J.B. NAGAR CPE STUDY CIRCLE OF WIRC

Subject	:	Recent Important Judgements in GST and its impact
Day & Date	:	Sunday, 6th September 2026
Venue	:	Goldfinch Hotel, Plot No.34/21, Central Road, MIDC, Near Akruti Center Point, Andheri East, Mumbai – 400 093

Preamble

Preamble

- GST Law is a complex and bit unfair piece of legislation
- Business entities and tax administrators are still grappling with it
- High-pitched demands are very common due to tax administrators taking revenue prone approach, may be due to collection pressure and extra cautious approach
- GST, being a new tax legislation, there is a Paucity of settled judicial precedence
- Tax exposure, being a transaction tax, is huge and remains open for 5 to 6 years
- Ambiguous drafting and lack of settled jurisprudence leads to **:**
  - Uncertain legal position
  - Uncertainty as to tax position to be taken by business community
  - Commercial Disputes between business entities
  - Hardships and harassment of taxpayers
  - Adverse financial implications for taxpayers

Preamble

- Attempt is made here to analyze few GST decisions of the Honorable Supreme Court and High courts on some important issues. This may help the taxpayers and GST practitioners to decide the course of action while:
  - Handling GST audits, Investigations by Anti- Evasion division or DGGI, Adjudications etc.
  - Planning financial affairs and deciding commercial strategies for business
  - Taking call whether to go for litigation or not? If yes, then to decide litigation strategy
- Whether business entity should go by strict legal call or by commercial wisdom call considering:
  - Possibility of passing of tax incidence to customers/clients
  - Entitlement to claim input tax credit
  - Uncertainty of litigation outcome
  - Time period and hassles of litigation
  - Litigation cost
  - Hidden cost of litigation such as payment of pre-deposit, time and efforts of promoters and employees

Grant of Leasehold Rights in Land

Taxability of Grant of Leasehold Rights in Land

- **Builders Association of Navi Mumbai v. Union of India ([2018] 92 Taxman.com 134 (Bombay))**

  - **Brief facts and background:**

    - CIDCO allotted leasehold plots to Various builders in Navi Mumbai by charging a "one-time lease premium" along with separate annual lease rentals
    - CIDCO raised demand for 18% GST on one time lease premium on the allotees
    - Builders association of Navi Mumbai (Petitioner) filed the Writ petition challenging an order levying/collecting the GST on the one time lease premium by CIDCO

  - **Issue Involved:**

    - Whether grant of the leasehold rights in land is liable to GST ?

Taxability of Grant of Leasehold Rights in Land

- **Contentions of the Petitioner:**
  - Long term Lease of land for 60 years tantamount to sale of immovable property
  - One time premium paid is a consideration for entering into the lease and is different from lease rent
  - Article 36 of Schedule to Maharashtra Stamp Act,1958 treats such lease transaction as conveyance and stamp duty is collected by State thereon
  - Schedule II of the GST Act does not classify the one time lease premium as service. This is indicative of legislative intent to leave out a long term lease transaction from GST levy
  - Such transaction tantamount to sale of land and hence not a supply as per entry 5 of Schedule III of CGST Act, 2017. Consequently it is not liable to GST
  - CIDCO is a planning authority and it is a creature of law. It performs **statutory function** which is not a "service"

Taxability of Grant of Leasehold Rights in Land

- **Observations and Decision of Honourable Bombay High Court:**
  - Section 7(1)(a) of the Central Goods and Services Tax Act, 2017, defines "supply" in an inclusive manner to include "all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, **lease** or disposal" made for a consideration "in the course or furtherance of business"
  - No activity of the nature mentioned in the inclusive provision can be left out of the tax net
  - Schedule II, Clause 2(a) of the CGST Act,2017 specifically classifies any **lease**, tenancy, easement, **licence to occupy land** as a "supply of services"
  - Once the legislature has treated such an activity as a supply, the premium charged as consideration constitutes the taxable measure upon which GST is to be levied, assessed, and recovered.
  - CIDCO is a "person" as defined in Section 2(84) and that it disposes of lands by leasing them in the course of its business
  - The Court did not find the merit in the arguments that the transaction amounted to a **sale of land** or was **exempt due to CIDCO's statutory status**
  - **The Writ petition was dismissed**

Taxability of Grant of Leasehold Rights in Land

- **Builders Association of Navi Mumbai v. Union of India [2024] 162 taxmann.com 610 (SC)**

  - Builders Association of Navi Mumbai filed a Special leave petition (SLP) against the above order of Honourable Bombay High Court

  - **Honourable Supreme Court's Order:**

    - "We do not find any good ground and reason to take a different view than the one expressed by the High Court."

    - "We have not examined the question of exemption granted by Notification No. 12 of 2017-CT (Rate) dated 28.06.2017 w.e.f., 01.07.2017. "

    - "We have also not examined the scope and ambit of the expression in Clause 2 (a) of Schedule-II "licence to occupy land is a supply of services" of the Central Goods and Services Tax Act, 2017.

      These aspects are left open."

    - **"The Special Leave Petition is dismissed"**

Taxability of Grant of Leasehold Rights in Land

- **Issues for Deliberation:**
  - Whether this decision establishes the ratio that:
    - Grant of leasehold rights does not amount to sale of land ?
    - Any right in land (though treated as immovable property under transfer of property Act or under general clauses Act) is not covered in Entry number 5 of Schedule III to the CGST Act,2017 and consequently liable to GST?
  - Whether grant of the leasehold rights by the Governmental authority is entitled to exemption under the following entries of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017:
    - Entry 4 - Which grants an exemption for Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution
    - Entry 41 – Which grants exemption for one-time upfront premium for long-term lease (30 years or more) of industrial plots to industrial units or developers in any industrial or financial business area allotted by State Government industrial development corporation or undertaking or an entity in which Central or State Government holds 20%.
  - If grant of leasehold rights is taxable, whether tax is payable under forward charge by supplier or under reverse charge by recipient ?

Assignment of Leasehold Rights in Land

Taxability of Assignment of Leasehold Rights in Land

- **Gujarat Chamber of Commerce and Industry v. UOI [2025] 170 taxmann.com 251 [Gujarat High Court]**

  - **Brief facts and background :**
    - Gujarat Chamber of Commerce filed a Special Civil Application in Gujrat High Court challenging the recovery of GST on assignment of long-term lease hold rights by assignor (original lessee) to the assignee
  - **Issue Involved:**
    - Whether assignment of leasehold rights in a GIDC plot by an assignor to an assignee for lump sum consideration is liable to GST ?
  - **Observations and Decision of the Court :**
    - The deliberations of the 5th and 7th GST Council meetings which explicitly deferred and excluded imposition of GST on land and buildings.
    - Schedule III, Entry 5 is the expression of this intent. The scope of 'land' for this purpose should be read liberally to include benefits arising from land, consistent **with the definition in Black's Law Dictionary and Law Lexicon**

Taxability of Assignment of Leasehold Rights in Land

- Section 7(1)(a) of the GST Act and Clause 5(a) of Schedule II classify "renting of immovable property" as a service, there is a "thin line of distinction" between renting and the outright assignment of leasehold rights
- This constitutes an absolute transfer of immovable property, and not merely a "service" of licensing or permitting another to use property
- When leasehold right is transferred by the assignor in favour of an assignee, it would be nothing but transfer of an “immovable property” in view of the settled legal position that lease for 99 years or for a long-term in consideration of premium paid is as much an alienation as sale or mortgage
- Sale and service are not interchangeable. The scope of “supply of services” would not include transfer of leasehold rights as it would be transfer of immovable property being a benefit arising out of immovable property consisting of land and building
- The entire land and building transferred along with leasehold rights constitutes a “Profit a prendre” which is also an immovable property and therefore, would not be subject to tax under GST
- **GST is not leviable on the assignment of leasehold rights**

Taxability of Assignment of Leasehold Rights in Land

- **Aerocom Cushions (P.) Ltd. v. Assistant Commissioner (Anti-Evasion), CGST & CX, Nagpur-1 [2026] 182 taxmann.com 432 (Bombay High Court) – Nagpur Bench**

  - **Issue Involved :**
    - Whether assignment of leasehold rights in MIDC plot by an assignor to an assignee is liable to GST?
  - **Observations and Decision of Honourable Bombay High Court (Nagpur Bench):**
    - Transaction was exclusively of a transfer of benefits arising out of immovable property
    - It had no nexus whatsoever with the business of the petitioner company. Since the transaction was not made "in the course of or in furtherance of business," the foundational requirement of Section 7(1)(a) of the CGST Act for a taxable supply was wholly absent
    - Court relied on decision of Gujarat High Court in case of Gujarat Chamber of Commerce and Industry v. UOI [2025], which held that assignment/sale/transfer of leasehold rights of GIDC-allotted land is a transfer of benefits arising out of immovable property and not subject to GST under Section 9 of the GST Act
    - Court held that GST is **not leviable** on the assignment of leasehold rights.

Taxability of Assignment of Leasehold Rights in Land

- **Assistant Commissioner (Anti - Evasion) V. Aerocom Cushions (P.) Ltd [2026] 186 taxmann.com 995(SC)**

  - **Facts and Background:**
    - Revenue filed Special Leave Petition against the order of Nagpur Bench of Bombay High Court in case of Aerocom Cushions (P) Ltd.
  - **Decision of Honorable Supreme Court:**
    - Honourable Supreme Court dismissed the SLP stating "We are not inclined to interfere with the impugned judgment and order of the High Court; hence, the special leave petition is dismissed"

Taxability of Assignment of Leasehold Rights in Land

- **Union of India v. Gujarat Chamber of Commerce and Industry[2026] 188 taxmann.com 762 (SC)**
  - The revenue has filed Special Leave Petition against the order of Gujrat High Court in case of Gujarat Chamber of Commerce and Industry
  - **Order of Honourable Supreme Court:**
    - **Upon reviewing the merits of the case**, the Court observed that a **similar Special Leave Petition involving the exact same legal issues** had already been considered and dismissed by the Court vide order dated **May 22, 2026**, in the case of *Assistant Commissioner (Anti Evasion) v. Aerocom Cushions (P.) Ltd.*
    - In view of the fact that a similar SLP has been dismissed, the instant special leave petitions is dismissed

Taxability of Assignment of Leasehold Rights in Land

- **Issues for Deliberation:**
  - Whether this decision establishes the ratio that:
    - Assignment of long term leasehold rights is covered in **Entry number 5 of Schedule III** to the CGST Act,2017 and **consequently not liable to GST**?
    - While interpreting the Entry 5 of Schedule III, scope of 'land' should be read liberally to include benefits arising from land, consistent with the definition in Black's Law Dictionary and Law Lexicon ?
    - Whether refund can be claimed of GST paid on assignment of leasehold rights? If answer is yes:
      - Who can apply for refund, assignor or assignee?
      - If assignee has borne incidence of GST and claimed ITC thereof, whether assignee is entitled to refund?
      - Whether limitation period of 2 years apply for claiming the refund?

Taxability of Assignment of Leasehold Rights in Land

- If GST is not payable on assignment of long term leasehold rights, whether following rights in the land would also be excluded from GST levy?
  - Development Rights
  - Minig Rights
  - Occupancy Rights
  - Tenancy Rights
  - Sale of Under Construction Property

- Whether the above referred decision of Honourable Supreme Court can be annulled by retrospective amendment in the Act?

- If retrospective amendment is done in the Act, what will be the implications in following cases where:
  - GST is not paid on assignment of leasehold rights?

Taxability of Assignment of Leasehold Rights in Land

- Taxability of Assignment of leasehold rights is contested in pending audit, scrutiny, investigation, adjudication or appeal proceedings?
- GST is already paid before above judgements of Honourable Supreme Court?
- GST is already paid before the above judgements and incidence of tax was passed on to the assignee ?
- Assignee has claimed input tax credit of tax paid on assignment of leasehold rights ?
- Refund is granted either to the Assignor or Assignee?

Transfer of Development Rights

Taxability of Transfer of Development Rights

- **Prahitha Construction Private limited vs Union Of India [2024-TIOL-623-HC-TELANGANA-GST]**
  - **Brief Facts and background :**
    - Prahitha Construction Private limited (“Petitioner”) entered into a Joint Development Agreement (JDA) with landowners for development of a commercial project
    - Petitioner filed the writ petition before Honourable High Court questioning whether transfer of development rights was in the nature of transfer of immovable property or nature of services falling within scope of GST
  - **Issue Involved:**
    - Whether transfer of development rights is liable to GST?
  - **Contentions of Petitioner:**
    - On execution of the JDA, there is a substantive transfer of development rights of property in favour of the petitioner which results in sale of land
    - Bar on levy of tax on sale of land is provided in Entry 5 of Schedule III of the GST law

Taxability of Transfer of Development Rights

- Notifications suggesting taxation of development rights in JDA are ultra vires of Article 14, 246A and 265 of the Constitution of India.
- Notification, being a delegated legislation, cannot travel beyond the scope of substantive law
- Taxing areas under the GST law cannot be expanded only by way of issuance of a notification

- **Observations of the High Court :**

  - Execution of the JDA between the two parties by itself would not amount to result in transfer of ownership
  - The transfer of development rights is a service and not an outright sale of an immovable property

- **Order of Honorable High Court :**
  - For all the aforesaid decisions and reasons, we are of the considered opinion that the grounds and contentions raised by the petitioner in respect of the **reliefs sought for is not sustainable;**
  - The writ petition sans merit and therefore deserves to be and is accordingly, **dismissed**

Taxability of Transfer of Development Rights

- **Prahitha Constructions (P.) Ltd. v. Union of India [2024] 162 taxmann.com 640 (SC)**
  - Aggrieved by the above order, Petitioner has filed Special Leave Petition in Honourable Supreme Court
  - Honourable Supreme Court has not stayed operation of the impugned judgment/order and, therefore, taxes will have to be paid.
  - In case the petitioner - Prahitha Constructions (P.) Ltd. is aggrieved, appropriate orders will be passed in accordance with the law.
  - **The final decision on SLP is pending**

Taxability of Transfer of Development Rights

- **Issues for Deliberation:**
  - Whether one can say that Honourable Supreme Court has concluded that transfer of development right is liable to GST?
  - Whether GST is payable on development right during the period before the final decision of Honourable Supreme Court on this issue ?
  - If Honourable Supreme Court decides in favour of taxpayer, what will be the implications in following cases where:
    - Taxability of development rights is contested in pending adjudication or appeal proceedings?
    - GST is already paid before final judgement of Honourable Supreme Court ?
    - GST is already paid before the judgement and incidence of tax has been passed on to the transferee?
    - Transferee has claimed input tax credit of tax paid on development rights ?
  - How one reconciles the ratio of decisions of Honourable Supreme Court in case of grant of Leasehold rights, Assignment of Leasehold Rights and transfer of Development Rights ?

Taxability of Transfer of Development Rights

- Implications of decision in case of Mormugao Port Trust [2016-TIOL-2843-CESTAT-MUM] In respect of Service Tax wherein it was held that when services is jointly provided by two parties to ultimate service recipient, there is no provision of service by one party to another party providing services jointly. SLP is rejected by Honourable Supreme Court not seeing merit in appeal
- If Honourable Supreme Court decides in favour of Revenue, what will be implications in following cases:
  - Tax is not paid by tax payer
  - Matter is agitated in audit, investigation, adjudication or appeal proceedings?

Corporate Guarantee for Related Parties

Taxability of Corporate Guarantee for Related Parties

- **D P Jain & Co. Infrastructure (P.) Ltd. v. UOI ([2026] 186 taxmann.com 392 (Bombay))- Nagpur Bench**

  - **Brief Facts and Background:**

    - Petitioner provided an irrevocable & unconditional corporate guarantees for bank loan to its subsidiary
    - Above referred guarantees were provided without any consideration
    - Petitioner received summons for investigation proceedings and show cause notice asking for payment of GST on above referred guarantees
    - Rule 28(2) was inserted vide notification number 52/2023-CT dated 26.10.2023 providing where the corporate guarantee is provided for related party, the value shall be deemed to be *one per cent of the amount of such guarantee offered per **annum***, or the actual consideration, whichever is higher*

      *Inserted on 10.07.2024 by the Central Goods and Services Tax (Amendment) Rules, 2024, w.r.e.f. **26-10-2023**

    - Circular-No-204/16/2023, dated 27.10.2023 was issued on the subject of taxability of corporate guarantee in GST and clarified that activity of providing corporate guarantee will be treated as a taxable supply of service
    - Petitioner filed SLP challenging the validity of Rule 28(2) and related circulars

Taxability of Corporate Guarantee for Related Parties

- **Issues Involved:**

  - Whether Corporate Guarantee provided by company for its group companies without charging any consideration is liable to GST as per Entry 2 of Schedule I to CGST Act,2017 read with Rule 28(2) of CGST Rule, 2017 ?

  - Whether Corporate Guarantee given **before 26.10.2023** (Prior to date of insertion of the rule 28(2)) is liable to GST?

- **Contentions of Petitioner:**

  - Sub-Rule (2) of Rule 28 of the Central Goods and Services Tax Rule, 2017 as inserted by the Notification No. 52/2023-Central Tax, dated 26.10.2023 and further amended by Notification No. 12/2024 Central Tax, dated 10.07.2024 are ultra-virus to the Act and hence needs to be quashed

  - it is a settled principle of law that, a tax liability cannot be created by a circular, where in this circular it is mentioned that providing corporate guarantee will be treated as a taxable supply of service

Taxability of Corporate Guarantee for Related Parties

- Corporate Guarantee is an 'actionable claim', which is neither a supply of goods and nor supply of service, hence not taxable

- A corporate guarantee is in the nature of a contingent contract, enforceable only upon default, hence not a service. It is an in house guarantee and not a commercial activity undertaken on a regular basis

- Petitioner was not engaged in the business of providing guarantees and issued the in house guarantee to support its subsidiary. The transaction is not in course of furtherance of business and hence not a supply liable to GST

- Valuation of guarantees issued or renewed before 26.10.2023 shall be done in accordance with Rule 28, as it existed during that time

- Valuation of only those guarantees issued or renewed after 26.10.2023 shall be done as per Rule 28(2) of CGST Rules, 2017

Taxability of Corporate Guarantee for Related Parties

- **Observations of the High Court:**

  - In the absence of flow of consideration for the rendering of services, taxability does not arise. Court relied on Mumbai CESTAT judgement in case of Edelweiss Financial Services Ltd under service tax regime (SERVICE TAX APPEAL NO: 86552 OF 2015) Upheld by Honourable Supreme court (Diary No(s).5258/2023)

  - The corporate guarantee is a guarantee of one corporate unit to keep itself responsible for the financial obligations or any other contractual obligations of the principal debtor to the creditor on behalf of principal debtor Corporate guarantee depends on the credit worthiness of the parent-company/guarantor

  - Executing a corporate guarantee to its subsidiary is not in the nature of supply of service taxable under Section 9 of the CGST Act, 2017

  - In the light of the well settled legal position, proposition of declaring Sub-Rule 2 of Rule 28 as ultra-vires is not sustainable

Taxability of Corporate Guarantee for Related Parties

- **Decision of the High Court:**
  - The Writ Petition is partly allowed:
    - Show cause notice is quashed and set aside (Favour of Petitioner)
    - Sub-Rule 2 of Rule 28 cannot be declared as ultra-vires (Favour of Revenue)

- **Issues for Deliberation:**
  - Revenue till date has not filed SLP against the above decision. Does this mean that this decision is binding in Bombay high court Jurisdiction?
  - The Court held that corporate guarantee to a related party is not a taxable supply while upholding the constitutional validity of Valuation Rule 28(2) of CGST Rule, 2017. The confusion – if supply is not taxable, valuation rule becomes redundant
  - The court relied on Apex court decision in case of Edelweiss which was in the context of Service Tax. There was no concept of taxability of deemed services between related parties in service tax regime while GST regime has specific provisions for deemed supply between related persons under Schedule I

Taxability of Corporate Guarantee for Related Parties

- What will be the impact of this decision in Jurisdiction of other High courts ?
- Whether the nominal value or nil value will be accepted for payment of GST on corporate guarantee for related party?
- What will be the implications in following cases where:
  - GST is already paid before this judgement of Honourable Bombay High Court ?
  - Whether refund can be claimed? If answer is yes:
    - ❑ Who can apply for refund, provider or recipient?
    - ❑ If recipient has borne incidence of GST and claimed ITC thereof, whether assignee is entitled to refund?
    - ❑ Whether limitation period of 2 years apply for claiming the refund?

Taxability of Corporate Guarantee for Related Parties

- **Torrent Power Ltd v. Union Of India & ORS [2026] 189 taxmann.com 490 (Gujarat)**

- **Brief Facts and Background :**

  - Holding companies furnished **corporate guarantees** to banks/financial institutions on behalf of their subsidiaries **without consideration**
  - Some holding companies done share pledge arrangement securing the subsidiary's obligations to the lender
  - GST authorities sought to levy GST on above referred guarantees by valuing it under Rule 28(2)
  - GST authorities issued the show cause notices under Section 74 for corporate guarantees executed in pre-GST era and tax was demanded for the period from July 2017 to March 2020
  - Tax was recovered from some of the petitioners
  - Petitioners challenged Rule 28(2) of the CGST Rules and Section 15(4) of the CGST Act as they are ultra vires to Articles 14, 19(1)(g), and 265 of the Constitution of India
  - Petitioners challenged validity of CBIC Circular No. 204/16/2023-GST dated 27.10.2023 and CBIC Circular No. 225/19/2024-GST dated 11.07.2024 as overstepping the statutory framework

Taxability of Corporate Guarantee for Related Parties

- **Issues Involved:**

  - Whether a corporate guarantee executed by a holding company for its subsidiary without consideration constitutes a "supply of services" under Section 7 of the CGST Act read with Schedule I ?
  - Whether a corporate guarantee secured by a share pledge arrangement constitutes a taxable supply ?
  - Whether grant of corporate guarantee constitutes "business" under Section 2(17) of the CGST Act ?
  - Whether corporate guarantees are "actionable claims" to be excluded from the scope of GST under Schedule III and consequently not liable to GST?
  - Whether flat 1% valuation under Rule 28(2) or actual consideration, "whichever is higher", is arbitrary and unconstitutional under Article 14 and Article 19(1)(g) ?
  - Whether GST can be collected by applying Rule 28(2) for the period prior to its insertion on **26.10.2023**?
  - Whether GST can be collected on corporate guarantee given for related party **before 26.10.2023** which continue on or **after 26.10.2023**?

Taxability of Corporate Guarantee for Related Parties

- **Contentions of the High Petitioners:**
  - The corporate guarantee for related party is **not a supply liable to GST** for following reasons:
    - gratuitous corporate guarantee involves no activity carried out for another with consideration
    - furnishing a gratuitous guarantee for a wholly owned subsidiary is a shareholder or investment activity designed to protect corporate investments and safeguard shareholding and does not constitute "business" under Section 2(17) of the CGST Act.
    - guarantee is a contingent contract and not a service in the course or furtherance of business
    - guarantee is given by the holding company to the lender bank, and hence service, if at all, are being rendered to the bank and not to the related party
    - corporate guarantee constitutes an actionable claim and is therefore non-taxable
    - actual pledging of shares is a transaction in "securities" under Section 2(101), which is excluded from the definition of both goods and services, precluding any GST levy

Taxability of Corporate Guarantee for Related Parties

- **Observations of the Court of High Court:**
  - Expression "supply" under Section 7 must receive a purposive and expansive interpretation
  - Holding companies and their subsidiaries are "related persons"
  - Once the guarantor (holding company) settles the debt of the defaulting subsidiary, it gets all the rights of the bank under the right of subrogation (Section 140) and has an implied promise of indemnification (Section 145). This statutory nexus constitutes the connecting link to treat the arrangement as a "supply of service" by the holding company to its subsidiary under Section 7(1)(c) read with Schedule I, Article 2
  - corporate guarantee falls within the expression "agreeing to do an obligation to do an act".
  - Subsidiary company is the ultimate beneficiary and recipient of the service as the service is triggered by the subsidiary's requirement for financial assistance and hence the subsidiary is a "recipient" under Section 2(93) of CGST Act,2017
  - Extending a guarantee is "business" under Section 2(17). Although lending money is not the holding company's core activity, safeguarding the financial interest of its subsidiary is an extension of its business interest. Volume, continuity, or profit motive are irrelevant, and even single, isolated transactions count as business

Taxability of Corporate Guarantee for Related Parties

- Being a specific, non-transferable financial assurance provided to a lender, a corporate guarantee cannot be casually traded and remains outside Schedule III read with Section 7(2)(a)
- A share pledge merely secures the performance of the guarantee. Since GST law is unconcerned with how a promise is secured, it tantamount to supply of service
- Outstanding debt reflected by the subsidiary each year triggers the valuation mechanism
- Validity of Section 15(4) and Rule 28(2) in general noting that the legislature holds wide fiscal latitude to prescribe specialized valuation methodologies.
- Fixation of benchmark of value of corporate guarantee at 1 per cent, even if 'actual consideration' may be lower than 1 per cent appears to be unreasonable and arbitrary
- The Court held that Rule 28(2) cannot be applied retrospectively to periods before its insertion on 26.10.2023. A retrospective levy of a new tax where no levy previously existed is harsh, unfair, and hit by the doctrine of unjust enrichment.
- The levy is permissible for periods after 26.10.2023

Taxability of Corporate Guarantee for Related Parties

- **Decision of the High Court:**
  - Section 15(4) of the CGST Act are held to be intra vires
  - Provision of Rule 28(2) of the CGST Rules, 2017 is held to be intra vires the CGST Act and the Constitution, except to the extent that the expression **"whichever is higher" is read down as arbitrary and unconstitutional**
  - Levy of GST on corporate guarantees for period prior to 26th October, 2023 under Rule 28(2) is declared violative of Articles 14 and 19(1)(g) of the Constitution
  - Levy on guarantee executed before 26.06.2023 is attracted prospectively from 26.10.2023 if the guarantees continue
  - Show cause notices, and demand orders taken by the Revenue under Section 74 are quashed and set aside.
  - Any excess GST deposited by the petitioners is ordered to be refunded within three months.
  - CBIC Circular No. 204/16/2023 and Circular No. 225/19/2024-GST are set aside to the extent they run contrary to this decision, with liberty granted to the Revenue to issue fresh circulars consistent with the ruling

Taxability of Corporate Guarantee for Related Parties

- **Issues under Deliberation:**

  - Neither Petitioner nor respondent has till date filed SLP against the above decision
  - Does this decision is binding in Gujrat high court Jurisdiction?
  - Can Revenue Authority apply ratio of this decision in case of taxpayers in Maharashtra or other States?
  - In case a nominal value is charged for corporate guarantee (much lower than 1% of Guarantee amount), whether such value will be accepted by the revenue authorities ?
  - If related party is entitled to input tax credit, whether nil valuation or nominal valuation will be acceptable?

Taxability - Mutuality Transactions

Taxability of Mutuality Transactions

- **Indian Medical Association V. Union Of India [2025] 173 taxmann.com 474 (Kerala) – Larger Bench**
  - **Brief Facts and Background:**
    - Section 7(1)(aa) inserted by Notification No. 39/2021-CT dated 21.12.2021 expanding the scope of supply by deeming activities or transactions by mutual associations to its members and constituents retrospectively from 01.07.2017
    - Indian Medical Association filed a Writ Application in Honourable Kerela High Court challenging the following:
      - Section 2(17)(e) and Section 7(1)(aa) and explanation thereto are ultra-virus the provisions of Article 246A read with Article 366 (12A) and violative of Articles 14, 19(1) (g), Articles 265 and 300A of the Constitution of India;
      - Applicability of Section 7(1) (aa) retrospectively from 01.07.2017 is unconstitutional and violative of Articles 14, 19 (1) (g) Articles 265 and 300A of the Constitution of India
    - Single Judge upheld the validity of the statutory amendments but struck down their retrospective application as unfair and illegal.
    - Petitioner appealed against the dismissal of its constitutional challenge and revenue authorities appealed against the setting aside of the retrospective operation of Section 7(1)(aa)

Taxability of Mutuality Transactions

- **Issues Involved:**

  - Whether Section 2(17)(e) and Section 7(1)(aa) and explanation thereto are ultra-virus the provisions of Article 246A read with Article 366 (12A) violative of Articles 14, 19(1) (g), Articles 265 and 300A of the Constitution of India ?

  - Whether Applicability of Section 7(1) (aa) retrospectively from 01.07.2017 is unconstitutional and violative of Articles 14, 19 (1) (g) Articles 265 and 300A of the Constitution of India ?

- **Petitioner's Contentions:**

  - Under the long-established common law "principle of mutuality," there is an identity between a club/association and its members, meaning that **there can be no sale/service by a club to its members**

  - This principle continues to survive even after the Constitution (Forty-sixth Amendment) Act, 1981, as affirmed by the Supreme Court of India in State of West Bengal & Ors. v. Calcutta Club Ltd., which recognized that there could be no service between a club and its members

Taxability of Mutuality Transactions

- Plain meaning of "supply of goods or services" under Article 366(12A) of the Constitution requires two persons and that there can be no supply to oneself
- Legislative power of Parliament and State Legislatures under Article 246A to tax "supply of goods and services" cannot be statutorily expanded by inserting an artificial definition of "supply" under Section 7(1)(aa)
- Any expansion of such constitutional power to tax self-sale or self-service can be achieved only by amending the Constitution and not by a statute of the legislature
- 46th Amendment only extended to the supply of goods and does not cover services
- Retrospective law is unreasonable, arbitrary, and confiscatory, as association had no notice of the levy prior to 2022 and could not have collected the tax from their members
- Petitioner, citing the maxim lex non cogit ad impossibilia, asserted that the law does not expect the impossible, meaning that interest and penalties cannot be retrospectively imposed for a period when the liability was unknown

Taxability of Mutuality Transactions

- **Observations of the Court:**

  - Under the constitutional scheme of GST, both "supply" and "service" do require a plurality of persons to infer their existence, and the concepts of self-supply or self-service are not envisioned under the Constitution for the purposes of the levy

  - When a word or concept in the Constitution has been interpreted by the Supreme Court, a legislative body cannot give to the word/concept a meaning that goes against the meaning assigned to it by the Supreme Court

  - Supreme Court's decision in Calcutta Club reinforces that the principle of mutuality has survived under the Constitution even after the 46th Amendment. GST Act amendment expands the scope of "supply" without a corresponding constitutional amendment to this effect

  - Altering the basis of indirect taxation with retrospective effect, without giving the assessee an opportunity to collect the tax from its service recipients, militates against the concept of Rule of Law and lacks valid justification

Taxability of Mutuality Transactions

- **Decision of the Court:**
  - Allowed Writ Petition with consequential reliefs to the petitioner
  - Dismissed the Revenue's Writ Petition
  - Section 2(17)(e) and Section 7(1)(aa) and the Explanation thereto of the CGST Act, 2017, and the corresponding provisions of the KGST Act, are unconstitutional and void, being ultra vires Article 246A read with Article 366(12A) and Article 265 of the Constitution of India
- **Issues under deliberation**:
  - SLP is pending before Honorable Supreme Court against the decision of Honorable Kerela High Court
  - Whether associations, clubs or society should treat its transactions with members as non-taxable based on Kerala High Court decision?

Taxability of Mutuality Transactions

- The call should be taken considering following:
  - The decision of Kerala High court is binding on subordinate courts, tribunals and authorities within its territorial jurisdiction
  - Above decision is challenged by GST authorities in supreme court (SLP(C) No. 018349 - 018350 / 2025 Registered on 15-07-2025)
- Possibility of constitutional amendment cannot be ruled out
- Possibility of long drawn litigation cannot be ruled out
- Litigation cost, hassles and uncertainty of outcome
- Exposure to exorbitant interest in the event of losing the case

Consolidated SCN and Adjudication Order for Multiple Years

Validity of Consolidated SCN and Adjudication Order for Multiple Years

- Revenue normally issues one consolidated SCN for multiple financial years instead of separate SCN for each year
- Under Sections 73(10) and 74(10) of the CGST Act, the limitation period for passing an order runs independently for each financial year
- When years are clubbed, **time-barred year gets carried along** inside a consolidated notice
- Taxpayer were losing year-specific limitation defenses
- Views of the various High Courts were divided on the issue whether:
  - Consolidated show cause notice for multiple years can be issued
  - Consolidated adjudication order for multiple years can be passed

Validity of Consolidated SCN and Adjudication Order for Multiple Years

- There are multiple judgements against and for the decision

Delhi High Court (Division Bench) — Mathur Polymers [2025 (9) TMI 112]

Pro-Consolidation

Anchor pro-consolidation ruling. Revenue's position upheld.

Supreme Court dismissed SLP [2025 (11) TMI 1 184] — declined to interfere; NOT binding Supreme Court precedent on merits.

Karnataka High Court (Division Bench) — Chimney Hills Education Society [2026 (5) TMI 125]

Pro-Consolidation

Consolidated notices permissible — but time-barred portions must be excluded, not the entire notice struck down.

Allahabad, Jammu & Kashmir, and Kerala High Court

Pro-Consolidation

All three upheld consolidated SCNs.

* Kerala High Court also has a conflicting ruling on the other side — jurisdiction is internally split.

Bombay High Court (Goa Bench) (Division Bench) — Milroc Good Earth [2025 (10) TMI 867]

Struck Down

Consolidated SCN = jurisdictional overreach.

Followed by Bombay High Court in : Paras Stone [2026(1) TMI 839], ICAD School of Learning Pvt. Ltd [2026 (2) TMI 1420], Rite Water [2025(11) TMI 1939].

Madras High Court (Single Bench) — Titan Company Ltd. [2024 (1) TMI 619]

Struck Down

Bunching SCNs is contrary to the scheme of the GST law.

Kerala*, Andhra Pradesh, and Himachal Pradesh High Court

Struck Down

All three consistently held consolidated SCNs impermissible.

* Kerala High Court is split internally — one bench upholds, another strikes down.

Validity of Consolidated SCN and Adjudication Order for Multiple Years

- Honourable Bombay High Court in case of Rollmet LLP (Bombay High Court (Division Bench) [2026 (4) TMI 1218]) referred the question on the same issue to a three-judge larger bench. The decision of Larger Bench is pending. This decision will be binding for jurisdiction of Bombay High Court

- Reference is also pending before Honourable Supreme Court in case of Brilliant Metals Pvt. Ltd. [18089/2026 dated 29 May 2026] where SLP is filed against Delhi High Court order on this very question of consolidated SCNs. Honorable Supreme Court has clubbed this SLP with an earlier pending matter on the same issue

- **Way Forward**:

  - Check the position taken by High Court having the jurisdiction and take call accordingly

  - Even if your High Court upholds the consolidated notice, time-barred years must be excluded

  - Need to wait for decision of Honourable Supreme Court on this issue as the decision will override all High Court splits and bind every jurisdiction

ITC Eligibility U/s. 16(2)(C)

ITC Eligibility Under Section 16(2)(C) of CGST Act, 2017

- **Brief Facts and Background:**
  - Section 16(2)(c) allows input tax credit to purchaser only when the tax charged to him has actually been paid by supplier to the Government
  - Strong view is prevalent among the tax payers and tax consultants that ITC can not be denied to bonafide purchaser for the supplier's default
  - Decisions of various High Courts are divided on this issue
- **Sahil Enterprises *v.* Union of India [2026] 182 taxmann.com 144 (TRIPURA)**
  - **Observations of the High Court:**
    - Recipient/purchaser has no practical mechanism to verify whether the supplier has actually deposited the collected tax with the Government
    - Section 16(2)(c) places an **onerous burden on a bona fide purchasing dealer**
    - Purchaser cannot reasonably identify suppliers who may default in payment of tax
    - Denial of ITC to a bona fide purchaser for the supplier's default may result in **disproportionate consequences**

ITC Eligibility Under Section 16(2)(C) of CGST Act, 2017

- To preserve the constitutional validity of Section 16(2)(c), the Court read down the said provision
- ITC cannot be denied to a bonafide purchaser merely because the supplier has failed to deposit the tax collected from the purchaser. The Department **should proceed against the defaulting supplier**
- Court relied on reasoning in Delhi VAT case law of **On Quest Merchandising India (P.) Ltd.**, as approved by the Supreme Court in **Arise India**

▪ Decision of the High Court:

- Section 16(2)(c) of the CGST Act & TGST Act upheld as constitutionally valid and is not violative of Articles 14, 19(1)(g), 265 or 300-A of the Constitution.
- Section 16(2)(c) of the Act should be read down and not be interpreted to deny ITC to purchasers in bona fide transactions and it should be applied only when the transaction is found to be Not bona fide; Collusive; or Fraudulent / intended to defraud the Revenue

ITC Eligibility Under Section 16(2)(C) of CGST Act, 2017

- **Maruti Enterprise *v.* Union of India [2026] 186 taxmann.com 90 (Gujarat)**
  - **Observations of the High Court:**
    - The legal position under the former VAT regime was materially different, as input tax credit was confined within the originating state
    - Section 16(2)(*c*) of the CGST Act cannot be equated with the VAT regime, particularly with Section 9(2)(*g*) of the DVAT Act, as examined by the Delhi High Court in *On Quest Merchandising India (P) Ltd*. (*supra*)
    - Tripura High Court, while following in the case of *On Quest* Merchandising *India (P) Ltd.* (*supra*), has read down Section 16(2)(*c*) of the CGST Act on the ground of practical impossibility for the purchaser to ensure that the supplier has deposited tax
    - Clauses (a), (b), (c) & (d) of Section 16(2) of the CGST Act should be read and **satisfied together and not separately**
    - A registered person (dealer) is not entitled to claim input tax credit unless all the conditions including 16(2)(c) are satisfied.
    - Section 41(2) of the CGST Act adequately addresses the concerns of the purchasing dealer disproportionate consequences

ITC Eligibility Under Section 16(2)(C) of CGST Act, 2017

- ITC is not a constitutional or vested right, but a statutory concession, subject to the conditions and restrictions prescribed under the Act

- Provision of Section 16(2) (c) enables the government to secure its interest in revenue

▪ **Decision of the High Court:**

- Court was not inclined to read down Section 16(2)(c) of the CGST Act and held that the constitutional challenge to section 16(2)(c) would fail

- There was no constitutional infirmity under Articles 14, 19(1)(g), 265, or 300A, as the provision is anchored in the legitimate objective of maintaining the integrity of the tax chain

- ITC is not a constitutional or vested right, but a statutory concession, subject to the conditions and restrictions prescribed under the Act

- Court noted a pressing need for legislative amendments or clarifications to alleviate the disproportionate financial and administrative burden on honest purchasers, suggesting the implementation of a technology-driven tracking mechanism for real-time verification of payments

ITC Eligibility Under Section 16(2)(C) of CGST Act, 2017

Bhandari Scrap Traders *v.* Union of India [2026] 188 taxmann.com 986 (SC)

Brief Facts and Background:

- Honourable **Gujarat High Court, in Maruti Enterprise v. Union of India**, held Section 16(2)(c) constitutionally valid and rejected the plea to read down its provisions
- High Court observed that the Statement of Objections and Reasons (SOR) tied ITC to "taxes paid," validly linking credit to actual payment of tax by the supplier
- Petitioner filed Special Leave Petition (C) No. 23931 of 2026 before the Supreme Court against the Gujarat High Court's order
- Petitioners filed writ petitions challenging the **constitutional validity of Section 16(2)(c)** of the CGST Act, 2017 and the GGST Act, 2017, or alternatively sought reading down of the provision.
- Petitioners challenged denial of Input Tax Credit (ITC) on the ground that ITC **could not be denied for the supplier's failure to deposit the requisite tax**

ITC Eligibility Under Section 16(2)(C) of CGST Act, 2017

- **Petitioners’ Contentions:**
  - They fulfilled all the conditions for availing ITC under clauses (a), (aa), (b), and (ba) of Section 16
  - There is an impossibility of verifying supplier payment
  - ITC should not be denied to a purchasing dealer solely due to the supplier's default in depositing tax with the government
  - Denying ITC for the supplier's failure to deposit tax violates Articles 14, 19(1)(g), 265, and 300A of the Constitution of India
  - To confine ITC denial to fraudulent or collusive transactions, rather than applying it to bona fide purchasing dealers
- **Observations of Honourable Supreme Court:**
  - The Supreme Court agreed with the detailed analysis of the Gujarat High Court distinguishing the provisions of the Delhi Value Added Tax Act, 2004 from those of the CGST Act, 2017
  - There is no possibility of drawing parity between the provisions of the two enactments

ITC Eligibility Under Section 16(2)(C) of CGST Act, 2017

- Under Section 41 and Sections 73 and 74 of the CGST Act, the purchasing dealer is entitled to re-avail the reversed ITC after the supplier-dealer is made to discharge the tax liability
- As Section 41 permits the re-availment of reversed ITC upon subsequent payment of tax by the supplier, Section 16(2)(c) was constitutionally valid and could not be read down
- The detailed exercise undertaken by the Gujarat High Court in the challenged judgment had not been performed by the Tripura High Court in case of *Sahil Enterprises v. Union of India*,

▪ **Decision of Honourable Supreme Court:**

- Honourable Supreme Court expressed complete and respectful agreement with the views expressed by the Gujarat High Court and affirmed and upheld the impugned judgment.
- The Court held that the High Court was fully justified in holding that no grounds were made out to declare Section 16(2)(c) of the CGST Act unconstitutional or to read down its provisions.
- The Supreme Court dismissed the special leave petitions.
- The final ruling was decided in favour of the Revenue.

ITC Eligibility Under Section 16(2)(C) of CGST Act, 2017

- **Way Forward:**
  - Ratio laid down by Honourable Supreme Court becomes law of a land
  - Advisable to reverse the ITC claimed which is not consonance with Section 16(2)(c) to avoid the further interest
  - Advisable to withdraw pending appeals, if any on this issue

Gist of Other Important Judgements

- **Tata Steel Limited Vs Union of India [Civil Appeal No. 12020 of 2026] Honourable Supreme Court order dated 25.08.2026:**
  - Section 74 can not be invoked by merely using the words "fraud or suppression or misstatement of facts"
  - Show cause notice must show foundational facts demonstrating fraud, wilful misstatement or suppression
- **DGGI Vs Gameskraft Technologies (P.) Ltd and others - [2026] 186 taxmann.com 1232 (SC):**
  - For online gaming platform, gross amount received for betting is liable to GST and not the platform charges, commission or service charges
- **Chief Commissioner of CGST Vs. Safari Retreats Pvt Ltd [2024-TIOL-101-SC-GST]:**
  - Erstwhile Section 17(5)(d) blocks the ITC of goods or services received by taxable person for construction of immovable property (other than Plant **or** Machinery) on his **own account**
  - Honourable Supreme Court allowed ITC in respect of construction of mall to be given on rent treating mall (special purpose building) treating it as a plant to which blockage under section 17(5)(d) does not apply
  - GST authorities filed a Review Petition against the above referred order of Honourable Supreme Court

    [2025] 174 taxmann.com 894 (SC)

Gist of Other Important Judgements

- Review petition was dismissed by Honourable Supreme Court as there was no error apparent on the record
- Section 17(5)(d) is amended with retrospective effect and post amendment said section reads as under:

  goods or services or both received by a taxable person for construction of an immovable property (other than *plant **and** machinery)* **on his own account** including when such goods or services or both are used in the course or furtherance of business.

- Relevant part of Para 32 of the Original judgement of Honourable Supreme Court reads as under:

  "There are two exceptions in clause (d) to the exclusion from ITC provided in the first part of Clause (d). The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery". **The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account. Construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license"**

  - **Does this mean that ITC can still be claimed in respect of construction of shopping mall or any commercial property intended to be used for renting or leasing out even after the amendment in Section 17(5)(d) of CGST Act, 2017?**

Words of Caution

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Any Questions ?

THANK YOU

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