



The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)



Organised by: GST & Indirect Taxes Committee

Hosted by: Eastern India Regional Council
& ICAI CoE Jaipur

RESIDENTIAL REFRESHER — COURSE ON — GST

📍 ICAI Centre of Excellence, Jaipur
📅 1st to 3rd May, 2026

Sponsor



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI



MOTTO

Ya esa suptesu jagarti kamam kamam Puruso nirmimanah |
Tadeva sukram tad brahma tadevamrtamucyate |
Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat ||

य एष सुप्तेषु जागर्ति कामं कामं पुरुषो निर्मिमाणः ।

तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।

तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ॥

(That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brahman, that, indeed, is called the immortal. In it all the worlds rest and no one ever goes beyond it. This, verily, is that, kamam kamam : desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.)

No one ever goes beyond it : cf. Eckhart : 'On reaching God all progress ends.')



Residential Refresher Course on GST
on

1st to 3rd May, 2026

at

ICAI Centre of Excellence, Jaipur

Organised by

GST & Indirect Taxes Committee, ICAI

Hosted by

Eastern India Regional Council

&

ICAI Centre of Excellence, Jaipur

Central Council Members

CA. Umesh Sharma, *Chairman*

GST & Indirect Taxes Committee

CA. Rajendra Kumar P, *Vice-Chairman*

GST & Indirect Taxes Committee

CA. Ravi Kumar Patwa, *Programme Convenor*

CA. Sanjib Sanghi, *Programme Co-Convenor*

Regional Council Members

CA. Mayur Agrawal, *Chairman, EIRC*

CA. Hari Ram Agarwal, *Vice Chairman, EIRC*

CA. Aditya Kr. Maheshwari, *Secretary, EIRC*

CA. Bisworanjan Sutar, *Secretary, EIRC*

CA. Vishnu K. Tulsyan, *Member, EIRC*

Published by

Eastern India Regional Council

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Disclaimer

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The Institute does not accept any responsibility for the views expressed in different contribution published in this Background Material.

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CA. Vishnu K Tulsyan
Immediate Past Chairman,
EIRC

Detailed Programme Schedule

Day 1: Friday, 1st May 2026

Timing	Session	Topic / Details
2.00 PM - 2.30 PM	Introductory Session	
2.30 PM - 4.00 PM	Tribunal Session	Practice. Plead. Prevail - Nuances of Appearance in GSTAT <i>Speaker: CA. Sunil Gabhawalla, Mumbai</i>
4.00 PM - 6.00 PM	Group Discussion - 1	When delay costs more than expected: Navigating GST issues in Liquidated Damages, Works Contract Charges and Running Bill Adjustments. Evolving Jurisprudence relating to Residential Dwelling Rental Services & Multilevel GTA Supply Chains. Holistic Analysis of GST on Promotional Schemes, Discounts, ITC and Section 194R (Income-tax)
6.00 PM - 6.30 PM	Break	
6.30 PM - 8.00 PM	Paper Presentation - I	GST Implications on Business Transfers, POS Determination and Cross-State Registration Complexities <i>Speaker: CA. Sushil Kr. Goyal, Kolkata</i>
8.00 PM Onwards	Visit to Chokhi Dhani	

Day 2: Saturday, 2nd May 2026

Timing	Session	Topic / Details
9.30 AM - 10.45 AM	Paper Presentation - II	ITC Implications of Erroneous Inter-Head Set-Off and E-Invoicing Lapses <i>Speaker: Adv. CA. (Dr.) Arpit Hadia, Jodhpur</i>
10.45 AM - 12.00 PM	Group Discussion – I (Presentation)	Summarisation of Outcome of Group Discussion - 1
12.00 Noon - 1:30 PM	Paper Presentation - III	Intricacies of Real Estate Sector <i>Speaker: CA. Yash Dhadda, Jaipur</i>
1:30 PM - 2:15 PM	Lunch Break	

2:15 PM - 4.30 PM	Group Discussion - 2	<p>GST in Digital Era: E-Commerce Transactions and Income of Influencer & Digital Content Creation.</p> <p>Aspects of ITC on Loss, Destruction, Warranty and Expiry of Goods.</p> <p>Critical GST Valuation Aspects: Rule 28, Stock Transfers, Barter and Corporate Guarantees.</p> <p>Applicability of GST on Statutory Levies, Government Services & Royalty.</p>
4:30 PM - 5:00 PM	Break	
5:00 PM - 8:00 PM	Mock Tribunal	<p>Nuances of Transfer of Property vis-à-vis Works Contract</p> <p>Plant or Property: The Great ITC Battle</p> <p>Room Tariff or Total Charge: Decoding Threshold Limit of Hotel Industry</p> <p>Reimbursement or Revenue? The Travel Agent GST Dilemma</p> <p><i>Speaker: Adv. K S Naveen Kumar, Bengaluru</i></p>
8:00 PM - 10:00 PM	Cultural Evening	

Day 3: Sunday, 3rd May 2026

Timing	Session	Topic / Details
9.30 AM - 11.30 AM	Group Discussion - II (Presentation)	Summarisation of Outcome of Group Discussion – II
11:30 AM - 1: 00 PM	Paper Presentation - IV	<p>Interplay and Practical Issues- Sections 73, 74, 74A and 122</p> <p><i>Speaker: CA. Adv. (Dr.) Gaurav Gupta, Delhi</i></p>
1:15 PM - 2:00 PM	Lunch Break	
2:00 PM - 3.00 PM	Valedictory Session	
3:00 PM - 3:30 PM	Group Photograph	
3:30 PM Onwards	Departure	





CA. Umesh Sharma

Central Council Member, ICAI

Chairman, GST & Indirect Taxes Committee

The GST & Indirect Taxes Committee of ICAI remains committed to supporting members through various initiatives, including technical publications, capacity-building programmes and stakeholder engagements.

The Residential Refresher Course, jointly hosted by EIRC of ICAI and the ICAI Centre of Excellence, Jaipur, under the aegis of the GST & Indirect Taxes Committee at the Centre of Excellence – Jaipur, is a significant initiative aimed at providing an immersive learning experience through focused deliberations, practical insights and interactive sessions on key GST issues.

The programme covers a wide spectrum of contemporary and complex GST topics, including procedural aspects of representation before GSTAT, evolving jurisprudence in key sectors, intricate issues relating to input tax credit, valuation and cross-border complexities and sector-specific challenges in real estate, digital content creation and travel agent GST dilemma among others.

This booklet, thoughtfully contributed by our esteemed speakers and other learned professionals, complements the programme by bridging theory with practice and offering diverse perspectives on complex and evolving aspects of GST through case studies.

The dynamic and evolving nature of GST law necessitates continuous learning, critical analysis and practical understanding. As GST moves towards a more technology-driven phase, with increasing use of data analytics, AI-enabled compliance and evolving jurisprudence, it is essential for professionals to remain agile and future-ready.

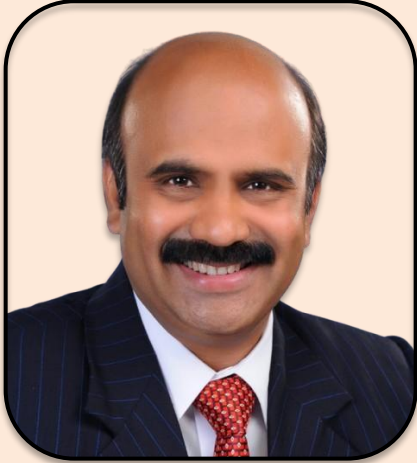
I am confident that this booklet will serve as a useful reference for participants.

I extend my sincere appreciation to all contributors and wish the participants a highly enriching learning experience.

CA. Umesh Sharma

Chairman

GST & Indirect Taxes Committee



CA. Rajendra Kumar P

Central Council Member, ICAI

Vice-Chairman, GST & Indirect Taxes Committee

In a tax regime as dynamic as GST, continuous updation of knowledge and practical insights is essential for professionals to effectively address emerging challenges. The GST & Indirect Taxes Committee consistently strives to be at the forefront of knowledge dissemination in the realm of indirect taxation. Our efforts are dedicated to organising such comprehensive programmes, developing useful publications and engaging with stakeholders to facilitate a smoother implementation and understanding of GST.

The Residential Refresher Course at the Centre of Excellence, Jaipur, hosted jointly by the EIRC of ICAI and the ICAI Centre of Excellence, Jaipur, under the aegis of the GST & Indirect Taxes Committee, is a thoughtfully designed programme that brings together expert-led discussions, real-world perspectives and interactive learning on the functioning of GST law.

The programme addresses emerging concerns such as lapses in e-invoicing compliance, analysis of taxation of promotional schemes, GST implications on business restructuring and the interplay of critical statutory provisions along with deliberations on practical challenges faced by professionals.

This compilation has been curated with the objective of providing participants with a blend of conceptual clarity and practical exposure through well-researched and relevant case studies. It reflects the collective expertise and rich experience of the contributors.

May this compilation booklet serve as an indispensable guide and a lasting reference for your professional journey. I also extend my best wishes for the success of this programme.

CA. Rajendra Kumar P

Vice-Chairman

GST & Indirect Taxes Committee



CA. Ravi Kumar Patwa

Central Council Member, ICAI

Programme Convenor

The 3-Day Residential Refresher Course on GST organised by GST and Indirect Tax Committee, ICAI and hosted by the EIRC, ICAI from 1st to 3rd May 2026 at the Centre of Excellence, Jaipur depicts a commendable initiative aimed at deepening professional knowledge and sharing practical insights by learned speakers, in the evolving GST landscape. Such immersive programmes provide an excellent platform for intense learning, peer interaction and capacity building for professionals.

In an era of dynamic regulatory changes, continuous upskilling is essential for chartered accountants for rendering value driven services. The refresher course reflects a strong commitment towards equipping professionals with updated knowledge, practical perspectives and a nuanced understanding of GST complexities.

I extend my sincere appreciation to the EIRC Chairman CA. Mayur Agarwal and his entire EIRC team for their dedicated efforts in conceptualising and organising this exceptional programme. I am confident that the course will significantly contribute to enhancing professional competence and inspire participants to uphold excellence in practice.

Wishing the event a resounding success and all participants an enriching experience.

Best Wishes Always.

CA. Ravi Kumar Patwa
Central Council Member, ICAI



CA. Sanjib Sanghi

Central Council Member, ICAI

Programme Co-Convenor

It gives me immense pleasure to note that the GST & Indirect Taxes Committee in association with the Eastern India Regional Council (EIRC) and ICAI Centre of Excellence, Jaipur, is organising a Residential Refresher Course on GST from 1st to 3rd May 2026.

I would like to place on record my sincere appreciation for the leadership of CA. Mayur Agarwal, Chairman, EIRC, and the continued efforts of the team at the ICAI Centre of Excellence, Jaipur, for conceptualising and hosting this impactful programme.

In today's dynamic regulatory landscape, GST continues to evolve through legislative amendments, judicial pronouncements, and emerging business models. As professionals, our ability to interpret, adapt, and apply these changes effectively is critical. This programme, thoughtfully designed with a blend of technical sessions, case studies, paper presentations, and mock tribunal exercises, offers a highly engaging and practical learning platform.

What distinguishes this initiative is its strong focus on application-oriented learning, addressing complex ITC issues, valuation challenges, evolving jurisprudence, and emerging areas such as the digital economy. The residential format further enables meaningful peer interaction, exchange of perspectives, and collaborative problem-solving beyond formal sessions.

The compilation of case studies and papers presented in this booklet reflects the depth of insight and expertise contributed by distinguished faculty and participants. I am confident that this knowledge resource will serve as a valuable reference, supporting professionals in navigating the evolving GST landscape with clarity and confidence.

I commend the organisers for curating such a comprehensive and forward-looking programme and extend my best wishes to all participants for a rewarding and enriching learning experience.

Warm regards,

CA. Sanjib Sanghi
Central Council Member, ICAI



CA. Mayur Agrawal

Chairman, EIRC

Dear Professional Colleagues,

It gives me immense pleasure to welcome you to the Residential Refresher Course on GST from 1st to 3rd May 2026 at the ICAI Centre of Excellence, Jaipur. The programme is organised by Eastern India Regional Council (EIRC) of The Institute of Chartered Accountants of India (ICAI), under the aegis of the GST & Indirect Taxes Committee of ICAI and jointly with ICAI CoE Jaipur.

In the ever-evolving landscape of indirect taxation, it is imperative for we professionals to stay updated with the latest developments, amendments and practical insights in Goods and Services Tax. This refresher course is thoughtfully designed to provide participants with practical insights and hands-on learning through Group Discussions, Paper Presentation & Mock Tribunals.

This year, EIRC has adopted the theme “NOW”, reflecting the urgency of action in a rapidly transforming professional landscape. The world around us is not gradually changing—it is evolving at an unprecedented pace. With the advent of Artificial Intelligence, automation, data analytics, increasing regulatory complexities, digital governance and global integration, the role of Chartered Accountants are continuously redefined. The question before us is no longer “What will the future look like?”—the real question is, “What are we doing about it?” And hence the answer is—“NOW” which we have adopted as this year’s theme.

In this context, continuous learning and timely upskilling are not just important, but has become essential. This Refresher Course on GST is a step in that direction, aimed at equipping members where along with the technical study, we provide platform for networking and fellowship.

I extend my sincere thanks to the GST & Indirect Taxes Committee of ICAI and ICAI CoE, Jaipur, for their collaborative efforts in organising this programme. I encourage members to participate actively and embrace the spirit of “NOW” by investing in their learning throughout 3 days.

Warm regards,

CA. Mayur Agarwal
Chairman
M – 99033 49773
EIRC-ICAI



CA. Hari Ram Agarwal

Vice Chairman, EIRC

Dear Professional Colleague,

It gives me immense joy to inform you that the GST & Indirect Taxes Committee of ICAI is organising a Residential Refresher Course on GST from 1st to 3rd May 2026 at the ICAI Centre of Excellence, Jaipur, hosted by the Eastern India Regional Council (EIRC) jointly with ICAI COE Jaipur.

The dynamic landscape of indirect taxation continues to evolve rapidly and GST, being a transformative reform, demands continuous learning and upskilling from professionals. With the amendments taking place in GST from time to time, we the professionals have to be well acquainted and versed with the changes that are taking place in the field of Indirect Taxation. In EIRC the theme for the year is “NOW”, this programme is both timely and relevant. It reminds us that the need to upgrade our knowledge, sharpening our skills and adapting to regulatory and technological changes is not the call for tomorrow—but it the call to take action today and hence it is “NOW”.

This Refresher Course brings together a distinguished panel of experts—CA. Sunil Gabhawalla, CA. Yash Dhadda, Adv. K S Naveen Kumar, CA. (Dr.) Arpit Haldia, CA. Sushil Kumar Goyal and CA. Gaurav Gupta—who will share their deep insights and practical perspectives on critical aspects of GST. I am confident that their deliberations will provide immense value to the participants.

I thank the GST & Indirect Taxes Committee of ICAI for approving the Residential Refresher Course on GST under their aegis. Special thanks to CA. Mayur Agrawal, Chairman, EIRC and CA. Aditya Kumar Maheshwari, Secretary, EIRC for curating and designing this Residential Refresher Course on GST. I urge the members to actively participate and make the most of this opportunity and to stay updated and professionally empowered.

Warm regards,

CA. Hari Ram Agarwal
Vice Chairman
M – 98306 30386
Eastern India Regional Council of ICAI



CA. Aditya Kumar Maheshwari

Secretary, EIRC

Dear Participants,

It gives me great pleasure to share with you that the GST & Indirect Taxes Committee of ICAI is organising a Refresher Course on GST from 1st to 3rd May 2026 at the ICAI Centre of Excellence, Jaipur, hosted by the Eastern India Regional Council jointly with ICAI COE Jaipur.

In today's rapidly evolving regulatory environment, continuous learning is not merely an option but a professional necessity. This Residential Refresher Course has been thoughtfully designed to provide members with a comprehensive and immersive learning experience in a focused academic setting. The programme aims to enhance professional competence by covering key aspects of Goods and Services Tax, including recent amendments, evolving interpretations and practical challenges faced in implementation.

What makes this course particularly enriching is its application oriented approach. Through case studies, real-life scenarios and practical problem solving discussions, participants will gain deeper insights in dealing with complex GST issues. The residential format further enables meaningful engagement beyond classroom sessions, encouraging exchange of ideas and sharing of professional experiences among the participants through networking.

The sessions, delivered by eminent faculties and subject matter experts, will combine conceptual clarity with practical perspectives. Interactive elements such as Q&A sessions, group discussions and participant presentations will add significant value to the overall learning experience.

I heartily thank the GST & Indirect Taxes Committee of ICAI for approving the Refresher Course under their aegis. I further thank CA. Mayur Agarwal, Chairman and my other Council Colleagues for their valuable inputs and suggestions in designing this impactful programme. I am confident that the participants will greatly benefit from this initiative and return with enhanced knowledge and renewed professional confidence.

Warm regards,

CA. Aditya Kumar Maheshwari

M – 97330 44550

Secretary, EIRC &

Chairman, GST & Indirect Tax Committee of EIRC



PROFILES

CA. SUNIL GABHAWALLA



**CA. Sunil
Gabhawalla**

Sunil Gabhawalla is a chartered accountant in practice with 3 rank at the All-India Level. He is also a cost accountant. He has an excellent academic record with ranks throughout the career.

Starting his career in the field of the sales tax practice, he helped clients transition from the sales tax regime to the VAT Regime. As a logical extension, he diversified into service tax practice. His comprehensive treatise on service tax published by the Bharat Law House saw 23 editions. He also wrote books on international taxation and use of MS-Excel.

At the time of introduction of GST in 2017, Sunil was actively involved in the policy formulation process as a member of the Study Group constituted by Maharashtra Government for implementing GST. He continues to share knowledge on this evolving domain. His Youtube Channel contains various videos on this topic and has garnered more than 80000 views.

Sunil has delivered lectures on topics of professional interest at various industry/trade bodies. He is a NACIN accredited trainer and regularly conducts training sessions for Department Officers. In the early days of his professional career, he also taught tax concepts to management students at NMIMS. He has also written articles in various professional and business journals and is regularly quoted in newspapers on indirect tax related issues.

Sunil was the President of the Bombay Chartered Accountants Society for 2018-2019 and is the immediate Past Chairman of the Indirect Tax Committee and the current Chairman of the Journal Committee of the said Society. He is the Editor of the BCAJ, the monthly publication of the Society.

Beyond profession, his hobbies extend to long distance running, cooking, chess, reading and spirituality.

CA. Sushil Kumar Goyal



**CA. Sushil
Kumar Goyal**

CA. Sushil Kumar Goyal is a distinguished Chartered Accountant and Partner at P K M S & Associates, with strong academic credentials, holding degrees in Commerce and Law.

Honoured with the Eminent Citizen Award by his school for his exemplary professional and social contributions, he has built an exceptional career spanning over 28 years in Indirect Taxation.

A leading expert in GST and Service Tax, he has been providing consultancy, representation, and advisory services since 1997, and is widely respected in Kolkata and beyond. He has authored a book on service tax, the first book on Service Tax from Eastern India, titled "Service Tax Guide".

He has circulated over 2,200 GST/Service Tax tips, acknowledged by Limca Book of Records. His leadership roles include serving as Chairman of the GST & Indirect Tax Committee, ICAI, Vice President of the Customs, Excise & Service Tax Bar Association, and key representative in several government consultations.

A seasoned faculty, prolific speaker with over 925 sessions, and contributor to national and international forums, he continues to make impactful professional and social contributions.

Adv. CA. (Dr.) Arpit Haldia



**Adv CA. (Dr.)
Arpit Haldia**

Year of Passing	Course	Institute
2007	ICWA	Institute of Cost and Work Accountants
2006	DIRM	Institute of Chartered Accountants of India
2006	Ph.D.	Jai Narain Vyas University
2005	LL.B.	Jai Narain Vyas University
2004	C.S.	Institute of Companies Secretaries of India
2003	DISA	Institute of Chartered Accountants of India
2002	C.A.	Institute of Chartered Accountants of India
2000	B.Com	Jai Narain Vyas University

Work Experience: 21 Years

Presently practising as an Advocate since October 2024 and prior to that practising as a Chartered Accountant since 2002 and handling areas relating to GST Litigation and Compliance. I have authored 9 books on GST spreading across total 34 Editions-

1. **“GST Made Easy”**-(English)- Published by Taxmann Publications
2. **“GST Mini Ready Reckoner”**- (English)- Published by Taxmann Publications
3. **“GST Search and Seizure”**- (English)- Published by Taxmann Publications
4. **“GST Law and Practice”**- (English)- Published by Taxmann Publications
5. **“GST-How to Handle ITC Litigation”**-(English)- Published by Taxmann Publications
6. **“GST Samasya Evam Samadhan”**- (Hindi)- Published by Taxmann Publications
7. **“GST Eway Bill”**-(Hindi)- Published by Taxmann Publications
8. **Editor to GST-Tariff of India-(English)**-Published by Centax Publications
9. **Handbook on Composition Scheme under GST-(English)**-Published by ICAI

Articles published and Speaker at Seminar Conferences and Study Circle Meetings during the last three years

A regular speaker since 2007 in Seminar, Conferences and the study circle meetings organized by Various Committees of ICAI, Branches of the Institute of Chartered Accountants of India and other trade and professional bodies. My articles have been published on GST, VAT and Direct Taxes.

Extracurricular Activities / Achievements

Visiting Faculty

National Faculty of ICAI for Members of ICAI. Visiting Faculty for NACIN for Training of CGST Officials and Public Financial Management and Training Institute, Government of Rajasthan for Training of SGST Officials.

Chartered Accountancy

- Secured All India Rank 36th in CA Intermediate Examination held in the month May 2000

Ph.D.

- Ph.D. in “Comparative Study of Existing system of Sales Tax and Proposed system of Value Added Tax”

Office Bearers in Professional Bodies

- Secretary Tax Bar Association, Jodhpur 2009-2011
- Secretary, Jodhpur Branch of CIRC of ICAI for the term 2012-13
- Treasurer, Jodhpur Branch of CIRC of ICAI for the term 2011-12
- CICASA Chairman, Jodhpur Branch of CIRC of ICAI for the term 2010-11

Other Interest

- Regular Blogger on GST and in the last 7 Years year, have written about 700 blog posts on GST
- Have a Following of 40+Thousand People on Twitter

CA. Yash Dhadha



**CA. Yash
Dhadha**

Yash Dhadha is a fellow member of The Institute of Chartered Accountants of India. He is having working experience of over 13 years in the fields of Indirect Taxes with concentration only on GST, Service Tax & Excise matters. He is currently engaged in handling litigation along with advising clients, structuring transactions and conducting Due Diligence in given fields of taxation.

He was a Special Invitee to the Indirect Tax Committee of ICAI for the term of three years i.e. 2021-22 19-20 & 2018-19. He is also on panel of CII (Rajasthan) as GST, Service Tax & Excise Advisor for Industry Members. He has represented ICAI in Regional Advisory Committee, Rajasthan under ageis of Chief Commissioner of Excise & Customs, Jaipur. He is founding core member of Study Group of ICAI on GST research and up gradation matters.

Yash has deep interest in academic discussions, upgradations and training. He was written Handbooks on Principles of Classification for Goods and Services under GST and also on Casual Taxable Person for IDTC of ICAI. He has also actively contributed as core-member of the team which has drafted Technical Guide On GST Audits issued by ICAI.

He has delivered lecture in across India and is also a regular attendee of various Study Courses on GST conducted by BCAS, CTC, ICAI and other forums as Group Leader and Coordinator. He is an empaneled trainer on GST for NACIN, ICAI and Regional Training Institute for Revenue & C&AG Officers and Rajasthan SGST Officers. As his passion, he is also engaged in grooming young professionals of CA, CS and MBA on topics of Soft Skills and Professional Life Management.

K. S. NAVEEN KUMAR

B.Com., LL.B., ML



**K. S. Naveen
Kumar**

K.S. Naveen Kumar., B.Com., LL.B., ML(Contracts) - is a lawyer practicing since the year 2001. He specializes in GST and other indirect taxes litigation and consulting and has appeared before various forums including Supreme Court, High Courts, CESTAT, ATFE and SEBI. Many of the cases argued by him are reported in leading law journals. He was under the tutelage of the renowned Senior Advocate Late Sri.K.S.Ravi Shankar for two decades.

He did B.Com from Guru Nanak College, Chennai, LL.B from Shri Jagadguru Renukacharya College of Law, Bangalore, ML from Annamalai University, Tamil Nadu.

He has served as Co-Chairman/Vice-Chairman/Member of GST/IDT/Central Taxes Committee of Federation of Karnataka Chambers of Commerce and Industry-FKCCI, since 2006. He has represented Assocham in the Karnataka GST Grievance Redressal Committee appointed by the CBIC. He has served as a co-opted member of the National Executive Committee of the Confederation of GST Professionals and Industries (CGPI) and also served as South Zonal Committee's Chairman in the past. He was earlier a member of Assocham's Karnataka MSME Council and Indirect Taxes Council.

Presented papers on Indirect Taxes including GST and other topics across the country in many seminars, conferences and workshops, courses, organized by reputed organizations/institutions including ICAI, ICSI, FKCCI, CII, IIM-B, Assocham, CBIC, CGPI, Bombay Chartered Accountants Society, KSCAA, Chamber of Tax Consultants, Tax Sutra etc.

He has co-authored four books titled 'Goods and Service Tax – A Primer', "Compendium of Issues and Solutions in GST" jointly published by Bharat and Taxsutra (online version), "Goods and Services Tax – An Abridged Compendium" and "GST Appellate Mechanism – Key Aspects and Procedures" jointly published by the Karnataka State Chartered Accountants Association and Taxmann.

He has contributed to the Booklet on GST Transition Provisions, Back Ground Material on GST and material for litigation management course published by ICAI. He has taught business laws, Constitution and taxation as a visiting faculty in Bharatiya Vidya Bhavan, ICAI, Fiscal Policy Institute, NACEN and National Law School of India University.

He has addressed officers of the Central Excise, Customs, Service Tax and Commercial Taxes Departments, Government undertakings and Corporate concerns on topics relating to law and indirect taxes.

He hails from a family of musicians and pursues his passion by researching, collecting and playing various types of percussion.

CA. Adv. (Dr.) Gaurav Gupta

B.Com(Hons.) - SRCC, F.CA., LL.M., ISA (ICAI)



**CA. Adv. (Dr.)
Gaurav Gupta**

Adv. Gaurav Gupta is a graduate from Sri Ram College of Commerce, Delhi University and a Law Graduate from Delhi University. He is a fellow member of Institute of Chartered Accountants of India. He has complemented his Master of Laws (LL.M.) in 2021 from OP Jindal Global University. He has completed his ISA post qualification course of Institute of Chartered Accountants of India. He has obtained his doctorate in Taxation from Ecole Superieure Robert de Sorbon, University of France. He is practising as an Advocate in Delhi High Court and Tax Tribunals.

He is practising as an advocate in High Courts especially Delhi High Court, Tribunals, and other Courts. He has more than 18 years of experience in indirect taxation during which he was extensively involved in consulting and litigations of Assessee including multinationals and domestic companies across a range of sectors such as Infrastructure, Power, Education, Medical, Telecommunication, Broadcasting, IT, FMCG, Financial Services etc. He specialises in handling enforcements, audits, litigations matters in Indirect Taxes in India. He has also worked as Head - Taxation of a Listed Group and with a Tier 1 consulting firms in Indirect tax space and had worked on assignments involving provision of opinion and consulting to Fortune 500 companies.

He is also author to books on many titles on GST including:

- Comprehensive Analysis of GST on Services,
- Goods and Services Tax – Law & Practise,
- Handbook on GST – Law & Practise,
- GST Handguide for Practitioners,
- GST Manual,
- GST Referencer and Manual (co-author),
- Audit and Annual Returns in GST (co-author) etc.

He has authored books on Service tax titles “Service Tax – Law & Practice” and Service Tax Ready Reckoner. He has contributed to various publications of Indirect Tax Committee of Institute of Chartered Accountants of India and has Co authored Compendium on all Notifications, Circulars, Orders & clarifications and Determinations in Delhi Value Added Tax Act, 2004. He is author of online resource on GST – www.gstindiaguide.com.

He has been a special invitee to the Indirect Tax Committee of ICAI for FY 2012, 2014, 2015, 2017, 2018, 2019, 2022, 2023. He was Co-Chairman of Indirect Tax Committee, PhD Chamber of Commerce for FY 2019-20. He is the Vice President of Sales Tax Bar Association, Delhi for FY 2023-24, was its elected Executive Committee member for FY 2021-22 and its Joint Secretary for FY 2014. He was a Special Invitee to National Executive Committee (NEC) of All India Federation of Tax Practitioners and Member of Indirect Tax (GST) Representation Committee of All India Federation of Tax Practitioners for the term 2022. He was a

Co-opted Member of Strategy Perspective Planning & Monitoring Committee of ICAI for the year 2021- 22. He is a founder member and an executive member of Society for Tax Analysis and Research (STAR). He has been Ex-Senior Advisor to World Association of Small and Medium Enterprises. He was also member of managing Committee of Indirect Tax Practitioners Association, Chhattisgarh, Raipur, India and member of Committees of Sales Tax Bar Association, 2016,2018, 2019. He has been Convener of Delhi Study Group on GST, ICAI, 2016 and Member, Indirect Tax Committee, ASSOCHAM

He has addressed more than 600 seminars on Indirect taxes in various forums, seminars, conference etc organized by professional bodies and association including PhD Chamber of Commerce, Institute of Chartered Accountants of India, Institute of Company Secretaries of India, Sales Tax Bar Association, National Chamber of Commerce and Industry, Southern Gujarat Commercial Tax Bar Association etc. He is also a faculty on GST and Indirect Tax organised by ICAI, GST Commissionerate etc.



**GROUP
DISCUSSION
&
RELATED
CASE
STUDIES**

Brief on Group Discussion

- There will be two Group Discussions (GD 1 on Day 1 and GD 2 on Day 2).
- GD 1 will have three topics and GD 2 will have four topics.
- Summarised presentation of GD1 topics will be given before all the participants in Day 2 by three Group Mentors.
- Summarised presentation of GD2 topics will be given before all the participants in Day 3 by four Group Mentors.

Participants will be divided into 3 groups: <ul style="list-style-type: none">• Hawa Mahal Group• Jantar Mantar Group• Amer Fort Group	Each group will have: <ul style="list-style-type: none">• 1 Group Leader (GL)• 1 Group Mentor (GM)
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Role of Group Leader (GL)

- Moderator of GD Session.
- Responsible to initiate the discussion, giving a brief of the case and the queries to discuss. (Remember, time will be a constraint, so do not spend too much time in explaining the facts to everyone)
- Once discussion is happening, you are also responsible to note down points coming out of the GD to share with Mentor (both for and against points)
- Please avoid giving your views/opinions unless it is very much needed to continue the flow
- Focus upon maintaining discipline within the group while discussion session.
- Please have a check on time so that all allotted case studies can be discussed.
- Try and involve most of the group members to provide their inputs
- If there are any policy suggestions, please note down separately for compilation
- If any key perspective is missed by the group, raise those questions

Role of Group Mentor (GM)

- Primarily responsible to give summarized presentation of Group Discussion of one of the allotted topic in next day before all participants.
- Ensure the discussions are on track. - mostly as a silent spectator.
- Give valuable inputs to steer the discussion. - as a participant only.
- Resolve any conflicting arguments and take the GD forward.- only if absolutely necessary.
- Try to sum up the key arguments of both sides very briefly_ - at the very end.
- Give presentation next day on one of the case study allotted to you in the "GD presentation slot" following the GD after taking input of Group Mentors of other group.
- To provide the Conclusion points of the other 2/3 Case Studies (which are not to be presented by respective mentors) discussed in the Group to the Lead Mentor of the Respective Topic who will be presenting the respective cases.

Summary:

Group Discussion – 1 in Day 1 (Time 2 Hours)

Three groups Hawa Mahal, Jantar Mantar, and Amer Fort in a GD

Number of Topics: 3

- GM-Jantar Mantar handles Topic 1
- GM-Amer Fort handles Topic 2
- GM-Hawa Mahal handles Topic 3

Presentations of GD-1 in Day 2 by GMs (Time 1.15 Mins (25 mins for each topic)

- Mentor of Jantar Mantar will present Topic 1, after taking inputs from Mentors of Groups Hawa Mahal and Amer Fort.
- Mentor of Amer Fort will present Topic 2, after taking inputs from Mentors of Groups Jantar Mantar and Hawa Mahal.
- Mentor of Hawa Mahal will present Topic 3, after taking inputs from Mentors of Groups Jantar Mantar and Amer Fort.

Group Discussion – 2 in Day 2 (Time 2 Hours 15 Minutes)

Three groups Amer Fort, Hawa Mahal and Jantar Mantar in a GD.

Number of Topics: 4

There will be 2 Mentors in Amer Fort.

- GMs(2)-Amer Fort handles Topic 4 & 5
- GM- Hawa Mahal handles Topic 6
- GM-Jantar Mantar handles Topic 7

Presentations of GD-2 in Day 3 by GMs (Time 90 Mins (22 mins for each topic)

- Mentors (Two) of Amer Fort will present Topic 4 & 5, after taking inputs from Mentors of Groups Jantar Mantar and Hawa Mahal.
- Mentor of Hawa Mahal will present Topic 6, after taking inputs from Mentors of Groups Jantar Mantar and Amer Fort.
- Mentor of Jantar Mantar will present Topic 7, after taking inputs from Mentors of Groups Amer Fort and Hawa Mahal.

List of Group Leaders and Group Mentors

Group Name	Group Leader	Group Mentor
Group Discussion – 1		
JANTAR MANTAR	CA. Gopal Sonika	CA. Manish Raj Dhandharia
AMER FORT	CA. Amit Agarwal	CA. Abhisek Tibrewal
HAWA MAHAL	CA. Siddhant Jajodia	CA. Suruchi Agrawal
Group Discussion – 2		
AMER FORT	CA. Shreya Hamirwasia	CA. Pinky Khemka
		CA. Anil Kumar Mittal
HAWA MAHAL	CA. Chiranjib Das	CA. Raman Khatuwala
JANTAR MANTAR	CA. Abhishek Ojha	CA. Satyananda Routray

List of GD Topics

Topic	Group Mentor	Group Discussion Topics
1	CA. Manish Raj Dhandharia	When delay costs more than expected: Navigating GST issues in Liquidated Damages, Works Contract Charges and Running Bill Adjustments.
2	CA. Abhisek Tibrewal	Evolving Jurisprudence relating to Residential Dwelling Rental Services & Multilevel GTA Supply Chains.
3	CA. Suruchi Agrawal	Holistic Analysis of GST on Promotional Schemes, Discounts, ITC and Section 194R (Income-tax)
4	CA. Pinky Khemka	GST in Digital Era: E-Commerce Transactions and Income of Influencer & Digital Content Creation.
5	CA. Anil Kumar Mittal	Aspects of ITC on Loss, Destruction, Warranty and Expiry of Goods.
6	CA. Raman Khatuwala	Critical GST Valuation Aspects: Rule 28, Stock Transfers, Barter and Corporate Guarantees.
7	CA. Satyananda Routray	Applicability of GST on Statutory Levies, Government Services & Royalty.

Group Members

SI No	Name	Location	GD Day 1 Group Name	GD Day 2 Group Name
1	CA. Abhisek Tibrewal	Kolkata	AMER FORT (GM)	JANTAR MANTAR
2	CA. Abhishek Ojha	Bhubaneswar	HAWA MAHAL	JANTAR MANTAR (GL)
3	CA. Aditya Kr Maheswari	Siliguri	AMER FORT	HAWA MAHAL
4	Mr. Ajit Kumar Sahoo	Cuttak	AMER FORT	JANTAR MANTAR
5	CA. Akash Kumar Sinha	Jharkhand	JANTAR MANTAR	AMER FORT
6	CA. Alok Kumar Jha	Kolkata	AMER FORT	JANTAR MANTAR
7	CA. Amit Agarwal	Siliguri	AMER FORT (GL)	HAWA MAHAL
8	CA. Amit Kumar Agarwal	Jamshedpur	AMER FORT	HAWA MAHAL
9	CA. Anil Kumar Mittal	Siliguri	JANTAR MANTAR	AMER FORT (GM)
10	Mr. Ankeet Tulsian	Kolkata	HAWA MAHAL	AMER FORT
11	CA. Ankita Jainik Soni	Hyderabad	AMER FORT	JANTAR MANTAR
12	CA. Arup Dasgupta	Kolkata	JANTAR MANTAR	AMER FORT
13	CA. Avijeet Ghoshal	Siliguri	HAWA MAHAL	JANTAR MANTAR
14	CA. Awez Halari	Cuttak	JANTAR MANTAR	HAWA MAHAL
15	CA. Ayush Agarwal	Haryana	HAWA MAHAL	AMER FORT
16	Mr. Bhavesh Goyal	Jaipur	HAWA MAHAL	AMER FORT
17	CA. Chiranjib Das	Kolkata	AMER FORT	HAWA MAHAL (GL)
18	CA. Deepak Jain	Howrah	JANTAR MANTAR	AMER FORT
19	CA. Gagan Kedia	Kolkata	JANTAR MANTAR	AMER FORT
20	CA. Gopal Sonika	Kolkata	JANTAR MANTAR (GL)	HAWA MAHAL
21	CA. Hari Ram Agarwal	Kolkata	HAWA MAHAL	AMER FORT
22	CA. Jay Agarwal	Kolkata	AMER FORT	JANTAR MANTAR
23	CA. Kalpataru Behera	Odisha	JANTAR MANTAR	HAWA MAHAL
24	CA. Krishanu Bhattacharyya	Kolkata	JANTAR MANTAR	HAWA MAHAL
25	CA. Lalit Talesara	Rajasthan	AMER FORT	HAWA MAHAL
26	CA. Mahender Kumar Gera	New Delhi	HAWA MAHAL	JANTAR MANTAR
27	CA. Manish Poddar	Shahibganj	JANTAR MANTAR	HAWA MAHAL
28	CA. Manish Raj Dhandharia	Kolkata	JANTAR MANTAR (GM)	HAWA MAHAL
29	CA. Mohan Lal Gupta	Kolkata	AMER FORT	HAWA MAHAL
30	CA. Neha Prasad	Jalpaiguri	HAWA MAHAL	JANTAR MANTAR
31	CA. Niraj Kumar Agarwal	Asansol	AMER FORT	JANTAR MANTAR
32	CA. Pinky Khemka	Howrah	JANTAR MANTAR	AMER FORT (GM)
33	CA. Pramesh Agarwal	Dibrugarh	HAWA MAHAL	JANTAR MANTAR
34	CA. Rahul Agarwal	Siliguri	JANTAR MANTAR	AMER FORT
35	CA. Rahul Sharma	Kolkata	HAWA MAHAL	AMER FORT
36	CA. Rajendra Kumar Bahety	Kolkata	JANTAR MANTAR	AMER FORT
37	CA. Rajesh Khurana	New Delhi	HAWA MAHAL	AMER FORT
38	CA. Raman Khatuwala	New Delhi	AMER FORT	HAWA MAHAL (GM)
39	CA. Sakshi Jhajaria	Kolkata	AMER FORT	HAWA MAHAL

40	CA. Sandeep Kumar Agarwal	Rourkela	AMER FORT	JANTAR MANTAR
41	CA. Santosh Kumar Agrawal	Kolkata	JANTAR MANTAR	HAWA MAHAL
42	CA. Satyananda Routray	Cuttak	HAWA MAHAL	JANTAR MANTAR (GM)
43	CA. Shiv Kumar Bansal	Siliguri	HAWA MAHAL	JANTAR MANTAR
44	CA. Shreya Hamirwasia	Kolkata	JANTAR MANTAR	AMER FORT (GL)
45	CA. Shubham Khaitan	Kolkata	HAWA MAHAL	JANTAR MANTAR
46	CA. Shubham Pareek	Bihar	AMER FORT	HAWA MAHAL
47	CA. Siddhant Jajodia	Kolkata	HAWA MAHAL (GL)	JANTAR MANTAR
48	CA. Srabana Bhattacharyya	Kolkata	JANTAR MANTAR	AMER FORT
49	CA. Sunil Kumar Verma	Kolkata	AMER FORT	HAWA MAHAL
50	CA. Surendra Kumar Goenka	Howrah	HAWA MAHAL	JANTAR MANTAR
51	CA. Suruchi Agrawal	Kolkata	HAWA MAHAL (GM)	AMER FORT
52	CA. Vikas Sharma	Rajasthan	AMER FORT	JANTAR MANTAR
53	CA. Vikash Kumar Banka	Kolkata	AMER FORT	HAWA MAHAL
54	CA. Vishal Jain	Siliguri	HAWA MAHAL	JANTAR MANTAR
55	CA. Vivek Goyal	Siliguri	JANTAR MANTAR	AMER FORT

Mock Tribunal Session

Mock Topics	Authorised Representative	Departmental Representative
Nuances of Transfer of Property vis-à-vis Works Contract	CA. Vikash Kumar Banka	CA. Hari Ram Agarwal
Plant or Property: The Great ITC Battle	CA. Arup Dasgupta	CA. Jay Agarwal
Room Tariff or Total Charge: Decoding Threshold Limit of Hotel Industry	CA. Shubham Khaitan	CA. Vishal Jain
Reimbursement or Revenue? The Travel Agent GST Dilemma	CA. Gagan Kedia	CA. Aditya Kr. Maheswari

Case Study 1: Evolving Jurisprudence relating to Residential Dwelling Rental Services & Multilevel GTA Supply Chains

Facts of the Case

M/s **Global Logistics** (“the taxpayer”) is engaged in the business of transportation of goods and cargo handling services. The taxpayer owns a fleet of 100 trucks and is registered as a Goods Transport Agency (GTA) under GST. The taxpayer has opted to discharge GST liability under **forward charge mechanism** w.e.f. 01.04.2020 by filing the prescribed declaration in Annexure V.

Apart from transportation business, the taxpayer also owns a residential building which has been used for accommodation of its drivers and staff.

Due to an unexpected economic slowdown, a majority of the taxpayer’s ongoing contracts/work orders were terminated w.e.f. 01.04.2021. Consequently:

- Most of the trucks remained idle
- The taxpayer had to lay off drivers and staff
- The residential building also became vacant

In order to generate alternative sources of income, the taxpayer is contemplating restructuring its business model through the following arrangements.

Situation 1: Renting of Residential Building for Hostel Use

The taxpayer proposes to rent out its residential building to an individual, Mr. X, at a monthly rent of ₹5,00,000.

Mr. X intends to use the said premises for providing hostel accommodation services to students and working professionals.

Queries

1. Whether the service of renting of building by the taxpayer to Mr. X would be **exempt under Entry 13 of Notification No. 12/2017-CT (Rate)** as “renting of residential dwelling for use as residence”?
2. Whether the exemption can be denied on the ground that:
 - The immediate recipient (Mr. X) is using the property for commercial activity (hostel business), and
 - The condition of “use as residence” is not satisfied at the first level of supply?
3. Alternatively, if the exemption is denied:
 - Whether GST would be payable on such renting?

- o What would be the applicable rate of GST?

Situation 2: Hiring of Trucks to Another Transporter

Out of the total fleet, 70 trucks are proposed to be given on hire to M/s A2Z Logistics, who is also a registered Goods Transport Agency (GTA).

M/s A2Z Logistics shall use these trucks for its transportation business and pay monthly hire charges of ₹20,000 per truck.

Queries

1. Whether this service can be treated as service of 'Transportation of Goods by Road, other than GTA' and fall under the exemption?
2. Whether GST would be payable on such Truck Hiring Service?
3. What would be the applicable rate of GST?
4. Would your answer differ if M/s A2Z Logistics is a Transporter other than GTA?

Situation 3: Hiring of Trucks to an Intermediary (Sub-leasing Model)

The remaining 30 trucks are proposed to be given on hire to M/s ABC Suppliers.

M/s ABC Suppliers shall further sub-let these trucks to various GTA's.

Queries

1. Whether GST applicability would differ where trucks are given on hire to an intermediary (ABC Suppliers) who further sub-leases them?
2. Whether the principle similar to "**ultimate use**" can be applied to:
 - o Treat the transaction as linked to transportation activity, and Claim any exemption?
3. What would be the **correct classification and GST rate** applicable in such arrangement?

Case Study 2: When delay costs more than expected: Navigating GST issues in Liquidated Damages, Works Contract Charges and Running Bill Adjustments

GST Implications on Liquidated Damages, Forfeiture, Penal Charges & Write-offs (Act of Tolerance in Contracts)

CASE STUDY: ABC Infrastructure Ltd. (ABC) enters into multiple contracts with vendors, contractors, and customers for execution of infrastructure projects. The contracts contain various clauses relating to delay penalties, forfeiture of deposits, penal recoveries, and accounting write-offs. ABC seeks to evaluate the GST implications on such recoveries in light of “act of tolerance” under GST law.

Variation 1: Liquidated Damages for Delay in Contract Execution

ABC entered into a contract with XYZ Contractors for construction of a commercial complex. As per the agreement, delay in completion beyond the stipulated time would attract liquidated damages @ ₹10,00,000 per week, recoverable from the contractor. Due to delays, ABC recovered ₹50,00,000 as liquidated damages.

Issues:

- Whether liquidated damages qualify as consideration for “tolerating an act” under GST?
- Whether such recovery constitutes a “supply” under Section 7?
- Whether GST is payable on such damages?
- Whether the characterization changes if the contract explicitly does not allow levy liquidated damages?
- What is the impact of CBIC Circular No. 178/10/2022-GST?

[Discussion on nature of liquidated damages as compensation vs consideration, Schedule II Entry 5(e), intention of parties, judicial precedents, and CBIC circular clarifications]

Variation 2: Forfeiture of Security Deposit / Earnest Money

ABC invited tenders for a project and received an earnest money deposit (EMD) of ₹20,00,000 from bidders. One successful bidder failed to execute the agreement, and ABC forfeited the EMD.

Issues:

- Whether forfeiture constitutes consideration for tolerating non-performance?
- Whether such forfeiture is taxable under GST?
- Whether nature of deposit affects taxability?
- Whether GST implications differ if deposit is adjusted against any supply?
- What documentation is required?

[Discussion on deposits vs consideration, forfeiture as consequence of breach, linkage with supply, and valuation provisions under Section 15]

Variation 3: Penal Charges / Late Payment Charges

ABC raises invoices on its customers with a clause that delay in payment beyond 30 days will attract penal charges @ 2% per month. During the year, ABC collected ₹15,00,000 as penal charges.

Issues:

- Whether penal charges are interest or separate consideration?
- Whether the same will form part of value of supply under Section 15?
- Whether exemption for interest applies?
- Whether this amounts to tolerating delayed payment?
- GST applicability on full or partial amount?

[Discussion on Section 15(2)(d), distinction between interest and penalty, classification, and valuation rules]

Variation 4: Write-off of Irrecoverable Receivables (Bad Debts)

ABC supplied services worth ₹1,00,00,000 plus GST. Due to financial distress of the client, ₹30,00,000 remained unpaid and was written off as bad debts.

Issues:

- Whether write-off constitutes a supply?
-
- Whether GST liability needs adjustment?
- ITC reversal implications?
- Impact under Section 34 and Section 16?

[Discussion on no-supply principle in write-offs, accounting vs taxable events, and ITC/payment linkage]

Variation 5: Contractual Clause Allowing Breach Upon Payment (True Tolerance Cases)

ABC enters into a contract with a logistics company where delay in delivery is permissible subject to payment of ₹5,00,000 per delay instance.

Issues:

- Whether this is an act of tolerance under GST?
- Whether payment qualifies as consideration for supply?
- How to distinguish from liquidated damages?
- Whether GST is payable?

[Discussion on pre-agreed obligation to tolerate, intention vs consequence, and differentiation between breach and permitted act]

Case Study – 3: Holistic Analysis of GST on Promotional Schemes, Discounts, ITC and Section 194R (Income-tax)

GST Implications on Promotional Schemes, Discounts & Section 194R

Healthy & Clean Ltd. (HCL) sells household care goods to its distributors and runs various schemes from time to time.

Variation 1: Incentive of 3 nights Foreign Trip to Vietnam for all dealers on achieving purchase target of 1,00,00,000 pieces of premium soaps during a year from their respective distributors. Cost of Foreign Trip is reported under Section 194R by HCL and the respective distributors as advised by their CA.

1. Will it be taxable under GST in the hands of the dealer? Whether mere reporting in Form 26AS can invite liability of GST or are there any pre-requisites for determining taxability of amount reported under Section 194R?
2. Will HCL get ITC of the foreign trip booked through the travel agent?
3. Whether the incentive provided be considered as a Schedule I supply in the hands of HCL?
4. How would the distributor recognize the incentive received and passed on to the dealers from GST perspective?

Variation 2: HCL announced special incentive of 3% to distributors against all products sold by the distributors during a special 2 day roadshows to be organized by such distributors.

5. Does incentive mean commission or supply of marketing services?
6. Should HCL issue financial credit notes for giving this incentive? If yes, whether the ITC needs to be proportionately reversed by the distributors for lower payment of consideration to the extent of 3%?
7. Does the implication change if the incentive is renamed a trade discount?
8. Does the implication change if the special incentive is fixated at Rs. 2,00,000?

Variation 3: HCL promised to sell cleaner at Rs. 100 per bottle to Kamla Dealer through its distributor, Rakesh Distributor. For this, HCL reimburses Rs. 20 per bottle to Rakesh Distributor for the loss in margins suffered by such distributors.

9. Whether the amount reimbursed by HCL to Rakesh Distributor would be treated as additional consideration in the hands of Rakesh Distributor?
10. What if there was no such agreement between HCL and Kamla dealer and that Rs. 20 per bottle was provided as a general practice by HCL to all distributors as reduction in prices to boost demand?

Variation 4: During a 7 day advertisement campaign, HCL asks its distributors to distribute free samples of 10000 bars of kitchen soaps each worth Rs. 20 each to the target customers. Out of the cost of Rs. 200,000 in the hands of the distributors, Rs. 80,000 is reimbursed by HCL as part of its cost sharing initiative.

11. Whether the cost shared by HCL would be recognized as supply in the hands of the distributors to HCL?
12. Whether the distributors would be able to claim ITC on the kitchen soaps distributed as free samples?

Case Study 4: GST in Digital Era: E-Commerce Transactions and Income of Influencer & Digital Content Creation

Case Study 4 (A) : GST on Influencer Marketing, Barter Deals, Export of Services & ITC

Case Study: DigitalBuzz Media (DBM)

DigitalBuzz Media (DBM) is a sole proprietorship based in **Kolkata**, engaged in content creation on **Instagram, YouTube, and short-video platforms**. DBM collaborates with various brands for **promotional posts, product reviews, sponsored reels, and endorsement campaigns**.

DBM receives consideration in different forms, such as:

- **Cash payments** from brands
- **Free products** in exchange for promotional content
- **Foreign remittances** from overseas clients
- **Affiliate commissions** linked to sales through referral links

DBM also incurs expenditure on:

- camera equipment, laptop, mobile phone
- internet and editing software
- travel and hotel stays for campaigns
- studio setup and related business expenses

DBM seeks to examine the **GST implications** of its business model.

Variation 1: Domestic Paid Promotion

DBM entered into a contract with **GlowNest Cosmetics Pvt. Ltd., Mumbai** for promotion of a skincare range through reels, stories, and review posts. DBM received **₹12,00,000** for the campaign.

Issues for Discussion

- Whether influencer activities constitute a “**supply**” under GST?
- Whether the service is classifiable as **advertising / promotional service**?
- What would be the **place of supply**?
- Whether GST is payable, and if yes, at what rate?

Variation 2: Free Products in Exchange for Promotion

DBM received:

- **2 smartphones**
- **1 smartwatch**

from **NovaMobiles India Ltd.** in exchange for an unboxing video, review reel, and promotional content. No monetary consideration was paid.

Issues for Discussion

- Whether receipt of goods in exchange for promotion amounts to **consideration**?

- What is the nature of supply?
- How should the value of such supply be determined?
- Whether GST applies even when no money is received?
- Whether the answer changes if the products are merely sent as **PR samples** without any obligation to post content and are returnable within 15 days?

Variation 3: Foreign Brand Promotion

DBM promoted products of **StyleNova LLC, Dubai** and received **USD 15,000** in foreign currency. However, the campaign was coordinated by an Indian marketing agency.

Issues for Discussion

- Whether the transaction qualifies as **export of services**?
- Who is the actual **recipient of service** — the foreign brand or the Indian agency?
- Whether the influencer is providing **advertising service** or acting as an **intermediary**?
- Whether the supply can be treated as **zero-rated** under GST?

Variation 4: Affiliate Income

DBM shares affiliate links of products through social media and earns commission when followers purchase through those links. During the year, DBM earned **₹18,50,000** as affiliate income.

Issues for Discussion

- Whether affiliate income is taxable under GST?
- Whether such income is for **promotion / marketing services** or intermediary services?
- Who is the recipient of the service?
- Whether gross or net amount should be considered for GST purposes? [This needs clarity]

Variation 5: Registration & ITC

DBM has not taken GST registration, claiming that annual receipts are below threshold. However, DBM has rendered services to brands located in multiple States and also received goods in barter. After registration, DBM also availed ITC on:

- camera and laptop
- mobile and internet
- editing software
- travel and hotel
- grooming and styling expenses

Issues for Discussion

- Whether GST registration is mandatory for DBM?
- Whether barter value is includible in **aggregate turnover**?
- Whether inter-State supply of services affects registration requirement?
- Which of the above expenses are eligible for **ITC**?

Case Study 4 (B): GST on YouTube Content Creators – AdSense, Sponsorships, Barter & Digital Income

Case Study: StreamSphere Creations (SSC)

StreamSphere Creations (SSC) is an independent YouTube content creator based in **India**, engaged in producing and uploading videos on technology reviews, lifestyle content, and educational tutorials.

SSC earns income from multiple sources:

- **AdSense revenue** from advertisements displayed on videos
- **Brand sponsorships** (domestic and international)
- **Affiliate commissions** through product links
- **Free products/services** received for promotional content
- **Sale of merchandise and digital products** (e.g., courses, presets, e-books)

SSC seeks to evaluate the **GST implications** of its various income streams.

Variation 1: AdSense Revenue from Foreign Platform

SSC earns revenue through YouTube AdSense, where advertisements are displayed on its videos. Payments are received from a foreign entity (e.g., platform operator) in **convertible foreign exchange**.

Issues for Discussion

- Whether AdSense income qualifies as a “**supply of service**”?
- Whether such income can be treated as **export of services**?
- Who is the **recipient of service** in this case?
- Whether the place of supply is outside India?

[It would be a replication of point 2]

Variation 2: Domestic & Cross-Border Sponsorship Income

SSC enters into agreements with brands for sponsored videos and product promotions:

- Indian brands pay in INR
- Foreign brands pay in foreign currency

Issues for Discussion

- Whether sponsorship income is taxable under GST? Who should discharge the tax?
- Whether services are classifiable as **advertising / promotional services (SAC 9983)**?
- Whether foreign sponsorship qualifies as **export of services**?
- Whether GST implications change based on **location of recipient and payment terms**?

Variation 3: Barter Transactions (Free Products) [Maybe we can ship this as it is already dealt in case study 1]

SSC receives:

- gadgets, accessories, and software subscriptions

from brands in exchange for product reviews and promotional videos. No monetary consideration is involved.

Issues for Discussion

- Whether barter transactions qualify as **taxable supply** under GST?
- Whether non-monetary consideration is covered within GST framework?
- How should such transactions be **valued**?
- Whether GST is payable even without receipt of money?

Variation 4: Affiliate Marketing Income [Maybe we can ship this as it is already dealt in case study 1]

SSC earns commission by sharing product links in video descriptions. Income is credited periodically by affiliate platforms after deducting certain charges.

Issues for Discussion

- Whether affiliate income is a **taxable supply of service**?
- Whether SSC is providing **marketing services** or acting as an **intermediary**?
- Who is the recipient of such services?
- Whether GST should be applied on **gross commission or net payout**?

Variation 5: Sale of Merchandise & Digital Products

SSC occasionally sells:

- branded merchandise (t-shirts, accessories)
- digital products (online courses, templates, presets)

through its own website and third-party platforms.

Issues for Discussion

- Whether sale of merchandise constitutes **supply of goods**?
- Whether sale of digital products qualifies as **supply of services**?
- Whether classification impacts GST rate and compliance?
- Whether platform involvement impacts GST liability?

Variation 6: Registration & Compliance [This is also dealt in case study 1]

SSC has not obtained GST registration, claiming that taxable receipts are below threshold. However:

- income is received from multiple sources
- services are provided across States and outside India
- barter transactions are also undertaken

Issues for Discussion

- Whether SSC is required to obtain **GST registration**?
- Whether export income and barter transactions are includible in **aggregate turnover**?

Case Study 4 (C) : GST on E-Commerce Transactions – TCS vs Supplies Made “Through” an Operator

Case Study: ShopBridge Online Platform

ShopBridge Online Platform Pvt. Ltd. (ShopBridge) operates a digital marketplace through which multiple sellers offer goods and services to customers across India.

The transaction model works as follows:

- customers place orders through the platform
- sellers fulfil the orders directly or through logistics support
- in some cases, **payment is collected by ShopBridge** and remitted to the seller after deductions
- in other cases, **payment is collected directly by the seller**
- ShopBridge charges **commission / platform usage fees** from the sellers

The parties seek to determine the **GST implications**, particularly in relation to **Tax Collection at Source (TCS)** under Section 52 of the CGST Act.

Variation 1: Operator Collects Payment

Customers place orders through ShopBridge and make payment online to the platform. ShopBridge deducts commission and remits the balance to the seller.

Issues for Discussion

- Whether the supply is made **“through” an e-commerce operator?**
- Whether ShopBridge is liable to collect **TCS under Section 52?**
- On what value should TCS be collected?
- Whether the seller is still liable to pay GST on the full value of supply?

Variation 2: Seller Collects Payment Directly

Customers place orders through ShopBridge, but payment is made directly to the seller through the seller’s own payment link / bank account. ShopBridge only provides listing and customer interface services.

Issues for Discussion

- Whether such supply can still be regarded as made **“through” the operator?**
- Whether ShopBridge is liable to collect TCS in such a case?
- Whether mere use of a digital platform automatically attracts Section 52?
- Whether the answer changes if ShopBridge still charges platform fees?

Variation 3: Hybrid Model

ShopBridge operates a mixed model:

- online prepaid orders are collected by the platform
- COD / offline payments are collected directly by sellers

Issues for Discussion

- Whether TCS applies to **all transactions** or only selected ones?
- Whether separate treatment is required based on the **mode of payment collection**?
- How should reconciliation be maintained for GST compliance?

Variation 4: Platform as Infrastructure Provider Only

ShopBridge provides sellers with:

- digital storefront
- listing support
- product visibility
- advertising tools

However, it does **not collect consideration**, nor does it participate in order settlement.

Issues for Discussion

- Whether such transactions amount to supplies made **“through”** the operator?
- Whether ShopBridge is only providing **infrastructure / facilitation services**?
- Whether TCS under Section 52 would still apply?
- How should one distinguish between a **marketplace model** and a **technology enablement model**?

Variation 5: Commission, Fees & Separate Taxability

Apart from facilitating sales, ShopBridge charges sellers:

- platform subscription fees
- commission on successful orders
- advertisement and visibility charges

Issues for Discussion

- Whether these charges are separate taxable supplies by ShopBridge?
- Whether GST on commission / platform fees is independent of TCS under Section 52?
- Whether the existence of commission itself makes the transaction one made **“through”** the operator?

Concluding Discussion

- Whether all e-commerce transactions are automatically covered by **TCS provisions**
- Whether the real test is **control over payment flow and settlement**
- Whether contracts and platform architecture can materially change GST consequences
- Whether businesses are often **over-complying or under-complying** due to misunderstanding of Section 52

Case Study 5: Applicability of GST on Statutory Levies, Government Services & Royalty

Alleged Non-Payment of GST under Reverse Charge on Mining Rights, Statutory Levies and Cross-State Transactions

M/s Eastern Minerals & Infrastructure Pvt. Ltd. (hereinafter referred to as “the Noticee” or “EMIPL”) is a company engaged in the business of extraction and dispatch of iron ore and minor minerals, along with ancillary infrastructure and leasing of immovable properties. The Noticee is registered under the Goods and Services Tax laws in the States of Odisha and Jharkhand, where its mining operations are carried out, and also holds registration in the State of West Bengal, where its Head Office is situated at Kolkata. It is submitted that all strategic, financial and managerial functions of the Noticee are undertaken from its Head Office in West Bengal.

It is observed that the Noticee has been granted:

- A mining lease for extraction of iron ore in the State of Odisha, and
- A mining lease for extraction of sand in the State of Jharkhand,

by the respective State Governments under the applicable mining laws.

As per the terms of the mining lease agreements and the governing statutory framework, the Noticee is required to make various payments to the respective State Governments and designated authorities, including:

- Royalty calculated on the quantity and/or value of minerals extracted
- Contributions towards District Mineral Foundation (DMF)
- Contributions towards National Mineral Exploration Trust (NMET)
- User charges / user fees for use of mining infrastructure
- Bid premium / auction premium
- Upfront payments at the time of grant of mining rights
- Net Present Value (NPV) and other compensatory levies
- Annual dead rent / license fee, as applicable

These payments arise solely on account of the grant and continued enjoyment of mining rights.

It is further observed that in respect of sand mining operations in the State of Jharkhand, the Noticee has entered into contractual arrangements with third-party contractors for excavation and transportation. As per the terms of such agreements, the liability towards royalty and allied statutory charges is discharged directly by the contractors to the Government, which is thereafter adjusted against the consideration payable to the Noticee. Accordingly, such payments are effectively borne by the Noticee and form part of the overall commercial arrangement for exploitation of mining rights.

It is also noticed that the Noticee has made payments towards water tax, environmental charges and other statutory levies to the State authorities in connection with the use of natural resources in the course of its mining operations.

Further, it is observed that the Noticee has deputed one of its directors to the State of Sikkim in connection with its business expansion activities. In this regard, the Noticee has taken a residential

dwelling on rent in Sikkim, for which rent is paid directly by the Noticee to the landlord, who is an unregistered person. The Noticee does not hold registration under GST in the State of Sikkim.

It is also observed that the Noticee owns a commercial immovable property situated in Mumbai, Maharashtra, which has been leased out to a GST registered tenant. However, the Noticee is not registered under GST in the State of Maharashtra.

Additionally, the Noticee has incurred expenditure towards late fees under the provisions of the Income Tax Act, on account of delay in statutory compliances.

Allegations by the Department

On the basis of scrutiny of returns, agreements and financial records, it appears that the Noticee has failed to discharge appropriate GST liability, as detailed herein below:

Allegation 1: Taxability of Mining Rights as Licensing Services (Liability under Reverse Charge Mechanism)

It appears that the grant of mining lease by the State Governments confers upon the Noticee the right to use natural resources, which constitutes a supply of service in the nature of licensing services for the right to use minerals including exploration and evaluation.

It appears that the aforesaid services are supplied by the Government to a business entity, and accordingly, the liability to discharge GST is cast upon the recipient, i.e., the Noticee, under the Reverse Charge Mechanism (RCM) @ 18%

It appears that the various payments made by the Noticee, including:

- Royalty
- DMF
- NMET
- User charges
- Bid premium
- Upfront payments
- NPV and similar levies

are intrinsically linked to the grant and continuation of mining rights, and therefore constitute consideration for the licensing services received from the Government.

Accordingly, all such payments are liable to be included in the taxable value for the purpose of levy of GST under RCM.

Allegation 2: Liability in Respect of Contractor-Paid Royalty (Sand Mining)

It appears that in respect of sand mining operations, the royalty and related charges discharged by the contractors are not independent obligations of such contractors, but are in fact incurred on behalf of the Noticee and subsequently adjusted from amounts payable to it.

Thus, the Noticee remains the actual recipient of the licensing services, and the mode of payment does not alter the incidence of tax. Accordingly, GST under RCM is payable by the Noticee on such amounts as well.

Allegation 3: Taxability of Water Tax and Other Statutory Charges

It appears that payments such as water tax, environmental charges and similar levies are collected in relation to the use of natural resources and facilities provided by the Government, and hence are not in the nature of taxes excluded from GST, but constitute consideration for supply of services.

Accordingly, GST is payable under RCM on such amounts.

Allegation 4: Renting of Residential Dwelling in Sikkim

It appears that the Noticee, being a registered person, has taken a residential dwelling on rent for business purposes, and hence is liable to discharge GST under RCM on such rent.

Further, since the place of supply is in the State of Sikkim, the Noticee appears liable to obtain registration in that State.

Allegation 5: Input Tax Credit Distribution

It appears that any tax paid in a State other than the principal place of business cannot be directly utilized, and therefore, the Noticee is required to follow the mechanism of Input Service Distributor (ISD) for distribution of credit, which has not been complied with.

Allegation 6: Taxability of Income Tax Late Fee

It appears that late fees paid under the Income Tax Act are in the nature of consideration for tolerating an act or situation, and hence fall within the scope of supply under GST.

Accordingly, GST is payable under RCM on such amounts.

Allegation 7: Non-registration in Maharashtra

It appears that the Noticee is engaged in the supply of renting services of immovable property located in Maharashtra.

Since the place of supply is Maharashtra and the property is situated therein, the Noticee appears liable to obtain registration in Maharashtra, which has not been done.

Further, tax needs to be paid on such supply of renting of immovable property.

Case Study 6: Critical GST Valuation Aspects: Rule 28, Stock Transfers, Barter and Corporate Guarantees

Valuation, ITC, and Related-Party Transactions under Section 15 and Rules 27–31 of CGST

Facts of the case study

XYZ Pvt Ltd is engaged in the manufacture of notebooks, printing paper and packaging material, operating through a depot-based distribution model which is common in the paper industry, where goods are often routed through depots not only for sale but also for market penetration activities such as school campaigns and promotional drives.

In addition to its taxable business, XYZ Pvt Ltd is also engaged in supplying handmade paper sheets and educational charts to government schools and NGOs, which are treated as exempt supplies, though the company has not maintained any separate records for input tax credit (ITC), proceeding on the belief that once inputs are used in the business, subsequent classification of output should not affect credit eligibility.

Goods are transferred from the factory in West Bengal to the depot in Assam at a value determined as cost plus 10%, despite internal reports indicating that the prevailing market price is significantly higher, and more importantly, a long-standing internal policy—though not disclosed in statutory records—states that a fixed portion of goods sent to the depot is consistently utilized for non-revenue purposes, including distribution during educational drives and institutional supply commitments where no GST is charged.

While no formal quantification is made at the time of stock transfer, internal planning documents prepared by the marketing team reflect that approximately one-fifth of total dispatches are routinely earmarked for promotional circulation, and another identifiable portion is directed towards exempt segment supplies, though such bifurcation is not captured in GST returns or valuation workings, and full ITC continues to be availed at the manufacturing stage without any subsequent adjustment.

Further, XYZ has structured its dealer network in a manner where dealers are expected to provide branding, display and promotional support within their territories, and although invoices for goods and such services are raised separately, internal communications and dealer agreements suggest that additional quantities or price concessions are extended only upon confirmation of such promotional commitments, with one such agreement specifically recording that “additional supply support shall be aligned with visibility and promotional obligations undertaken by the dealer.”

XYZ Pvt Ltd also supplies goods to its related entity, ABC Pvt Ltd (it’s subsidiary) at values lower than those charged to independent buyers, applying the benefit of the second proviso to Rule 28 on the assumption that the recipient would be eligible for full ITC; however, it is noted from financial and operational data that the ABC Pvt Ltd is engaged exclusively in supplying educational materials to institutions without charging GST and has also procured assets such as motor vehicles, resulting in ineligibility of ITC under certain provisions, though no review of this aspect has been carried out by ABC Pvt Ltd while determining valuation.

In addition to its supply activities, XYZ Ltd has extended corporate guarantees to support financing arrangements, including a guarantee issued in favour of a bank for loans availed by ABC Pvt Ltd (subsidiary) as well as a separate guarantee provided to an independent distributor operating in a rural market, in both cases without charging any commission or consideration; while the management considers the former as a shareholder function and the latter as a business promotion strategy, it is relevant to note that the unrelated distributor is not contractually bound to provide any additional business or benefit to XYZ Pvt Ltd, and no clause exists requiring increased purchases or exclusivity at the time of extending the guarantee.

However, subsequent internal arrangements and revised dealer understandings indicate that the distributor is expected to align with certain commercial objectives, including maintaining minimum purchase levels, ensuring brand exclusivity within the territory, and undertaking promotional and visibility-related activities, though no separate consideration has been identified or charged in respect of the guarantee.

Queries/allegations

Question:-1:

XYZ Pvt Ltd transfers goods from West Bengal factory to Assam depot at cost + 10%. Internal planning documents indicate 20% of stock is routinely used for free school campaigns and exempt institutional supplies. **What if** the department argues that valuation should reflect only taxable use and Rule 27 residual valuation should apply?

Question:-2:

XYZ Pvt Ltd supplies goods to ABC Pvt Ltd (subsidiary) at below-market price assuming full ITC eligibility. **What if** ABC Pvt Ltd is engaged exclusively in exempt supplies and has blocked credits for capital assets?

Question:-3:

XYZ Pvt Ltd provides extra goods or price concessions to dealers conditional on promotional commitments. **What if** invoices do not mention services, but internal communications demonstrate commercial reciprocity?

Question-4:

XYZ Pvt Ltd avails full ITC on inputs but does not maintain separate records. **What if** 1/5th of inputs is routinely used for free distribution or exempt institutional supplies embedded in the business model?

Question-5: Examine the tax obligations of corporate guarantee provided by it.

Case Study 7: Aspects of ITC on Loss, Destruction, Warranty and Expiry of Goods

1. M/s **XYZ LLP**, a registered person under GST, is engaged in the manufacturing and trading of pharmaceutical products, FMCG goods, and consumer electronics across multiple states in India. The entity maintains centralized procurement and multiple warehouses, including one in a flood-prone region. During FY 2024–25, the company availed substantial input tax credit (ITC) on inputs, input services, and capital goods used in the course or furtherance of business in terms of Section 16 of CGST Act.
2. During the year, the company faced various operational challenges leading to different categories of loss and disposal of goods. In its manufacturing process, a **normal process loss of 3%** occurred due to evaporation, handling, and chemical reactions, which is consistent with industry standards and is factored into product costing. However, an additional **2% loss occurred due to improper storage and negligence** at the warehouse level. The total ITC attributable to such inputs was ₹35 lakh, and the company did not reverse any portion of such credit, considering the entire loss as incidental to business operations.
3. Further, one of the warehouses located in Assam suffered **severe flood damage**, resulting in the destruction of finished goods valued at ₹2 crore. ITC of ₹36 lakh had been availed on such goods. The company lodged an insurance claim and received ₹1.5 crore as compensation, which covered only the value of goods and explicitly excluded the GST component. The company retained the ITC on the ground that the loss was beyond its control and GST was not reimbursed.
4. In the pharmaceutical division, due to strict regulatory requirements, expired medicines worth ₹1 crore (ITC ₹18 lakh) were **mandatorily destroyed** under supervision. The company argued that such destruction was not voluntary but a legal obligation to ensure public safety. In contrast, in the FMCG segment, expired goods worth ₹20 lakh (ITC ₹3.6 lakh) were **partly destroyed and partly sold at nominal value as scrap**. GST was paid on the scrap sale.
5. The electronics division of XYZ LLP offers a **standard one-year replacement warranty** on its products. During the year, defective goods were replaced free of cost, amounting to ₹80 lakh (ITC ₹14.4 lakh), without any separate consideration. The company treated such replacements as part of the original supply and did not reverse ITC.
6. Additionally, the company undertook aggressive marketing strategies to increase market share. It launched a **“Buy 10 Get 1 Free” scheme**, where additional units were supplied without separate pricing. It also distributed **gift hampers to dealers** upon achieving sales targets, amounting to ₹25 lakh (ITC ₹4.5 lakh). The company treated these as business promotion expenses and claimed full ITC.

During a GST audit, the department raised objections on multiple counts, alleging wrongful availment of ITC and proposing reversals under Section 17(5) of CGST Act, thereby leading to a potential dispute.

Questions

Q1. In the given case, the company has incurred both normal process loss and abnormal loss due to negligence during storage of inputs. You are required to examine whether ITC attributable to such losses is required to be reversed under GST law, considering the distinction between inherent process loss and loss due to avoidable reasons.

Q2. The company suffered destruction of finished goods due to floods and received partial insurance compensation excluding GST. Analyze whether ITC availed on such goods is required to be reversed and whether the receipt of insurance claim has any impact on ITC eligibility.

Q3. Expired goods in the pharmaceutical division were mandatorily destroyed, whereas in the FMCG division such goods were partly destroyed and partly sold as scrap. Discuss the GST implications on ITC in both scenarios, particularly whether mandatory destruction should be treated differently from voluntary destruction.

Q4. The company has provided free replacement of goods under warranty without charging any separate consideration. Examine whether such replacements qualify as supply under GST and whether ITC on such goods is admissible.

Q5. The company has implemented promotional schemes such as “Buy 10 Get 1 Free” and distributed gift hampers to dealers for achieving sales targets. Analyze whether these transactions should be treated as gifts and whether ITC is admissible in both cases.

Q6. In the context of GST law, examine whether an artificial juridical person like a company can be said to provide “gifts,” and how this impacts the allowability of ITC on promotional items distributed without consideration



**MOCK
CASES**

Mock Case No. 1: Nuances of ‘Transfer of Property’ viz-a-vis ‘Works Contract’

Rehman Ltd. vs Commissioner CGST & Ors.

Facts of the case.

1. **Rehman Ltd.** is engaged in the business of **infrastructure development across India** and undertaking projects such as commercial buildings, roads, bridges, industrial parks, and urban infrastructure.
2. The company executes projects in two ways:
 - **Direct Execution Model** – Rehman Ltd. undertakes the entire project using its own resources.
 - **Sub-Contracting Model** – Rehman Ltd. sub-contracts the entire project (or substantial portions thereof) to third-party contractors.

In one particular case,

3. Rehman Ltd. was awarded a contract for construction of a commercial building for M Iqbal University (a private university) at an agreed contract value of INR 300 crore plus applicable GST.
4. Rehman Ltd. sub-contracted the entire work to Hamza Ltd. (a sub-contractor) for a total contract value of INR 250 crores plus applicable GST. Rehman Ltd. would deploy a Supervisor Engineer to oversee the project and the quality of work executed by Hamza Ltd.
5. Hamza Ltd. executed the said work by procuring various goods & services required to execute the project. It procured the materials from 3rd party vendors and got it delivered directly at the site of M Iqbal University. It also engaged various service providers as well as hired labour force directly at the site to execute the said project. Until the work was completed, the materials brought at the site remained as property of the Hamza Ltd.
6. The main contract agreement provided for stage-wise billings & payments linked to % completion of works. This clause was replicated in the sub-contract agreement as well. In neither of the agreements, there is any provision for any advance payments.
7. Accordingly, whenever a particular stage of work was being completed, Hamza Ltd., used to raise a tax invoice on Rehman Ltd plus applicable GST @ 18% as ‘works contract service’ with SAC 995421
8. Consequently Rehman Ltd., also raised the proportionate value tax invoice on M Iqbal University with GST @ 18% as ‘works contract service’ with SAC 995421.
9. While filings its GST returns, Rehman Ltd., avails and utilizes ITC on inward supplies from Hamza Ltd., and pays the balance output GST in cash.

Adjudication Stage -

10. The department alleged the ITC availed by Rehman Ltd., alleging the same is in violation of section 17(5)(c)
11. *Rehman Ltd., submitted that 17(5)(c) specifically allows ITC when a ‘works contract’ input service is used for further supply of works contract service. Accordingly, the ‘works contract’ service bills of Hamza Ltd., is validly eligible to be availed and utilized for its output tax liability as a works contract service done for M Iqbal University.*
12. *The department (in a well-reasoned order) held that with respect to the work executed by Rehman Ltd., for M Iqbal University, Rehman Ltd., is not providing a works contract service. Accordingly, it cannot avail ITC of Works Contract service.*
13. After at length discussions during the PH and after giving sufficient opportunity to present its case, *the O-I-O held that section 2(119) of the CGST Act, defines a ‘works contract’, and as per the said definition, one of essential condition to satisfy is that “the contract should involve transfer of property in goods”. In the present case, the contract between Rehman Ltd. and M Iqbal University is NOT a works contract because there is NO ‘transfer of property’ from Rehman Ltd. to M Iqbal University.*

Accordingly, since Rehman Ltd., is not executing a works contract, it is not eligible for the ITC of invoices of Hamza Ltd.

14. The department contended that it is well settled that in a works contract, property in goods would stand passed to the buyer by theory of accretion, i.e. as and when building was actually constructed. Therefore, it is only the sub-contractor who effects ‘transfer of property’ in goods, as no goods vests with the main contractor, so as to be the subject matter of retransfer. Once the work is assigned by Rehman Ltd., to its sub-contractor, Rehman Ltd., ceases to execute the works contract in the sence contemplated by article 366(29A)(b), because property passes by accretion and there is no property in goods with Rehman Ltd., which is capable of a retransfer, whether as goods or in some other form.
15. The department relied Supreme Court judgements in case of **State of AP & Ors. Vs. Larsen & Tourbo Ltd** [2008(8) TMI 21 – SC], **Authority for clarification & Advance Ruling, Karnataka vs. Skyline Construction & Housing Pvt Ltd.** [2025 26 Centax 259 (SC)]

Appeal Stage

16. The OIA confirmed the position.

Mock Case 2: Plant or Property: The Great ITC Battle

In the matter of:

M/s. Bengal Modi Infrastructure Ltd.

vs.

Mamta, Commissioner of SGST

Topic: Admissibility of Input Tax Credit (ITC) on works contract services and procurement of goods/services for building outfitting (Electricals, Lifts, Fire-Fighting, HVAC, Pre-fab structures, Window fittings).

1. Brief Facts of the Case

- The Applicant M/s. Bengal Modi Infrastructure Pvt. Ltd., registered under the WBGST, is engaged in the business of constructing and renting out commercial properties (IT Parks) and providing allied facility management services.
- The applicant constructed a multi-story IT Park in Rajarhat. During the construction and outfitting phase, they procured goods and works contract services for the installation of:
 1. Centralized Air Conditioning (HVAC) plant and ducting.
 2. Multiple passenger and freight elevators (Lifts).
 3. Comprehensive fire-fighting systems (pumps, pipes, sprinklers, alarms).
 4. Heavy electrical installations (transformers, DG sets, HT/LT panels, cabling).
 5. Pre-fabricated structural sheds for the rooftop cafeteria and parking.
 6. Custom aluminium window fittings and structural glazing.
- The applicant availed an accumulated ITC of ₹4.5 Crores on the aforementioned procurements, classifying them as "Plant and Machinery" essential for the provision of outward supply (Renting of Immovable Property).
- Under Ind AS 16 (Property, Plant and Equipment), the applicant followed "Component Accounting." While the lifts, HVAC, and DG sets were capitalized separately with distinct useful lives in the fixed asset register, they were grouped under the broader head of "Property, Plant & equipment" in the finalized balance sheet for depreciation purposes under the Income Tax Act.

2. Adjudication - SCN

The Department conducted an audit and subsequently issued a Show Cause Notice (SCN) under Section 74 of the CGST Act, 2017, proposing to reverse the entire ₹4.5 Crore ITC along with interest and a 100% penalty.

Key Grounds of the SCN:

- **Section 17(5)(c) & (d) Blockage:** The Department alleged that the items procured are inherently in the nature of works contract services and goods used for the construction of immovable property on the applicant's own account.
- **Movability test:** The SCN argued that lifts, centralized AC, and fire-fighting equipment are permanently embedded/fastened to the earth and the building structure. They cannot be dismantled without substantial damage. Therefore, they lose their individual identity as goods and become an integral part of the immovable property. Further, the pre-fabricated structural sheds for rooftops and parking had been specially designed for installation at relevant location and the intent / factum was to permanently fix them.
- **Exclusion from Plant and Machinery:** The Department relied on the Explanation to Chapter V (Section 17), which defines "plant and machinery" but explicitly excludes "*land, building or any other civil structures.*" The SCN contended that window fittings, fire safety pipes, and electrical cablings are civil structures/building appurtenances.
- **Accounting Admission:** The SCN highlighted that since the applicant capitalized these assets under the Property block in their books of accounts, they have admitted that the items are part of the building. Consequently, ITC is blocked.

3. Applicant's Reply to the SCN

The applicant vehemently contested the SCN on both factual and legal grounds:

- **The "Functionality Test" (Plant & Machinery):** The applicant argued that elevators, HVAC, and fire systems are not "buildings" but specialized machinery. Without these, the IT Park cannot function as a modern commercial workspace. They squarely fall under the definition of "Plant and Machinery" (apparatus, equipment, and machinery fixed to earth) and are thus explicitly carved out of the ITC blockage in Section 17(5)(d).
- **Movable vs. Immovable (The Pre-fab Structures):** Relying on the landmark Supreme Court judgment *in Solid & Correct Engg. Works*, the applicant argued that the pre-fabricated structures are merely fastened to the roof with nuts and bolts for stability, not for permanent beneficial enjoyment of the land. They can be dismantled and moved; hence, they remain movable property outside the ambit of 17(5)(d).
- **Accounting Standards vs. GST Law:** The applicant stated that the classification of an asset under the Income Tax Act or Ind AS does not dictate its treatment under GST law. Component accounting recognizes the distinct identity of these machines. Merely grouping them under "Building" for financial reporting does not alter their intrinsic nature as "Machinery."
- **Constitutional Argument:** The intent of GST is to prevent the cascading of taxes. Denying ITC on capital goods essential for the outward taxable supply of "renting" defeats the core objective of the legislation.

4. Order-in-Original

The Adjudicating Authority (Joint Commissioner) rejected the applicant's defense confirming the demand of ₹4.5 Crores, and imposed penalty, based on the following:

- **Integral Part of the Building:** The AA held that an IT Park is incomplete without lifts, HVACs and fire safety. Therefore, these items are not separate machines but "structural components" of the building itself. Once installed, they coalesce into the immovable property.

- **Strict Interpretation of Exceptions:** The AA noted that the exception for "Plant and Machinery" must be construed strictly. It applies to manufacturing machinery (e.g., a boiler in a factory), not to utility equipment used for the habitable enjoyment of a commercial building.
- **Capitalization Estoppel:** The AA ruled that the taxpayer cannot approbate and reprobate. Having capitalized the items as part of the building, they cannot re-characterize them as movable machinery solely to avail ITC under GST.
- **Immovable test** – The pre-fabricated structure was specially designed for installation at the relevant location. The intention and factum was to permanently affix it without removing the same. Also, it cannot be installed at any other location without making significant structural changes to it in terms of both dimensions and its strength.

5. First Appeal Stage

The applicant filed an appeal before the Commissioner (Appeals). The First Appellate Authority upheld the Order-in-Original and dismissed the appeal, on the following rationale:

- Heavy reliance was placed on the strict wording of Section 17(5)(d). The Commissioner (Appeals) noted that while the Supreme Court in recent jurisprudence (referencing the underlying principles of the *Safari Retreats* litigation) recognized the "functionality test," the specific statutory embargo in GST law explicitly excludes civil structures.
- He further held that electrical ducting, window structural glazing, and embedded AC vents are undeniably civil works.
- Regarding the pre-fab structures, he observed that their sheer size and functional integration with the IT Park rendered them immovable in practical terms, regardless of theoretical dismantlability.

The Appellant **M/s. Bengal Modi Infrastructure Ltd.** is now in Appeal before the GSTAT against the order by **Mamta, Commissioner of SGST**

Mock Case 3: Room Tariff or Total Charge: Decoding Threshold Limit of Hotel Industry

BEFORE THE HON'BLE GOODS AND SERVICES TAX APPELLATE TRIBUNAL
Mock Case No. ... of 2026

IN THE MATTER OF:

M/s Zenith Hospitality Pvt. Ltd. Appellant

Versus

Commissioner, CGST & Ors. Respondent

POINTS OF LAW

Whether, for the purpose of determining the rate of GST applicable on restaurant services under Notification No. 20/2019-Central Tax (Rate), the classification of a hotel as a “specified premises” is to be determined on the basis of the **declared tariff of accommodation**, and in absence of any **published or fixed tariff**, whether transaction-wise pricing, including charges such as **extra bed charges, early check-in/late check-out charges, demand-driven dynamic pricing and bundled accommodation plans such as American Plan (AP), Modified American Plan (MAP) and European Plan (EP)**, can be considered for determining such classification, and whether inclusion of meals in such plans forms part of “declared tariff”?

STATEMENT OF FACTS

1. M/s Zenith Hospitality Pvt. Ltd. (hereinafter referred to as the “Appellant”) is engaged in providing:
 - (i) Accommodation services; and
 - (ii) Restaurant services from the same premises.
2. The Appellant operates a hotel wherein pricing is determined through a **fully dynamic pricing model**, based on real-time booking demand and occupancy.
3. The Appellant does not maintain or publish any **fixed or standard tariff**, and specifically:
 - (i) No tariff is published on its website;
 - (ii) No tariff is displayed at the reception or at any place within the premises;
 - (iii) No standard rate card exists for rooms.
4. The pricing mechanism adopted by the Appellant is such that:
 - o Room prices vary on a day-to-day basis;
 - o Prices are not dependent on predefined seasons;
 - o Variation occurs based on **specific dates where booking demand increases**, such as events, local demand surges, or occupancy spikes.
5. During the period **April 2019 to March 2024** (hereinafter referred to as the “relevant period”), the Appellant:
 - o Discharged GST on accommodation services based on transaction value;
 - o Discharged GST on restaurant services at the rate of 5%.
6. In addition to room rent, the Appellant charged:
 - o Extra bed charges (optional facility);
 - o Early check-in and late check-out charges;
 - o Other incidental charges linked to customer preferences.
7. The Appellant treated such charges as:

- Separate/additional charges;
 - Not forming part of any “declared tariff”.
8. The Appellant also provided accommodation under different pricing structures, namely:
 - European Plan (EP) – Room only;
 - Continental Plan (CP) – Room with breakfast;
 - Modified American Plan (MAP) – Room with one additional meal;
 - American Plan (AP) – Room with multiple meals.
 9. It was observed that in a majority of cases where accommodation was provided under EP/CP plans (without or with limited meals), the room tariff remained below ₹7,500 per unit per day.
 10. However, in certain instances, where accommodation was provided under MAP/AP plans, the inclusion of meals such as breakfast, lunch and/or dinner resulted in the total consideration exceeding ₹7,500 per unit per day.
 11. The Appellant contended that such increase in value was solely on account of inclusion of food components and that the base room tariff, if considered independently, would remain below ₹7,500.
 12. The Appellant further contended that inclusion of meals leads to artificial inflation of invoice value and raises the issue whether such bundled components can be treated as part of “declared tariff” of accommodation.
 13. The Respondent conducted investigation and inspection at the Appellant’s premises.
 14. The Respondent conducted investigation and inspection at the Appellant’s premises.
 15. Upon scrutiny of invoices, it was observed that:
 - In certain instances, the total room rent exceeded ₹7,500 per unit per day;
 - Such instances arose due to:
 - High-demand dates;
 - Inclusion of extra bed charges;
 - Billing of more than one day in certain cases;
 - Inclusion of meals under MAP/AP plans.
 16. Based on the above, the Respondent alleged that the Appellant’s premises qualify as “**specified premises**” and that restaurant services were liable to GST at 18%.

ADJUDICATION PROCEEDINGS

A. Allegation by the Department

11. The Respondent issued a Show Cause Notice alleging that:
 - The Appellant had short paid GST on restaurant services by applying 5% instead of 18%;
 - The hotel qualifies as a “specified premises” as room tariff exceeded ₹7,500 in several instances;
 - Differential tax along with interest and penalty is recoverable under Section 74.
12. The Respondent contended that:

(i) Absence of declared tariff is irrelevant

- In absence of published tariff, actual transaction value must be considered;
- Otherwise, the provision becomes unworkable.

(ii) Tariff threshold breached

- Multiple invoices reflect room rent exceeding ₹7,500;
- Hence threshold condition is satisfied.

(iii) Inclusive approach to tariff

- Extra bed, early check-in, and similar charges are part of accommodation service;

- Bundled plans such as AP/MAP constitute composite supply of accommodation along with food;
 - The entire consideration under such plans must be included for determining tariff.
- (iv) **Dynamic pricing indicates premium nature**
- Frequent high-value transactions show that the hotel operates in a higher tariff segment.
- (v) **Uniform classification principle**
- Once threshold is crossed, classification applies to entire premises and not selectively by date.
- (vi) **Suppression and misstatement**
- The Appellant failed to correctly classify the premises;
 - Short payment would not have been detected but for investigation;
 - Section 74 is applicable.

B. Submission of the Appellant

13. The Appellant submitted that:

- (i) **Declared tariff is a mandatory statutory concept**
- The notification specifically uses “declared tariff”;
 - In absence of any declared tariff, the condition for classification fails.
- (ii) **Absence of published tariff negates classification**
- Since no tariff is declared, displayed, or published, the premises cannot be categorized as specified premises.
- (iii) **Dynamic pricing is transaction-specific**
- Pricing varies based on demand on particular dates and not on any fixed or seasonal basis;
 - Such fluctuations cannot determine classification of the entire premises.
- (iv) **Extra bed charges are excludible**
- Extra bed is optional and independent;
 - It does not alter the base tariff of the room.
- (v) **Early check-in / late check-out charges**
- These are time-based ancillary services;
 - They are not part of accommodation tariff.
- (vi) **Treatment of bundled plans (AP/MAP)**
- Inclusion of meals under AP/MAP plans is merely bundling of independent supplies of food with accommodation;
 - The base room tariff (as reflected in EP/CP plans) remains below ₹7,500;
 - Declared tariff must be determined with reference to accommodation component alone.
- (vii) **Billing anomalies**
- Certain invoices reflect higher values due to aggregation of multiple days or system-related entries;
 - Per day tariff remains below ₹7,500 in most cases.
- (viii) **Majority of transactions below threshold**
- Substantial portion of bookings fall below ₹7,500;
 - Only limited instances exceed threshold due to demand spikes.
- (ix) **Without prejudice**
- Even if threshold is considered breached, higher GST rate can apply only for those specific instances/days and not for the entire period.
- (x) **Distinction between declared tariff and value of supply**
- The Respondent has incorrectly substituted transaction value in place of declared tariff.

Mock Case 4: Reimbursement or Revenue? The Travel Agent GST

Dilemma

BEFORE THE HON'BLE GOODS AND SERVICES TAX APPELLATE TRIBUNAL

Mock Case No. ... of 2026

IN THE MATTER OF:

SKYWAY TRAVELS PVT. LTD. Appellant

Versus

COMMISSIONER, CGST & ORS. Respondent

POINTS OF LAW

Whether amounts recovered by a travel agent from clients towards airfare, hotel bookings, and other travel-related expenses, on actual basis, qualify as **pure agent reimbursements under Rule 33 of the CGST Rules, 2017**, and are therefore **excludible from the value of supply under Section 15 of the CGST Act, 2017?**

STATEMENT OF FACTS

1. Skyway Travels Pvt. Ltd. (hereinafter referred to as the "Appellant") is engaged in the business of providing travel-related services including:
 - o Air ticket booking
 - o Hotel reservations
 - o Visa facilitation
 - o Travel consultancy
2. The Appellant operates under two models:
 - (i) **Commission Model** – earning commission from airlines/hotels; and
 - (ii) **Service + Reimbursement Model** – charging a service fee while recovering actual costs from clients.

In one particular case

3. The Appellant entered into an agreement with M/s Zenith Consultants Ltd. for arranging travel for its executives.
4. As per the agreement:
 - o The Appellant would charge a **service fee of INR 5,000 per booking**
 - o All airfare, hotel, and visa costs would be recovered **on actual basis**
5. During the relevant period, the Appellant:
 - o Booked airline tickets worth INR 50,00,000
 - o Booked hotels worth INR 30,00,000
 - o Charged service fees of INR 5,00,000

6. The Appellant raised invoices as follows:
 - o Service Fee: GST charged @ 18%
 - o Reimbursements: Shown separately, without GST
7. The Appellant claimed that such reimbursements were made **as a pure agent**, satisfying conditions under Rule 33 of CGST Rules.

ADJUDICATION PROCEEDINGS

A. Allegation by the Department

8. The Department issued a Show Cause Notice alleging that:
 - o The entire amount (including reimbursements) forms part of **“value of supply” under Section 15**
 - o The Appellant is not acting as a “pure agent”
 - o GST is payable on the **gross amount recovered from clients**

B. Submission of the Appellant

9. The Appellant submitted that:
 - o It acts as an intermediary facilitating bookings
 - o Air tickets and hotel services are procured **on behalf of the client**
 - o The client is the actual recipient of such services
 - o Conditions of **Rule 33 (Pure Agent)** are satisfied:
 - Separate indication in invoice
 - No title in goods/services
 - Actual amount recovered without markup
10. The Appellant further contended that:
 - Only the **service fee** constitutes consideration for supply
 - Reimbursements are **pass-through costs**

C. Finding in the Order-in-Original (O-I-O)

11. The Adjudicating Authority held as follows:
“The Appellant fails to satisfy the essential conditions of a ‘pure agent’ under Rule 33. The Appellant is the contractual service provider responsible for end-to-end travel arrangements. Therefore, the entire amount recovered, including reimbursements, constitutes consideration under Section 15.”

12. Accordingly, demand of GST was confirmed on **total recoveries including reimbursements**, along with interest and penalty.

D. Authorities Relied Upon by the Department

13. The Department relied upon:
 - (i) **Section 15 of CGST Act, 2017** – Value of Supply
 - (ii) **Rule 33 of CGST Rules, 2017** – Pure Agent
14.
 - (iii) Judicial precedents distinguishing **reimbursement vs bundled supply**



***PAPER
PRESENTATION***

Paper Presentation : Intricacies of Real Estate Sector

▪ CA. Yash Dhadda & CA. Shuchi Sethi

Practical Issues in the Real Estate Sector under GST

1. Setting the Stage

The real estate rate-scheme introduced with effect from 01.04.2019 was presented to the industry as a simplification. In exchange for concessional headline rates of 1% (affordable residential) and 5% (other residential), builders surrendered input tax credit, and the structural interplay between developer, landowner and buyer was recast through four notifications issued on 29.03.2019 – Notification Nos. 03 to 06 of 2019-Central Tax (Rate). Seven years later, that promise of simplification has proved aspirational. The sector continues to grapple with valuation anomalies, time-of-supply dead zones, unresolved questions on mid-project transfers, ambiguous treatment of incidental charges, and a bifurcated jurisprudence on the very taxability of development rights.

The calendar from 2024 into the current year has been particularly eventful. The Hon'ble Telangana High Court in ***Prahitha Constructions Pvt. Ltd. v. Union of India [W.P. No. 5493 of 2020, decided 09.02.2024; 2024 (83) GSTL 129 (Telangana)]*** upheld the imposition of GST on the transfer of development rights under a JDA. The Hon'ble Supreme Court in ***Prahitha Constructions Pvt. Ltd. v. Union of India, SLP (C) No. 11079 of 2024 [2024 (162) taxmann.com 640 (SC)]***, by order dated 13.05.2024, issued notice but declined to stay the judgment. Less than a year later, the Nagpur Bench of the Hon'ble Bombay High Court in ***M/s Shrinivasa Realcon Pvt. Ltd. v. Deputy Commissioner, Anti-Evasion Branch, CGST Nagpur [W.P. No. 7135 of 2024, decided 08.04.2025 (Bombay HC, Nagpur Bench)]*** read Entry 5B of Notification No. 13/2017-CT(R) narrowly to cover only the transfer of Transferable Development Rights as compensatorily granted under the UDCPR, not the development rights that flow from landowner to developer under a conventional JDA. In parallel, a Division Bench of the Hon'ble Gujarat High Court in ***Gujarat Chamber of Commerce and Industry v. Union of India [2025] 170 taxmann.com 251 (Gujarat), decided 03.01.2025*** held that GST does not apply to the assignment of leasehold rights of a GIDC plot. A Division Bench of the Hon'ble Karnataka High Court in ***Smt. Asha R. v. Assistant Commissioner of Commercial Taxes [2025 (4) TMI 548; 2024:KHC:37691, Karnataka HC, decided 10.09.2024]*** reinforced the same principle in the context of solatium on compulsory acquisition; and in ***Rohan Corporation India Pvt. Ltd. v. Union of India [2025-VIL-324-KAR (Karnataka HC)]***, the Karnataka High Court held that a sale of an incomplete building by a liquidator on an "as-is-where-is" basis is not a works contract. The Bombay High Court has granted interim relief in ***Nirmal Lifestyle Developers Pvt. Ltd. v. Union of India [W.P. (L) No. 11011 of 2025; 2025-TIOL-606-HC-MUM-GST, Bombay HC, decided 09.04.2025]*** on the proposition that a revenue-sharing JDA involves no supply at all.

This paper takes up the seven issues identified in the brief circulated for this RRC. It is organised in three parts. Part A (Sections 2 to 9) presents the constitutional overlay and the seven core issues. Part B (Section 10) flags twelve adjacent practical issues that appear in almost every engagement on real estate GST. Part C (Section 11) offers closing observations.

2. The Constitutional Overlay – Is the Transfer of Development Rights, FSI or Leasehold Even a Supply?

The paper writer cannot in fairness proceed to the valuation and TOS mechanics of a notification-based charge whose foundation is itself before the Supreme Court. The question goes back to first principles. Section 3(26) of the General Clauses Act, 1897 defines “immovable property” as including land, benefits to arise out of land, and things attached to the earth. A line of Supreme Court authority – **Ananda Behera v. State of Orissa [1955 SCR (2) 919 (SC)]**; **State of Orissa v. Titagur Paper Mills Ltd. [AIR 1985 SC 1293]**; and **Safiya Bee v. Mohd. Vajahath Hussain [(2011) 2 SCC 94 (SC)]** – has consistently treated “benefits arising out of land” as immovable property. A parallel line in the High Courts specifically treats TDR and development rights as immovable property: **Chheda Housing Development Corporation v. Bibijan Shaikh Farid [2007 (3) Mh.L.J. 402 (Bombay HC)]**; **Sadoday Builders Pvt. Ltd. v. Jt. Charity Commissioner [MANU/MH/0079/2011 (Bombay HC)]**; and, in the service-tax context, the Chandigarh Bench of CESTAT in **DLF Commercial Projects v. CST [2019 (27) GSTL 712 (Tri.-Chan.)]**.

Under Article 246A read with Article 366(12A) of the Constitution, GST is a tax on supply of goods or services. “Goods” excludes immovable property. “Services” is anything other than goods. Entry 49 of List II of the Seventh Schedule preserves to the States the exclusive power to tax lands and buildings. The exclusion of sale of land from the charge is not a concession in Entry 5 of Schedule III – it is the acknowledgement of the absence of legislative competence. The Karnataka High Court in **Smt. Asha R. v. ACCT (supra)** puts it precisely: “even if Entry 5 of Schedule III were not there, sale of land and building cannot be brought under GST as they are covered under the State List II and there is no intention to tax sale or acquisition of immovable property per se under the GST legislations”. The Supreme Court’s dictum in **Union of India v. VKC Footsteps India Pvt. Ltd. [(2022) 2 SCC 603 (SC)]** that the GST regime preserves stamp-duty transactions as a matter of constitutional design supports the same conclusion.

Two additional strands of reasoning deserve mention. First, the Bombay High Court in **Chirag Infra Projects Pvt. Ltd. v. Vijay Jwala Co-operative Housing (Bombay HC, 2021)** held that a Development Agreement is a “Contract of Property” and not a “Contract of Service”. Second, the Bombay High Court in **Sandeep Dwellers Pvt. Ltd. v. State of Maharashtra [2022 (5) Mh.L.J. (Bombay HC)]**, at paragraph 12, held that a Development Agreement is a “Conveyance” within the meaning of Section 2(g) of the Stamp Act; when the State itself treats the document as a conveyance for stamp-duty purposes, it is difficult for the same State to assert, in its GST avatar, that the same document is a contract for supply of service. The doctrine of mutuality, reaffirmed by the Supreme Court in **State of West Bengal v. Calcutta Club Co. [(2019) 19 SCC 107 (SC)]** and most recently by the Kerala High Court in **Indian Medical Association v. Union of India (Kerala HC, Division Bench, 2025)**, further weakens the revenue’s claim in self-redevelopment and tenanted-redevelopment contexts.

How does this map to development rights? Five propositions may be put forward, with varying degrees of jurisprudential support:

- First, TDR simpliciter – the compensatory FAR granted by a planning authority in exchange for surrender of land – is a benefit arising out of land and is immovable property (*Chheda Housing, Sadoday Builders, DLF Commercial*). Its transfer is therefore outside the charge. The Nagpur Bench in *Shrinivasa Realcon (supra)* reads Entry 5B of Notification 13/2017-CT(R) in exactly this way and confines its application to UDCPR-defined TDR.
- Second, development rights under a JDA (the right of a developer to build and sell on the landowner’s land) are, on the Bombay HC’s *Shrinivasa Realcon* reasoning, not covered by

Entry 5B at all. They are a creature of the development agreement, not a transfer of pre-existing TDR or FSI.

- Third, on the Telangana HC's view in *Prahitha (supra)* – now before the Supreme Court – development rights under a JDA remain a service because there is no automatic transfer of ownership, only a contractual right to develop and sell. The Division Bench distinguished *Chheda Housing* on facts, relied on ***CIT v. Balbir Singh Maini [(2018) 12 SCC 354 (SC)]*** on the “de facto transfer” test, and upheld Notification 4/2018-CT(R) as dealing only with TOS.
- Fourth, revenue-sharing JDAs stand on softer ground for the department. In *Nirmal Lifestyle Developers Pvt. Ltd. v. Union of India [W.P. (L) No. 11011 of 2025; 2025-TIOL-606-HC-MUM-GST]*, decided on 09.04.2025 by a Division Bench comprising Colabawalla and Pooniwalla JJ., the Bombay High Court granted interim relief restraining the department from acting on the Order-in-Original, holding a prima facie case that the revenue-sharing development right is either not a transfer at all or is a transfer of immovable property outside the charge. In ***Mormugao Port Trust v. CCE [2017 (48) STR 69 (Tri.-Mum.)]***, affirmed at ***2018 (19) GSTL J118 (SC)***, the Tribunal held that a share of revenue in a joint venture is not consideration for a service.
- Fifth, the assignment of leasehold rights in a State industrial plot is outside the charge, per *Gujarat Chamber of Commerce and Industry v. UOI [2025] 170 taxmann.com 251 (Gujarat) (supra)*, which held it to be a transfer of benefits arising out of immovable property not within Section 7(1)(a) read with Schedule II.

The paper writer's view, on balance, is that the conflict between Prahitha and Shrinivasa Realcon is genuine and is unlikely to be resolved before the Supreme Court speaks. For the present, prudent counsel will continue to discharge tax under protest on the Prahitha protection while filing a conditional disclosure and a protective refund plea invoking Shrinivasa Realcon, Nirmal Lifestyle and Gujarat Chamber. The sections that follow proceed on the working assumption that GST presently applies, but every planning pointer should be read against this overlay.

3. Issue I : The Valuation Anomaly in Area-Sharing JDAs – the “One-Third” that is Missing

3.1 The Statutory Text

Paragraph 1A inserted into Notification No. 12/2017 by Notification No. 04/2019-CT(R) provides that the value of supply of service by way of transfer of development rights or FSI by a person to a promoter against consideration in the form of construction service shall be deemed to be equal to the value of similar apartments charged by the promoter from independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter. Paragraph 2A inserted into Notification No. 11/2017 by Notification No. 03/2019-CT(R) mirrors the concept from the opposite side – the value of construction service provided by the promoter to the landowner in lieu of transfer of development rights shall be deemed to be equal to the Total Amount charged for similar apartments in the project from independent buyers, less the value of transfer of land as prescribed in paragraph 2. Paragraph 1B fixes the value of unbooked apartments at the date of CC / first occupation for the RCM cap computation.

3.2 The Asymmetry Explained – with Numbers

Paragraph 2 of Notification No. 11/2017-CT(R) defines “Total Amount” as the consideration less one-third deemed to be the value of land. That one-third carve-out is expressly imported into the construction-service valuation entry (paragraph 2A) but is conspicuously absent from paragraph 1A. A worked example makes the anomaly vivid. Assume a non-affordable residential project where the value of a similar apartment nearest to JDA date is ₹1 crore, area sharing is 75:25 (developer:landowner), total inventory is 40 apartments of which 10 are landowner-share, and at CC 10 apartments in the developer’s share remain unsold. The tax incidence is:

- Construction service from developer to landowner (paragraph 2A) – value is ₹100 lakh less one-third land = ₹66.67 lakh per apartment; 10 apartments = ₹6.67 crore; GST @ 5% = ₹33.33 lakh, paid on forward charge.
- Development right from landowner to developer (paragraph 1A), valued at the first-agreement rate without one-third deduction = ₹1 crore × 10 landowner apartments = ₹10 crore; GST @ 18% under RCM, subject to exemption for residential apartments booked before CC and the paragraph 1B cap.
- Computing the RCM cap: value of 10 unsold residential apartments at CC (say ₹1.2 crore each) × 5% = ₹60 lakh. RCM is lower of (i) 18% of DR value attributable to unsold, i.e., 18% × ₹10 crore × 10/30 = ₹60 lakh; and (ii) ₹60 lakh cap. In this stylised case the two match and the RCM burden is ₹60 lakh – but if the unsold portion were larger, the 18% limb would dominate. Every incremental rupee of land-value included in the “similar apartment” anchor is taxed again at 18% as part of the development right. That is the “6% gap” the brief identifies.

3.3 Is the One-Third Deduction Even Sacrosanct?

The Hon’ble Gujarat High Court in ***Munjaal Manishbhai Bhatt v. Union of India [R/SCA Nos. 1350, 6840 of 2021 and 5052 of 2022, decided 06.05.2022; (2022) 104 GSTR 419 (Gujarat HC)]*** read down the mandatory one-third deemed deduction of paragraph 2 of Notification No. 11/2017-CT(R). The Court held the deeming fiction ultra vires to the extent it compels a uniform one-third abatement where the value of land is actually ascertainable from the contract, and held that Schedule II is merely a classification schedule and does not expand the scope of supply. The Delhi High Court in ***Suresh Kumar Bansal v. Union of India [2016 (43) STR 3 (Delhi HC)]*** – in the service-tax era – had held that an abatement cannot substitute the absence of statutory machinery to ascertain the service value in a composite contract. The Gujarat HC has taken the *Munjaal* reasoning forward in *Gujarat Chamber (supra)*, reinforcing the line that a deeming fiction which ignores actual value is constitutionally fragile.

3.4 View and Planning Pointers

The paper writer’s view, firm on the anomaly and balanced on the relief, offers the following planning pointers:

- Rely on *Munjaal Bhatt* by parity for the development-right leg as well, claiming a deduction of actual land value (or one-third at the very least) from the paragraph 1A measure, supported by stamp-duty ready-reckoner evidence and an independent valuer’s certificate.
- For commercial projects and RREPs with sizeable unsold inventory at CC, model GST exposure on both limbs at feasibility stage and build the RCM burden into the landowner-share waterfall. Use Entry 41A of Notification 12/2017 (as amended) to cap the RCM at 5% / 1% of unsold residential value at CC.

- A protective representation to the CBIC seeking parity – a one-third land carve-out in paragraph 1A itself – remains the cleanest fix.

4. Issue II : Time of Supply of Development Rights in Commercial Revenue-Sharing Projects

4.1 What Notification 06/2019 Covers – and What it Doesn't

Notification No. 06/2019-CT(R) designates the date of issuance of CC or first occupation, whichever is earlier, as the time of supply for supply of development rights by any person to a promoter in three mapped fact-patterns: area-sharing arrangements (commercial and residential), revenue-sharing arrangements for residential projects, and transfers of FSI. A revenue-sharing arrangement in a commercial project falls conspicuously outside the four corners of the notification. Sub-para (vii) directs that tax on these services shall be paid under reverse charge in accordance with Notification 13/2017; where the notification does not apply, Section 13(3) of the CGST Act is the default.

4.2 The Valuation Fork – and Whether the Levy Survives

Before Rule 27 / 30 / 31 are even reached, the paper writer must satisfy himself that the paragraphs 1A and 2A valuation entries themselves apply. On a textual reading, they do not. Paragraph 1A of Notification 12/2017 (as inserted by Notification 04/2019) is expressly confined to a supply of development rights “against consideration, wholly or partly, in the form of residential or commercial apartments”. In a commercial revenue-sharing project, the consideration to the landowner is a cash flow – a share of the revenue derived from sale or rental by the developer – and not apartments. The anchor of paragraph 1A (the value of similar apartments) thus has nothing to attach itself to. Paragraph 2A of Notification 11/2017 is the mirror entry: it values the construction service provided by the developer to the landowner in lieu of the transfer of development rights. In a revenue-sharing arrangement, the developer does not provide any construction service to the landowner at all – the landowner does not receive an apartment. Paragraph 2A therefore also has no operative field. Both deeming entries presuppose an area-sharing barter; neither fits a cash-based revenue share.

Paragraph 2 of Notification 11/2017 (the one-third land deduction) also has no application because there is no “construction service” supplied from developer to landowner involving land or undivided share of land in the first place. The consequence is significant: for the revenue-sharing commercial fact-pattern, the special valuation regime designed for JDAs does not reach the transaction at all. The fall-back is to Chapter IV of the CGST Rules – Rule 27 (consideration not wholly in money), Rule 30 (cost plus 10%) and Rule 31 (reasonable means).

The more searching question is whether, in the absence of a notification-prescribed valuation and with Rule 27-31 yielding no principled measure, the levy itself survives. The Supreme Court in ***CIT v. B. C. Srinivasa Setty [(1981) 2 SCC 460 (SC)]*** held that a charge cannot be imposed where the machinery for computation of the taxable amount fails; a self-generated asset with no cost of acquisition could not be brought to tax under the capital gains provisions because the machinery provisions could not be applied. The ratio has since been applied across tax statutes. In the service-tax era, the Delhi High Court in *Suresh Kumar Bansal (supra)* applied the same principle to hold that abatement cannot substitute for the absence of statutory machinery. Read together, these authorities sustain a serious contention that where the special notifications carry no measure of value and the residual Rules cannot be applied without conjecture, the levy on the development right in a commercial revenue-sharing project fails for want of machinery. This is a principled contention, not a planning gimmick.

If the levy is held to survive, Rule 31 becomes the operative provision. Three candidates suggest themselves for the measure:

- To determine the FMV, a discounted cash flow of the landowner's contractually projected revenue share, computed at the JDA date with appropriate risk discounting. This is the most economically faithful approach but is the most sensitive to assumption-choice and may invite audit challenge on the discount rate.
- The actual cumulative revenue share received by the landowner, aggregated and treated as the value of the development right once the revenue crystallises. This is the simplest and most objectively verifiable – but it defers certainty until the revenue stream is exhausted.
- The stamp-duty-ready-reckoner 'circle rate' value of the proportionate plot of land allotted to the landowner's revenue share as on the JDA execution date. This is objectively ascertainable and consistent with the constitutional principle that immovable property value is measured by the State through stamp duty.

The next question – at what point does the charge fasten – is more fundamental than it may appear. Section 13(3) of the CGST Act prescribes TOS for supplies on which tax is payable under reverse charge as the earliest of: (a) the date of payment as per the recipient's books, (b) the date of debit in the recipient's bank, or (c) sixty days from the date of issue of invoice. Sub-section 13(3) thus presupposes a payment *for the supply* – in this case, for the development right. In a revenue-sharing arrangement, the periodic payments made by the developer to the landowner are not payments made for the development right. They are disbursements of the landowner's agreed share of the revenue that the developer derives from monetisation of the developed property. The character of the payment is the landowner's revenue entitlement, not a consideration flowing from the developer to the landowner for the grant of development rights. A strict textual reading of Section 13(3) therefore leaves the TOS unanchored – there is no "date of payment" for the development right, because no such direct payment exists.

Two constructions are possible. On the first, the payments are ignored for Section 13(3) because they are not payments "for" the supply – the result is that no TOS is ever triggered, reinforcing the levy-fails contention above (no machinery, no TOS). On the second, the payments are treated as a proxy consideration for the development right by a purposive reading – the developer pays out of his revenue stream because the landowner parted with the development right. On this second view, each payment becomes a distinct TOS event. But that immediately raises the valuation question in a new form: how is the value of the development right to be computed at each payment date? It cannot be the payment amount itself (which is a share of revenue, not the value of the right). It cannot be recomputed afresh at each payment date without resort to an assumption. The paper writer's view is that a defensible middle course – pending binding guidance – is to recognise the value of the development right once, at the JDA date, on a Rule 31 measure (circle rate or valuer's DCF as above), and to treat each subsequent cash payment as a disbursement of an already-recognised consideration rather than as a fresh TOS event. This is coherent, minimises interest exposure, and best reconciles Section 13(3) with the economic reality of a revenue-sharing JDA.

4.3 Planning Pointers

- Document the JDA with an express TOS clause, the valuation methodology and the invoicing cadence agreed between landowner and developer. Commission a Rule 31 valuation report at the JDA date and retain it contemporaneously.

- Account for RCM on development rights in the developer's books on an at-JDA recognition basis with suitable disclosure. Where the auditor or the department insists on a payment-wise recognition, reserve the right to raise the levy-fails contention under B. C. Srinivasa Setty.
- Where the asset is wholly for captive use, consider the Nirmal Lifestyle argument that a revenue-share is not a supply at all – file a protective claim in parallel.

5. Issue III : Mid-Project Transfer of Development Rights between Developers

5.1 The Fact-Pattern

Developer A launches a residential project under the 01.04.2019 regime, incurs construction cost, claims no input tax credit (having opted for the 5% concessional rate), but is unable to complete. The project is transferred to Developer B, who completes and monetises it. Three sub-questions arise: (a) Developer A's residual RCM exposure on DR originally acquired; (b) the ITC that Developer A did not claim on the 5% regime; and (c) the GST character of the A-B transaction.

5.2 Developer A – the Departing Promoter

The residential exemption under paragraph 1A(i) of Notification 04/2019 operates by reference to apartments booked from independent buyers before CC. Where Developer A exits before CC, the exemption has not crystallised and, on a strict reading, every apartment at the point of transfer is treated as “unsold”. The paper writer takes the view that such a construction is not the correct reading. The exemption design contemplates a CC-based crystallisation within a single continuous project; when the project is transferred as an ongoing enterprise before CC, the crystallisation event migrates to the successor-promoter's CC. Developer A's RCM liability should be computed only on (i) the commercial proportion (if any) and (ii) residential apartments formally unsold and unallotted before transfer, with the balance migrating to Developer B. On the ITC front, the surrender is quid pro quo for the rate concession. The Supreme Court's dictum in ***Dai Ichi Karkaria Ltd. v. CCE [1999 (112) ELT 353 (SC)]*** that validly availed credit is an “indefeasible right” does not assist here, because the credit was never availed on account of the conscious regime-choice.

5.3 Developer B – the Incoming Promoter

Developer B inherits the mandatory 5% / 1% regime for the project; it cannot elect back into 12% with full ITC. Its RCM obligation on development rights is computed at its CC date on apartments unsold at that date. The ITC restriction applies with equal rigour from the date of acquisition.

5.4 The A-to-B Transaction Itself

1. Slump-sale or transfer of a going concern: Documented as the transfer of the real estate business (or an independent part thereof) as a going concern, it falls within Entry 2 of Notification 12/2017-CT(R) and is exempt. The key indicia – transfer of all assets and liabilities, continuity of employees and contracts, transfer as an operating undertaking – must be established contemporaneously. The RERA registration must be updated to reflect the new promoter.
2. Assignment of development rights simpliciter: If only the development right is assigned without business continuity, the transaction is a taxable service at 18% on forward charge. The ***Balbir Singh Maini and Binjusaria Properties Pvt. Ltd. v. ACIT [ITAT Hyderabad]*** line is relevant – if Developer B has not taken de facto ownership-like control, the transfer may not have occurred on the A-B date, and the tax position can be argued to rest on

subsequent dealings. The Bombay High Court's decision in ***CIT v. Patel Engineering Ltd. [ITXA Nos. 1146 of 2004 and 934 of 2008, Bombay HC, decided 11.03.2026]***, while rendered under Section 80-IA(4) of the Income-Tax Act, 1961, supplies a useful analogy on the test for distinguishing a developer (assumption of managerial and financial risk, overall control over the project) from a mere contractor; where Developer B is reimbursing Developer A for cost incurred plus interest and a reasonable mark-up, the assignee may qualify as the successor developer rather than a new contractor, which is relevant to the characterisation of the A-B payment.

3. Share-sale of the project SPV: Where Developer A holds the project in an SPV and sells shares of the SPV to Developer B, there is no "supply" under GST – securities are excluded from the definitions of goods and services. This is cleanest but must be modelled against stamp-duty and direct-tax consequences.

5.5 Planning Pointers

- Wherever possible, structure as a slump-sale of a going concern with robust contemporaneous documentation to anchor Entry 2 exemption.
- If a share-sale is feasible, run the indirect-tax comparison against a slump-sale including the stamp-duty delta; for closely-held SPVs the share-sale often wins.
- Avoid a bare assignment of DR between two developers without a binding High Court precedent or comfort letter; the 18% cost on residual project value can be ruinous.

6. Issue IV : What is a "Similar Apartment" in a Mixed-Use Project?

6.1 Framework

Paragraphs 1A and 2A both anchor valuation on the "value of similar apartments charged by the promoter from independent buyers". A Residential Real Estate Project (RREP) is one in which the carpet area of commercial apartments does not exceed 15% of the total carpet area (CBIC FAQ Part II dated 14.05.2019). In an RREP, the commercial micro-component is taxed at the concessional rate. In a REP (commercial > 15%), each apartment is taxed at the rate applicable to its declared use. Within the same project, an affordable residential unit, a non-affordable residential unit and a commercial unit can each attract a different rate, as acknowledged in CBIC FAQ Part II.

6.2 Why "Similar" Matters

Commercial rates per square foot in the same tower typically range between 1.5x and 3x of the residential rate. If "similar apartment" is read disjunctively – any apartment nearest to the relevant date – a developer who sells a commercial unit first in a predominantly residential RREP could see the development-right valuation balloon arbitrarily. Conversely, in a predominantly commercial REP with a small residential tower, a residential first-sale could understate the true commercial valuation. Either outcome offends the substantive object of the scheme.

6.3 View

The paper writer's firm view is that "similar apartments" must mean apartments similar in use – commercial compared with commercial, residential with residential – and, where possible, similar in configuration (saleable area band, floor-rise band, view entitlement). The dictionary meaning of "similar" requires parity; the notifications themselves distinguish between commercial and residential at every turn; Article 14 (invoked in *Munjaal Bhatt*) militates against treating unequals

as equals for valuation. Practitioners should anchor the valuation on the first independent sale in the same use-class.

7. Issue V : Taxability of PLC, EDC, Club, Legal, Transformer and Related “Head-Charges”

7.1 The Evolution

Preferential Location Charges, External Development Charges, one-time club membership, legal charges, transformer / electrical-connection charges, and other “head-charges” were historically invoiced at 18% (independent services) or at the concessional construction-service rate (bundled). The matter was partly resolved by Circular No. 177/09/2022-GST dated 03.08.2022 (PLC in long-term lease context). It was decisively resolved by the 54th GST Council Meeting on 09.09.2024 and Circular No. 234/28/2024-GST dated 11.10.2024, paragraph 8 of which clarifies that PLC paid alongside consideration for construction of a residential, commercial or industrial complex before CC forms part of a composite supply with construction service as the principal supply, and attracts the same rate. The 18% view is buried for PLC.

7.2 AAR and High Court Landscape

The West Bengal Authority for Advance Ruling in ***In re Bengal Peerless Housing Development Co. Ltd. (WBAAR, 2019)*** ruled that PLC and the right to use parking and common amenities, when offered alongside a dwelling unit, constitute a composite supply with construction service as the principal supply. For EDC passed through from the State government, the pure-agent analysis under Rule 33 is available, subject to strict compliance. For legal charges, transformer, water and electricity connection, and one-time club membership collected before CC, the composite-supply analysis drives a concessional rate. Recurring common-area maintenance by the builder in the interim (post-CC, pre-handover to society) attracts 18%. A one-time sinking fund or reserve fund collected to be handed over to the society is a transfer in fiduciary capacity, not a supply, but the distinction must be documented. The Madras High Court’s decision in ***Greenwood Owners Association v. UOI [(2021) 128 taxmann.com 182 (Madras HC)]*** – that the ₹7,500 per member threshold in Notification 12/2017 Sl. No. 77 is an exemption threshold and not a cap above which the entire amount becomes taxable – is a useful reference for societies once handed over. In a related context, the Authority for Advance Ruling in ***In re Eden Real Estates Pvt. Ltd. [Order No. 19/WBAAR/2022-23 dated 22.12.2022, confirmed by WBAAAR]*** held that the right to use a car parking space invoiced separately is an independent supply at 18% – relevant to the bundling analysis in the next Section.

FAQ Part II Q.4 dated 14.05.2019 confirms that for the ₹45 lakh affordable-housing threshold, preferential location charges, parking charges and common facility charges are included but stamp duty and society maintenance deposits are excluded. By parity, the same logic applies to the “total amount” under paragraph 2.

7.3 Planning Pointers

The paper writer’s view, firm: For charges that are (a) collected before CC, (b) invoiced as part of or integrally linked to the apartment sale, and (c) without which the apartment cannot be sold or occupied – PLC, EDC pass-through, electrical connection / transformer, statutory legal charges – the composite-supply classification is defensible and the concessional rate (1% / 5%) applies. Where the charge is collected post-CC or as a separable consumer choice, 18% stands.

- Integrate PLC, EDC and transformer charges into the agreement to sell rather than raising separate side-invoices.

- Distinguish one-time club membership (corpus-like, pre-CC) from recurring CAM (post-CC, usually 18%) in books.
- For EDC recovered as a pure pass-through, document the pure-agent conditions under Rule 33 with care.
- Reserve-fund and sinking-fund contributions collected on behalf of the RWA / society, for onward transfer after handover, should be recorded as liabilities, not income.

8. Issue VI : Car Parking – Composite Supply or Standalone Service?

8.1 The Bundled / Unbundled Split

The binary is clean. Where parking is bundled into the apartment agreement and single-priced, it is a composite supply with construction service as the principal supply, and the concessional rate applies. Where parking is sold under an independent agreement at a later date, it is an independent supply taxable at 18%. The factual distinguishers are whether parking forms part of a single price with the apartment, whether the buyer has a genuine option to acquire the flat without parking, and whether parking is invoiced pre-CC (integral) or post-CC (standalone).

8.2 Indian Property Law Overlay

The Hon'ble Supreme Court in ***Nahalchand Laloochand Pvt. Ltd. v. Panchali Co-operative Housing Society Ltd. [AIR 2011 SC 3471]*** held that stilt car parking is not an independently saleable unit under the Maharashtra Ownership of Flats Act; it is part of the common areas. The ratio continues to colour how courts and authorities construe independent sale of parking. Where a promoter assigns a "right to use" rather than sells a parking slot, the receipt is for service, not sale – squarely within the tax net at 18% if unbundled from the apartment.

8.3 Planning Pointers

- Where commercially feasible, bundle parking into the apartment sale agreement and collect a consolidated consideration before CC. Disclose the parking-to-saleable-area ratio in the RERA filing and avoid a discretionary opt-out.
- For post-CC top-ups or transfers to other flat-owners, charge 18% cleanly.
- When the right is ultimately transferred to the society on handover, record it as a statutory transfer and ensure the builder-buyer agreement and society by-laws are aligned – the *Nahalchand* insulation.

9. Issue VII : Valuation where the Project has No Independent Sale; and the RERA-Registration Overlay

9.1 The Fact-Pattern

A JDA is executed. The landowner and the developer agree to develop the property for captive use – leasing the entire commercial block, retaining the residential stock for lease portfolios, or own occupation. No independent buyer transaction is recorded up to and beyond CC. The valuation anchors in Notifications 03/2019 and 04/2019 presuppose an independent sale; that anchor fails. Does Rule 30 or Rule 31 step in, and if so with what methodology? And, is the project even within the scope of the 29.03.2019 notifications where RERA registration is not required?

9.2 The RERA-Registration Overlay

The rate and valuation notifications expressly import their definitional core from RERA – “real estate project”, “residential real estate project”, “promoter”, “apartment”, “carpet area”. Section 3 of RERA requires registration only for projects intended to be promoted, constructed, sold or transferred to consumers. A project built for own-use or for lease as an operating asset (without allotment to individual buyers) is therefore outside the RERA registration requirement. Two opposing constructions follow:

4. The notifications import RERA definitions, not the RERA registration requirement. A project that is substantively a residential / commercial real estate project continues to be covered by Notifications 03 to 06 of 2019 irrespective of formal RERA registration. Valuation defaults to Rule 30 / 31 where no independent sale exists; concessional rates apply.
5. The notifications presuppose a RERA-registered project. Where there is no RERA registration, the construction service falls outside the 01.04.2019 scheme and is taxed under the residual construction-service entry in Notification 11/2017 (12% with full ITC, subject to the one-third land deduction where applicable under *Munjaal Bhatt*).

The paper writer’s view, on balance, favours the first construction: RERA supplies the definitions and not the regulatory trigger. This is the reading CBIC has implicitly adopted in its FAQs. However, the second construction cannot be ruled out, particularly if the department seeks to deny the concessional rate to an own-use project nominally characterised as residential.

9.3 Rule 30 and Rule 31 Mechanics

- Re-test Rule 27 for any like-kind project in the vicinity – a neighbouring developer’s similar project, stamp-duty-ready-reckoner values, or a public comparable. A reasoned Rule 27 valuation is the highest in the hierarchy.
- If Rule 27 is infeasible, Rule 30 with a clear cost-buildup – land cost, statutory fees, construction cost, interest, overheads – and the 10% uplift. Validate by a certified cost accountant or chartered engineer.
- Rule 31 is the last resort; support it with an independent valuer’s report applying a DCF of rentals for captive-lease projects or a comparable-transaction approach for own-use projects.

9.4 A Related Question – Free Units to Existing Occupiers

The construction service supplied by a developer to existing society members or to protected tenants is, on the CBIC view, a taxable barter. CBIC FAQ Part II Q.9 dated 14.05.2019 confirms that units supplied free of monetary consideration to existing occupiers attract GST because the consideration is in the form of TDR / FSI / rights relating to land. The service-tax era *Vasantha Green, Ethics Infra Dev.* and *Sujal Developers* line is being tested in the GST context; a protective refund claim is advisable for those discharging tax on both legs. Valuation in such cases again calls for Rule 30 / 31 where no independent sale exists in the project.

9.5 Planning Pointers

- Structure at least one arm’s length independent transaction close to the CC date. A single genuine comparable revives the notification anchor and dramatically reduces valuation risk.
- Where no independent transaction is possible, commission an independent valuer’s report at the JDA date, at the CC date, and at interim TOS events.

- On RERA, consider protective voluntary registration even where not strictly required.
- For a genuinely commercial own-use or captive-lease asset, model both the 12%-with-ITC and the 5%-without-ITC routes and elect basis the ITC-to-rate arbitrage.

10. Adjacent Practical Issues – Twelve Collateral Touch-Points

A real estate GST engagement rarely confines itself to the seven issues above. Twelve collateral touch-points recur in audit and litigation and deserve at least a flag: (i) FSI, additional FSI and staircase premium paid to MCGM / MHADA / AUDA, where the Article 243W / 243G governmental-authority exemption (Entries 4 and 5 of Notification 12/2017) is the principal defence against RCM demands; (ii) plotting schemes, where Circular 177/09/2022-GST paragraph 14 preserves the Schedule III exclusion for sale of developed land; (iii) redevelopment of co-operative housing societies, where paragraph 2A valuation, the Entry 41A cap and the *Vasantha Green / Ethics Infra Dev. / Sujal Developers* “self-service” alternative view must be weighed; (iv) self-redevelopment, slum rehabilitation and tenanted redevelopment, where the Maharashtra Government Resolution dated 04.07.2019 and FAQ Part II Q.9 govern the barter treatment; (v) assignment of leasehold rights of industrial plots, now outside the charge per *Gujarat Chamber of Commerce and Industry v. UOI [2025] 170 taxmann.com 251 (Gujarat)*; (vi) the 80 / 20 rule, where the shortfall RCM must be paid in FORM GST DRC-03 per CBIC Instruction No. 3/2/2020-GST dated 24.06.2020; (vii) booking cancellation, where Circular 188/20/2022-GST, Section 34 and Rule 89(2)(kb) govern the credit-note and refund routes; (viii) Rule 42 / 43 ITC reversal for ongoing projects, where RODO-4/2019 prescribes the area-based methodology; (ix) FOC supply by developer to contractor, where *M/s Bhayana Builders Pvt. Ltd. v. CST [2018 (10) GSTL 118 (SC)]* read with Section 15(2)(b) turns on contractual allocation of material; (x) interest under Section 50 and the Section 16(4) limitation, where *Eicher Motors Ltd. v. Superintendent [2024-VIL-72-MAD]* and *RSB Transmission (India) Ltd. v. UOI [MANU/JH/1260]* protect credit-ledger utilisation; (xi) reimbursement of electricity, clarified by Circular 206/18/2023-GST as composite supply at the principal-supply rate unless the lessor qualifies as a pure agent under Rule 33; and (xii) anti-profiteering under Section 171, now under the jurisdiction of the Competition Commission of India after the NAA sunset, with fresh investigations limited to cases initiated before 01.04.2025. Each of these merits a focused paper; flagged here because no real estate audit closes without them.

11. Closing Observations – A Forward-Looking Note

Seven years into the 01.04.2019 scheme, the real estate sector’s tax architecture still resembles an incomplete bridge: rate and valuation pillars are in place, but the spans between them remain provisional. Four forward-looking developments are worth watching.

First, the Supreme Court’s decision in *Prahitha Constructions (SLP (C) No. 11079 of 2024)* will, when rendered, settle the primary fault-line between the Telangana and Bombay High Courts on the very taxability of TDR. If the Apex Court affirms the Telangana view, the current notification scheme stabilises; if it accepts the Bombay view in *Shrinivasa Realcon* or the Gujarat reasoning in *Gujarat Chamber of Commerce and Industry*, large segments of the sector will revisit their RCM exposure.

Second, the GST Council’s rate-rationalisation review places the 5% / 1% residential rate structure under examination. The practitioner community should watch closely for any reconfiguration that restores input tax credit – the single most consequential change the sector could ask for. A parallel representation for insertion of a one-third land carve-out in paragraph 1A (DR valuation) would cure the asymmetry identified in Section 3.

Practice. Plead. Prevail.

Nuances of GST Appellate Tribunal (GSTAT) Appellate Practice

CA Sunil Gabhawalla
Gabhawalla & Co | Chartered Accountants

ACT I

PRACTICE

Know the Forum

ACT II

PLEAD

Master the Craft

ACT III

PREVAIL

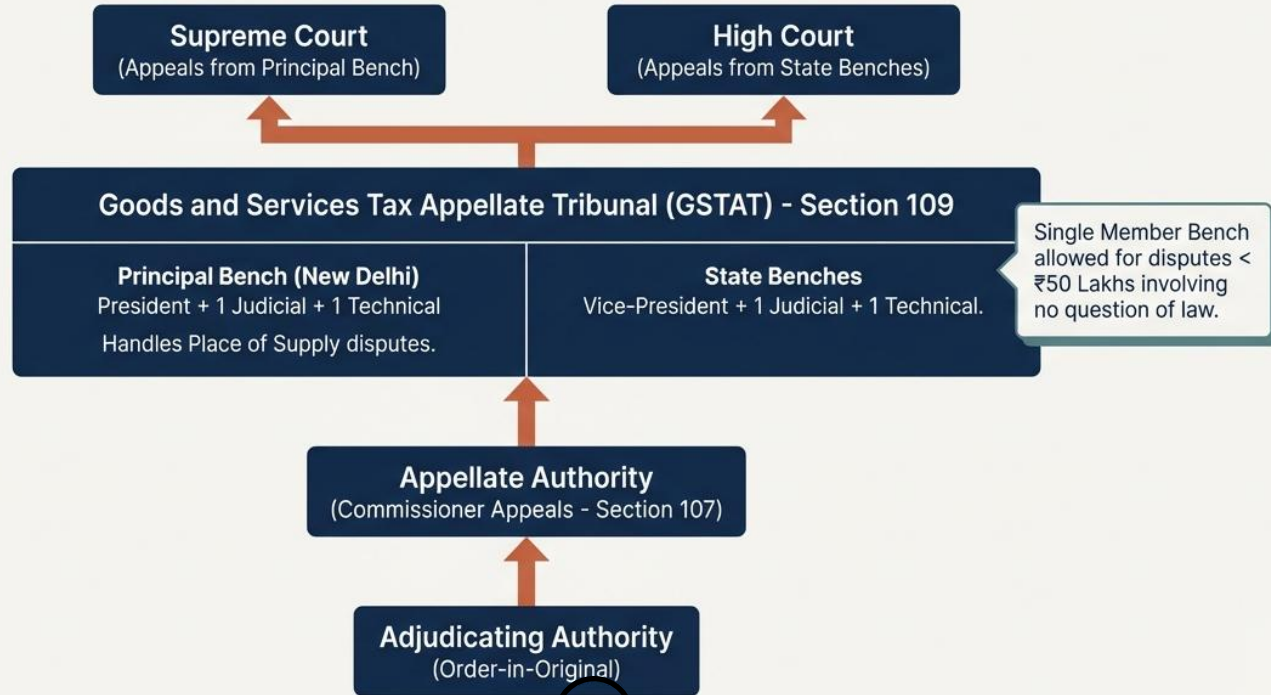
Secure the Outcome



PRACTICE — Know the Forum

The New Landscape · Why GSTAT Matters · Jurisdiction · The Bench · Logistics

GSTAT — STRUCTURE & CONSTITUTION



GSTAT — The New Landscape

01

The Seven-Year Gap

GSTAT's absence created a generation of GST practitioners who defaulted to HC writ petitions.
Tribunal advocacy requires different skill sets.

02

The Mindset Shift

GSTAT is neither the Commissioner (Appeals) nor the High Court.

It is a specialised tribunal — combining legal rigour with commercial domain expertise.

03

The Opportunity

GSTAT jurisprudence is a blank slate.

Practitioners who engage seriously in the first five years will shape the law for the next two decades.

Three Things GSTAT Changes

1

Facts must be built here — the HC will not re-examine them

2

Arguments must be propositions, not grievances

3

The taxpayer **as well as** the department faces a genuinely impartial bench for the first time

⚠ *Open Issue: Large body of HC writ petitions filed during GSTAT's absence — Courts may now insist on exhausting GSTAT remedy first. Professionals may need to manage both forums simultaneously.*

Why GSTAT Matters: Last Fact-Finder & First Neutral Forum

LAST FACT-FINDER

- › HC (Sec. 117) and SC (Art. 136) hear only substantial questions of law — they do not re-appreciate evidence

- › Whatever is not in the GSTAT record is permanently lost for all subsequent forums

- › Every document, explanation and evidence must be presented at the GSTAT stage itself

- › Contrast: income tax practitioners learned this discipline decades ago — GST practitioners are just beginning

FIRST NEUTRAL FORUM

- › Adjudicating officer = department employee.
Commissioner (Appeals) = department employee.

- Both have institutional interest in the revenue outcome

- › GSTAT's Judicial Member is a retired HC judge. The bench owes neither side an institutional outcome

- › Arguments that were futile below — because officers could not rule against the department — now have genuine traction

- › Technical Members bring domain expertise; a well-structured commercial argument can land

- › Technical Members are drawn from revenue services — perceived vs actual neutrality is a live question.

Jurisdiction: Filing in the Right Bench

Principal Bench — New Delhi [Sec. 109(5)]

- ◆ Place of supply disputes — inter-State vs intra-State
- ◆ Levy disputes — whether CGST or IGST applies
- ◆ IGST on imports and inter-State supplies
- ◆ Anti-profiteering (as notified under Sec. 171)
- ◆ Conflicting decisions between two State Benches

State / Area Benches [Sec. 109(6)]

- ◆ All other appeals: ITC, valuation, classification, exemption
- ◆ Territorial jurisdiction follows the adjudicating authority's location — not the taxpayer's registered office
- ◆ Multiple Area Benches may be notified within a single State
- ◆ 31 State Benches notified; operational infrastructure still being established

Decision Tree: Step 1 — Nature of dispute → Step 2 — Location of adjudicating authority → Step 3 — Principal or State Bench → Step 4 — Correct Area Bench

The Bench: Composition & Advocacy Implications

Judicial Member

Retired HC Judge — Sec. 110(1)(b)

Expects structured legal argument: provision → issue → interpretation → precedent. Responds to precise legal logic. Does not respond to commercial shortcuts without legal anchoring.

Technical Member (Centre)

Senior IRS Officer — Sec. 110(1)(c)

Revenue administration background. Responds to commercial genuineness, tax neutrality, industry practice, and worked numerical examples. Instinctively guards against systemic revenue exposure.

Technical Member (State)

Senior State GST Officer — Sec. 110(1)(d)

Deeper familiarity with intra-State trade, local notifications and State-specific matters. Keep IGST / cross-border arguments simple. Acknowledge the State's revenue concern before countering it.

5 Logistics: The Unglamorous Reality of GSTAT Practice

Principal Bench — The Delhi Question

Travel for Mumbai / Ahmedabad / Kolkatta practitioners is a real recurring cost.

Identify Delhi-based GST counsel for Principal Bench matters — not a compromise, it is professional efficiency.

State Bench Logistics

Registry processes and cause list systems are still being established.

For your own State Bench — appear personally in early days to understand the Bench's working style.

For other States — brief a local professional with a detailed written brief note, not a phone call.

Virtual Hearings

GSTAT Rules permit virtual hearings — framework being notified State-wise. Request only for genuine hardship, not as a default convenience.

Benches in their early years may prefer physical presence. Have a contingency plan if refused.

The No-Show Problem

For a low demand matter, total GSTAT costs (pre-deposit + fees + travel) may approach the demand itself.

Apply the cost-benefit filter before filing.

Briefing a Local Counsel

Give them: one-page case summary, impugned order with highlights, filed MOA, synopsis, specific date instructions. Establish in writing who takes instructions from the client and who reports outcomes. Do not leave this undefined.



PLEAD — Master the Craft

Provisions · Written Submissions · Filing Procedures · Synopsis at hearing · Oral Advocacy

PART A

Provisions

TIME LIMITS & MONETARY LIMITS

	Assessee (Section 112(1))	Department (Section 112(3))
Statutory Limitation Period	3 months from order communication	6 months from order communication
Condonable Delay Window	Up to 3 additional months	Up to 3 additional months
Minimum Dispute Threshold	₹50,000 per case (discretionary refusal below this)	₹20 Lakhs (as directed by Commissioner)
Financial Friction	Mandatory Pre-Deposit + Court Fees Required	NIL Pre-Deposit, NIL Court Fees
Consolidation Rule	No joint or common appeals permitted for either side. Multiple OIOs under a single OIA require entirely separate , individual appeals.	

PRE-DEPOSIT REQUIREMENT & KEY CASE LAW



Exception: Penalty-Only Demands require a flat 10% of the penalty amount.

Strategy Sidebar: Ashirwad Food Industries, 2026

Pre-deposit is calculated on the remaining demand. If excess deposit was made at the first appellate stage due to subsequent demand reduction, no additional GSTAT pre-deposit is required to file the appeal.

Recovery Impact (Section 112(9))

Payment of the requisite pre-deposit amount automatically **stays** all recovery proceedings for the balance amount until final disposal.

The Appellate Countdown



PART B

Written Submissions

Drafting the Memorandum of Appeal — Form GST APL-05 / APL-06

1 Cause Title & Particulars

Full identification: appellant, impugned order number/date, date of communication, pre-deposit challan details, relief sought. Errors here generate defect memos and consume limitation time.

2 Statement of Facts (SOF)

Write as a narrative — not a list of dates. The Bench must understand the commercial reality before reading the grounds. If a fact is not in the SOF, it does not exist for GSTAT.

3 Grounds of Appeal

Each ground: (a) specific finding in the order being challenged with paragraph reference, (b) legal provision violated, (c) consequence and relief on that ground. Lead with your strongest ground. Always plead in the alternative.

4 Relief Clause

Be precise — quash entirely, or modify to the extent of a specific finding, or remand with specific directions. Draft alternative reliefs in descending order. 'Justice be done' is not a relief clause.

⚠ Open Issue: Ground not in the MOA cannot be argued orally without leave. File an application for amendment of grounds before the hearing — do not rely on the Bench's indulgence.

What the Counter-Memo Is

Filed by Respondent after appeal is admitted and notice is issued. Responds ground-by-ground to the MOA; raises preliminary objections (limitation, pre-deposit, maintainability). A new dimension for most CA practitioners — GST adjudication had no equivalent.

Preliminary Objections

Limitation, pre-deposit shortfall, maintainability — all threshold objections upfront. If not raised in counter-memo, may be treated as waived.

Reply to Statement of Facts

Paragraph-by-paragraph response — admit, deny or explain. A blanket denial carries minimal weight with a Judicial Member.

Reply to Grounds

Address each ground specifically. Cite the provision relied upon; distinguish appellant's case law; direct the Bench to specific pages of the departmental

Cross-reference to Record

Point the Bench to specific pages and passages. Departmental strength lies in the original record — use it precisely.

⚠ Open Issue: No statutory time-limit for counter-memo — Bench sets it by direction. Press for a specific calendar date on the first hearing. Resist open-ended directions — they keep the pre-deposit blocked.

When Counter-Memo Arrives — Appellant's Actions

1. Map counter-memo against each MOA ground — identify new factual assertions and new legal arguments not taken in the impugned order
2. If new legal argument not in the order: consider a rejoinder — department cannot support an order on a ground not in the order itself
3. If new documents annexed: examine whether they were part of the original record or introduced fresh — the latter requires leave under Rule 8
4. Read Respondent's written submissions as a brief against you — identifies arguments you will face at the oral hearing

Additional Grounds & Additional Evidence — Rule 8

Additional Grounds — Amending the MOA

Requires leave of the Bench — not a right

Pure question of law: easier to obtain. New factual controversy: harder, may require additional evidence.

Timing is critical

Apply before the counter-memo is filed so the Respondent can address the new ground. Last-minute applications will almost certainly be refused.

Review MOA after counter-memo arrives

Counter-memo frequently reveals gaps in the original MOA. Amendment of grounds is the remedy — make it a standard step in every GSTAT matter.

Additional Evidence — Rule 8 (Three Grounds)

Ground 1 — Refused by lower authority

Cleanest ground. Produce the record of refusal. Silence by the officer may be argued as deemed refusal.

Ground 2 — Not available despite due diligence

Must file affidavit explaining the cause, why it was sufficient, and steps taken. A document forgotten by the representative does not qualify.

Ground 3 — Required by GSTAT itself

Bench's suo motu power. Cannot be invoked unilaterally — but the practitioner can invite the Bench to exercise it.

⚠ Rule 8 is a safety net for genuine hardship — NOT a strategy for deferred evidence production. Granting your application also opens the door for the Respondent's additional evidence, creating a fresh factual inquiry.

⚠ Open Issue: 'Not available despite due diligence' — what constitutes due diligence? Generated for the order? Held by a third party? A portal glitch? GSTAT will develop this standard case by case.

Cross-Objections: The Under-Used Weapon — Section 112(4)

Any person who could have filed an appeal but did not may file cross-objections within 45 days of receiving notice of the other party's appeal — NO pre-deposit required

Scenario A: Dept appeals against partial taxpayer relief

Taxpayer files cross-objections seeking the relief the Appellate Authority denied — a second bite at full relief, with no further pre-deposit.

Scenario B: Taxpayer has appealed the demand

Department files cross-objections seeking enhancement or supporting the order on additional grounds. Note: GSTAT cannot enhance without notice — but cross-objections preserve the right to argue.

Scenario C: Third party affected by the order

In triangular transactions — supplier whose output tax is implicated by buyer's ITC disallowance — the third party may also file cross-objections.

45-Day Action Plan

Day 1

Diarise the 45-day deadline with a 10-day buffer alert

Days 1–7

Identify every adverse finding your client did not appeal

Days 7–30

Evaluate strength of legal position and cost-benefit

Days 30–44

Draft and file cross-objections if warranted — with own SOF, grounds and relief

⚠ Open Issue: No condonation provision for cross-objections after 45 days — Sec. 112(4) has no proviso, unlike Sec. 112(1). Do not let clients rely on condonation. The 45-day window is effectively a hard stop.

Stay Applications & Miscellaneous Applications

Sec. 112(9): Pre-deposit stays recovery of the balance demand as a matter of statute — no separate application needed. But communicate this formally to the recovery officer with proof of pre-deposit.

When Specific Stay is Needed

Attachment already initiated before filing; interest/penalty recovery not covered by automatic stay; allied proceedings continuing (registration cancellation, GSTIN blocking, bank attachment).

Drafting a Stay Application

Address three elements: (a) Prima facie case — grounds are not frivolous; (b) Balance of convenience — harm from non-stay exceeds harm to revenue; (c) Irreparable harm — insolvency, forced asset sale, closure. Support with financials.

Conditions the Bench May Impose

Bank guarantee, additional deposit, periodic compliance reporting. Brief the client before the hearing — do not let a bank guarantee condition surprise them in the courtroom.

Early Hearing Application

Genuine urgency only — imminent insolvency trigger, export licence cancellation, contractual deadline. 'Urgency' is not inconvenience; it is a demonstrable and imminent harm with documentary support.

Restoration Application

Where appeal dismissed in default. Requires showing sufficient cause. GSTAT treats persistent non-appearance harshly — restoration is not a matter of course.

⚠ *Open Issue: GSTAT stay operates within CGST/IGST framework only — it does NOT automatically protect against FEMA, Customs, PMLA, or insolvency proceedings arising from the same transaction.*

PART C

Filing and Procedures

GSTAT PROCEDURE RULES 2025 — CHAPTER STRUCTURE

Chapter I–II

Rules 1–17

Preliminary & Powers

Definitions, inherent powers,
Registry operations

Chapter III

Rules 18–37

Institution of Appeals

Filing procedure, documents,
scrutiny, registration

Chapter IV–V

Rules 38–52

Cause List & Hearing

Scheduling, hearing procedure,
evidence, adjournment

Chapter VI–VII

Rules 53–66

Records & Registers

Court diary, order sheet, file
maintenance, registers

Chapter VIII–IX

Rules 67–77

Inspection & Appearance

Record inspection, authorised
representatives

Chapter X–XII

Rules 78–98

Affidavits & Evidence

Affidavit form, witnesses,
commissions, depositions

Chapter XIII

Rules 99–114

Disposal & Orders

Pronouncement, rectification,
recusal, costs

Chapter XIV–XV

Rules 115–124

E-filing & Misc.

GSTAT portal filing, fees, dress
code, State Bench inspection

APPEAL FILING PROCEDURE — STEP BY STEP

1 Prepare Appeal Form

Online on GSTAT Portal
[Rule 18 & Rule 115]

2 Attach Documents

Certified copy of OIA
+ relied upon docs [Rule 21]

3 Pay Fees

Online via GSTAT Portal
as per Schedule of Fees [Rule
119]

4 Scrutiny by Registry

Within 7 working days
[Rule 24 — defect notice]

5 Registration

Numbered & registered
[Rule 25]

6 Notice to Respondent

Copies endorsed; reply within
1 month [Rule 34 & 36]

7 Cause Listing

Per daily cause list priority
[Rule 38 & 12]

8 Hearing & Order

Order within 30 days of
final hearing [Rule 103]

STEPS FOR APPEAL FILING FEES & PRE-DEPOSIT PAYMENT

Fee Structure (Rule 110/119)

Tier 1: Base Rate: ₹1,000 per ₹1 Lakh of disputed Tax/ITC/Penalty

Tier 2: Minimum Floor: ₹5,000

Tier 3: Maximum Cap: ₹25,000

Flat Rate Exceptions

Interlocutory Applications (IA), Inspection of Records, or Appeals without money demand = Flat ₹5,000.

Step 1: GST Portal Routing

Log in → Services → Ledgers → Payment towards Demand → Utilize Cash/ITC → Generate Challan

Step 2: GSTAT E-Filing Portal Routing

Log in → Form APL-05 → Enter pre-deposit amount in Demand Details → Pay Court Fee (Online/Bharat Kosh)

CONTENTS OF APPEAL & DOCUMENTS REQUIRED

Contents of Appeal Form [Rule 20]

- Cause title — 'In the Goods and Service Tax Appellate Tribunal'
- Full name, GSTIN, description & address of each party
- Appeal divided into paragraphs — numbered consecutively
- Grounds of appeal — clearly set forth under distinct heads
- Typed in double spacing on A4 size paper
- Signed & verified by appellant / authorised representative
- Documents self-certified as true copies

Documents to Accompany [Rule 21]

- Certified copy of Order-in-Appeal (First Appellate Order)
- Copy of Order-in-Original
- All relied upon documents clearly legible, paged & indexed
- Proof of pre-deposit payment
- Vakalatnama / Memorandum of Appearance [Rule 72]
- Translation in English if any document is in regional language [Rule 23]
- Online upload via GSTAT portal — acknowledgement auto-issued

FILING CHECKLIST

Mandatory Specifications

- ✓ Scan all documents in Greyscale at an exact resolution of 300 DPI.
- ✓ Ensure each individual PDF file size remains strictly under 20 MB (Split into volumes if necessary).
- ✓ Keep individual uploaded files under 100 pages.
- ✓ Physically sign the first and last page of every document before scanning.
- ✓ Digitally bookmark all uploaded PDFs for registry navigation.

Instant Rejection Triggers

- ✗ No watermarks of any kind on any uploaded document.
- ✗ No encryption, passwords, or locked PDF files.
- ✗ No tracked changes, comments, or digital markup annotations.
- ✗ No physical/online file mismatches (physical volumes and pages must be identical to the digital upload).

ONLINE FILING PROCESS

[Order Details](#)[Basic Details](#)[Case Details](#)[Appellant Details](#)[Add Respondent](#)[Add Representative](#)[Demand details](#)[Upload Document](#)[Check List](#)[Final Preview](#)

Order Details

Select Filing Through*

ARN/CRN not Available

Order Details

Order Appeal Against*

Select Order Appeal Against

Appellate/Revisional Authority Order Number*

APL01 Appellant Name*

Appellate/Revisional Authority Order Type*

Select Order Type

Authority Type*

Select Authority Type

Appellate/Revisional Authority Passed By*

Appellate/Revisional Authority Designation*

Appellate/Revisional Authority Date of Order*

Appellate/Revisional Authority Order Communication Date*

Order Id of original adjudication order*

Date of original adjudication order*

Period of Dispute From*

Period of Dispute To*

Market value of seized goods (if any)

Upload Impugned Order*

Choose File No file chosen

Confirm

ONLINE FILING PROCESS

[Order Details](#)[Basic Details](#)[Case Details](#)[Appellant Details](#)[Add Respondent](#)[Add Representative](#)[Demand details](#)[Upload Document](#)[Check List](#)[Final Preview](#)

Basic Details

Reference No : -

Select Act*

-- Select Act --

Section*

Add More Act

Case Type *

Appeal

Does the appeal/application involve any issue over which only the Principal Bench has jurisdiction in terms of the provisions of the Act or rules/notification made/issued thereunder *

Select

Select

Yes

No

Jurisdiction of Appellate/Revisional authority*

--Select State/Center--

State/ Zone of Appellate authority *

Has the original order of adjudication been passed by a common adjudicating authority*

Select

Appellate/Revisional authority who has passed the impugned order*

Parentage

Parentage

110
Save and Next

ONLINE FILING PROCESS

Order Details	Basic Details	Case Details	Appellant Details	Add Respondent	Add Representative	Demand details	Upload Document	Check List	Final Preview
Back	Case Detail								Next
Reference No : - 2025107201000035									
Grounds of appeal in brief* ①			GST return filing			Prayer* ①		GST filing	
Brief issue of the case under dispute* ①			Testing						
Category of Case									
Category of case under dispute*			Wrong applicability of a notification issu						
Notification No *			654644446464			Notification Date *		02/02/2025	
Amount involved(In actuals)			100000						
Add More Category Of Case									
Case Summary									
Issue related To			Short or non-payment of tax						
As per order of adjudicating authority ①			Testing			As determined by Appellate/Revisional authority ①		Testing	
As per stand of appellant before Tribunal ①			Testing			As declared/ claimed by present Appellant ①		Testing	
Add More Issue									
About Appellant									
Constitution/Identification Number			54954464844664646464			Constitution of Business		Testing	
Statute under which incorporated			Testing			Date of Commencement of business		05/02/2025	
Address			CGO , Complex, New Delhi			Nature of Business		Testing	
Any other relevant fact			Testing						
Statement of Fact case history									
Reference/ acknowledgment no.			54447798797877			Action By		Original Adjudicating Authority	
Date			06/02/2025			Brief Narration		GST Filing	
Add More									
Save As PDF text									



ONLINE FILING PROCESS

[Order Details](#)[Basic Details](#)[Case Details](#)[Appellant Details](#)[Add Respondent](#)[Add Representative](#)[Demand details](#)[Upload Document](#)[Check List](#)[Final Preview](#)[← Back](#)

Add Respondent

[Next →](#)

Reference No : - 2025107201000035

Respondent Name*

Designation *

Office*

Contact Number

E-mail Id

[Save](#)

+ RESPONDENT'S LIST

S. No.	Name of Respondent	Designation	Office	Mobile No	E-mail	Action
1	Mohan Kumar	OS	NIC	93xxxxxxxx40	m*****m@supportgov.in	Edit
2	Assistant Commissioner (L & J)		Delhi	11xxxxxxxx11	a*****2@nic.in	

ONLINE FILING PROCESS

[← Back](#) [Next →](#)

Reference No : - 2025307201005720 **Document Uploaded successfully**

Note: 1. Upload document in the sequence in which it appears in the document type dropdown.
2. Please Upload the document with proper pdf bookmarking.
3. In case of any short payment done by user or in case of non-agreement with system calculated payment, user is requested to upload their calculation sheet and supporting documents under the document type: Higher Court Orders/Self calculation sheet and Any Other Document respectively.

Submit with external DSC Utility Submit with NIC DSC Utility Submit with Aadhaar Based Utility

Document Filed By*	<input type="text" value="Document Filed By"/>	Document Type*	<input type="text" value="--Document Type--"/>
Select file*	<input type="button" value="Choose file"/> No file chosen	Number of pages*	<input type="text" value="No Of Pages"/>

+ UPLOADED DOCUMENT'S LIST

S.No.	Document Filed By.	No. of Pages.	Document Type	Document Name	Action
1	Appellant	2	Case Management Appeal - PDF Upload	1.pdf	<input type="button" value="View"/>
2	Appellant	2	Appeal	1.pdf	<input type="button" value="View"/> <input type="button" value="Delete"/>
3	Appellant	2	Affidavits	1.pdf	<input type="button" value="View"/> <input type="button" value="Delete"/>
4	Appellant	2	Impugned Order	1.pdf	<input type="button" value="View"/> <input type="button" value="Delete"/>
5	Appellant	2	Vakalnama	1.pdf	<input type="button" value="View"/> <input type="button" value="Delete"/>

PART D

Hearings and Oral Submissions

AUTHORISED REPRESENTATIVE — CHAPTER IX (RULES 72–77)

G

Government Representative

Person duly appointed by Central / State Government or officer duly authorised to appear, plead and act for the Commissioner [Rule 2(d)(i)]

T

Taxpayer's Authorised Representative

Person authorised in writing or through a vakalatnama (duly stamped as per respective High Court rules) to appear, plead and act on behalf of the party [Rule 2(d)(ii) & Section 116 CGST Act]

S

Special Empanelled Representatives

GSTAT may draw a panel of authorised representatives, valuers or other experts to assist in proceedings. Remuneration specified in consultation with Tribunal [Rule 76]

DRESS CODE, RESTRICTIONS & RECUSAL PROVISIONS

Dress Code [Rule 77 & 122]

- AR must appear in professional dress as per their Code of Conduct
- Male: Close-collared black coat OR open-collared black coat with white shirt & black tie
- Female: Black coat over white sari or any other white dress
- Summer exemption (15 April to 31 August): Black coat may be dispensed with
- Relatives / regular employees of party — no dress code requirement

Restrictions on Appearance [Rule 74]

- AR who has tendered advice or drawn pleadings for a party cannot later appear for the opposing side
- Exception: With prior written permission of GSTAT
- Party who has engaged an AR may be restricted from making personal submissions [Rule 75]
- Change of AR requires consent of existing AR on record or permission of GSTAT [Rule 73]
- Consent not required for fresh appeal under Section 112(3)

Recusal [Rule 106]

- President or Member must recuse if personal, familial or professional relationship exists with any party
- Must recuse if previously acted as advisor, expert, representative or witness in the matter
- Must recuse if circumstances make participation inappropriate
- Reasons for recusal may be recorded — not disclosed to parties
- Ensures independence and impartiality of GSTAT proceedings

The Synopsis: Non-Negotiable at GSTAT

What It Is — and Is Not

A 3–5 page hearing-day document that crystallises the case as it stands at the hearing. NOT a repetition of the MOA. NOT the written submissions. It is the Bench's companion during oral argument — brief, crisp, current.

- 1 One-paragraph factual background in plain English
- 2 Impugned order's key findings — stated neutrally with paragraph references
- 3 Grounds distilled to 3–5 propositions — rewritten for the hearing
- 4 Case law — listed with the exact proposition for which each case is cited
- 5 Respondent's main contentions — briefly stated
- 6 Relief sought — precise and specific

⚠ *Open Issue: Rules do not mandate a synopsis — it is professional practice. Practitioners who file one have their arguments anchored in the order; those who do not rely on oral argument that may be imperfectly captured.*

Why Non-Negotiable at GSTAT — 4 Reasons

1 GSTAT writes speaking orders

Without a synopsis, the order is built on the Bench's notes. With one, your propositions are anchored in the reasoning — critical for the HC appeal.

2 Mixed bench dynamic

A synopsis that presents legal grounds AND commercial logic simultaneously is the most efficient single document in a GSTAT advocate's toolkit.

3 Cause list reality

GSTAT lists dozens of appeals per day. A synopsis filed in advance ensures the Bench has read your case before you stand — not a cold audience.

4 Professional signal

The quality of the synopsis is the first impression the Bench forms of the practitioner. Preparation and precision are visible from this document alone.

Arguing Before a Mixed Bench

Judicial Member

HOW TO ENGAGE

Lead with legal proposition: provision → question of interpretation → competing positions → your position with reasons → precedent with ratio stated precisely.

THE TRAP

Arguing like an SCN reply — factual, defensive, commercially framed without legal anchoring.

Technical Member (Centre)

HOW TO ENGAGE

Bring the transaction to life commercially. Use a worked numerical example showing double taxation or tax neutrality. Address the 'revenue loss' concern directly — do not hope it stays unvoiced.

THE TRAP

Assuming they favour the department. A good Technical Member wants the commercially correct answer — help them find it.

Technical Member (State)

HOW TO ENGAGE

Keep cross-border / IGST arguments simple. On intra-State matters and State notifications, this is your most knowledgeable audience — engage specifically with the State framework.

THE TRAP

Assuming the same familiarity with IGST structures as the Centre member. Calibrate the complexity of your argument accordingly.

⚠ Open Issue: 2:1 split with two Technical Members overruling Judicial Member on pure question of law — structurally uncomfortable. How President's larger bench reference power addresses this will be watched closely.

Attacking an Order: The Three-Facet Framework

FACET 1

JURISDICTIONAL / TECHNICAL

Nature & Examples:

Threshold arguments — if they succeed, the order falls without examining merits — Officer without jurisdiction; limitation lapse under Sec. 73/74; non-est SCN; order travels beyond SCN; principles of natural justice violated

Primary Audience & Remedy:

Judicial Member — pure questions of law and procedure. Remedy: Annulment — a jurisdictional defect nullifies the proceeding

Strategic Risk:

If defect is marginal, spending 40 minutes before reaching a strong merit case depletes goodwill and time

FACET 2

FACTUAL / MERIT

Nature & Examples:

Challenges to findings of fact — officer's reading of documents, inferences drawn, characterisation of the supply — Document misread; transaction mischaracterised; inference unsustainable on the evidence; computation error

Primary Audience & Remedy:

Technical Members — frame commercially; take the Bench to specific pages of the paper book. Remedy: Modification or annulment of the specific finding; remand if fresh fact-finding required

Strategic Risk:

Never assume the Bench knows the facts — walk them through the evidence methodically with page references

FACET 3

LEGAL / INTERPRETIVE

Nature & Examples:

Challenges to interpretation of statute, notification or circular — even accepting the facts, the legal conclusion is wrong — Wrong test applied; circular misread; notification

Primary Audience & Remedy:

Judicial Member primarily — but ground the argument in commercial consequence so Technical Members remain engaged. Remedy: Annulment or modification based on

Strategic Risk:

Always say 'even if the Bench accepts the departmental facts, the legal conclusion does not follow because...' — keep facets

⚠ *Open Issue: Characterisation question: when a factual finding is based on a wrong legal standard, is the challenge factual or legal? The answer determines HC reviewability. Be deliberate — this choice at GSTAT has HC consequences.*

Technical vs Merit-Driven Grounds: When to Lead with What

Lead with JURISDICTIONAL / TECHNICAL when:

- ✓ Defect is incontrovertible — dates speak for themselves, non-speaking order visible on face
- ✓ Merits are genuinely difficult — a jurisdictional exit avoids ruling on contested facts
- ✓ Client wants a clean win without precedent on the substantive issue

When NOT: Defect is marginal or requires lengthy argument — depletes goodwill before the merit case

Lead with FACTUAL / MERIT when:

- ✓ Facts are overwhelmingly in your favour — Bench needs commercial reality before appreciating the injustice
- ✓ Recurring transaction — client needs a merit finding, not a jurisdictional annulment that leaves the issue open
- ✓ Technical Members' commercial sympathy needs building before the Judicial Member rules on law

When NOT: Legal position is stronger than factual — do not spend time on facts if the law settles the matter

Lead with LEGAL / INTERPRETIVE when:

- ✓ Directly applicable binding precedent — show the Bench the answer before working through facts
- ✓ Pure question of statutory interpretation — Bench may dispose of the entire appeal on this ground
- ✓ Dept's case rests on misreading a notification or circular — expose it at the outset

When NOT: Legal argument requires extensive contextual setup — establish facts first, then the legal consequence

⚠ *Open Issue: Always argue in the alternative — even with a strong jurisdictional argument, argue merits fully. The Bench may choose to rule on merits even where jurisdiction would suffice, particularly on recurring issues.*

Managing a Numerically Complex Case

Core Principle: Never argue numbers — argue propositions. State the proposition → state the amount at stake → offer to take the Bench through the computation if required.

The Master Summary

Single-page table in the synopsis: total demand → broken by head → your admission (if any) → your challenge against each head. Gives the Bench an aerial view before any detail is argued. The most efficient single page in a numbers-heavy GSTAT matter.

The Colour-Coded Paper Book

Green tabs: documents supporting your position. Orange tabs: documents the department relies on. Blue tabs: undisputed background documents. A Bench that can navigate the paper book is a Bench that stays engaged.

The Agreed Facts Memo

Joint note with the departmental representative confirming undisputed figures — total turnover, tax paid, period. Narrows the numerical contest to what is actually disputed. Signals professional confidence and saves hearing time.

When the Bench Is Losing the Thread — What to Do

Read the signals:

Judicial Member stops taking notes; Technical Member's question reveals a numerical misunderstanding; members confer with each other rather than engaging with you.

Stop and pivot:

Say: 'May it please the Bench — perhaps it would assist if I summarised the numerical position in the one-page table.' Then take them to the master summary. Pause. Let them read.

Request a part-hearing:

If confusion is deep and time is running out, ask for the matter to be stood over. A part-heard matter where the Bench has absorbed the picture is far better than a rushed conclusion on a confused record.

⚠ Open Issue: GSTAT may suo motu call for GSTN portal data or ledger records to resolve numerical disputes — power untested but plausible under Sec. 113. Pre-empt by ensuring the paper book contains all portal records.



PREVAIL — Secure the Outcome

Powers of GSTAT: What It Can and Cannot Do — Section 113

What GSTAT CAN Do [Sec. 113(1)]

Confirm

Uphold the order in whole or in part

Modify

Enhance, reduce or vary specific findings or quantum — subject to enhancement constraint

Annul

Set aside entirely — on jurisdictional, factual or legal grounds

Remand

Return to Appellate or Adjudicating Authority with specific directions

Interim Orders

Pass interim orders in the interests of justice — inherent tribunal power

What GSTAT CANNOT Do — Critical Constraints

No enhancement without notice

Cannot increase demand/penalty/interest beyond the impugned order without notice and opportunity to be heard — Sec. 113(1) proviso. Fundamental taxpayer protection.

Cannot travel beyond pleadings

Confined to grounds raised in the MOA and cross-objections. Unpleaded grounds cannot be decided.

No review jurisdiction

Cannot review its own order once pronounced. The remedy is Section 117 — appeal to HC. A review application before GSTAT is not maintainable.

Not bound by CBIC circulars

GSTAT is a judicial forum. Executive instructions bind revenue officers — not the Tribunal. Establish this explicitly when the department relies on a circular that contradicts the statute.

⚠ *Open Issue: Power to award costs — not explicitly conferred by CGST Act. Inherent power of a tribunal may extend to costs in vexatious or frivolous proceedings. Watch for early GSTAT practice on this.*

Dissenting Members, Larger Bench References & Tagged Matters

Dissenting Orders — Procedure & Strategic Use

GSTAT decides by majority [Sec. 114(3)]. Equal division → third member appointed by President hears only the specific point of difference — not the entire appeal. Sharply articulate the precise point of disagreement for the third member reference.

Strategic use: A Judicial Member dissent on a question of law is powerful ammunition for the Sec. 117 HC appeal — it demonstrates the question is genuinely debatable. Cite it prominently in the HC admission memo. A Technical Member dissent on facts is less directly useful at HC stage but supports the finding was not inevitable. Obtain the certified copy immediately and read the dissent before advising on next steps.

Larger Bench References — Upside and Downside

President may constitute a larger bench where: a question of general importance arises; there is a conflict between two Bench decisions; or a novel GST question requires authoritative determination. File a specific application — do not leave this to the Bench's notice.

Upside: decision binds all subsequent Benches; a win is durable. Downside: significant delay — longer to list, argue and decide. The client's pre-deposit remains blocked throughout. Weigh precedential benefit against time cost explicitly with the client.

Tagged Matters — The Double-Edged Sword

Where multiple appeals raise identical questions, they may be tagged with a lead matter.

Upside: your matter benefits from the lead matter's arguments and decision without the cost of a full hearing.

Downside: you lose control of the arguments — lead counsel argues what is best for their client, not yours.

When tagged: appear on the date the lead matter is argued; seek specific leave to address any point unique to your facts. When you have distinguishing facts: apply proactively to de-tag before the lead matter is argued — after decision, de-tagging becomes very difficult.

Navigating Objections & Technical Defects

Part A — Registry-Level Defects

Defect	If Uncured	How to Cure
Pre-deposit shortfall	Appeal not entertained	Pay deficit; file fresh proof with affidavit of compliance
Wrong form (APL-05 vs 06)	Defect memo / rejection	Re-file in correct form; argue substance over form if limitation has run
Limitation expired — no condonation app	Dismissed in limine	File condonation application simultaneously with the appeal
Certified copy not annexed	Defect memo	Obtain certified copy; if delayed, file affidavit of pendency
Relief clause absent / unintelligible	Defect memo	Amendment application

⚠ Defect memo deadline (typically 30 days) must be treated with the same rigour as the original limitation date. Failure to cure = appeal treated as never filed.

⚠ Open Issue: Jurisdictional objection — matter filed before wrong bench (State vs Principal) — GSTAT Rules do not specify whether this results in dismissal (requiring fresh filing with limitation consequences) or transfer.

Part B — Preliminary Objections from Respondent

Limitation — 'Appeal is barred'

Produce communication date (not portal upload). Have condonation application already filed. Argue actual receipt date.

Pre-deposit shortfall

Produce challan and electronic ledger entry. Have your computation ready. File on higher of two interpretations if 'gross vs net' is in dispute.

Maintainability

Identify precise section under which order was passed. Demonstrate it falls within Sec. 112(1). A statutory right of appeal is not easily ousted.

Res judicata / Issue estoppel

Distinguish on period-specific facts and evidence. GST assessments are period-specific — a prior period finding does not automatically bind the current period.

Non-joinder of necessary parties

In triangular transactions — join the necessary party proactively or argue the matter can proceed without them.

Remand Orders: Strategy, Response & Risk

Sec. 113(1): GSTAT may remand to the Appellate Authority or the Adjudicating Authority with such directions as it thinks fit. A remand is not a victory and not a defeat — it is a second chance with significant responsibilities.

When to Argue FOR Remand

Factual record is thin and natural justice violation is the strongest ground. A fresh hearing with complete evidence will produce a favourable outcome. Problem is process, not substance.

Do NOT argue for remand when: facts are clear and in your favour — ask for outright annulment. A remand sends the client back into the adjudication machinery — another cycle of SCN, order, first appeal, GSTAT — potentially 3–5 more years.

Protecting the Record on Remand

Read the directions paragraph immediately on pronouncement. If any direction is ambiguous or narrower than argued — apply for clarification before the Bench rises. Once sealed, clarification is a separate application.

Directions must state: (a) legal standard to apply, (b) documents to consider, (c) whether fresh evidence can be adduced, (d) time-limit for remand proceedings.

File a copy of the GSTAT order with the lower authority immediately — do not wait for the Registry.

⚠ *Open Issue: Whether GSTAT can remand directly to the Adjudicating Authority — bypassing the Appellate Authority — is debated. Sec. 113(1) permits both. Where the Appellate Authority itself committed the error, direct remand is appropriate. GSTAT will develop criteria.*

Appeal to the High Court — Section 117

Sec. 117(1): Any person aggrieved by a GSTAT order may appeal to the High Court on a SUBSTANTIAL QUESTION OF LAW | Limitation: 180 days from communication of GSTAT order | HC: jurisdiction over the GSTAT Bench's location

The 'Substantial Question of Law' Threshold

Substantial if: not covered by binding precedent of the HC or SC; of general public importance; directly and substantially affects the rights of the parties.

What it is NOT: re-appreciation of evidence, challenge to a finding of fact, disagreement with the Bench's commercial assessment.

The bridge from fact to law: where GSTAT's factual finding is based on an incorrect legal standard, challenge the standard applied — this is a question of law. Frame it as such.

Formulating the Substantial Question of Law

Standard formulation: 'Whether on the facts and in the circumstances of the case and in law, GSTAT was correct in holding that [specific finding / interpretation] and whether [specific provision] requires [specific construction]?'

Frame 2–4 questions maximum. 11 questions signals none is truly substantial.

Each question must be self-contained — a judge encountering it cold must understand the legal issue without reading the full record.

Building the HC Appeal from the GSTAT Stage

Every legal proposition intended for the HC must have been specifically argued before GSTAT and addressed in the GSTAT order. You cannot raise a new question of law at the HC that was not before GSTAT.

A Judicial Member's dissent is the strongest evidence that a substantial question of law arises — cite it prominently in the HC admission memo.

⚠ *Open Issue: Appeal against interlocutory GSTAT order (e.g., refusing additional evidence, dismissing stay) — Sec. 117 says 'any order' but HC courts may refuse piecemeal challenge. Assess costs carefully before filing against an interlocutory order.*

Pre-Deposit: Recovery, Refund & Interest

Pre-deposit under Sec. 112(8) stays recovery of the balance demand as a matter of statute. But: interest continues to accrue on the stayed demand throughout the appeal period — payable in full if the appeal fails.

Refund on Success — Mechanics

Sec. 54 read with Sec. 56: file formal refund application with the jurisdictional officer supported by certified copy of GSTAT order. Not automatic — file on Day 1 after receiving the certified copy.

Sec. 56 interest: if not refunded within 60 days of application, interest at 6% p.a. accrues from expiry of 60-day period.

Resisting Wrongful Withholding

Departmental response: 'Refund held pending possible HC appeal.' This is legally impermissible — a GSTAT order is immediately executable. Only an explicit HC stay order on the GSTAT order justifies withholding. A mere filing of an HC appeal by the department does NOT stay the GSTAT order.

Escalation path: Day 1 — file refund application. Day 45 — formal follow-up. Day 60 — issue legal notice citing Sec. 56 interest. If still withheld — file writ petition at HC seeking mandamus.

Partial Success — Apportionment & Economics

Prepare your own apportionment computation: pre-deposit attributable to successful heads = refundable with Sec. 56 interest; pre-deposit attributable to failed heads = adjusted against surviving demand. Do not rely on the department's computation.

The economics of pre-deposit: Sec. 56 interest at 6% p.a. is almost certainly less than the client's cost of capital. A ₹2 crore pre-deposit blocked for 3 years at 12% cost of capital = ₹72 lakhs cost; Sec. 56 interest returns only ₹36 lakhs. Net unrecoverable cost: ₹36 lakhs even on a clean win. Factor this into the retainer conversation.

Practice.
Plead.
Prevail.

Session Summary

ACT I

Know the forum before you enter it — jurisdiction, bench composition, and logistics are threshold competencies

ACT II

The written record you build is permanent — what is not in the GSTAT record does not exist for the HC

ACT III

Securing the outcome requires as much skill after the order as before — refund pursuit, HC appeal framing, and remand management

EIRC - GST REFRESHER COURSE |

Sections 73, 74 & 122

of the CGST Act, 2017

Critical Distinctions Through the Lens of Recent Judgments

Presented by Adv. Gaurav Gupta

Agenda

- *Penalty selection*
- *Source vs Nature*
- *SCN under Sec 122*
- *Reconciliation 74 SCNs*
- *Sec 122(1)(iii) vs 73*
- *73 vs 74 – key considerations*
- *Q & A*

At a Glance

SECTION 73

Tax not paid / short paid – non-fraud cases

Trigger

Reasons other than fraud, willful misstatement or suppression

Limitation

3 yrs from due date of annual return (FY upto 2023-24)

Penalty in order

10% of tax or Rs.10,000 – whichever higher [Sec 73(9)]

Pre-SCN payment

Tax + interest – NIL penalty; proceedings concluded [Sec 73(5)/(6)]

30 days of SCN

NIL penalty; proceedings concluded [Sec 73(8)]

SECTION 74

Tax not paid / short paid – fraud cases

Trigger

Fraud OR willful misstatement OR suppression of facts

Limitation

5 yrs from due date of annual return (FY upto 2023-24)

Penalty in order

Equal to tax [Sec 74(9)]

Pre-SCN payment

Tax + interest + 15% penalty [Sec 74(5)]

30 days of SCN / order

25% / 50% penalty respectively [Sec 74(8)/(11)]

SECTION 122

Substantive penalty for listed offences

Nature

Penalty section – 21 offences in 122(1); 122(2)/(3) prescribe quantum

Sec 122(2)

Rs.10,000 or amount equivalent to tax evaded – whichever higher

SCN mechanism

No self-contained machinery; relies on Rule 142 / Form DRC-01

Bar – Sec 75(13)

If 73/74 penalty imposed, no parallel 122 penalty for same act / omission

From FY 24-25

New Sec 74A unifies 73/74; classification battle continues for legacy years

Note: Finance (No.2) Act, 2024 introduced Section 74A unifying procedure / limitation for FY 2024-25 onwards. For all earlier financial years – which dominate present-day litigation – the 73 vs 74 vs 122 distinction remains decisive.

Sec 73 / 74 penalty vs Sec 122(2) penalty

4

The Statutory Provision - Section 75(13) of the CGST Act

"Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

Important Cases

- **Huida Sanitaryware India v. Dy. Commissioner CT, W.P. No. 14068 of 2023 (Karn HC)**

Initiation of 73/74 proceedings results in deemed conclusion of Sec 122 penalty proceedings; parallel CGST action barred under Sec 6(2)(b) where SGST has already concluded.

- **Metal N Strips v. Jt. Commissioner, W.P. No. 3208 of 2024 (Karn HC)**

Penalty cannot exceed amount proposed in SCN, nor can parallel penalty be imposed for the same act under another provision.

- **Greenstar Fertilizers v. Jt. Commr (Appeals), W.P. (MD) No. 26254 of 2022 (Mad HC)**

Where ingredients of Sec 74 are not made out, full penalty replaced with token Rs.10,000 under Sec 122.

The Statutory Provisions

- *Rule 142 (1)(a) of the CGST Act*

“The proper officer shall serve, along with the– (a) notice issued under section 52 or section 73 or section 74 or section 74A or section 76 or section 122....”

- Proper officer notified for Sec 122 functions.

Circular No. 254/11/2025-GST dated 27.10.2025

- Limitation for Section 122

The Challenges

- Substantive penalty cannot be levied without a parent SCN provision in the Act – the Rule cannot supply jurisdiction the Act withholds.
- Sections 73, 74, 76 each contain self-contained SCN-and-adjudication mechanisms. Section 122 contains none.
- Sec 75(13) recognises 122 only as a parallel head – it presupposes a 73/74 bedrock proceeding.

Nature of enquiry – to decide penalty?

6

- Is 'Scrutiny = 73' and 'Audit / Enforcement = 74' the correct test? - Sections 65(7), 66(6) and 67(11) all read: "may initiate action under section 73 OR section 74".
- Sec 67 Inspection / Search / Anti-evasion : invariably Sec 74

Important Cases

- **HCL Infotech v. Commissioner, Commercial Tax, Writ Tax No. 1396 of 2024 (All HC)**

Sec 74 SCN that does not even "whisper" allegation of fraud / willful misstatement / suppression is without jurisdiction; quashed.

- **Stemcyte India Therapeutics Pvt. Ltd. vs. CCE&ST, Ahmedabad-III [Civil Appeal Nos. 3816-3817 of 2025 (S.C.)]**

Mere non-payment of tax, without any element of intent or suppression, is not sufficient to attract extended limitation period.

- **Amit Agarwal v. Asst. Commr. CGST, WPA 7788 of 2025 (Cal HC)**

Dropping of Sec 61 scrutiny does NOT bar later Sec 74 proceedings if fraud / suppression is subsequently detected through investigation.

- **Honey Rose Varghese v. State of Kerala, WP(C) No. 41590 of 2024 (Ker HC)** – objection to invocation of Sec 74 must be decided as preliminary issue.

Data mismatches and the reach of Section 74

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Apparent Differences

Data Checks

- GSTR-1 vs GSTR-3B – outward supply mismatch
- GSTR-2A / 2B vs ITC claimed in 3B / 9
- GSTR-9 vs GSTR-9C – reconciliation differences
- 26AS / TDS / ITR turnover vs GST turnover
- MCA / ROC financials vs GST returns

Why Sec 74 is generally inapt

- Data points are SELF-DISCLOSED in returns / financials.
- "Suppression" requires concealment from the Department.
- What is on the Department's own portal cannot be "suppressed".
- Mismatch may be procedural – timing / classification – not evasion.

Important Cases

- *BirlaNu Ltd. v. Union of India, W.P. No. 14564 of 2024 (Telangana HC)* - Where the relevant disclosures were already in GSTR-6, invocation of extended limitation under Sec 74 is unsustainable; SCN and consequential proceedings quashed.
- *Abhimaani Structures v. Supt. of Central Tax, W.P. No. 35021 of 2025 (Karn HC) & Guru Mahesh Medicals v. Asst. Commr., W.P. No. 35021 OF 2025 (T-RES) (Karn HC)* - Circular 183/15/2022-GST governs pending GSTR-3B vs GSTR-2A mismatch matters and must be applied even if not pleaded by the assessee; orders set aside.
- *Geetha Agencies v. Dy. Commr. of State Tax, WP(C) No. 32070 of 2023 (Ker HC) | Dennish Kollikkara v. Asst. State Tax Officer, WP(C) No. 32070 of 2023 (Ker HC)* - Mere mismatch cannot justify ITC denial where supplier has actually remitted tax; remand for fresh consideration.

Section 122(1)(iii) penalty vs Section 73

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Non payers

- SEC 122(1)(iii) - "collects any amount of tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due" – penalty under Sec 122(2): Rs.10,000 or amount equivalent to tax evaded, whichever higher.

Pre conditions for 122(1)(iii)

- Pre-condition: tax must have been COLLECTED. Mere non-filing of GSTR-3B does not, by itself, prove collection.
- Department must establish (a) collection (b) non-payment (c) lapse of three months – year-wise.
- Conclusory invocation, without these particulars, is liable to be quashed for non-application of mind.

Important Cases

- **Annai Angammal Arakkattalai v. Jt. Commr. (Appeals), W.P. (MD) No. 28502 of 2022 (Mad HC)** - Where non-registration, receipts disguised as donations, and post-inspection payments showed deliberate evasion, Sec 74 demand and penalty SUSTAINED.
- **Kulithalai Municipality v. Supt. CGST, W.P.(MD) No. 22245 of 2024 (Mad HC)** – Revenue issued SCN and passed order levying penalty under Section 122(2)(b) despite subsequent payment of entire tax amount with interest – when tax + interest paid; opportunity to contest penalty granted; order treated as SCN.

The 73 vs 74 Matrix

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The requisites

- Suppression - *in financials or in returns?*
- Pre-SCN payment - *does it always make it 74?*
- Retrospective amendments - *law changing after the act*
- Conflicting judgments - *interpretational disputes*
- Clerical / human errors
- Multi-year SCNs
- Other issues - *limitation, jurisdiction, particulars*

Important Cases

- **Establishment of fraud – onus on department – Circular No. 1053/02/2017-CX dated 10.03.2017 – Para 3.2.**
- **HCL Infotech v. Commissioner, Commercial Tax, Writ Tax No. 1396 of 2024 (All HC) - SCN that did not even "whisper" fraud / willful misstatement / suppression – jurisdictional ingredients absent – proceedings quashed.**

The 73 vs 74 Matrix

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The requisites

Bonafide Interpretations – battles in Section 74

- Cross-charge between distinct persons
- ITC on immovable property and CSR – pre-amendment treatment
- Secondment – pre / post Northern Operating Systems
- Classification / HSN with rival entries
- Related-party valuation methodology
- Intermediary – place of supply for export of services

Important Cases

- **BSH Household Appliances Manufacturing v. Commissioner of Central Tax, W.P. No. 11574 of 2025 (Karn HC)** - Tax not paid on secondment of foreign group employees relying on prevailing Tribunal view; tax later paid post Northern Operating Systems (SC). Held: bona-fide interpretational dispute – no fraud / willful misstatement / suppression / intent to evade. Sec 74 PENALTY SET ASIDE; only interest sustained.

Voluntary deposits = Admission of fraud?

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Payment before SCN

Does voluntary deposit transmute the case into a 74 case?

- Sec 74(5) contemplates pre-SCN payment with 15% penalty – its very existence shows pre-SCN payment cases are 74 cases
- Voluntary payment may equally be on advice / abundant caution – assessee to establish

Important Cases

- **Aathi Hotel v. Asst. Commr. (ST), W.P. No. 3474 of 2021 (Mad HC)** - Interest and full penalty under Sec 73 / 74 arise only where wrongly availed credit is also UTILISED. Credit reversed before utilisation – only token Rs.10,000 penalty sustained.
- **Greenstar Fertilizers v. Jt. Commr. (Appeals), W.P. (MD) No. 26254 of 2022 (Mad HC)** - Transitional credit reversed (partly before, partly after SCN) – no fraud / suppression established – Sec 74 penalty replaced with token Rs.10,000 under Sec 122.
- **Deendayal Port Authority v. Union of India, R/SCA No. 19866 of 2022 (Guj HC)** - Bona-fide procedural error in TRAN-1 carry-forward – interest sustained but penalty under Sec 74 / 122 set aside.

Clerical errors and retrospective amendments

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Beyond control

CLERICAL & HUMAN ERRORS

- Wrong head – CGST/SGST instead of IGST and vice-versa
- Digit transposition in invoice / GSTIN
- Mismatch between invoice and e-way bill values
- ITC availed in wrong period within same FY

Important Cases

- **Aarem Trad Ex v. STO, W.P.(C) No. 2767 of 2024 (Del HC)** - IGST instead of CGST/SGST = clerical mistake; non-speaking order set aside.
- **Akash Gupta (Yogi Sanitations) v. STO, W.P.(C) 14648 of 2024 (Del HC)** - Clerical error in GSTR-9; rectification reply ignored – order set aside.
- **OSEL Devices v. AEO, WP(C) No. 33720 of 2024 (Ker HC) & Peenya Industrial Gases (Ker HC)** - Minor discrepancies without intent to evade fall under Sec 122, not Sec 129.

Clerical errors and retrospective amendments

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Beyond control

RETROSPECTIVE AMENDMENTS

- Schedule III amendments – HSS, merchant trade
- Sec 16(4) extensions for past ITC claims
- Insertion of explanations changing valuation

Judged by the law as it then stood, the original act was lawful.

Important Cases

- **Amit Manilal Haria v. Jt. Commr. CGST & CE, W.P. No. 5001 of 2025 (Bombay HC)** - Sec 122(1A), introduced w.e.f. 01.01.2021, cannot be applied retrospectively for periods from 2017 onwards. Coercive action restrained.

IS consolidation permissible?

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SCN for multiple years

Yes

- Ambika Traders v. Addl. Commissioner, W.P.(C) 4853 of 2025 (Del HC)
- Devansh Wire and Cables v. Jt. Commr. CGST, W.P.(C) Nos. 4455 & 16884 of 2025 (Del HC)
- Goldstone Infra v. Addl. Commr. CGST, W.P. No. 1498 of 2026 (Telangana HC)
- SA Aromatics v. UoI, Writ Tax Nos. 1000 etc. of 2025 (All HC)

No

- AR Traders v. Jt. Commr. CGST, W.P. No. 8397 of 2025 (Bom HC)
- Century Galaxy Developers v. UoI, W.P. No. 22633 of 2024 (Karn HC)
- Chimney Hills Education Society v. Addl. Commr. CT, W.P. No. 26164 of 2024 (Karn HC)
- Dhanlaxmi Bank v. State of Kerala, WP(C) No. 39107 of 2024 (Ker HC)

Important Points

- **Summary is not SCN - Aditya Medisales v. State of Jharkhand, W.P. (T) No. 4338 of 2022 (Jhar HC)** - Summary of SCN in DRC-01 cannot substitute the statutory notice required under Sec 73; foundation legally defective.
- **Summary of demand - Air Transport Corporation Assam v. State of Assam, WP(C) Nos. 470 of 2025 (Gauhati HC)** - DRC summaries cannot replace the statutory SCN under Sec 73 / 74; orders without proper hearing offend Sec 75(4).
- **Signature on Orders / SCN - Water Tech Engineers v. Asst. Commr. CGST, WP No. 21072 of 2024 (Telangana HC)** - DRC-07 without digital signature of the Proper Officer is not legally sustainable.
- **Supplier's registration cancellation – BP Oil Mills v. Addl. Commr. Grade-2, Writ Tax Nos. 1841/43/44 of 2024 (All HC)** - No material to show fraud / suppression once supplier's registration was restored – Sec 74 assessment quashed.
- **Parallel Proceedings – RES JUDICATA**
 - **Armour Security (India) Ltd. vs. Commissioner, CGST, Delhi East Commissionerate , SLP (c) No. 6092 of 2025 (SC)** - Parallel proceedings should not be initiated by other tax administration when one of the tax administrations has already initiated intelligence-based enforcement action. The expression "initiation of any proceedings" in Section 6(2)(b) refers to the formal commencement of adjudicatory proceedings by way of issuance of a SCN
 - **Toyota Kirloskar v. UoI, W.P. No. 22952 OF 2023(T-RES)(Karn HC)** - Sec 6(2)(b) bars State action where Centre has already initiated
 - **Bipin Kumar Agrawal v. Commr. CGST, W.P.(C) No. 20151 of 2024 (Ori HC)** - Audit qualifies as proceeding under Sec 6(2)(b); Central action quashed.
 - **HM Leisure v. Asst. Commr. CGST, W.P. No. 236 of 2025 (Bom HC)** - Parallel proceedings cause chaos / harassment – impugned order quashed.

Important Points


- **Section 75(13) bar - Huida Sanitaryware (Karn HC) and Metal N Strips (Karn HC).**
- **Prabhu Steel Industries Ltd. v. Collector of Central Excise, Nagpur, [1997 (95) E.L.T. 164 (S.C.)]** – if all material facts were in the knowledge of the revenue authorities, mere change in opinion as to correct the classification is not sufficient to invoke the extended period of limitation
- **Lubri-Chem Industries Ltd. v. Collector of Central Excise, Bombay, - 1994 (73) E.L.T. 257 (S.C.)** - there had been something more positive than mere inaction or failure on the part of the assessee or conscious or deliberate withholding of information when the assessee knew otherwise
- **Collector of Central Excise, Ahmedabad v. ITEC (P) Ltd., Bombay, 2002 (145) E.L.T. 280 (S.C.)** - when assessee has disclosed the correct facts including the price at which the goods were sold to related person, it is futile to contend that there was any suppression of fact on the part of the assessee

Q & A

Thank you

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