

GST BULLETIN

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Delhi, Pune, Bangalore

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1. ITC Not Blocked Under Section 17(5)(d) where No Construction Activity Is Undertaken – Gujarat High Court.

Case of : Niket Bipinbhai Patel

Decision by : Gujarat High Court

Date of Ruling : 02nd February 2025

Facts:

- The petitioner acquired leasehold rights in a plot from Gujarat Industrial Development Corporation (GIDC) and carried on the business of sub-plotting and transferring leasehold rights of such sub-plots to buyers.
- For effecting such transfers, the petitioner paid various charges to GIDC such as sub-division charges, transfer fees, administrative charges, and other statutory dues, on which GST was levied by GIDC. The petitioner availed Input Tax Credit (ITC) of GST paid on these expenses as they were directly linked to his business activity.
- During FY 2022-23, the petitioner transferred two sub-plots and discharged GST liability of approximately ₹6.57 crore on such transactions.
- The department alleged that ITC availed on GIDC invoices constituted blocked credit under Section 17(5)(d) relating to construction of immovable property and issued intimation under Section 74 proposing demand of ₹98.11 lakh along with interest and penalty, while also blocking the credit in the electronic credit ledger.
- Aggrieved by the notice and blocking of ITC, the petitioner filed a writ petition before the High Court.

Issue:

- Whether ITC availed on GST charged by GIDC for charges related to transfer of leasehold rights in sub-plots is blocked under Section 17(5)(d) of the CGST Act, and whether proceedings under Section 74 were justified in the absence of fraud, wilful misstatement, or suppression of facts.



Court Observation

- The Court observed that Section 17(5)(d) blocks ITC only in relation to goods or services used for construction of immovable property on one's own account.
- The legislative intent behind the provision is to restrict ITC only for construction-related expenditure, and not for other business activities involving immovable property.
- In the present case, the petitioner was only engaged in acquiring leasehold rights, undertaking sub-plotting, and transferring leasehold rights to buyers, and the department failed to establish that any construction activity was undertaken by the petitioner.
- Accordingly, the Court held that Section 17(5)(d) had no application to the petitioner's activities.
- The Court further noted that the petitioner had discharged the entire output tax liability in cash and even the ITC that was inadvertently utilized earlier had been reversed through Form DRC-03.
- Since there was no evidence of fraud, wilful misstatement, or suppression, initiation of proceedings under Section 74 was also held to be unjustified.
- Consequently, the Court quashed the show cause notice and directed the department to unblock the ITC of ₹98.11 lakh lying in the electronic credit ledger.

Full Judgement: [Niket Bipinbhai Patel](#)

SNR's Take



This ruling clarifies that the restriction under Section 17(5)(d) is specifically limited to construction-related activities and cannot be extended to situations where a taxpayer merely transfers leasehold rights in land without undertaking construction. Further, the judgment reiterates that proceedings under Section 74 require the presence of fraud, wilful misstatement, or suppression of facts, and cannot be initiated in routine interpretational disputes.

2. GSTAT has inherent power to grant interim relief.

Case of : The Hongkong and Shanghai Banking Corporation Ltd

Decision by : Bombay High Court

Date of Ruling : 20th February 2026

Facts:

- An Order-in-Original dated 18 December 2023 confirmed a GST demand against the petitioner bank.
- The petitioner filed an appeal before the Appellate Authority, which was rejected through an Order-in-Appeal dated 12 June 2024.
- Subsequently, the petitioner filed a second appeal before the GST Appellate Tribunal (GSTAT) on 5 February 2026.
- During the pendency of the appeal, the department issued intimation and recovery notices dated 3 February 2026 and 6 February 2026.
- The petitioner approached the Bombay High Court under Article 226, contending that GSTAT had no statutory power to grant interim relief or stay recovery, and therefore the writ petition was maintainable.

Issue:

- Whether the GST Appellate Tribunal has the power to grant interim relief (such as stay of recovery proceedings) even though the CGST Act does not expressly provide such power.



Court Observation

- The Bombay High Court held that GSTAT possesses inherent and incidental powers to grant interim relief, including stay of recovery proceedings.
- The Court interpreted Section 113(1) of the CGST Act, which allows the Tribunal to pass orders “as it thinks fit,” as conferring wide appellate powers, including interim orders.
- It observed that denying such power would render the appellate remedy ineffective or illusory.
- The Court also relied on the Supreme Court decision in ITO v. M.K. Mohammed Kunhi, which recognized that appellate tribunals possess implied powers to grant stay even without explicit statutory provisions.
- Further, the GSTAT (Procedure) Rules, 2025 recognize interlocutory applications and inherent powers of the Tribunal, reinforcing the Tribunal’s authority to grant interim relief.
- Accordingly, the Court held that the petitioner should approach the GSTAT for interim relief rather than invoking writ jurisdiction.

Full Judgement: [The Hongkong and Shanghai Banking Corporation Ltd](#)



SNR's Take

This judgment clarifies that the GST Appellate Tribunal has inherent authority to grant interim relief, including stay of recovery proceedings, even though the CGST Act does not expressly provide for such powers. The decision strengthens the principle that statutory appellate remedies must be exhausted before invoking writ jurisdiction, and that High Courts should not function as interim forums where an effective alternate remedy exists. The ruling provides important procedural clarity for taxpayers and reinforces the role of GSTAT as a complete appellate forum under GST law.

3. Refund under Inverted Duty Structure cannot be denied by retrospective application of clarificatory circular

Case of : M/s Adani Wilmar Ltd.

Decision by : Calcutta High Court

Date of Ruling : 25th February 2026

Facts:

- The petitioner, Adani Wilmar Limited, is engaged in the supply of goods including edible oil.
- Due to an inverted duty structure (IDS), the tax rate on inputs used by the petitioner was higher than the tax rate on its outward supplies, resulting in accumulation of unutilised Input Tax Credit (ITC).
- The petitioner filed an application on 16 June 2023 seeking refund of accumulated ITC for May 2021 under Section 54 of the CGST Act.
- The refund claim was rejected by the proper officer relying on Circular No. 181/13/2022-GST dated 10 November 2022 and a corresponding State circular which clarified that restrictions imposed by a notification dated 23 August 2022 would apply to refund applications filed on or after 18 July 2022.
- The appellate authority upheld the rejection, following which the petitioner approached the Calcutta High Court by filing a writ petition.

Issue:

- Whether a clarificatory circular issued subsequently can be applied retrospectively to deny refund of accumulated ITC under the inverted duty structure, when the taxpayer's right to claim such refund had already accrued and the application was filed within the limitation period prescribed under Section 54(1) of the CGST Act.



Court Observations

- The Court observed that under Explanation 2(e) to Section 54, the relevant date for claiming refund of unutilised ITC under IDS is the due date for filing return under Section 39 for the relevant tax period.
- For the petitioner, the due date for filing return for May 2021 was 20 June 2021, which became the relevant date for computing the limitation period.
- Since the refund application was filed on 16 June 2023, it was within the two-year limitation period prescribed under Section 54(1).
- The Court held that the right to claim refund accrues upon filing of the return, and such vested right continues until the expiry of the statutory limitation period.
- An executive circular cannot retrospectively curtail a vested statutory right to claim refund.
- The Court also relied on consistent views taken by various High Courts that refund claims cannot be rejected merely because the application was filed after issuance of the circular if the right to claim refund had accrued earlier and the claim is within the prescribed limitation period.
- Accordingly, the Court set aside the orders of the adjudicating and appellate authorities and directed the proper officer to reconsider the refund claim on merits without being influenced by the circulars.

Full Judgement: [M/s Adani Wilmar Ltd.](#)

SNR's Take



This judgment reinforces the principle that executive circulars cannot override statutory rights granted under the GST law. Once the right to claim refund under Section 54 accrues and the taxpayer files the claim within the prescribed limitation period, such right cannot be curtailed through retrospective application of a clarificatory circular. The ruling strengthens taxpayer protection in cases involving inverted duty structure refunds, particularly where later notifications or circulars attempt to restrict previously available benefits.

4. GST Payable on Mobilisation Advance Received in Works Contract – Time of Supply Arises on Receipt of Advance.

Case of : M/s PC Snehal Construction Private Limited

Decision by : Advance Ruling Gujarat

Date of Judgement : 19th February 2026

Facts:

- The applicant, PC Snehal Construction Private Limited, entered into a contract with Ahmedabad Urban Development Authority (AUDA) for providing storm water drainage services.
- The total tender value of the contract was approximately ₹109.5 crore.
- As per the contract terms, 10% of the contract value was paid as mobilisation advance by AUDA to the applicant to meet the initial working capital requirements for execution of the project.
- The mobilisation advance was interest-free and was to be adjusted against future Running Account (R.A.) bills raised by the applicant.
- The applicant contended that such mobilisation advance should not attract GST at the time of receipt, as it was in the nature of an advance or loan provided for project execution.
- Accordingly, the applicant approached the Authority for Advance Ruling (AAR), Gujarat to determine the taxability and time of supply in respect of such mobilisation advance.

Issue:

- Whether mobilisation advance received in relation to a works contract service is liable to GST at the time of receipt of advance, even if the invoice for the same is issued later while raising running account bills.



AAR Observations

- The AAR observed that works contract is treated as a supply of service under the GST law.
- The mobilisation advance received from AUDA was not an independent loan, since it was adjustable against future R.A. bills, and therefore qualifies as “consideration” under Section 2(31) of the CGST Act.
- As per Section 13 of the CGST Act, the time of supply of services is the earlier of the date of invoice or the date of receipt of payment.
- In the present case, no invoice was issued at the time of receipt of advance, and the advance was adjusted later in R.A. bills.
- Therefore, the time of supply would be the date of receipt of the mobilisation advance, and GST liability arises at that time.
- The AAR also relied on a similar ruling in the case of S.P. Singla Constructions, which had been upheld by the Gujarat Appellate Authority for Advance Ruling (AAAR).

Full Judgement: [M/s PC Snehal Construction Private Limited](#)

SNR's Take



This ruling reiterates that mobilisation advance received in relation to works contract services is treated as consideration for supply, even if it is described as an advance or interest-free loan. Since works contracts are classified as supply of services under GST, the time of supply provisions under Section 13 apply, which trigger tax liability upon receipt of advance where invoice is not issued earlier. The decision highlights that the commercial nomenclature of payment is irrelevant if the amount is ultimately adjusted against the contract value.

5. GST Exemption on Transportation of Segregated Waste for Municipal Corporation to be treated as Pure Services

Case of : Hari Narayan Singh

Decision by : Advance Ruling West Bengal

Date of Ruling : 27th February 2026

Facts:

- The applicant, Hari Narayan Singh, is a registered proprietorship engaged in conservancy-related services. The applicant was awarded a contract by the Howrah Municipal Corporation (HMC) to transport segregated waste from secondary transfer points to designated dumpsites using its own fuel-operated vehicles.
- The consideration for the service was determined based on the quantity of waste transported (per metric ton). The applicant deployed its own vehicles, manpower, and fuel for execution of the contract, while ownership of such resources remained with the applicant.
- The applicant contended that the services relate to municipal solid waste management, which is a function entrusted to municipalities under Article 243W of the Constitution read with Entry 6 of the Twelfth Schedule.
- Accordingly, the applicant sought an advance ruling on whether the services are exempt from GST under Serial No. 3, 3A or 4 of Notification No. 12/2017 – Central Tax (Rate).

Issue:

- Whether the service of transportation of segregated waste from transfer points to dumpsites provided to Howrah Municipal Corporation using the applicant's own vehicles qualifies for GST exemption under Notification No. 12/2017-CT (Rate) as an activity relating to functions entrusted to a municipality under Article 243W of the Constitution.



AAR Observations

- Howrah Municipal Corporation qualifies as a 'local authority' under Section 2(69) of the CGST Act.
- The activity undertaken by the applicant relates to solid waste management, which falls under Entry 6 of the Twelfth Schedule to the Constitution, a function entrusted to municipalities under Article 243W.
- The contract involves transportation and disposal of waste using the applicant's own vehicles, and there is no transfer of property in goods to the municipal corporation.
- Use of vehicles, fuel, machinery, and manpower for execution of the service does not amount to supply of goods.
- Therefore, the activity does not constitute a works contract or composite supply, but qualifies as "pure services."
- The Authority held that:
 1. Serial No. 4 of Notification 12/2017 is not applicable because the applicant is not a governmental authority.
 2. Serial No. 3A is not applicable since no supply of goods is involved.
 3. The activity satisfies all conditions of Serial No. 3, i.e.,
 4. It is a pure service,
 5. Provided to a local authority, and
 6. In relation to a function entrusted to a municipality under Article 243W.
- Accordingly, the services were held exempt from GST under Serial No. 3 of Notification No. 12/2017-CT (Rate)

Full Judgement: [Hari Narayan Singh](#)

SNR's Take



This ruling reiterates that services provided to municipalities in relation to core municipal functions such as sanitation and waste management may qualify for GST exemption when the supply is in the nature of pure services without involvement of goods. The decision clarifies that the use of equipment, fuel, or vehicles owned by the service provider does not amount to supply of goods, provided there is no transfer of ownership or property in such goods to the recipient authority.

Amendments made vide Finance Bill 2026

The Finance Bill, 2026 proposes certain amendments under the GST law aimed at simplifying compliance, providing relief to taxpayers, and reducing litigation. The key proposed changes and their impact on existing provisions are summarized in the table below.

Section / Rule	Pre-Amendment Position	Post-Amendment Position (Finance Bill 2026)
Section 15 – Value of Taxable Supply (Post-sale Discounts)	<p>Post-sale discounts were allowed as deduction only if:</p> <ul style="list-style-type: none"> Established in agreement before supply Specifically linked to relevant invoices ITC reversed by recipient Non-compliance with any condition led to denial of GST adjustment. 	<p>Conditions relating to prior agreement and invoice-wise linkage relaxed. GST adjustment allowed</p> <ul style="list-style-type: none"> if credit note is issued and corresponding ITC is reversed by recipient.
Section 54 – Refund of Tax (Inverted Duty Structure)	<p>Provisional refund of 90% was not clearly available for inverted duty refunds. Refunds were mostly granted after detailed verification, leading to working capital blockage.</p>	<p>Provisional refund (up to 90%) extended to inverted duty structure cases.</p>
Section 54 – Export Refund (Minimum Threshold)	<p>Refund claims were subject to minimum threshold limits, causing small exporters to accumulate unutilized balance.</p>	<p>Minimum threshold for export refunds removed. Refund can be claimed even for small amounts.</p>
Section 13(8)(b), IGST Act – Place of Supply (Intermediary Services)	<p>Place of supply for intermediary services = location of supplier, making many services taxable in India even when recipient was outside India (non-export).</p>	<p>Clause 13(8)(b) omitted. Place of supply now governed by general rule – location of recipient. Intermediary services can now qualify as export of services, reducing GST cost and litigation.</p>
Section 109 / Appellate Framework – GST Tribunal (Interim Mechanism)	<p>Absence of National GST Appellate Tribunal led to lack of appellate remedy in certain cases (e.g., conflicting Advance Rulings).</p>	<p>Government empowered to notify alternative authority / interim appellate mechanism till Tribunal is constituted.</p>

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