



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST & Indirect Taxes Committee



CAPACITY BUILDING PROGRAM FOR GST OFFICERS

Important Judicial Pronouncements

Landmark GST Rulings · High Courts & Supreme Court

FACULTY

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Sixteen rulings · four themes

A

Property & ITC eligibility

Leasehold rights · telecom towers — movable or immovable

B

Section 16(4) time limit

Concession or right — two High Courts, two views

C

Natural justice & procedure

Personal hearing · cross-examination · SCN · appeals

D

ITC conditions, refund & transfer

Supplier default · GSTR-2A · refunds · ITC-02

For each ruling: the legal issue, the court's reasoning, and the conclusion — the audit takeaway for officers.



LEGAL ISSUE Whether assignment of leasehold rights of GIDC-allotted land — and the building constructed by the lessee — to a third party is a transaction of sale of immovable property, or a supply of goods/services under GST.

Facts

- GIDC allots industrial land on a 99-year lease.
- Lessee constructs a building and assigns the leasehold rights to an assignee.
- Assignee makes an upfront lump-sum payment.

Court's Analysis

The transaction is the transfer of benefits arising from immovable property — not subject to GST.

Para 75: even under Service Tax, development rights (benefits arising from land) were not taxable; a leasehold right is a greater right and interest in land, so the principle continues under GST, whose object is to subsume existing taxes.

Conclusion: Assignment of leasehold rights is a transfer of immovable property, not a supply of goods or services — hence **no GST is payable**.



LEGAL ISSUE Whether telecommunication towers are movable or immovable property for the purpose of Section 17(5) of the CGST Act — and therefore whether Input Tax Credit is available.

Petitioner's claim

Towers are movable — essential equipment used in telecommunications that can be dismantled and moved. ITC should therefore be available.

Court's Analysis

Towers are excluded from "plant and machinery" in Section 17(5), **but they are movable property**. The court applied six established tests to determine movability — set out on the next slide.

Conclusion: The denial of ITC under Section 17(5)(d) does not apply to telecommunication towers (being movable). Appeal allowed; denial of ITC overturned.



Six tests to classify property — movable or immovable

1 · Nature of annexation

How firmly it is attached. If it cannot be removed without damage, that indicates immovable.

2 · Object of annexation

For permanent enjoyment of the land → immovable. Merely to use the item itself → movable.

3 · Intendment of the parties

Intention behind the attachment — permanent addition → immovable; otherwise movable.

4 · Functionality test

Fixed only to make the article stable / wobble-free → for the benefit of the article → movable.

5 · Permanency test

If it can be dismantled and relocated without damage, the attachment is temporary → movable.

6 · Marketability test

If it can be removed and sold in the market — even though attached — it is movable.



LEGAL ISSUE Whether the time limit for claiming ITC under Section 16(4) violates Articles 14, 19(1)(g) and 300A of the Constitution.

Petitioner's claim

- ITC is a statutory right — a time limit violates Arts 14, 19(1)(g), 300A.
- Section 16(2) overrides 16(4).
- Acceptance of GSTR-3B with late fee should condone the delay.

Court's Analysis

ITC is a **concession, not a statutory or constitutional right** — conditions, including time limits, are valid. 16(1) enables ITC; 16(2) conditions it; 16(3) & (4) further restrict — so no one restriction overrides the others. Filing a return with late fee is not a springboard for claiming ITC.

Conclusion: Writ petition rejected — the Section 16(4) time limit is upheld.



LEGAL ISSUE Whether the time limit for claiming ITC under Section 16(4) violates Articles 14, 19(1)(g) and 300A of the Constitution.

Petitioner's claim

- ITC accrues on receipt of supplies used in business — disallowing it on a procedural lapse is arbitrary.
- The taxpayer is penalised twice — late fee paid, then ITC denied.

Court's Analysis

Allowing returns with late fee and then disallowing ITC **punishes twice for a single default**. Late fee and interest already compensate for the delayed tax; double payment via 16(4) is arbitrary and capricious. An amendment has been proposed to jettison the time-limit condition. Constitutional validity not examined.

Conclusion: Show cause notices and orders issued on the petitioners are set aside.



LEGAL ISSUE Whether a personal hearing must be granted even where the assessee selected the option for personal hearing as 'No' on the GST portal.

Facts

The order was challenged for want of a personal hearing. The department argued the petitioner had selected the personal-hearing option as 'No'.

Court's Observation (Para 8)

An assessee need not request an opportunity of personal hearing — it remains **mandatory** upon the Assessing Authority to afford it before passing an adverse order. Marking 'No' in the choice column bears no legal consequence.

Conclusion: Impugned orders quashed; matters remitted to the Assistant Commissioner to issue fresh notice for personal hearing and conclude the proceedings.



LEGAL ISSUE Whether a consolidated show cause notice for multiple assessment years under Section 74 is permissible, or whether separate notices are required for each year.

M/s XL Interiors (Para 6)

Bunching of SCNs causes no prejudice — the petitioner may raise any year-specific contention in the reply, and the adjudicating authority will consider it.

M/s Riocare (Para 3)

Nothing in Section 74 / 74(1) prohibits a notice for any period — provided it is issued at least 6 months before the time limit in Section 74(10) for the order.

Conclusion: A consolidated SCN spanning multiple assessment years under Section 74 is permissible.



Section 73 — rulings in favour of the assessee

1

M/s Veremax Technologie Services Ltd.

2024 (9) TMI 1347 — *Karnataka High Court*

2

Titan Company Ltd.

2024 (1) TMI 619 — *Madras High Court*

3

Gopi Chand

2025 (1) TMI 1513 — *Karnataka High Court*



LEGAL ISSUE Whether denying the opportunity to cross-examine persons whose statements the department relied upon amounts to a violation of the principles of natural justice.

Facts

SCN alleged fake registrations and suppressed sales to wrongly avail ITC, based on the statements of 20 persons. The petitioner specifically sought cross-examination; the authority passed the order without granting it.

Conclusion: Order set aside; the authority to reconsider afresh after granting cross-examination of the persons relied on in the SCN.

Court's Observation

When third-party statements are relied on, the party against whom they are used must get an opportunity to question the maker. Cross-examination is the mode of testing veracity; fairness demands the reliability and credibility be tested.

Also: Andaman Timber Industries [2015 (10) TMI 442 — SC] · Roshan Sharma [2024 (5) TMI 513 — Cal.]



LEGAL ISSUE Whether the appellate authority can condone delay in filing an appeal beyond one month after the three-month period prescribed under Section 107(1).

Facts

Demand orders were issued; the petitioners filed appeals beyond the one-month condonable period after the statutory three-month limit. The appeals were rejected as time-barred.

Court's Analysis

The discretion conferred on the appellate authority under Section 107 is restricted to condoning delay for a **maximum of one month** — there is no power to go beyond it.

Conclusion: Writ petitions quashed as without merit — the limitation cannot be extended.

Also: M/s Vasudeva Engineering & Others [2024 (11) TMI 259 — P&H]



LEGAL ISSUE Whether a charitable trust running a medical store is carrying on "business" within the meaning of Section 2(17) of the CGST Act.

Facts

A registered charitable trust for eye research and prevention of blindness runs a medical store selling medicines at a lower rate. The marginal surplus is used only for unforeseen eventualities and administrative expenses.

Court's Analysis

Any trade or commerce — whether or not for pecuniary benefit — falls within "business". Selling medicines for consideration is trade or commerce; it is **immaterial whether the activity is for profit**.

Conclusion: The petitions are quashed — the activity is "business" under GST.



M/s PEI Industries

High Court of Delhi — W.P.(C) 7725/2026



LEGAL ISSUE Where the State GST authorities have closed proceedings on a set of documents, can the Central GST authorities initiate proceedings under Section 74 on the very same evidence?

Court's Analysis (Paras 9–10)

- Sections 73 and 74 operate in different arenas — their language and the recourse under them can be taken at face value.
- Mere exoneration of the petitioner in Section 73 proceedings cannot, by itself, lead to being proceeded against by the Central authorities under Section 74.
- The two sections operate on altogether different considerations.

Takeaway: Closure under Section 73 does not automatically open the door to Section 74 on the same set of facts.



LEGAL ISSUE Having filed a refund application for July–September 2022, could the petitioner maintain a separate application for a period that was, in fact, already covered by the first application?

Court's Analysis

- Section 54(1) does not bar a party from maintaining more than one application — particularly where there is an inadvertent mistake or lapse.
- For distinct-period refund applications, there is no question of res judicata or any analogous principle.
- A too-technical view cannot be taken to defeat the requirement of justice.

Conclusion: A separate refund application is maintainable; the technical objection was rejected.



LEGAL ISSUE Whether ITC can be denied to purchasers where the supplier defaults in depositing with the government the tax it collected.

Court's Analysis

- ITC is a concession under the statutory scheme — it can be received only as per the scheme of the statute.
- Where a concession is granted, its conditions must be strictly complied with.
- ITC can be denied **only if it is shown that the recipient knew, or ought to have known, that the purchase was connected with a fraudulent evasion of tax.**
- Terms of Rule 37A of the CGST Rules, 2017 once the supplier discharges such tax liability, the purchasing dealer becomes entitled to re-avail the credit in the immediately succeeding month. Mere delay or hardship in availing ITC, therefore, cannot constitute a valid ground for reading down Section 16(2)(c) of the CGST Act.

Takeaway: A bona fide recipient is not to be denied ITC merely for the supplier's default, absent knowledge of fraud.



LEGAL ISSUE Whether Section 16(2)(c) places an impossible burden on recipients — to ensure the supplier's payment of tax and timely filing of returns — which is beyond the recipient's control.

Court's Analysis

Section 16(2)(c) of the CGST / KGST Act and Rule 36(4) of the CGST / KGST Rules are **read down** in a manner that allows the benefit of ITC to bona fide recipients — such as the petitioner — who have complied with all other conditions under Section 16(2), despite any fault, lapse or non-payment of tax to the government by the suppliers.

Takeaway: Compliance by the recipient protects ITC; the supplier's default alone cannot defeat it.



LEGAL ISSUE Whether ITC can be denied where imports of goods do not appear in GSTR-2A — i.e. is matching of invoices with GSTR-2A mandatory?

Court's Analysis

- Until Section 16(2)(aa) was introduced w.e.f. 01.01.2022, there was **no requirement of matching with GSTR-2A**.
- Import details and supplies from SEZ were getting reflected in GSTR-2A only from August 2020.

Takeaway: For periods before the matching requirement, ITC cannot be denied solely on a GSTR-2A mismatch.



LEGAL ISSUE On filing Form GST ITC-02 to transfer ITC after an amalgamation, the portal displayed: "Transferee and Transferor should be of the same State / U.T." Is such a cross-State restriction valid?

Court's Analysis

The statute neither permits nor debars the transfer of ITC after a scheme of amalgamation approved by the NCLT. Restricting the transfer of ITC on the online GST portal is **de hors the intention** of Section 18(3) of the CGST Act read with Rule 41 of the CGST Rules.

Takeaway: A portal-level restriction cannot override the statutory entitlement to transfer ITC on amalgamation.



Thank You

Questions & discussion welcome

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