Sections 44AD, 44ADA or 44AE of the IT Act – Having LTCG under Section 112A of the IT Act up to INR 1.25 lakh – Not for an individual who is either a Director in a company or has invested in unlisted equity shares, or if income tax is deferred on ESOP, or has assets (including financial interest in any entity) located outside India, or has agricultural income more than INR 5,000	2025-26
ITR-5	Person other than individual, HUF, company and person filing Form ITR-7		2025-26
ITR-6	For companies other than those claiming exemption under Section 11 of the IT Act		2025-26
ITR-7	Persons (including companies) furnishing ITR under Sections 139(4A) or 139(4B) or 139(4C) or 139(4D) of the IT Act		2025-26
ITR-V	Where the data of the ITR in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4 (SUGAM), ITR-5, ITR-7 is filed but not verified electronically		2025-26
ITR-Ack	Where the data of the return of income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4 (SUGAM), ITR-5, ITR-6 and ITR-7 is filed and verified		2025-26
ITR-U	For persons to update income within 48 months from the end of the relevant AY		

*ITR U came into force w.e.f. 19 May 2025

The CBDT has also amended Rule 12 of the IT Rules, requiring ITR-1 (Sahaj) and ITR-4 (Sugam) to be filed if the taxpayer has LTCG under Section 112A of the IT Act not exceeding INR 1.25 lakhs, with an additional condition for ITR-1 that the taxpayer should not have any brought forward/carry forward loss.

The CBDT has further amended Rule 11B of the IT Rules to specify that Form 10BA (Declaration by the taxpayer for claiming deduction under Section 80GG of the IT Act) must be furnished, along with the ITR.

[Notification No. 40 of 2025 dated 29 April 2025, Notification No. 41 of 2025 dated 30 April 2025, Notification No. 42 of 2025 dated 1 May 2025, Notification No. 43 of 2025 dated 3 May 2025, Notification No. 44 of 2025 dated 6 May 2025, Notification No. 45 of 2025 dated 7 May 2025, Notification No. 46 of 2025 dated 9 May 2025 and Notification No. 49 of 2025 dated 19 May 2025]

Mumbai Tribunal - 'Debt and equity funds' and 'shares' are two separate type of assets

Brief facts

- For the relevant AY, the taxpayer was a tax resident of Singapore and earned STCG on debt-oriented and equity-oriented mutual funds.
- In this regard, she applied the beneficial provisions of Article 13(5) of the DTAA and claimed exemption on the said income in India.
- However, the tax officer proposed to tax the aforesaid STCG. This view was further endorsed by the DRP.
- Accordingly, the taxpayer filed an appeal before the Tribunal.

Tribunal's observations and ruling

- The Tribunal has observed that the Cochin Tribunal, in the case of **DCIT vs. K.E. Faizal [2019] 108 taxmann.com 545 (Cochin - Trib.),** observed the following –
  - The term 'share' is not defined under the India-UAE tax DTAA. Hence, as per Article 3(2) of the India-UAE DTAA, any term not defined in the DTAA will have the meaning that it has under the laws of the country that is being applied (i.e. India in the instant case).
  - The IT Act also does not define the term 'share'. However, 2(84) of the Companies Act, 2013, defines the term 'share' to mean "a share in the share capital of a company and includes stock". The term 'company' is further defined to mean 'a company incorporated under the Companies Act, 2013' or under any previous company law.
  - As per the SEBI (Mutual Fund) Regulations, 1995, mutual funds in India can only be established as 'trusts', and not 'companies'. Therefore, a unit issued by a mutual fund will not qualify as a 'share' as per the Companies Act, 2013.
  - Further, under the Securities Contract (Regulation) Act, 1956, a security is defined to include inter alia shares, scrips, stocks, bonds, debentures, debenture stock or other body corporate and **units or any other such instrument issued to the investors under any mutual fund scheme.** From this definition of 'securities', it is clear that 'shares' and 'units of mutual funds' are two separate types of securities.
  - Accordingly, the Cochin Tribunal held that gains arising from the transfer of units of mutual funds would be covered by Article 13(5) of the India-UAE DTAA and not Article 13(4) of the India-UAE DTAA. Therefore, it opined that gains arising to a taxpayer (resident of UAE) from the sale of units of equity-oriented and debt-oriented mutual funds would not be taxed in India as per the provisions of Article 13(5) of the India-UAE DTAA.
- Since the facts of the instant case are identical to those of the aforesaid case of **K. E. Faizal (supra),**the tribunal has held that shares and mutual funds are two separate types of securities.
- Accordingly, it has been held that the sale of a mutual fund will be governed by the provisions of Article 13(5) of the India-Singapore DTAA, and the taxpayer is entitled to claim exemption in respect of short-term capital gains earned on debt funds and equity funds under the India-Singapore DTAA.

[Anushka Sanjay Shah [TS-393-ITAT-2025(Mum)]]

Mumbai Tribunal Special Bench: Surcharge is chargeable at slab rates on income tax payable by private discretionary trusts

Brief facts

- The taxpayer (private discretionary trust) filed its ITR for the relevant AY by paying taxes at MMR as per Section 164 r.w.s. 2(29C) of the IT Act.
- The CPC, while processing the said ITR, levied the highest rate of surcharge on the MMR at which the tax was computed.
- Aggrieved by this, the taxpayer filed an appeal before the CIT(A) and contended that surcharge is levied as per the terms of the Finance Act, wherein it is to be levied if income exceeds INR 50 lakhs. Since the taxpayer's total income was below such limit, no surcharge should be levied.
- However, the CIT(A) dismissed the taxpayer's case. As a result, the taxpayer filed an appeal before the Tribunal, which was referred to the Special Bench since there were contrary Tribunal rulings on this matter.

Special Bench's observations and ruling

- A 'Discretionary Trust' is registered under the Indian Trusts Act, 1882. In such trusts, the trustees have complete discretion over both the distribution of capital and income, as well as the determination of beneficiaries. As a result, the shares of the beneficiaries are indeterminate. Such trusts are assessed under Sections 164 or 167B of the Act and are taxed at MMR.
- The term MMR is defined under Section 2(29C) of the IT Act to mean the income tax rate (including surcharge, if any) applicable to the highest slab of income for an individual, AOP or BOI as per the Finance Act.
- In the instant case, the Special Bench noted that **Section 164/167B prescribes taxation at MMR; however, these sections do not provide reference to the levy of a surcharge.** Whereas Section 2(29C) of the IT Act refers to surcharge, and it does not independently specify the tax rate or surcharge structure and refers to the Finance Act of the relevant year.
- The income-tax rate is provided under Section 2(1) of the Finance Act, 2023, which references Paragraph A, Part (I) of the First Schedule to the Finance Act, 2023. Section 2(1) of the Finance Act further provides that tax so determined shall be increased by a surcharge provided in the First Schedule.
- The first proviso under the heading 'Surcharge on income tax' restricts the rate of surcharge applicable on dividend income and capital gains to 15%. Hence, if it is concluded that as per the definition of MMR under the IT Act, surcharge is to be computed at the highest rate of 37%, then the exception provided by the first proviso would become otiose.
- The expression 'including surcharge on income-tax, if any' within the bracketed portion of Section 2(29C) of the IT Act would mean the surcharge as provided in the computation mechanism in the First Schedule to the Finance Act.
- The expression 'if any' used in Section 2(29C) of the IT Act has to be read in conjunction with the computation mechanism provided under the heading 'surcharge on income tax' provided in Section 2 of the Finance Act.
- Hence, in case of private discretionary trusts, whose income is chargeable to tax at MMR, surcharge is to be computed on income tax, having reference to the slab rates prescribed in the Finance Act under the heading 'surcharge on income tax' appearing in Paragraph A, Part 1, First Schedule.

[Araadhya Jain Trust v. Income Tax Officer (TS-366-ITAT-2025)]

Glossary

AA	Advance Authorisation
AAR	Authority for Advance Ruling
AAAR	Appellate Authority for Advance Ruling
AO	Assessment order
AY	Assessment Year
APVAT Act	Andhra Pradesh Value Added Tax Act, 2005
BAS	Business auxiliary services
BCD	Basic Customs Duty
BOE	Bill of Entry
CBDT	Central Board of Direct Taxes
CBIC	Central Board of Indirect Taxes and Customs
Central Excise Act	Central Excise Act, 1944
CESTAT	The Customs Excise and Service Tax Appellate Tribunal
CGST Act	Central Goods and Services Tax Act, 2017
CGST Rules	Central Goods and Services Tax Rules, 2017
CIT(A)	Commissioner of Income-tax (Appeal)
CPC	Centralized Processing Centre
CST	Central Sales Tax Act 1956.
CTA	Customs Tariff Act, 1975
Customs Act	Customs Act, 1962
DCIT	Deputy Commissioner of Income Tax
DGFT	Directorate General of Foreign Trade
DRP	Dispute Resolution Pannel
DRC	Dispute Resolution Committee
DRI	Directorate of Revenue Intelligence
DTH	Direct-to-home
DTAA	Double Taxation Avoidance Agreement
ENA	Extra-neutral alcohol
EO	Export obligation
EOU	Export oriented unit
EPCG	Export Promotion Capital Goods
ESOP	Employee Stock Option Plan
EPIRB	Emergency Position-Indicating Radio Beacons
FAQ	Frequently asked questions
FA	FA, 1994
FCM	Forward charge mechanism
FIRC	Foreign Inward Remittance Certificate
FOB	Free on board
FTP	Foreign Trade Policy
FY	Financial year
GST	Goods and Services Tax
GSTN	Goods and Services Tax Network
GSTIN	Goods and Services Tax Identification Numbers
HC	High court
HS	Harmonised system
HSN	Harmonised system of nomenclature
HUF	Hindu Undivided Family
IBC	Insolvency and Bankruptcy Code, 2016
IES	Interest Equalisation Scheme
IFF	Invoice furnishing facility
IGST	Integrated Goods and Service Tax
IMS	Invoice management system
INR	Indian Rupee
IPR	Intellectual Property Rights
I-REC	International Renewable Energy Certificates
IT	Information technology
IT Act	Income-tax Act, 1961
IT Rules	Income-tax Rules, 1962
ITC	Input tax credit
ITR	Income-tax Return
ITSS	Information Technology Software Services
JSON	JavaScript Object Notation
LTCG	Long-term Capital Gains
MMR	Maximum Marginal Rate
MSME	Micro, small and medium enterprises
MWh	Megawatt-hour
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NFEI	No foreign exchange involved
OTS	One time settlement
PGBP	Profits and Gains of Business or Profession
POS	Place of supply
POPS Rules	Place of Provision of Services Rules 2012.
RBI	Reserve Bank of India
RCM	Reverse charge mechanism
RFN	Document reference number
RMPU	Roof-mounted package unit
RoDTEP	Remission of Duties and Taxes on Exported Products
SART	Search and rescue transponders
SC	Supreme Court
SCB	Standard Chartered Bank
SCN	Show cause notice
SEZ	Special economic zones
SGST	State Goods and Service Tax
SLP	Special leave petition
STCG	Short-term Capital Gains
SSAS	Ship Security Alert Systems
TDS	Tax deduction at source
Telangana VAT Act	Telangana Value Added Tax Act, 2005
Tribunal	Income Tax Appellate Tribunal
UAE	The United Arab Emirates
UCB	United Commercial Bank
UKVAT Act	Uttarakhand Value Added Tax Act, 2005
VAT	Value Added Tax
w.e.f	With effect from

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