



THE GST INSIDER

BUDGET EDITION 2026



CA. SAMARPIT SHARMA

»»» PREFACE «««

Welcome to our latest issue of "**The GST Insider**" meticulously compiled by **CA Samarpit Sharma**. As we navigate through the ever-evolving landscape of the Goods and Services Tax (GST), our aim is to bring you the most recent and pertinent updates, including circulars, notifications, press releases, relevant case laws, advance rulings, and other essential documents.

This Newsletter is designed to serve as a comprehensive resource for enhancing your understanding of GST regulations. Each edition is carefully structured to present complex legal content in an accessible and engaging format. Through the use of explanatory visuals and simplified explanations, we strive to make the material not only easier to comprehend but also more interesting to read.

It is important to note that the information provided herein is intended solely for knowledge sharing purposes and should not be utilized as a basis for any form of professional advice. For specific GST-related advice, we recommend consulting with qualified experts.

By integrating visual aids and reformulating the legal text into reader-friendly formats, we hope to enrich your learning experience and keep you updated on significant GST developments. Enjoy the read, and may it spark both your interest and understanding of GST.

Thank you for trusting "The GST Insider" as your go-to source for GST updates. We hope you find this edition both informative and easy to comprehend.

Thank You!



CA. SAMARPIT
SHARMA

AUTHOR

“

*Push past your
comfort zone*

”

»»» NEWSLETTER «««

THE GST INSIDER



TOP UPDATES OF THE MONTH

KEY GST REFORMS ANNOUNCED IN BUDGET 2025-26

»»» READ MORE

The Finance Bill 2026 proposes key GST reforms aimed at simplifying compliance, easing working capital through faster refunds, and reducing litigation, particularly in areas of post-supply discounts, refund mechanisms, and advance rulings. Budget

.... Cont. on Page 05

READ MORE



The Court held that Input Tax Credit cannot be denied to a bona fide purchaser merely because the supplier failed to deposit the tax, unless the transaction is proven to be fraudulent or collusive.

.... Cont. on Page 16

ITC CANNOT BE DENIED TO BONA FIDE PURCHASER FOR SUPPLIER'S FAILURE TO DEPOSIT GST

TRIPURA HIGH COURT

20 FEBRUARY 26

SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4	5	6	7
8	9	GSTR7 (JAN 2026) GSTR 8 (JAN 2026)	GSTR1 (JAN 2026)	12	GSTR1/IFF (JAN 2026)	14
15	16	17	18	19	GSTR 3B (JAN 2026) GSTR 5A (JAN 2026)	21
22	23	24	25	26	27	GSTR 11 (JAN 2026)

INDEX

»»» *Gst Budget Highlights - By Divya Sharma*

•→ Relaxation in Valuation (Sections 15 & 34)	06
•→ Amendment to Refund Provisions (Section 54)	06
•→ Interim Appellate Mechanism - Section 101A	07
•→ Place of Supply for Intermediary Services Act.....	08

»»» *Case Laws*

•→ GSTR-1 vs GSTR-3B Mismatch; Conversion from Section 74 to Section 73 and Remand for Fresh Determination under Section 75(2) of the CGST Act - Commissioner, Odisha	10
•→ Detention of Goods without Valid E-Way Bill; Invalid Tax Invoice Issued During Suspension of Supplier's GST Registration; Release under Section 129(1)(a) Denied - Allahabad High Court	12
•→ Affiliation Fees Collected by Universities from Colleges Held Taxable under GST - Madras High Court (Tiruchirappalli Bench)	14
•→ ITC Cannot Be Denied to Bona Fide Purchaser for Supplier's Failure to Deposit GST - Tripura High Court	16
•→ Bail in GST Evasion Case Above ₹5 Crore Upheld; Deposit Condition Alone Not Ground for Cancellation (Union of India v. Arun Jindal)	17
•→ Anti-Profiteering Proceedings: Developer Held to Have Fully Passed on ITC Benefit to Homebuyers - GSTAT, New Delhi	19
•→ Regular Bail Granted in Alleged IGST Evasion Case Involving Import of Services and Non-Payment under RCM - Punjab and Haryana High Court..	20
•→ Writ Petition Challenging Section 74 GST Show Cause Notice Dismissed; Disputed Facts to Be Examined in Adjudication Proceedings - Allahabad High Court	22



Gst Budget

HIGHLIGHTS

DIVYA SHARMA



KEY GST REFORMS ANNOUNCED IN BUDGET 2025-26

AUTHOR PROFILE

Divya Sharma is an MBA (Finance) and currently pursuing LLB, with a keen interest in GST and indirect taxation. Based in Jaipur, she closely follows regulatory developments and practical compliance aspects, aiming to present clear and well-structured insights on evolving GST provisions.



EXECUTIVE SUMMARY

The Finance Bill 2026 proposes significant amendments aimed at simplifying compliance, improving liquidity, and reducing litigation under the GST regime.

The framework for post-supply discounts under Sections 15 and 34 of the CGST Act has been relaxed. Earlier, discounts were allowed as deductions from taxable value only if pre-agreed and linked to specific invoices. The proposed amendment removes this condition and shifts the compliance focus to proper issuance of credit notes and corresponding reversal of input tax credit (ITC) by the recipient. Budget

This provides practical relief for businesses offering commercial discounts such as turnover rebates and performance incentives.

Refund provisions under Section 54 have also been strengthened. Provisional refunds up to 90% will now extend to cases involving accumulated ITC due to inverted duty structures, easing working capital pressures. Additionally, the ₹1,000 minimum threshold will not apply to export refunds where goods are exported with payment of tax. Budget

An interim appellate mechanism is proposed under Section 101A to resolve conflicting advance rulings across States until the National Appellate Authority becomes operational. Budget

This aims to reduce uncertainty for multi-state businesses.

Further, the omission of Section 13(8)(b) of the IGST Act proposes a major shift in the place of supply for intermediary services. Services provided to foreign clients may now qualify as exports under the general rule, enabling zero-rating benefits. Budget

Overall, these amendments reflect a clear move toward rationalisation, documentation-based compliance, faster refunds, and alignment with destination-based taxation principles.

The major legislative changes and their practical implications are examined in detail below.



KEY GST REFORMS ANNOUNCED IN BUDGET 2025-26

POST-SUPPLY DISCOUNTS: RELAXATION IN VALUATION (SECTIONS 15 & 34)

BACKGROUND AND EARLIER LEGAL POSITION

Under Section 15(3)(b) of the CGST Act, post-supply discounts could be excluded from the taxable value only if certain stringent conditions were met. The discount had to form part of a pre-existing agreement (entered into at or before the time of supply), be clearly linked to specific invoices, and the recipient was required to reverse the proportionate input tax credit (ITC) based on the credit note issued by the supplier. This framework often posed practical challenges in recognizing genuine commercial discounts such as year-end rebates, dealer incentives, or sales performance-based discounts.

PROPOSED AMENDMENT

The proposed amendment seeks to simplify this framework. The supplier must mandatorily issue a credit note in accordance with Section 34 of the CGST Act. A post-supply discount will be allowed to be excluded from the taxable value where the supplier issues a valid credit note for the discount and the recipient reverses the proportionate input tax credit in accordance with the provisions of Section 15(3)(b) read with Section 34. The earlier requirement that the discount must have been pre-agreed at the time of supply and specifically linked to the original invoices is proposed to be removed. Accordingly, the compliance emphasis shifts from demonstrating prior contractual terms to ensuring proper documentation through credit-note issuance and corresponding ITC reversal.

IMPACT AND INSIGHT

This change marks a practical shift in compliance from contractual rigidity to documentation based validation. Businesses can now recognize genuine commercial discounts such as volume rebates, turnover-based incentives, or post-sale performance adjustments without needing pre-defined agreements. Proper credit note issuance and corresponding ITC reversal will be key to compliance.

AMENDMENT TO REFUND PROVISIONS (SECTION 54)

BACKGROUND AND EARLIER LEGAL POSITION

Under the existing GST refund framework, provisional refund of up to 90% of the claimed amount was generally available in cases of zero-rated supplies such as exports. However, where input tax credit accumulated due to an inverted duty structure (i.e., where the tax rate on inputs exceeded the tax rate on output supplies), taxpayers were required to undergo the regular refund verification process before any amount was sanctioned. This often resulted in delays in receipt of refunds and led to working-capital blockage, particularly in industries operating under structurally higher input tax rates.



KEY GST REFORMS ANNOUNCED IN BUDGET 2025-26

PROPOSED AMENDMENT

Two specific changes have been proposed:-

- **Extension of Provisional Refund to Inverted Duty Structure Cases :-** Section 54(6) will now cover refunds of unutilised ITC under clause (ii) of the first proviso to Section 54(3), enabling provisional refunds up to 90% for such cases, subject to prescribed conditions.
- **Relaxation of Minimum Refund Threshold for Exports:-** The ₹1,000 minimum refund threshold under Section 54(14) will not apply to cases of goods exported on payment of tax, allowing refunds irrespective of the claim amount.

IMPACT & INSIGHT

The amendments will help businesses access refunds faster, easing cash flow pressures especially in sectors like textiles, chemicals, and manufacturing. Smaller exporters benefit too, as even low-value claims can now be processed. Proper record-keeping and ITC reconciliation will still be important to ensure smooth compliance.

INTERIM APPELLATE MECHANISM - SECTION 101A

BACKGROUND AND EARLIER LEGAL POSITION

Under the GST framework, Section 101A provides for the establishment of a National Appellate Authority to resolve situations where different State Appellate Authorities issue conflicting advance rulings on the same question of law or classification. However, since this National Authority has not yet become operational in practice, taxpayers and departmental officers often lacked a dedicated statutory forum to file appeals in such cases under Section 101B. As a result, businesses operating across multiple States frequently faced inconsistent tax positions, uncertainty in classification or rate applicability, and increased litigation exposure. In many instances, parties were compelled to approach High Courts for relief or continue business operations without final clarity, leading to avoidable compliance risks.

PROPOSED AMENDMENT

To address this gap, the Finance Bill, 2026 proposes insertion of a new sub-section (1A) in Section 101A. The amendment empowers the Central Government to notify an existing authority or tribunal to hear appeals against conflicting advance rulings until the National Appellate Authority is formally constituted. The notified tribunal will adjudicate such appeals using its own existing procedural structure. Further, the detailed provisions contained in sub-sections (2) to (13) of Section 101A which relate to the composition, appointment, qualifications, service conditions, and procedural framework of the National Appellate Authority will not apply to this interim arrangement. This provision is specifically proposed to take effect from 1 April 2026.



KEY GST REFORMS ANNOUNCED IN BUDGET 2025-26

IMPACT & INSIGHT

This move ensures a pragmatic, interim appellate framework, minimizing legal uncertainty for businesses operating across multiple States. It provides a functional forum to resolve issues related to classification, rate applicability, and valuation disputes, reducing dependency on constitutional litigation. Taxpayers should monitor notifications specifying the designated tribunals to anticipate and prepare for potentially expedited appellate processes.

PLACE OF SUPPLY FOR INTERMEDIARY SERVICES - SECTION 13, IGST ACT

BACKGROUND AND EARLIER LEGAL POSITION

Currently, under Section 13(8)(b) of the IGST Act, the place of supply for intermediary services is deemed to be the location of the supplier. This meant that Indian intermediaries rendering services to foreign clients (such as marketing agents or sourcing facilitators) were taxed in India, disqualifying them from export treatment despite foreign currency remittance - leading to tax costs and litigation.

PROPOSED AMENDMENT

The Finance Bill 2026 proposes to omit clause (b) of Section 13(8).

As a result:-

- Intermediary services will now fall under Section 13(2) (general rule), where the place of supply is the location of the recipient.
- Services provided to recipients outside India that meet the export conditions (such as receipt in convertible foreign exchange and distinct establishment criteria) will qualify as export of services.
- These services can then be zero-rated, allowing supply under LUT without tax or with payment of IGST followed by refund.

IMPACT & INSIGHT

This is a landmark change, aligning GST more closely with destination-based taxation principles. It enhances the global competitiveness of Indian service intermediaries especially those involved in commission agency, sourcing, marketing, or facilitation services.

Businesses should, however, continue to carefully examine whether their arrangements qualify as “intermediary services” and maintain robust documentation proving recipient location, contractual scope, and foreign exchange realisation for export eligibility.



Case **LAW**



CA. SAMARPIT SHARMA

GSTR-1 VS GSTR-3B MISMATCH, CONVERSION FROM SECTION 74 TO SECTION 73 AND REMAND FOR FRESH DETERMINATION UNDER SECTION 75(2) CGST ACT.

(M/S STERLING & WILSON PVT. LTD. V/S COMMISSIONER, ODISHA)

➤➤➤

This case concerns a Second Appeal filed under Section 112 of the Central Goods and Services Tax (CGST) Act, 2017 by M/s Sterling and Wilson Private Limited, an EPC (Engineering, Procurement and Construction) company registered under GST, against the order of the First Appellate Authority (Additional Commissioner of CT & GST, Puri Range) for Financial Year 2018-19. The dispute arose from a discrepancy between the output tax liability declared in GSTR-1 and that reported and paid in GSTR-3B. While the appellant had disclosed ₹31.36 crore in GSTR-1, it declared ₹31.09 crore in GSTR-3B, resulting in an alleged short payment of ₹27,06,634 (CGST and SGST combined).

The Proper Officer initiated proceedings under Section 74 of the CGST/SGST Act, alleging suppression of facts, and confirmed the demand of tax along with interest and equivalent penalty, aggregating to over ₹65 lakh. The appellant explained that the difference arose due to issuance of credit notes, adjustment of advances pertaining to earlier periods, and technical/system constraints in the early GST regime, which prevented proper amendments in GSTR-1. It was contended that all such adjustments were duly recorded in books of accounts and reflected in GSTR-3B, and that there was no intent to evade tax. However, the Proper Officer rejected these explanations on grounds that certain credit notes were issued beyond the time limit prescribed

under Section 34(2), annual return (GSTR-9) and audit return (GSTR-9C) did not reconcile the figures correctly, and there was no proof that the recipients had reversed the corresponding Input Tax Credit (ITC).

On first appeal, the Appellate Authority accepted that there was no fraud, suppression, or wilful misstatement, and therefore Section 74 was not attracted. However, it held that the appellant had failed to satisfactorily reconcile the mismatch and prove ITC reversal by recipients. Accordingly, it converted the proceedings from Section 74 to Section 73 and upheld the tax and interest while reducing the penalty to 10% under Section 73(9). The total liability was recalculated, adjusting for payments already made.

Aggrieved, the appellant approached the Tribunal, arguing that the demand was unsustainable as it was based merely on return mismatch without proper reconciliation verification. It was submitted that once the absence of intent to evade tax was recorded, the proceedings under Section 74 ought to have been dropped entirely and that the matter was revenue neutral. The Revenue, in its cross-objections, maintained that statutory returns are self-assessed declarations, and the appellant failed to comply with procedural requirements such as timely amendment of GSTR-1, reconciliation in GSTR-9/9C, and proof of ITC reversal. It relied on Supreme Court judgments to

GSTR-1 VS GSTR-3B MISMATCH, CONVERSION FROM SECTION 74 TO SECTION 73 AND REMAND FOR FRESH DETERMINATION UNDER SECTION 75(2) CGST ACT.

(M/S STERLING & WILSON PVT. LTD. V/S COMMISSIONER, ODISHA)

contend that tax statutes require strict interpretation and that new pleas cannot be raised at the appellate stage. The Tribunal first examined its jurisdiction under Section 112 of the CGST Act and distinguished it from the limited second appellate jurisdiction under Section 100 of the Code of Civil Procedure. It held that, unlike the High Court under Section 100 CPC, the GST Appellate Tribunal is not confined to substantial questions of law and is empowered to examine questions of fact as the final fact-finding authority. It also observed that the Supreme Court decision in Dilip Kumar & Co. (relating to strict interpretation of exemption notifications) was not directly applicable, since the present case concerned alleged short payment of tax rather than interpretation of an exemption provision.

On merits, the Tribunal noted that the First Appellate Authority had clearly recorded absence of fraud or suppression and acknowledged that the credit/debit notes were duly accounted for in the books. The primary lapse attributed to the appellant was failure to properly reflect such adjustments in periodical returns and to establish non-utilisation or reversal of ITC by recipients. The Tribunal observed that the GST regime was relatively new during the relevant period, with technical and manual filing challenges, and that such reconciliatory discrepancies required a pragmatic rather than pedantic approach.

It emphasized that an honest taxpayer should not be penalized without adequate opportunity to correct procedural lapses, particularly where tax payment itself was not conclusively disproved.

Importantly, the Tribunal analyzed Section 75(2) of the CGST Act, which provides that if an appellate forum concludes that proceedings under Section 74 (fraud) are unsustainable, the Proper Officer shall determine tax as if the notice were issued under Section 73 (non-fraud). It held that once Section 74 is found inapplicable, re-determination under Section 73 must be carried out by the Proper Officer and not by the Appellate Authority or Tribunal. Therefore, even if the First Appellate Authority was correct in converting the case to Section 73, it could not itself finally determine the liability without remanding the matter.

Accordingly, the Tribunal set aside the orders of the Proper Officer and the First Appellate Authority insofar as they treated and finalized the matter under Section 73 without proper re-determination. However, it upheld the finding that the case did not fall under Section 74 (i.e., no fraud or suppression). The matter was remanded to the Proper Officer for fresh adjudication under Section 73, with liberty to the appellant to file amendment applications within one month and produce relevant documents.



DETENTION OF GOODS WITHOUT VALID E-WAY BILL - INVALID TAX INVOICE ISSUED DURING SUSPENSION OF SUPPLIER'S GST REGISTRATION - RELEASE UNDER SECTION 129(1)(A) DENIED.

(M/S SHRI BABA TRADERS VERSUS STATE OF U.P. - ALLAHABAD HIGH COURT)

This judgment concerns a batch of writ petitions, with Writ Tax No. 122 of 2026 treated as the leading case, challenging orders of detention and penalty passed under Section 129 of the UPGST Act, 2017. The petitioner, a GST-registered firm in Jharkhand engaged in trading iron bars and angles, had purchased goods from M/s S.S. Enterprises, Haryana. During transit on 3.12.2025, the goods were intercepted and detained on the ground that no e-way bill accompanied them. Subsequent proceedings were undertaken through statutory forms (MOV-01 to MOV-07), culminating in a penalty order under Section 129(1)(b). The petitioner claimed ownership of the goods and sought release under Section 129(1)(a), relying on Circular No. 76/50/2018-GST dated 31.12.2018 and several Division Bench decisions of the High Court where goods were directed to be released when the owner had come forward.

The petitioner argued that the detention was solely due to absence of an e-way bill and that, being the owner/recipient, it was entitled to release of goods on payment of applicable tax under Section 129(1)(a). However, the State opposed the petition contending that the petitioner could not be treated as owner in the absence of valid specified documents. It was pointed out that the petitioner had admitted in its reply to the show cause notice that the supplier's GST registration had been suspended with effect from 21.11.2025,

prior to issuance of the tax invoice dated 3.12.2025. As per Rule 21A(3) of the UPGST Rules, a registered person whose registration is suspended cannot make taxable supplies or issue tax invoices during the suspension period. Therefore, the invoice issued by the supplier during suspension was invalid and could not be treated as a genuine tax invoice under Sections 2(66) and 31 of the Act. Consequently, no valid document accompanied the goods.

The Court noted that the petitioner itself admitted that the e-way bill could not be generated due to the supplier's suspended registration. It further held that even if the supplier was under suspension, the petitioner, as the alleged owner/recipient, could have generated the e-way bill in accordance with Rule 138(3) before movement of goods, but failed to do so. Since neither a valid tax invoice nor a valid e-way bill accompanied the goods, the statutory requirement of "specified documents" was not fulfilled. In such circumstances, the Circular dated 31.12.2018, which applies where proper documents exist, was held inapplicable.

Distinguishing the precedents relied upon by the petitioner, including M/s Halder Enterprises and other Division Bench rulings, the Court observed that in those cases the registration was valid at the time of movement and proper tax invoices and e-way bills were present, or there were only minor procedural defects

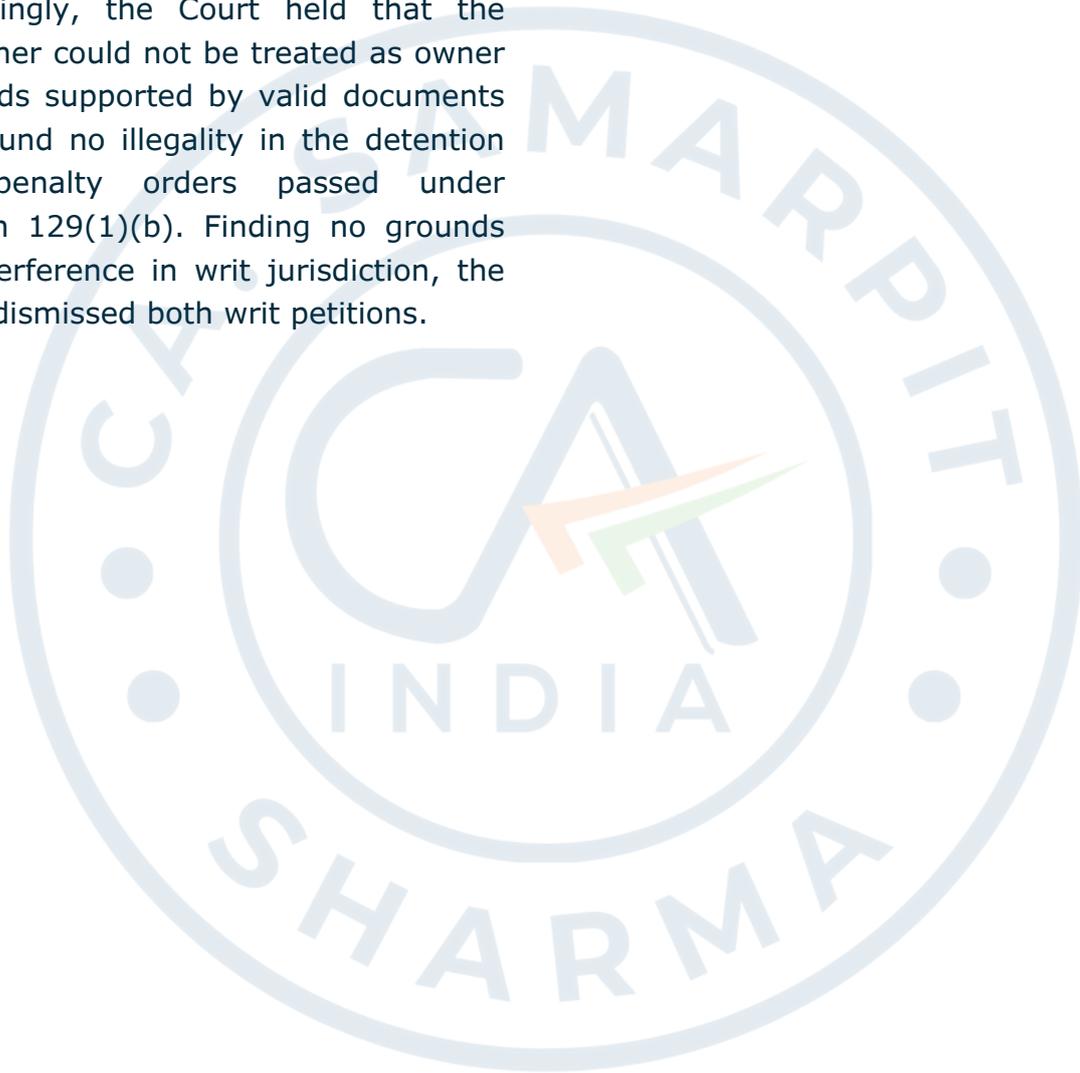


DETENTION OF GOODS WITHOUT VALID E-WAY BILL - INVALID TAX INVOICE ISSUED DURING SUSPENSION OF SUPPLIER'S GST REGISTRATION - RELEASE UNDER SECTION 129(1)(A) DENIED.

(M/S SHRI BABA TRADERS VERSUS STATE OF U.P. - ALLAHABAD HIGH COURT)

(such as non-filing of Part-B). In the present case, however, the supplier's registration was already suspended at the time of issuance of invoice, no restoration was shown, and no e-way bill was generated at all.

Accordingly, the Court held that the petitioner could not be treated as owner of goods supported by valid documents and found no illegality in the detention and penalty orders passed under Section 129(1)(b). Finding no grounds for interference in writ jurisdiction, the Court dismissed both writ petitions.





AFFILIATION FEES COLLECTED BY UNIVERSITIES FROM COLLEGES HELD TAXABLE UNDER GST.

(BHARATHIDASAN UNIVERSITY V/S THE JOINT COMMISSIONER OF GST, TIRUCHIRAPALLI - MADRAS HIGH COURT)

These writ petitions were filed by Bharathidasan University challenging notices issued under Section 74(5) of the Tamil Nadu GST Act, 2017, proposing levy of GST, interest, and penalty on affiliation fees collected from affiliated colleges for the academic years 2019–20 to 2022–23. The core issue was whether affiliation fees collected by a University from colleges are exempt from GST under Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

The University contended that affiliation fees are part of services provided to educational institutions that admit students and conduct examinations under the University's authority, and therefore qualify for exemption under Entry 66 of Notification No. 12/2017, which exempts services relating to admission to or conduct of examination by educational institutions. The Department, however, argued that affiliation is a distinct activity unrelated to admission or conduct of examinations and hence taxable.

Due to conflicting Single Judge decisions of the High Court—one in Madurai Kamaraj University holding affiliation services exempt through purposive interpretation, and another in Pondicherry University and subsequent cases holding such services taxable through strict interpretation—the matter was referred to a Division Bench to decide: "Whether affiliation charges collected by a University from affiliating

institutions are amenable to GST?"

The Division Bench examined the statutory scheme, the exemption notification, relevant circulars, and judgments of other High Courts. It analyzed Entry 66 of Notification No. 12/2017, which exempts services provided by educational institutions to students, faculty, and staff, and services relating to admission or conduct of examination. The Court held that exemption provisions in a taxing statute must be strictly construed and cannot be expanded by interpretative extension. Affiliation, the Court observed, is a prerequisite enabling a college to admit students and conduct examinations, but it is a separate regulatory function ensuring infrastructure and compliance standards. It precedes admission and examination and is not itself a service relating to admission or conduct of examination.

The Court also relied on Circular No. 234/28/2024-GST dated 11.10.2024, which clarified that affiliation services provided by educational boards are taxable (except when provided to government schools from 10.10.2024 onward). It held that such clarification aligns with the language of the exemption notification and reinforces that affiliation services are outside its scope. The Bench disagreed with the purposive interpretation adopted in Madurai Kamaraj University, holding that extending the meaning of "services

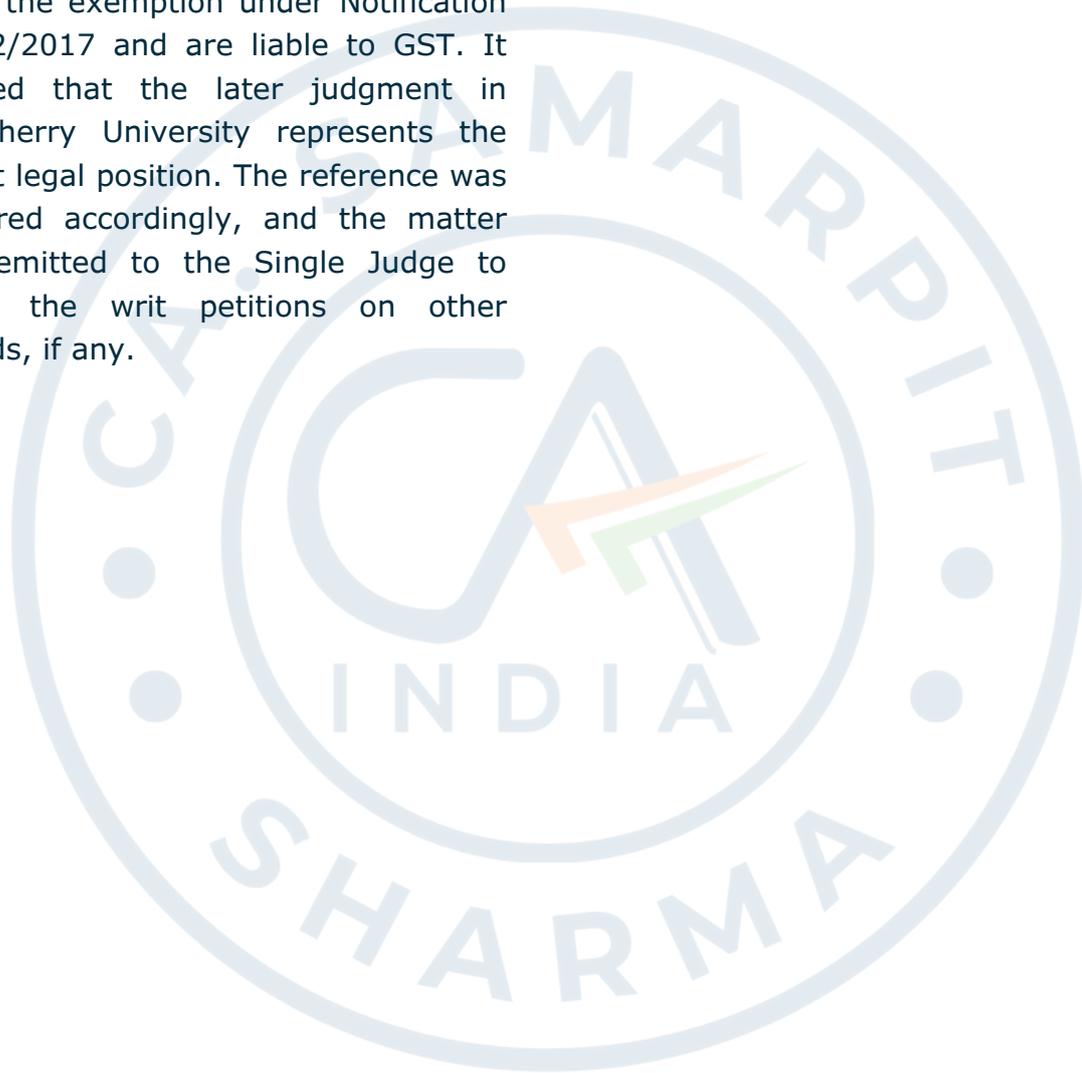


AFFILIATION FEES COLLECTED BY UNIVERSITIES FROM COLLEGES HELD TAXABLE UNDER GST.

(BHARATHIDASAN UNIVERSITY V/S THE JOINT COMMISSIONER OF GST, TIRUCHIRAPALLI - MADRAS HIGH COURT)

relating to admission or conduct of examination” to include affiliation is impermissible.

Accordingly, the Division Bench held that affiliation fees collected by Universities from colleges do not fall within the exemption under Notification No. 12/2017 and are liable to GST. It affirmed that the later judgment in Pondicherry University represents the correct legal position. The reference was answered accordingly, and the matter was remitted to the Single Judge to decide the writ petitions on other grounds, if any.





ITC CANNOT BE DENIED TO BONA FIDE PURCHASER FOR SUPPLIER'S FAILURE TO DEPOSIT GST.

(M/S. MALAYA RUB-TECH INDUSTRIES V/S THE UNION OF INDIA - TRIPURA HIGH COURT)

The petitioner, a partnership firm engaged in the rubber business and registered under the CGST and SGST Acts, had purchased input materials from a supplier (respondent No. 7) between 08.03.2018 and 30.11.2018 for manufacturing finished products. The petitioner claimed that it had paid the applicable taxes on such purchases and, having utilized the inputs in its business, was entitled to avail Input Tax Credit (ITC). It further stated that it was under a bona fide belief that the supplier had duly deposited the tax collected from it with the Government. However, the tax authorities issued a show cause notice under Section 73(1) of the CGST Act on 14.01.2021, alleging that for the tax period August 2017 to July 2019, tax had not been paid or had been short paid, or that ITC had been wrongly availed or utilized. The petitioner was called upon to explain why an amount of ₹22,09,964.04 should not be recovered. Despite submission of a reply, an order dated 17.02.2022 was passed denying ITC and directing recovery of the said amount. The petitioner challenged this order through the present writ petition.

The petitioner contended that the show cause notice was vague and contradictory, and that Section 16(2)(c) of the CGST Act—which requires that tax charged by the supplier must actually be paid to the Government before the purchaser can claim ITC was

wrongly invoked. It argued that there is no statutory mechanism enabling a purchaser to compel a supplier to deposit the collected tax, and therefore a bona fide purchaser cannot be penalized for the supplier's default.

The Court relied on its earlier Division Bench judgment in M/s Sahil Enterprises v. Union of India (06.01.2026), where Section 16(2)(c) was read down to prevent denial of ITC to bona fide purchasers. In that case, it was held that the provision cannot be interpreted to impose an impossible burden on purchasing dealers to ensure that sellers deposit the tax with the Government. The Court had ruled that ITC can be denied only where the transaction is found to be fraudulent, collusive, or not bona fide, and that denying ITC to genuine purchasers would violate Article 14 of the Constitution unless the provision is narrowly construed.

Applying that ratio, the Court observed that in the present case neither the show cause notice nor the order contained any finding that the transaction between the petitioner and the supplier was fraudulent, collusive, or lacking bona fides.

The Court therefore held that the petitioner's transactions were bona fide and that denial of ITC solely due to the supplier's failure to deposit tax was unsustainable.



BAIL IN GST EVASION CASE ABOVE ₹5 CRORE UPHELD DEPOSIT CONDITION ALONE NOT GROUND FOR CANCELLATION.

(UNION OF INDIA V/S ARUN JINDAL.)

The Union of India sought cancellation of bail granted to the respondent, Arun Jindal, who had been enlarged on bail by the trial court on 11.03.2025 for offences under Sections 132(1)(a), (f), (h) and (l) of the CGST Act, 2017. The allegations against him were serious: he was accused of clandestinely supplying 1.49 crore kilograms of iron ingots without issuing invoices, with the assistance of co-accused persons, resulting in alleged GST evasion of ₹9.39 crore and substantial loss to the public exchequer.

The petitioner contended that the trial court's order was legally flawed and perverse. It argued that the court wrongly relied on the possibility of compounding under Section 138 of the CGST Act and the respondent's willingness to deposit 50% of the alleged tax liability. Since the alleged evasion exceeded ₹5 crore, the offence was cognizable and non-bailable under Section 132, and not compoundable. It was further argued that the Supreme Court in *Gajanan Dattaray Gore (2025)* had held that bail cannot be granted merely on the basis of an undertaking to deposit money. The petitioner also relied on *Mahipal v. Rajesh Kumar* and *Y.S. Jagan Mohan Reddy v. CBI* to emphasize that economic offences are grave and must be treated seriously while considering bail. Additionally, it was pointed out that bail applications of certain co-accused had been rejected.

The respondent, however, argued that bail was granted after due consideration

of law and facts. He had deposited ₹5 crore in compliance with the trial court's order before release. It was also contended that the Special Public Prosecutor had consented to the order. The respondent relied on *Satender Kumar Antil v. CBI*, which held that though economic offences are serious, bail must be assessed based on multiple factors including the maximum punishment prescribed. The maximum punishment under Section 132 is five years, triable by a Magistrate. It was also highlighted that the final tax liability had not yet been determined and that in comparable cases such as *C. Pradeep and Gulam Fareed*, the Supreme Court had granted bail even in cases involving substantial alleged tax liability.

The Court examined Sections 132 and 138 of the CGST Act and agreed that the trial court's analogy regarding compounding was legally incorrect, as offences involving evasion exceeding ₹5 crore are non-bailable and not compoundable. However, it noted that the grant of bail was not based solely on the deposit condition. The respondent had already deposited ₹5 crore, there was no prior criminal history, no allegation of misuse of liberty, and most witnesses were official witnesses, minimizing the risk of interference. Furthermore, other co-accused had been granted bail by the Supreme Court.

The Court clarified that the Supreme Court's ruling in *Gajanan Dattaray Gore* did not automatically invalidate the bail



BAIL IN GST EVASION CASE ABOVE ₹5 CRORE UPHELD DEPOSIT CONDITION ALONE NOT GROUND FOR CANCELLATION.

(UNION OF INDIA V/S ARUN JINDAL.)

order in this case, as the deposit was not the sole basis for granting bail. Considering the overall circumstances, including the period of custody, maximum punishment, absence of criminal antecedents, and compliance with conditions, the Court found no sufficient grounds to cancel bail.

Accordingly, the application for cancellation of bail was dismissed.





ANTI-PROFITEERING PROCEEDINGS - DEVELOPER HELD TO HAVE FULLY PASSED ON ITC BENEFIT TO HOMEBUYERS.

(DGAP VERSUS AXIS INFRATECH LLP - GSTAT NEW DELHI)

The present proceedings arose from an investigation conducted by the Director General of Anti-Profiteering (DGAP) under Section 171 of the CGST Act, 2017 read with Rule 129 of the CGST Rules, based on a complaint filed by Shri Abhay Yagnesh Desai against M/s Axis Infratech LLP (formerly Axis Infratech Pvt. Ltd.), developer of the residential project "24K" at Vadodara, Gujarat. The allegation was that the Respondent had failed to pass on the benefit of Input Tax Credit (ITC) to homebuyers by way of commensurate reduction in prices, thereby violating the anti-profiteering provisions.

Upon investigation, the DGAP identified 11 buyers whose flats were sold prior to issuance of the Completion Certificate on 16.05.2019 and who were therefore eligible for ITC benefits under Section 171. Units sold after the Completion Certificate were excluded from scrutiny. Applying the area-based methodology approved by the Delhi High Court, the DGAP determined that the Respondent had gained an incremental ITC benefit of 2.43% (difference between pre-GST and post-GST ITC ratios). On this basis, the total profiteered amount was computed at ₹23,02,653 (base amount) plus GST of ₹2,76,318, aggregating to ₹25,78,971, to be passed on to the 11 eligible buyers.

However, during verification, the DGAP found that the Respondent had already passed on ITC benefits amounting to ₹42,03,560 to the 11 buyers, which

exceeded the computed profiteering amount. In respect of one buyer, Shri Mukesh B. Kewalramani (Flat No. 1101), a shortfall of ₹17,829 was identified. The Respondent subsequently transferred this amount via NEFT and furnished confirmation of receipt.

After issuance of notice and consideration of the Respondent's reply accepting the DGAP findings, the Tribunal examined the investigation report and compliance documents. It noted that the Respondent had fully passed on the required ITC benefit, including the balance amount payable to the concerned buyer. Consequently, it held that the Respondent had discharged its statutory obligation under Section 171 of the CGST Act.

The Tribunal accepted the DGAP's report and concluded the proceedings, holding that no further action was warranted, as the Respondent had complied with the anti-profiteering provisions in respect of the "24K" project. Copies of the order were directed to be forwarded to the concerned parties and authorities.



REGULAR BAIL GRANTED IN ALLEGED IGST EVASION CASE INVOLVING IMPORT OF SERVICES AND NON-PAYMENT UNDER RCM.

(JASHANPAL SINGH V/S UNION OF INDIA - PUNJAB AND HARYANA HIGH COURT)

This common order disposed of two regular bail petitions (CRM-M-53422-2025 and CRM-M-62114-2025) arising from the same complaint filed by the Union of India under Section 132(1)(a) and (1)/(i) of the CGST Act, 2017, read with corresponding provisions of the Punjab GST Act. The petitioners, Jashanpal Singh and Preet Pal Garg, were arrested on 30.07.2025 for alleged GST evasion relating to import of services without payment of IGST under the Reverse Charge Mechanism (RCM). Their earlier bail applications had been dismissed by the trial court.

According to the prosecution, the petitioners, through their respective entities, entered into agreements with overseas companies for shooting and supply of raw albums, transferring ₹42.76 crore and ₹299.51 crore respectively. These transactions allegedly constituted "import of services" under Section 2(11) and Section 7(4) of the IGST Act, attracting IGST liability. It was alleged that IGST was not paid under RCM, resulting in tax evasion of ₹7.69 crore (Jashanpal Singh) and ₹53.91 crore (Preet Pal Garg), the latter exceeding the ₹5 crore threshold under Section 132(1)(i), making the offence cognizable and non-bailable.

The prosecution opposed bail on the ground that further investigation was ongoing and supplementary complaints could be filed. It relied on judicial precedents emphasizing the seriousness

of economic offences and the need for strict consideration in such cases.

The petitioners argued that the case essentially concerned non-payment of GST on import of services and that the arrest memos did not mention fraud, intentional evasion, or cheating. They contended that the offences are triable by a Magistrate and carry a maximum sentence of five years. It was further argued that indefinite custody cannot be justified merely on the ground of ongoing investigation, especially when no specific reasons were shown for continued incarceration. Reliance was placed on recent Supreme Court and High Court judgments, including Vineet Jain v. Union of India, Radhika Aggarwal v. Union of India, and other Punjab & Haryana High Court decisions granting bail in similar GST cases.

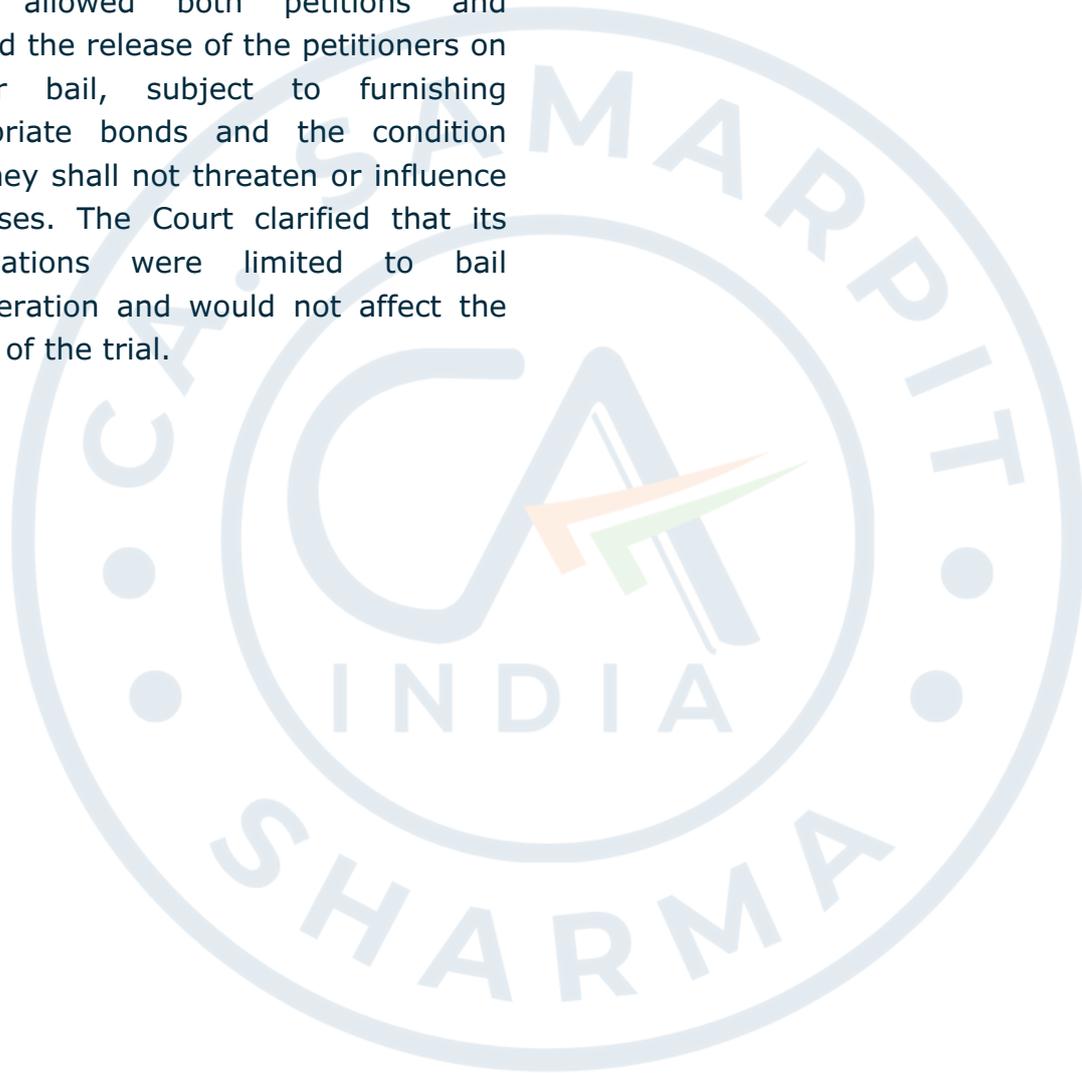
The High Court observed that at the bail stage, it was not required to conduct a detailed evaluation of the merits or hold a parallel trial. It noted that the offences are triable by a Magistrate with a maximum sentence of five years and that the petitioners had been in custody for about six months. The Court found that the issue of intentional evasion or fraud was yet to be established at trial, and the arrest memos did not specifically allege fraud. The mere possibility of further investigation or filing of supplementary complaints was held insufficient to justify continued detention.



REGULAR BAIL GRANTED IN ALLEGED IGST EVASION CASE INVOLVING IMPORT OF SERVICES AND NON-PAYMENT UNDER RCM.

(JASHANPAL SINGH V/S UNION OF INDIA - PUNJAB AND HARYANA HIGH COURT)

The Court emphasized that personal liberty cannot be curtailed indefinitely, especially when the allegations are based largely on documentary evidence and trial is likely to take time. Finding no compelling reason to deny bail, the Court allowed both petitions and ordered the release of the petitioners on regular bail, subject to furnishing appropriate bonds and the condition that they shall not threaten or influence witnesses. The Court clarified that its observations were limited to bail consideration and would not affect the merits of the trial.





WRIT PETITION CHALLENGING SECTION 74 GST SHOW CAUSE NOTICE DISMISSED, HOLDING THAT DISPUTED FACTS MUST BE EXAMINED IN ADJUDICATION PROCEEDINGS.

(M/S ISHAN INDUSTRIES V/S DIRECTOR DGGI - ALLAHABAD HIGH COURT)

The petitioner challenged a show cause notice dated 24.09.2025 issued under Section 74(1) of the CGST Act, 2017 (along with corresponding provisions of the U.P. GST Act and Section 20 of the IGST Act) for the tax period April 2019 to January 2024. The notice alleged wrongful availment of refunds and possible involvement in sham transactions.

The petitioner contended that it was regularly filing returns and had lawfully claimed refunds under the inverted duty structure, which were granted after due scrutiny by the department. It argued that the present proceedings were initiated to defeat its legitimate refund claims, particularly when one refund dispute was already pending in an earlier writ petition. The petitioner asserted that there was no material evidence linking it to any tax evasion or paper transactions. Although a search had been conducted at the premises of another person (Vijay Agrawal), no documentary evidence existed to implicate the petitioner. The supplies received by the petitioner were not disputed, and it was engaged in genuine manufacture of hand pumps.

The revenue, on the other hand, submitted that the matter was not a mere refund rejection but followed search, inquiry, and investigation. The petitioner had claimed refunds under the inverted tax structure by purchasing goods (e.g., pipes) at 18% GST and allegedly manufacturing hand pumps

sold at 5%. During investigation, certain recipients reportedly denied having received supplies from the petitioner, suggesting that some transactions might be sham. The department argued that these issues required adjudication on facts and evidence.

The Court observed that the writ petition had been filed at the initiation stage of adjudication proceedings and that no final determination had yet been made by the authority. Since disputed questions of fact were involved, including reliance on statements of recipients and documentary evidence, the matter was better suited for adjudication rather than interference under writ jurisdiction. The Court emphasized that if the department relied on witness statements, the petitioner must be given an opportunity to cross-examine them and to rebut any documents relied upon, in compliance with principles of natural justice.

Accordingly, the Court declined to interfere at this preliminary stage and disposed of the writ petition, leaving the petitioner to raise all factual and legal defenses during adjudication proceedings.

MORE INFORMATION ABOUT US



The GST Insider: Stay Informed, Stay Compliant

As we conclude this edition of **The GST Insider**, we hope the insights and updates have provided valuable knowledge to our readers. Our commitment remains steadfast in delivering timely, accurate, and relevant information to help you navigate the complexities of the GST landscape. We have explored significant developments and shared expert opinions to help you stay compliant and maximize benefits.

We are grateful for your continued support and engagement. Your feedback and suggestions are invaluable as we strive to make "The GST Insider" a trusted resource for all your GST-related needs.

Until the next issue, stay informed, stay compliant, and keep thriving in your business endeavors.

Email us for a copy and for more info!

CONTACT US :



Phone Number
+91-9718668812



Email Address
casamarpitsharma@gmail.com