CNK & Associates LLP
Chartered Accountants

Quarterly Insights
October 2025

# GST Judicial Decisions

## INDEX

## Extension of time limit vide Notification No. 9/2023 & 56/2023 held to be arbitrary and illegal

### Tata Play Ltd v. Union of India ((2025) 32 Centax 318 (Mad.))
***In favour of revenue***

#### Relevant facts

A batch of writ petitions were filed before the Madras High Court challenging the validity of the extension of time limit for issuance of orders under Section 73(10) of the Act in light of the disruptions caused by COVID.

The impugned Notifications No. 9/2023-CT and 56/2023-CT were challenged on the grounds that the same were illegal as the said notifications were issued without considering and examining the relevant materials. In addition, Notification No. 56/2023-CT was challenged as illegal on the ground that it was issued even before the GST Council recommended as is required under Section 168A of the Act.

#### Decision of the Madras High Court

- The Court observed that power to issue notification for extension of time limits under Section 168A of the Act is a delegated legislation as it results in modifying the limitation provided under the Act.
- Thereby, the conditions and circumstances prescribed under the said section for issuance of notification warrant a strict interpretation of Section 168A of the Act.
- The Court observed that the condition precedent for exercising powers of Section 168A of the Act is (a) presence of force majeure and (b) action could not be completed 'due to' force majeure.
- It was highlighted that the action of conducting scrutiny and issuance of notices / orders could not be completed due to staff crunch and inherent system deficiencies of the Department and could not be attributed to COVID pandemic. This aspect /material was never placed before the GST Council for providing a sound recommendation for issuance of notification.
- The Court opined at Para 9.40 that "*the impugned notifications suffer from the vires of not complying with the statutory mandate inasmuch as the recommendation itself is made without keeping in view the relevant material.*"
- In relation to Notification No. 56/2023-CT, the Court held that it was issued even before the Council recommended (such recommendations being *sine qua non*). The Court highlighted that recommendations were mandatory (though the same were not binding on the Government). Further, it was held that a subsequent ratification by the GST Council does not suffice.
- The Court distinguished 'period of limitation' from 'computation of limitation' and stated that the notifications extending the time limits would fall under 'period of limitation'. Whereas the Supreme Court Suo Motu order (Cognisance for extension of limitation) falls under 'computation of limitation' as the period 15.03.2020 to 28.02.2022 stands excluded from computation of limitation. This continues to operate despite the notifications issued under Section 168A of the Act.
- The Court held that the Supreme Court order provided a much larger period to the Authorities as against a limited / curtailed extension as per the impugned notifications. The Court opined that the impugned notifications under Section 168A of the Act cannot curtail / diminish the limitation which was otherwise available with the Authorities on account of Supreme Court order. Thereby, it was held that the impugned notifications are not in conformity of the purpose and objective of the Law.

#### CNK comments

*This ruling of the Madras High Court underlines the importance of understanding the scope and nature of relief provided under Section 168A and concomitant conditions/ circumstances that are required to exercise the power. The distinction between 'period of limitation' and 'computation of limitation' has brought more clarity. By holding that the Supreme Court order does not overlap and is available, the time limit for issuance of SCN for 17-18, 18-19 & 19-20 is still available with the Authorities.*

## Refund of unutilised ITC upon closure of business is not available

### Union of India v. SICPA India Pvt. Ltd. ((2025) 34 Centax 200 (Sikkim))

***In favour of revenue***

#### Relevant facts

The Single Judge Bench of Sikkim High Court had allowed the refund of Rs.4.37 crores claimed by SICPA on account of accumulated input tax credit **(ITC)** balance as on the date of discontinuance of business. It was held that the refund of ITC is permissible under Section 49(6) of the Act.

Challenging this decision, Union of India preferred an appeal before the Division Bench of Sikkim High Court raising the below questions:

- Whether Section 49(6) of the Act solely governs/ grants refund of ITC upon discontinuance of business or should the provisions of Section 54(3) of the Act must be adhered to before granting refund?
- Whether the decision was rendered in sub silentio to the decision of Supreme Court in VKC Footsteps India (P.) Ltd (2021 (52) GSTL 513 (SC)) wherein the Supreme Court categorically held that refund under Section 54(3) of the Act is permissible only under two situations and none other (including accumulated ITC upon discontinuance of business)?

#### Decision of the Sikkim High Court

- The Court noted that Section 54 of the Act is the section governing refund and not Section 49(6).
- The Court opined at Para 14 that "*Section 49(6) permits the refund of the balance of electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the CGST Act or the Rules made thereunder in accordance with the provisions of section 54. . . The words 'in accordance with the provisions of section 54', thereafter, is a clear indication that this permissibility to refund must be in accordance with the provisions of section 54 and in no other manner.*"
- Refunds (being a statutory right) is permissible only under the scheme created. Strict adherence to Section 54(3) of the Act is required which provides for refund of accumulated ITC.
- The Court placed reliance on Supreme Court in VKC Footsteps India (P.) Ltd (2021 (52) GSTL 513 (SC)) wherein it has been held that refund of accumulated ITC under Section 54(3) of the Act is permissible only due to (a) zero-rated supplies and (b) inverted duty supplies.
- Accordingly, the Division Bench was pleased to note that Section 54(3) of the Act does not permit refund of accumulated ITC upon discontinuance of business.

#### CNK comments

*In what can be called as 'twist in the tale', the Division Bench reverses the order of Single Judge Bench. In our earlier edition, we had highlighted that the Single Judge Bench decision must be relied upon with much caution and after due consideration of the refund mechanism prescribed under the GST Law and decision of Bombay High Court in Gauri Plasticulture P Ltd v. CCE Indore (2019-VIL-280-BOM-CE) which had held that question of law on refund of CENVAT credit balance upon closure of business is open considering that the dismissal of Special Leave Petition **(SLP)** by the Supreme Court in the matter of Slovak India (supra) does not provide any answer on this question of law.*

*Considering the stakes involved, it would be interesting to see how the jurisprudence evolves on this question of law!*

## Establishing the jurisdictional fact for invoking Section 74 of the Act

### NCS Pearson Inc. v. Union of India & Ors. (2025-VIL-969-KAR)

***In favour of taxpayer***

#### Relevant facts

The petitioner had filed for Advance Ruling for classification of their services (viz. Type III test) of Online Information and Database Access or Retrieval **(OIDAR)** rendered by them and related taxability.

The AAR ruled in their favour that Type III test is not OIDAR. Revenue preferred an appeal before AAAR. The AAAR set aside the decision of AAR and held Type III test is OIDAR. Aggrieved by this, the petitioner filed a writ petition before Karnataka High Court.

During the pendency of the writ petition, the department issued show cause notice **(SCN)** under Section 74 of the Act on the charges of suppression of facts for demanding tax on Type III test classifying it as OIDAR service.

The petitioner filed a new writ petition challenging the impugned SCN to be wholly without jurisdiction as there was no suppression with an intention to evade tax for invoking Section 74 of the Act.

### Decision of the Karnataka High Court

- The Court held that for invoking Section 74 of the Act the necessary jurisdictional fact must be present viz. fraud, willful misstatement or suppression of facts along with the associated element of *mens rea* i.e., intention to evade tax.
- It is apposite to refer to Para 17, wherein the Court notes "*In this context, it is relevant to state that the question of limitation involves a question of jurisdiction and that a finding of fact on the question of jurisdiction would be a jurisdictional fact and issues concerning limitation go to the very root of the matter and an authority cannot clothe itself with jurisdiction by deciding the jurisdictional fact incorrectly or by assuming the jurisdictional fact wrongly.*"
- Department had actively participated in the advance ruling proceedings. Thus, one can reasonably hold that department was fully aware of the facts. The Court held that suppression cannot be alleged when department is fully aware of the facts and circumstances of the case.
- The classification of Type III test was first held not as OIDAR and later held as OIDAR. The Court also noted that suppression cannot persist when classification / taxability is in dispute.

### CNK comments

*The reader may be curious to understand what is a "Type III test". However, it is for another day to dive deep into understanding the business of the petitioner. Importantly, the judgement underscores the importance of identification of 'jurisdictional fact' and differentiating it from 'adjudicating fact' / 'fact in issue' (though this may be relevant for establishing 'jurisdictional fact'). Another aspect to bear in mind laying/ unfurling the mens rea viz. intention to evade tax which is necessary for invoking Section 74.*

*Identifying all the instances where information has been disclosed at earlier instances will prove dearly to Departments case of suppression!*

*Establishing the jurisdictional facts goes to the root of the legality of the adjudication proceedings. We believe that challenging the invocation of Section 74 of the Act is essential to avoid the usurpation of power under Section 74 of the Act (the whisper of caution by the Court).*

## Renewal of provisional attachment after expiry of 1 year is not permitted under Section 83

### Kesari Nandan Mobile v. Office of ACCT ((2025) 33 Centax 224 (SC))

***In favour of taxpayer***

### Relevant facts

The petitioners bank account was provisionally attached under Section 83 of the Act. Immediately upon expiry of 1 year, the department renewed the provisional attachment.

This renewal was challenged before the Gujarat High Court wherein the Division Bench upheld the actions of the department in renewing/extending the provisional attachment.

Aggrieved by the above order, the petitioner appealed before the Supreme Court with a sole question of law: Whether the GST Law permits issuance of second provisional (viz. renewal) attachment after the expiry of 1 year from the initial attachment?

### Decision of the Supreme Court

- The Court noted that Section 83(2) of the Act provides that the provisional attachment ceases to

have effect after the expiry of 1 year. Permitting renewal/ issuance of provisional attachment would render the said Section otiose.

- The Court relied on the maxim '*maxim ut res magis valeat quampereat (statute should be interpreted in a way that gives the document force rather than makes it fail)* to hold that lapse of attachment under Section 83(2) of the Act is 'statutory intendment' and cannot be bypassed.
- Dismissing the departments argument that the law does not restrict second provisional attachment, the Court held that an authority can act only as per the statute or any executive instruction. Because the law does not restrict second provisional attachment, it cannot be understood that the authority had the power/authority to order for a second provisional attachment.
- The Court took stock of the provisions relating to provisional attachment under Excise Law, Customs Law and Income Tax Law which provided for extension/renewal of provisional attachment. The absence of such a provision in GST Law clearly indicates the intention of Government to not provide for extension/ renewal of provisional attachment.
- The Court held that provisional attachment is a pre-emptive measure different from recovery mechanism and that a period of 1 year is sufficient (to the wisdom of Government) to complete investigation and take appropriate action. Therefore, the provisional attachment must not be used as a recovery tool.

### CNK comments

*The Supreme Court lamented that the aggrieved parties are forced to approach the courts to enforce a law (viz. Section 83(2)) already present. This ruling reminds (yet again) the highhandedness of authorities exercising pre-emptive measures designed to supplement the statute rather than supplant it!*

## Cross Empowerment: The CGST and SGST authorities are prevented from conducting parallel proceedings on the same subject matter

### Armour Security (India) Ltd. v. Commissioner, CGST, Delhi East Commissionerate (2025) 33 Centax 222 (S.C.)

***In favour of revenue***

### Relevant facts

The Taxpayer is engaged in providing security services and registered with Delhi GST. SCN was issued in November 2024, by State GST authority under Section 73 of the Act for the tax period April 2020 to March 2021 demanding Rs. 1.25 crores along with interest and penalty. The SCN was issued on grounds including under-declared tax as well as claim of an excess ITC.

Subsequently, search was carried out, and summons was issued by the CGST Authorities to the taxpayer in January 2025. The Taxpayer challenged investigations by filing writ petition on the basis that the matter has been already investigated by SGST Authorities on similar grounds and parallel proceedings cannot be investigated by the CGST Authorities in terms of section 6(2)(b) of the Act.

The Delhi High Court held:

a. The statute aims to prevent parallel assessment proceedings under Sections 73 and 74 of the Act.
b. The expression 'any proceeding' in Section 6(2)(b) does not include a search or investigation.
c. At the summons stage, authorities are merely gathering information, and the specific course of action is not yet determined.

The Taxpayer filed SLP before the Supreme Cout against the judgment and order passed by the High Court of Delhi.

### Decision of the Supreme Court

- The Court held that the summons issued under Section 70 of the Act do not constitute 'initiation

of proceedings' within the meaning of Section 6(2)(b) of the Act. The Court also held that summons is merely a step in an inquiry or investigation to gather information and not the culmination.

- Initiation of 'any proceedings' refers to the formal commencement of adjudicatory proceedings through the issuance of a SCN.
- Twofold Test for the 'Same Subject Matter':
  - Authority has already proceeded with an identical liability of tax or alleged offence by the assessee on the same facts.
  - The demand or relief sought is identical.
- Section 6(2)(a) of the Act mandates that if a proper officer issues an order under the CGST Act, they must also issue a corresponding order under the SGST or UTGST Act, with intimation to the jurisdictional officer.
- The Court has also issued guidelines for Authorities and Taxpayers:
  - An assessee must comply with summons.
  - Assessee's obligation to inform in writing to the authority that initiated the subsequent action.
  - Upon receiving such intimation, tax authorities shall communicate with each other to verify the claim and avoid duplication.
  - If authorities find an overlap, they shall decide inter-se which authority will continue the inquiry/investigation.
  - If authorities cannot agree, the authority that first initiated the inquiry/investigation shall continue.
- The Supreme Court also urged the DGGI to consider developing a robust mechanism for seamless data and intelligence sharing between Central and State authorities.

### CNK comments

*Section 6 of the Act prescribes provisions relating to the cross empowerment of SGST and CGST authorities. Whereas section 6(2)(b) of the Act stipulates that where a proper officer under the SGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the CGST officer on the same subject matter.*

*Though the judgement is not in favour of the taxpayer, the same has provided clarity on the matter of cross empowerment of SGST and CGST authorities in understanding the meaning of terms 'initiation of proceedings' and 'same subject matter'. The Court has issued guidelines to the tax authorities to communicate with each other and avoid duplication. Whereas the Court has also issued guidelines to the taxpayers to comply with summons, corporate in investigations and inform the tax officer about the action already initiated.*


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www.cnkindia.com.

CNK & Associates LLP
Chartered Accountants

**Mumbai**
**3rd Floor, Mistry Bhavan, Dinshaw Vachha Road, Churchgate, Mumbai 400 020.**
**Tel: +91 22 6623 0600**

**501/502, Narain Chambers, M.G Road, Vile Parle (East), Mumbai 400 057.**
**Tel: +91 22 6250 7600**

**A-301, 3rd Floor, Takshshila Building, Goregaon (East), Mumbai – 400 063.**
**Tel: +91 22 6307 2500**

**Chennai**: +91 44 4384 9695
**GIFT City**: +91 79 2630 6530
**Pune**: +91 20 2998 0865
**Dubai**: +971 4355 9533

**Vadodara**: +91 265 234 3483
**Bengaluru**: +91 91411 07765
**Kolkata:** +91 98 3680 5313
**Abu Dhabi**: +971 4355 9544

**Ahmedabad**: +91 79 2630 6530
**Delhi**: +91 11 2735 7350
**Gurgaon:** +91 97 1722 2088