



THE TAX POST

**A Bimonthly Bulletin On
The World Of Indirect Taxes**

Edition 33 - November 2025

Presented by BDO India

CONTENTS

COVER STORY GST IN INDIA: TOWARDS A SIMPLER, FAIRER AND DIGITALLY INTEGRATED FUTURE	03
THE EXPERT SPEAK	05
LEX INSIGHTS	08
DECODED	10
GLOBAL TRENDS	14
ABOUT BDO GLOBAL AND BDO INDIA	16

PREFACE

“Taxation is the price which civilized communities pay for the opportunity of remaining civilized”

- Albert Bushnell Hart

The Goods and Services Tax (‘GST’) regime in India is evolving towards greater simplicity, fairness and digital integration to reap benefits of ‘One Nation, One Tax’ vision. In this edition of The Tax Post, the ‘Cover Story’ examines key potential reforms that could be introduced/ recommended by the GST Council in the years to come to reduce litigation, improve uniformity and create a robust, technology-driven tax regime that supports business growth and facilitates Ease of Doing Business.

The ‘Expert Speaks’ segment explores the transformative potential of the newly established Goods and Services Tax Appellate Tribunal (‘GSTAT’), designed to bring uniformity and expeditious resolution of GST disputes. This article highlights the critical need for focusing on substantive legal issues, curbing procedural litigations and adopting technological reforms to create a more predictable and efficient GST litigation ecosystem.

The ‘Lex Insights’ segment examines the manner in which the terms ‘may’ and ‘shall’ used in statutory provisions have been interpreted. It also focuses on the role of these terms in determining whether a provision is mandatory or directory. The section also examines various judicial precedents concerning interpretation of these terms by laying emphasis on the legislative purpose and thereby ensuring that discretion, obligation and procedural fairness align with the overarching spirit of the statute.

In the ‘Decoded’ segment, we analyse the Madras High Court ruling that set-aside the validity of extension notifications issued under section 168A of the Central Goods and Services Tax Act, 2017 due to existence of ‘force majeure’ situation. The said ruling clarifies that such extensions require valid GST Council recommendations, reinforcing the balance between delegated legislative powers and the need for procedural fairness in tax administration.

Lastly, we continue to bring the latest updates on indirect taxes from across the globe in our ‘Global Trends’ feature.

We wish our readers happy reading!



MUNJAL ALMOULA
Head of Tax



GYANENDRA TRIPATHI
Partner & Leader (West)
Indirect Tax

COVER STORY

GST IN INDIA: TOWARDS A SIMPLER, FAIRER AND DIGITALLY INTEGRATED FUTURE

INTRODUCTION

The future of Goods and Services Tax ('GST') in India promises a blend of a rational and simple tax structure which is technologically integrated and achieves judicial uniformity, aiming to uphold its original vision of "One Nation, One Tax". More than eight years have passed since the introduction of GST law and during this period, we have witnessed significant changes in the GST law and procedures, accompanied by a considerable increase in compliance, revenue collection and inevitably, new points of disputes. We have also seen a notable shift toward digital compliance and progressive stabilisation of the tax base.

Going forward, as GST matures, significant changes to the law, compliance structures and dispute mechanisms are on the horizon, each with the objective of fostering an ecosystem to fuel robust economic growth and enhance Taxpayer facilitation with a technology-driven tax environment. Following is a comprehensive and rational analysis of reforms that would be welcomed by the industry in the upcoming years.

A WISH LIST OF CHANGES IN LAW AND PROCESSES

The key changes that are hoped to be introduced in the GST law are summarised hereunder:

- Refund-related:
 - Inverted Duty Structure ('IDS'):
 - Refund of unutilised input tax credit ('ITC') on account of IDS is available in cases where the applicable GST rate on input exceeds the applicable GST rate on output.
 - In this regard, CBIC had issued circular no:135/05/2020-GST dated 31 March 2020 ('Circular') wherein it was clarified at Para 3.2 that where input and output are the same product, though attracting different GST rates at different points in time, refund on account of IDS is not available as per section 54(3)(ii) of Central Goods and Services Tax Act, 2017 ('CGST Act').
 - However, various High Courts have observed that Para 3.2 of the Circular is in conflict with section 54(3)(ii) of the CGST Act and hence, the same must be ignored. Accordingly, it has been observed that refund on account of IDS must be available even in cases where the input and output are the same and applicable GST rate is reduced.
 - Despite the above, the FAQs released by CBIC pursuant to the 56th GST Council meeting had inter alia reiterated the clarification provided in the Circular to state that where the input and output are the same, refund on account of IDS is not available.
 - A Taxpayer friendly interpretation in respect of the aforesaid issue will pave the way for promoting Ease of Doing Business in India. Accordingly, issuance of a suitable clarification upholding the Taxpayer's eligibility to claim refund on account of IDS in such cases will settle various disputes between the taxpayer and the tax authorities.
 - Another important issue relating to the refund of ITC under IDS pertains to eligible pool for claiming refund. Currently, the formula for calculating the amount of refund of ITC on account of the IDS only considers the ITC of tax paid on input goods, excluding the ITC on input services. As a result, no refund is available for accumulated ITC on input services, leading to a build-up of unutilized credit. Therefore, refund of ITC on input services, if extended under IDS, would significantly aid the industry avoid the accumulation of ITC. The issue is somewhat more pronounced for various industries now after recent GST rate cuts, where significant quantum of goods have been made subject to tax @ 5%, with services remaining taxable @ 18%, leading to accumulation of ITC pertaining to services. This highlights the pressing need now for revisiting the formula to compute the eligible refund of accumulated ITC.
- ITC related:
 - Presently, ITC pool is determined qua a GST registration number ('GSTIN') and hence, different GSTINs of a person having same PAN4 is treated as distinct persons. Hence, an accumulated credit balance in one GSTIN cannot be utilised for discharging output tax liability in another GSTIN. This leads to a scenario wherein a person is forced to pay output GST in cash for a particular GSTIN despite the fact that the very same person has accumulated ITC in another GSTIN (whether or not situated in the same State/Union Territory).
 - On the other hand, as regards the balance lying in Electronic Cash Ledger ('ECL'), the facility to transfer the said balance from one GSTIN to another GSTIN within the same legal entity (i.e., having same PAN) was introduced vide rule 87(14) of CGST Rules upon filing of Form GST PMT-09.

² BMG Informatics Pvt. Ltd. Vs. Union of India [TS-487-HC(GAUH)-2021-GST], Indian Oil Corporation Ltd. Vs. Commissioner of Central Goods and Services Tax and Ors. [2023 (12) TMI 361 - Delhi High Court], Shivaco Associates and Anr. Vs. Joint Commissioner of State Tax, Directorate of Commercial Taxes & Ors. [2022 (4) TMI 118 - Calcutta High Court], Baker Hughes Asia Pacific Ltd. Vs. Union of India and Ors. [2022 (7) TMI 73 - Rajasthan High Court] and Malabar Fuel Corp. Vs. The Asst. Commissioner of Central Tax [TS-35-HC(KER)-2024-GST]

³ https://gstcouncil.gov.in/sites/default/files/2025-09/faq_0.pdf

⁴ Permanent Account Number

- The GST law was introduced with an objective of enabling seamless flow of ITC. However, section 17(5) of CGST Act provides a restriction on the claim of ITC in respect of various transactions. Over the period of time, instead of trimming these restrictions to further align with the aforesaid objective, the GST Council had increased the scope of these restrictions by inter alia including the following:
 - Retrospective amendment to section 17(5)(d) to replace the word ‘plant or machinery’ with ‘plant and machinery’ with effect from 1 July 2017; and
 - Restriction of ITC on goods/ services procured for fulfilling the obligation towards Corporate Social Responsibility under section 135 of Companies Act, 2013

These instances of enlarging the scope of restrictions to claim ITC are contrary to the stated objective of introduction of GST law to reduce non-creditable taxes. Accordingly, the industry expects the Government / GST Council to reduce the restrictions, so as to only restrict ITC in cases where the goods/services are procured for non-business purposes or for making exempt/non-taxable supplies.

- Section 16(2) of CGST Act deals with the conditions for the eligibility of ITC. Clause (c) of the said provision inter alia provides that the eligibility of ITC is subject to the condition that the supplier remits GST to the Government. In this regard, under the pre-GST regime, Courts have held that a bona fide purchaser cannot be vicariously liable for the defaults of its supplier. Accordingly, applying this principle, the aforesaid condition cannot be construed to impose vicarious liability on a bona fide recipient. This has also led to a significant extent of commercial disputes between suppliers and buyers due to certain mismatch in filings or delay in compliance by the supplier, the buyer stands to lose ITC. The industry strongly hopes for this provision to be done away with. The interest of the Government is protected in any case, since section 16(2) of CGST Act already lays down a condition that the supplier should report the details of the said transaction in Form GSTR-1 and the same is duly communicated in Form GSTR-2B of buyer and only then the buyer can claim ITC. Therefore, the fact that the supply has been effected remains an unquestioned fact and hence, the fact of non-payment of GST thereafter must be attributable to supplier’s default. Thus, the demand of GST (if any) ought to have been initiated against the said supplier and denial of ITC qua the recipient vitiates the principle of fairness.
- Presently, petroleum products are outside the purview of GST. Consequently, the suppliers of such products are not entitled to claim ITC of GST paid on inputs and hence, the GST incurred by such suppliers on their procurement forms part of their cost. Further, the excise duty and VAT paid on such petroleum products also becomes a cost to the buyers, leading to higher overall costs. Bringing petroleum products under GST has been a persistent demand from industry and investors.

As an initial step, Aviation Turbine Fuel (‘ATF’) and natural gas are the potential first candidates for GST induction due to their industrial consumption profile and inter-state movements. Subsequently, the GST Council may consider the eventual inclusion of other petroleum products.

CONCLUSION

The journey of GST in India reflects a continual effort to create a transparent, efficient and business-friendly tax system. Over the years, the GST framework has adapted to meet the changing needs of the economy by encouraging digitalisation, simplifying procedures and balancing the interests of both taxpayers and the government. While the early stages of implementation focused on establishing the structure and improving compliance, the next phase must focus on refining the law and reducing ambiguities.

Structural legal reforms under GST are crucial for achieving the vision of a comprehensive and fair tax regime. These reforms would not only promote ease of doing business but also enhance investor confidence. Collaboration between policymakers, industry and administrators will play a key role in framing policies that promote economic growth. The focus should remain on minimising compliance burdens and ensuring that GST functions as a unified, predictable and rational tax framework, evolving into a modern tax system that supports India’s aspiration for sustainable economic growth and reinforces its vision of ‘Good and Simple Tax’.



THE EXPERT SPEAK

GST LITIGATION: RECURRING ISSUES AND PATHWAYS TO REDUCTION



Maulik Manakiwala
Partner
Indirect Tax

INTRODUCTION

With the formal establishment of the Goods and Services Tax Appellate Tribunal (GSTAT / Tribunal), India's GST litigation architecture enters a decisive new phase. For the first time since the rollout of GST in 2017, the country now possesses a national-level appellate body designed to bring coherence, consistency and predictability to GST jurisprudence. Prior to the establishment of the Tribunal, all the interpretation-related issues travelled to the High Court / Supreme Court. However, the scale of pending and emerging disputes under Goods and Services Tax (GST) law remains substantial.

With the newly operational GSTAT and a dedicated e-filing portal, the Tribunal is entering service amid an enormous pending workload – the GSTAT President has indicated that an estimated 0.48 million appeals⁵ may be filed under the backlog window extending up to 30 June 2026.

Considering the above, it is not a mere figment of imagination that GSTAT is being launched amid a backlog of lakhs of pending cases, posing a major challenge to timely and effective dispute resolution.

Considering the above, the real test of GSTAT does not merely remain limited to its constitution but in the quality of dispute resolution. For the Tribunal to emerge as the intellectual custodian of GST law, its docket must be reserved for questions of principle – those involving interpretation of statutory provisions such as provision of supply, classification, valuation mechanisms, input tax credit ('ITC') frameworks, etc., that shape the evolution of law.

If, instead, GSTAT becomes a forum for resolving arithmetical disputes such as return mismatches or minor procedural irregularities, of which there is no dearth, it risks being overwhelmed by the volume rather than laying down contours of the law and a robust frame work on the legal interpretations. The objective should therefore be twofold: ensuring that only disputes of legal merit reach the tribunal and simultaneously resolving procedural grievances at the pre-adjudication level through better compliance design and institutional discipline.

THE NATURE AND ROOTS OF RECURRING GST LITIGATION

Despite being conceived as a "Good and Simple Tax", GST has become synonymous with complexity and litigation. The surge in disputes is not entirely surprising; a nationwide indirect tax covering basket of varied goods and services, layered across the Centre and States, was bound to face transitional turbulence. However, more than eight years on, the persistence of avoidable disputes reveals a deeper systemic weakness.

The GST disputes primarily arise in the following categories:

- **Issues relating to ITC** - Litigation commonly arises from denial or disallowance of ITC due to vendor-side non-compliance (such as defaults in filing returns or tax payment under Section 16(2)(c) of Central Goods and Services Tax Act, 2017 ('CGST Act')), mismatches between GSTR-2A/2B and GSTR-3B caused by timing gaps or incorrect reporting, blocked or ineligible credits, delays or technical errors in import-ITC transmission between ICEGATE and GSTN leading to excess or un-reflected ITC, claims on genuine business expenses being disputed and computational mistakes in Rule 42/43 of Central Goods and Services Tax Rules, 2017 (CGST Rules') reversals for common inputs to personal and business usage, resulting in over-claimed credit.
- **Classification disputes:** Conflicts over tariff headings and service classifications due to ambiguity, especially when rate notifications differ marginally or bundled services complicate categorisation.
- **Procedural and transitional compliance:** Delayed filings, export invoice non-linkage and transitional credit disputes continue to generate administrative litigation that burdens judicial resources.
- **E-way bill issues** - E-way bill data mismatch with Form GSTR-1 on account of credit/ debit note raised or cancellation of invoices.
- **Refund related issues:** Frequent disputes involving delayed or withheld refunds, deficiency memos, mismatches in export turnover or tax paid, incorrect declarations in RFD-01/01A, rejection of claims under inverted duty structure, lapses in Letter of Undertaking/Bond compliance, misclassification of zero-rated supplies, ineligible ITC claims forming part of refund and procedural shortcomings leading to rejections or prolonged processing.

A large number of these disputes represents a failure of reconciliation, not intent. Yet they contribute to most show cause notices and litigation at the Commissioner (Appeals) level.

⁵ https://www.business-standard.com/finance/news/gstat-launch-one-forum-for-state-and-centre-gst-appeals-says-fm-125092401381_1.html

Litigation frequently stems from preventable procedural gaps rather than deliberate evasion due to documentation deficiencies wherein missing agreements, unlinked debit or credit notes or unavailable invoices lead to audit objections and eventually result in litigation.

These gaps are administrative in nature but consume the same administrative and judicial resources as complex interpretational disputes, diluting the focus of appellate bodies.

The ITC Conundrum: A Self-Policing System Gone Awry

The ITC mechanism was envisioned as the cornerstone of GST – ensuring that tax is levied only on the value addition. Ironically, it has become the most litigated part of the system.

Frequent discrepancies between suppliers' and recipients' returns, mismatches between customs and GST data and reversal errors under Rules 42 and 43 of CGST Rules have generated uncertainty. Most of these disputes are mechanical, triggered by data-entry delays rather than substantive evasion.

The central policy dilemma is fairness: should a buyer who has paid the supplier in good faith lose ITC because the supplier defaulted?

The Supreme Court in its recent ruling⁶ emphasised that ITC cannot be denied to a bona fide purchasing dealer merely because the selling dealer failed to deposit tax. This principle echoes the ongoing debate under Section 16(2)(c) of the CGST Act, which conditions ITC on the supplier having paid the tax to the Government. While the provision appears stricter on paper, this DVAT ruling, combined with judicial trends in GST cases (e.g. Suncraft Energy⁷) reinforces that bona fide purchasers cannot be denied of ITC solely due to supplier's default, unless collusion is proven. A lack of a departmental circular in this regard, prompts the adjudicating authorities to raise disputes pertaining to the aforesaid issue.



PRACTICAL SOLUTIONS TO MINIMISE GST LITIGATION

Reducing litigation requires a blend of administrative, procedural and technological reforms, an indicative list whereof is provided herein below:

- Seamless data integration: Real-time synchronisation between GSTN and ICEGATE.
- Automated grievance redressal: Quick resolution of import ITC mismatches through defined timelines.
- Supplier compliance monitoring: Not to penalise compliant taxpayers and promote vendor compliance trackers.
- Standard operating procedures: Mandate documentation protocols for ITC denial and annual reconciliation.
- Rectification windows: Permit monthly corrections in GSTR-3B to prevent cumulative mismatches.

These measures can significantly reduce repetitive litigation and ensure that only substantive cases reach higher forums.

REDUCING PROCEDURAL LITIGATION THROUGH BETTER GOVERNANCE

Institutional reform remains critical. The following measures can strengthen administrative discipline:

- Continue to issue circulars clarifying ambiguities
- Mandate speaking orders under Section 75(7) to ensure decisions are reasoned and sustainable
- Conduct pre-SCN reviews to eliminate defective notices
- Foster cross-functional training between officers and industry for shared interpretation

These actions create procedural certainty – the foundation for fair adjudication.

EXPEDITING PENDING LITIGATIONS

Even as GSTAT is established, a massive backlog burdens High Courts and Commissioner (Appeals) offices. Many cases involve repetitive or low-value issues that could be resolved through administrative settlements.

To fast-track resolution:

- Implement digital case management between adjudication and appellate branches - A digital case-management system ensures seamless movement of records between adjudication and appeals, thereby preventing delays, missing files and inconsistent document versions that trigger unnecessary remands. This further ensures faster disposal of cases, allowing appellate bodies to decide matters purely on merits.
- Open settlement and conciliation windows for procedural defaults - They enable quick closure of cases involving minor errors through clarification, payment or documentation. This reduces show cause notices, lowers appellate burden and redirects focus to substantive disputes.

These measures can unclog the litigation pipeline and ensure that GSTAT focuses on questions that truly shape the law.

⁶ Commissioner of Trade and Taxes, Delhi vs. Shanti Kiran India (P) Civil Appeal Nos. 2042-2047 of 2015

⁷ Suncraft Energy Pvt. Ltd. Vs. The Assistant Commissioner of State Tax [TS-367-HC(CAL)-2023-GST], subsequently SLP dismissed by the Supreme Court in [2023 (12) TMI 739 - SC].

POLICY AND SYSTEMIC REFORMS

Sustainable reduction in litigation demands long-term policy consistency and institutional accountability:

- Automated self-assessment tools to flag mismatches at the filing stage - While Form ASMT-10 already serves as an intimation for discrepancies, the expectation is for a more proactive, pre-filing automated system that detects mismatches in real time—between GSTR-1, GSTR-3B, GSTR-2A/2B, e-way bills, ICEGATE import data and past compliance history—before returns are submitted. Such a tool should provide taxpayer dashboards with instant alerts, variance explanations and recommended corrective actions, thereby reducing the need for ASMT-10 notices, preventing avoidable disputes and promoting accurate self-assessment at the source.
- Online voluntary rectifications under section 161 of CGST Act - Enabling taxpayers to correct apparent errors online, such as clerical mistakes, computation slips, misreported figures, or inadvertent omissions, will significantly reduce unnecessary dispute cycles. After making enabling provisions, a digital module should be implemented, allowing taxpayers to submit rectification requests directly on the portal, upload supporting documents and receive automated acknowledgements. Officers should be able to review, accept, or seek clarification through the same interface with time-bound workflows. By resolving minor errors at the pre-adjudication stage before they escalate into appeals, this mechanism prevents avoidable show cause notices, reduces appellate backlog, ensures accurate tax determination, and creates a collaborative rather than adversarial compliance environment.
- Peer reviews and performance audits for adjudicating officers - Introducing structured peer review mechanisms and periodic performance audits for adjudicating authorities will enhance the quality, consistency and defensibility of orders. When officers know that their orders will be evaluated on parameters such as legal soundness, adherence to principles of natural justice, correct application of law, factual accuracy and timely disposal, it promotes greater diligence and reduces arbitrary or unreasoned orders which are overturned frequently at appellate stages. Performance audits can identify patterns of recurring errors, training needs and systemic gaps, enabling targeted capacity-building. Over time, this results in higher-quality adjudication, fewer remands, reduced appellate workload and enhanced taxpayer confidence in the fairness and predictability of the system.
- Time-bound case disposal using transparent digital workflow systems enabling end-to-end, timestamp-driven case handling, where every notice, reply, hearing memo, evidence submission, and order is logged, tracked and escalated automatically. It should also provide officers and taxpayers with real-time dashboards showing pending actions, statutory deadlines and auto-alerts for approaching time limits to prevent delay. Taxpayers should be able to upload documents in structured formats without document size concerns, receive automated acknowledgements, view the status of each stage of adjudication and track accountability for delays. The system should integrate audit, investigation, adjudication and appeals on a

common platform so that all parties reference the same version of facts and documents, reducing duplication, manual errors and discretionary delays. Ultimately, the expectation is that such digital workflows ensure transparency, predictable timelines, minimal physical interface and a measurable reduction in procedure-induced litigation.

A robust policy and monitoring framework ensures that errors are corrected upstream rather than adjudicated downstream.

CONCLUSION

Majority of GST litigation persists due to systemic gaps – compliance errors, interpretational ambiguities and procedural inefficiencies. The establishment of GSTAT provides India an opportunity to reduce the quantum of disputes and enable businesses on what they do best, i.e., building their businesses.

But for the Tribunal to fulfil that purpose, the foundational layers of compliance, audit and adjudication must be strengthened. The Tribunal must interpret law, not correct arithmetical errors.

The tax officials need to view taxpayers as participants in nation-building, not as potential defaulters. Equally, the taxpayers must embrace disciplined documentation and proactive reconciliation. Training, empathy and accountability – on both sides – are key to this shift.

If administrative reforms, digital integration and cultural change align, GST will finally evolve from a complex compliance regime into a transparent, predictable and jurisprudence-driven tax ecosystem – not merely a unified tax, but a unified system of justice.



LEX INSIGHTS

'MAY' AND 'SHALL' IN STATUTORY LANGUAGE: UNPACKING THE MANDATORY-DIRECTORY DICHOTOMY IN INDIRECT TAX

UNDERSTANDING THE USAGE OF "SHALL" AND "MAY"

The words "shall" and "may" have occupied a vital position in interpretation of statutory provisions while serving as indicators of legislative intent. Ordinarily, the word "shall" signifies a mandate or an obligation, while the word "may" conveys discretion or permissiveness. However, the Courts have repeatedly underscored the principle that mere use of these words is not conclusive. The true import of either term is dependent on the object of the statute, the consequence of alternative interpretations and the overall legislative scheme.

While the legislature often uses the word "shall" to impose a duty on an authority or an individual to act in a particular manner, modern drafting practices recognise that rigid interpretation may at times frustrate legislative intent. Thus, to prevent injustice or administrative impracticability, the word "shall" can be read as "may" when the context demands flexibility. Similarly, although the word "may" is generally regarded as conferring discretion, Courts on many occasions have treated it as a mandatory provision when its permissive reading would defeat the legislative intent or render the provision meaningless or otiose.

The judicial approach has therefore been pragmatic rather than purely grammatical. The Courts, while interpreting these expressions, examine whether the statute provides a penalty or consequence for non-compliance, whether public interest is involved and whether the authority concerned has any choice in performance. In this article, we will examine the key principles to interpret the expressions "shall" and "may" in statutory provisions.

GENERAL INTERPRETATION OF THE WORD "SHALL" AND EXCEPTIONS THEREOF

Generally, the use of the word "shall" raises a presumption that the particular provision is imperative/mandatory⁸. Thus, the usage of the term "shall" in a statute implies that the provision is mandatory and must be strictly followed, i.e., its compliance is not optional and failure to comply with the said provision would lead to consequence⁹. It is also well settled that whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow¹⁰. In this regard, the Courts have interpreted the word "shall" as being mandatory in various judicial precedents, some of which are set out hereunder:

- **IJM Concrete Products Pvt. Ltd.**¹¹: Section 75(4) of the Central Goods and Services Tax Act, 2017 ('CGST Act')

provides that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. In this regard, the word "shall" was interpreted by the Madhya Pradesh High Court as a mandatory condition to provide that irrespective of the specific request made by a Taxpayer, when an adverse decision is being contemplated against the Taxpayer, it is obligatory and mandatory for the tax authorities to provide a personal hearing opportunity. Absent such opportunity, the decision-making process is vitiated since it contradicts the principles of natural justice and the statutory mandate provided under section 75(4) of CGST Act¹².

- **Cotton Corporation of India**¹³: Section 73(10) of CGST Act inter alia provides that the proper officer shall issue an order under section 73(9) of CGST Act within a period of three years¹⁴ from the due date of filing the annual return. Further, section 73(2) of the CGST Act states that the proper officer shall issue a show cause notice ('SCN') at least three months prior to the time limit specified in section 73(10) of CGST Act for issuance of order¹⁵. In this backdrop, the Andhra Pradesh High Court had interpreted the word "shall" used in section 73(2) of CGST Act to conclude that adherence to the time limit for issuing a show cause notice is mandatory and any violation thereof cannot be condoned and would render the SCN otiose¹⁶. Similar view was taken by Karnataka High Court in interpreting the expression "shall" in section 73(10) of CGST Act in *M/s Veremax Technologie Services Limited*¹⁷.

Having examined the manner in which the word "shall" is interpreted by Courts generally, let us now examine the exceptions to this general rule wherein the said word is interpreted as being directory or recommendatory.

- **Manbodhan Lal Srivastava**¹⁸: The Supreme Court had held that the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect. Accordingly, the word "shall" referred to in Article 320(3)(c) of the Constitution of India ('Constitution') was interpreted as being non-mandatory. Hence, non-compliance of the condition provided in Article 320(3)(c) of Constitution does not afford a cause of action in a court of law.
- **G. Sundarrajan**¹⁹: The Madras High Court had interpreted the word "shall" in section 7(2) of the Goods and Services Tax (Compensation to States) Act, 2017 and held that since the said provision does not provide the consequences for non-compliance within the timeline stipulated thereunder, it can only be construed as a directory provision and not as a mandatory provision.
- The mandatory nature of a provision may be excused

⁸State of Uttar Pradesh Vs. Manbodhan Lal Srivastava [1957 (9) TMI 43 - Supreme Court]

⁹In Beckodan Abdul Rahiman Vs. State of Kerala [2002 (4) TMI 912 - Supreme Court]

¹⁰Sharif-Ud-Din Vs. Abdul Gani Lone [1980 (1) SCC 403]

¹¹IJM Concrete Products Pvt. Ltd. Vs. State of Madhya Pradesh and Ors. [TS-30-HC(MP)-2024-GST]

¹²Similar view was also taken in Ultratech Cement Ltd. Vs. Union of India and Ors. [2023 (1) TMI 1027 - Madhya Pradesh High Court], BL Pahariya Medical Store Vs. State of U.P. and Ors. [2023 (77) GSTL 193 (All.)] and Bharat Mint and Allied Chemicals Vs. Commissioner Commercial Tax [2022 (59) GSTL 394 (All.)]

¹³The Cotton Corporation of India Vs. Assistant Commissioner (ST) (Audit) and Ors. [TS-58-HC(AP)-2025 GST]

¹⁴Owing to COVID 19 pandemic, for certain tax periods, the due date for issuing orders under section 73 of CGST Act have been extended.

¹⁵Similar provisions are prescribed for issuance of SCN and order under sections 74 and 74A of CGST Act

¹⁶Similar view was taken in Sri Durga Bhavani Enterprises Vs. Assistant Commissioner of State Tax [2025 (4) TMI 1148 - Telangana High Court]

¹⁷M/s Veremax Technologie Services Limited Vs. The Assistant Commissioner of Central Tax, Bengaluru [TS-602-HC(KAR)-2024 GST]

¹⁸Manbodhan Lal Srivastava (Supra)

¹⁹G. Sundarrajan Vs. Union of India and Anr. [2020 (11) TMI 78 - Madras High Court] (Para 16)

when its compliance becomes impossible due to circumstances beyond a party's control. The legal maxim 'lex non cogit ad impossibilia' meaning the law does not compel the impossible may be applied here. If literal compliance with a mandatory provision would require performance of an impossible act, the Courts read the provision as directory to the extent of the impossibility. Reliance is placed on **Cochin State Power and Light Corporation Ltd.**²⁰ wherein the Supreme Court had held that a statutory provision laying down a duty is construed to not apply to a case where its performance is impossible²¹.

GENERAL INTERPRETATION OF THE WORD "MAY" AND EXCEPTIONS THEREOF

- Similarly, to the principles of interpretation for the word "shall", the use of the word "may" would generally indicate that a provision is directory and a permissive provision, implying that a degree of discretion is available at the option of the decision-maker. Such provision serves as a guideline or recommendation and not as an absolute requirement. Non-compliance with such a provision does not invalidate the action involved as long as the essential purpose and substantial justice are maintained, although it may attract penalties or other consequences. In this regard, the Courts have interpreted the word "may" as being directory/recommendatory in various judicial precedents, some of which are set out here under:
- **Lenovo (India) Pvt. Ltd.**²² : Section 54(1) of CGST Act inter alia provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date. While the aforesaid provision employs the word "may", an issue arose before various Courts as to whether the time limit provided in section 54(1) of CGST Act is directory or mandatory. In this regard, the Madras High Court held that the time limit for filing refund applications fixed under section 54(1) of CGST Act is directory in nature and it is not mandatory. Therefore, even if the application is filed beyond the prescribed period of two years, the legitimate claim of refund cannot be denied²³.
- **Independent Sugar Corporation Ltd.**²⁴: Section 29(1A) of the Competition Act, 2002 ('Competition Act') states that the Competition Commission may call for a report from the Director General. In this regard, the Supreme Court has held that the expression "may" used in section 29(1A) of Competition Act means that the said provision dealing with the Competition Commission to call for report from Director General is directory in nature.
- **Orissa Administrative Tribunal Bar Association**²⁵ : Articles 323A(1) and 323A(2) of Constitution deals with the provisions of Administrative Tribunals. These articles use the word "may" and interpreting the same, the Supreme Court observed that it does not compel Parliament to enact a law to give effect to it. Parliament is entrusted with a discretion to enact a law which provides for the adjudication of certain disputes by administrative tribunals. It is a permissive provision. The provision is facilitative and enabling.

Having examined the manner in which the word "may" is interpreted by Courts generally, let us now examine the exceptions to this general rule wherein the said word is interpreted as being mandatory.

- Where the word "may" involves a discretion coupled with an obligation²⁶ or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word "may" should be interpreted to convey a mandatory force²⁷.
- **N Nagendra Rao & Co.**²⁸ : The Supreme Court observed that even though the section 6A(2) of Essential Commodities Act, 1955 ('EC Act') uses the expression "may" in the context of sale of essential commodities (in certain circumstances), keeping in view the object of the EC Act and the context thereof, the said word should be read as "shall", otherwise it would frustrate the objective of the said provision.

IMPACT OF SUBSTITUTION OF THE WORD "SHALL" AS "MAY" AND VICE VERSA

When the legislature substitutes the word "shall" for the word "may" by an amendment, it will be a very strong indication that the use of the word "shall" in the erstwhile provision makes the provision imperative²⁹.

The aforesaid principle is usefully applied in interpreting the scope of rule 142(1A) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') which deals with the requirement to issue Pre-show cause notice ('Pre-SCN') before issuing a show cause notice ('SCN'). Prior to its amendment vide Notification No. 79/2020-Central Tax dated 15 October 2020 ('NN 79/2020'), the said provision used the word "shall" mandating the proper officer to issue a Pre-SCN before issuing a SCN. However, vide NN 79/2020, the said word was replaced by the word "may" which provided an option to the proper officer to issue Pre-SCN before issuing the SCN. In light of the aforesaid backdrop, the Courts have consistently observed that prior to the amendment vide NN 79/2020, the word "shall" must be interpreted as a mandatory requirement and consequently, the proper officer would be required to issue a Pre-SCN before issuing a SCN³⁰.

CONCLUSION

To summarise, the discussion on how the Courts interpret the words "shall" and "may" shows that statutory language cannot be understood only by grammar or its literal meaning. Courts look at the purpose, context and the consequences before deciding whether a provision is mandatory or directory. Although "shall" usually implies an obligation, it can sometimes be treated as directory to avoid unfair results or when compliance is impossible. Similarly, while "may" generally gives discretion, it can be read as mandatory when needed to protect public interest or ensure justice. This balanced and practical approach helps preserve legislative intent while ensuring fairness and administrative efficiency. Thus, while "shall" and "may" seem simple, their legal meanings often depend on how they fit within the statute and real-world circumstances.

In the field of indirect tax, such interpretation plays a crucial role in maintaining a consistent and workable legal system, where neither excessive rigidity nor uncontrolled discretion is allowed. Understanding this distinction helps taxpayers, administrators and legal professionals interpret the law more appropriately and align compliance with both the spirit and letter of legislation.

²⁰ Cochin State Power and Light Corporation Ltd. Vs. State of Kerala [AIR 1965 SC 1688]

²¹ Similar view was held in Shekhar Resorts Ltd. Vs. Union of India [2023 (68) GSTL 225 (SC)], Hico Enterprises Vs. Commissioner of Customs [2005 (189) ELT 135 (Tribunal-LB)] (affirmed by the Supreme Court in [2008 (228) ELT 161 (SC)], Indian Seamless Steel and Alloys Ltd. Vs. Union of India [2003 (156) E.L.T. 945 (Bom.)] and Commissioner of Income Tax Vs. Premkumar [2008 (214) CTR 452 (All.)].

²² Lenovo (India) Pvt. Ltd. Vs. The Joint Commissioner of GST [TS-591-HC(MAD)-2023-GST]

²³ Similar view was upheld in BLA Infrastructure Private Limited Vs. The State of Jharkhand & Ors. [TS-48-HC(JHAR)-2023-GST] and ARS Energy Pvt. Ltd. Vs. Additional Commissioner (Appeals) and Ors. [2023]

²⁴ Competition Commission of India Vs. Independent Sugar Corporation Ltd. [2025 (6) TMI 601 - SC Order (LB)]

²⁵ Orissa Administrative Tribunal Bar Association Vs. Union of India [2023 (4) Centax 372 (SC)]

²⁶ APL (India) Pvt. Ltd. Vs. Chairman, Cochin Port Trust and Ors. [2011 (9) TMI 991 - Kerala High Court]

²⁷ Smt. Bachahan Devi and Anr. Vs. Nagar Nigam, Gorakhpur and Anr. [2008 (2) TMI 869 - Supreme Court] and Dilip K. Basu Vs. State of West Bengal and Ors. [MANU/SC/0799/2015]

²⁸ N Nagendra Rao & Co. Vs. State of Andhra Pradesh [1994 AIR 2663]

²⁹ Jaywant S Kulkarni Vs. Minochar Dosabhai Shroff [AIR 1988 SC 1817 (Page 1820)]

³⁰ See New Morning Star Travels Vs. The Deputy Commissioner [TS(DB)-GST-HC(AP)-2023-993], Gulati Enterprises Vs. CBIC and Ors. [2023 (68) GSTL 237 (Del.)], BAMS Constructions Vs. The Assistant Commissioner (ST) [2022 (12) TMI 125 - Andhra Pradesh High Court], Skyline Automation Industries Vs. State of U.P. and Ors. [2023 (1) TMI 379 - Allahabad High Court]

DECODED

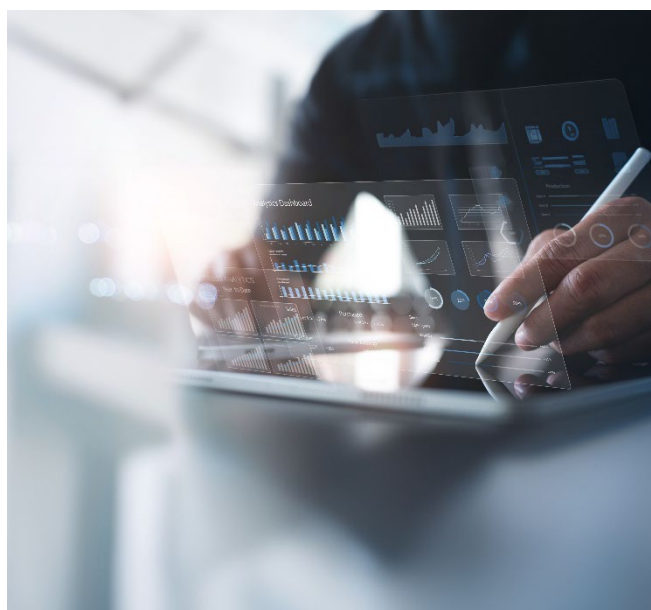
FORCE MAJEURE, DELEGATED LEGISLATION AND LIMITATION UNDER GST

INTRODUCTION

- Section 73 of the Central Goods and Services Tax Act, 2017 ('CGST Act') mandates the tax authorities to issue an order within a period of three years from the due date of furnishing of Annual Return, where the Show Cause Notice ('SCN') is issued under the said Section, i.e., without alleging fraud, etc. Further, the SCN in respect of such orders must be issued at least three months prior to the last date for issuing the adjudicating order.
- However, due to COVID-19 pandemic-led lockdown, the Government had promulgated Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020³¹ (TOLO) which introduced section 168A in the CGST Act to inter alia provide the following:
 - The Central Government may, on the recommendations of the GST Council, by notification, extend the time limit specified in or prescribed or notified under the CGST Act in respect of actions which cannot be completed or complied with due to existence of force majeure situations.
 - The term 'force majeure' is defined in Explanation to section 168A to mean a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of the CGST Act.
- As per Section 168A of CGST Act, the following extension notifications were issued by CBIC:
 - **Notification no:35/2020-Central Tax**³²: Time limits for various actions inter alia including completion of any proceeding or passing of any order, notice, intimation, etc. that fell between 20 March 2020 and 30 August 2020, were extended until 31 August 2020.
 - **Notification no:14/2021-Central Tax**³³: Similar extension was provided till 30 June 2021 in respect of acts that were required to be performed between 15 April 2021 and 29 June 2021.
 - **Notification no:13/2022-Central Tax**³⁴ ('**NN 13/2022**'): It extended the time limit for issuing an order under Section 73 for FY 2017-18 until 30 September 2023 (as per recommendation made in the 47th GST Council meeting) from earlier due date of 5 / 7 February 2023 (depending on the state).
 - **Notification no:9/2023-Central Tax**³⁵ ('**NN 9/2023**'): Thereafter, based the recommendations made in the 49th GST Council meeting, NN 9/2023 was issued, inter alia further extending the time limit for issuing order under Section 73 for FY 2017-18 till 31 December 2023 and also extending the time limit for issuing orders under Section 73 for FY 2018-19 and FY 2019-20 to 31 March 2024 and 30 June 2024 respectively (originally 31 December 2023 and 31 March 2024, respectively).
 - **Notification no:56/2023-Central Tax**³⁶ ('**NN 56/2023**'): It extended the time limit for issuing an order under section 73(10) of CGST Act for FY 2018-19 and FY 2019-20 to 30 April 2024 and 31 August 2024, respectively, from the earlier due date of 31 March 2024 and 30 June 2024.

CHALLENGE TO THE VALIDITY OF EXTENSION NOTIFICATIONS (NN 9/2023 AND NN 56/2023)

The constitutional validity of the extension notifications issued by CBIC viz., NN 9/2023 and NN 56/2023 ('Impugned Notifications') has been challenged by various taxpayers across various High Courts. The gist of the challenges made and the orders issued by various courts is tabulated here under:



³¹ TOLO was subsequently replaced with Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA).

³² Dated 3 April 2020

³³ Dated 1 May 2021, as amended by Notification No. 24/2021-Central Tax dated 1 June 2021

³⁴ Dated 5 July 2022

³⁵ Dated 31 March 2023

³⁶ Dated 28 December 2023

Sl. No.	Case	High Court	NN challenged	Validity	Ratio
1.	Faizal Traders Pvt. Ltd. ³⁷	Kerala High Court	NN 9/2023	Upheld	<ul style="list-style-type: none"> COVID-19 was force majeure. Impugned Notifications were issued on recommendations of GST Council. Challenge to the Impugned Notifications was set aside.
2.	Graziano Trasmissioni ³⁸	Allahabad High Court	NN 9/2023	Upheld	
3.	Sahaj Construction ³⁹	Karnataka High Court	NN 9/2023	Upheld	
4.	Barhonia Enigcon Pvt. Ltd. ⁴⁰	Patna High Court	NN 9/2023 and NN 56/2023	Upheld	
5.	Brunda Infra Pvt. Ltd. ⁴¹	Telangana High Court	NN 13/2022, NN 9/2023 and NN 56/2023	Upheld	
6.	Barkataki Print and Media Services ⁴²	Gauhati High Court	NN 56/2023	Set Aside / Quashed	<ul style="list-style-type: none"> Powers under Section 168A cannot be exercised without any recommendations. Impugned Notification was issued without any recommendations from the GST Council. Impugned Notification is ultra vires the provisions of CGST Act.

Recently, the Madras High Court, in *Tata Play Ltd.*⁴³ (Taxpayer), while examining the validity of NN 9/2023 and NN 56/2023 ('Impugned Notifications'), has quashed the same. In this section, we will dissect the Madras High Court ruling.

CONTENTIONS OF THE TAXPAYER

▪ Submissions on the validity of Impugned Notifications

- Section 168A empowers the Central/State Government to exercise discretionary legislative powers in the nature of delegated legislation and not a conditional legislation. Hence, the Impugned Notifications must be construed as delegated legislations. Further, the power conferred under section 168A is an exception to the legislative policy reflected in section 73 and hence, it must be construed strictly.
- The jurisdictional pre-conditions to exercise the powers conferred under section 168A are:
 - Existence of force majeure event affecting implementation of any provisions of CGST Act
 - Actions for which time limit is prescribed but which cannot be completed or complied with
 - Such actions cannot be completed or complied with due to force majeure.
- The expression "due to" referred to in section 168A qualifies 'force majeure' and ought to be understood as referring to "causa causans" and not "causa sine qua non", i.e., the force majeure event should be the proximate cause behind the inability of the tax authorities to complete actions within the prescribed time limits. Further, the expression "cannot" referred in section 168A conveys an impossibility and not a mere difficulty.
- The GST Council, while recommending exercise of the power under section 168A and the issuance of Impugned Notifications, failed to take into account certain relevant materials⁴⁴, thereby vitiating the validity of Impugned Notifications. Accordingly, the recommendation of GST Council itself is rendered vulnerable to challenge.
- The inability of tax authorities to abide by the prescribed time limit was not due to any extraneous factor/force majeure event but was attributable wholly to inaction and delay in setting up a suitable system/infrastructure for undertaking scrutiny/audit proceedings.

³⁷ Faizal Traders Pvt. Ltd. Vs. Central Board of Indirect Taxes and Customs and Ors. [2024-TIOL-736-HC-KERALA-GST]

³⁸ Graziano Trasmissioni Vs. Goods and Services Tax and five Ors. [TS-321-HC(ALL)-2024-GST] - Editor's Note: Petitions pertaining to similar notification issued for FY 2018-19 (NN 56/2023) as well as the validity of Section 168A to be heard and decided separately.

³⁹ Sahaj Construction Vs. Union of India and Ors. [TS-726-HC(KAR)-2024-GST]. Editor's Note: Since this ruling was issued subsequent to the Madras High Court ruling in *Tata Play Ltd. Vs. Union of India* [TS-616-HC(MAD)-2025-GST], the same has not been referred by the Madras High Court.

⁴⁰ Barhonia Enigcon Pvt. Ltd. Vs. State of Bihar [2024 SCC OnLine Pat 8366]

⁴¹ Brunda Infra Pvt. Ltd. Vs. Additional Commissioner, Central Tax [2025 SCC OnLine TS 145]

⁴² Barkataki Print and Media Services Vs. Union of India [TS-588-HC(GAUH)-2024-GST]

⁴³ *Tata Play Ltd. Vs. Union of India* [TS-616-HC(MAD)-2025-GST]

⁴⁴ Office Memorandum of the Ministry of Personnel, Public Grievances and Pension, Government of India, dated 6 February 2022, D.O.No.40-3/2020-DM-1(A) of the Home Secretary, Government of India, dated 22 March 2022, addressed to all Chief Secretaries of all States, Report of the Comptroller and Auditor General of India ('CAG') for the period FY 2020-21 bearing No.5 of 2022 dated 31 March 2022 and Report of CAG for the period FY 2021-22 bearing No.7 of 2024 dated 21 June 2024.

- **Additional submissions on the validity of NN 56/2023**
 - NN 56/2023 was issued before any recommendation was made by the GST Council. Absent such recommendation, NN 56/2023 would be void for non-compliance with pre-conditions for exercise of power under Section 168A.
 - NN 56/2023 was issued only on the basis of the decision of GST Implementation Committee ('GIC'). However, under Section 168A, a notification can only be issued on recommendations of GST Council. Recommendation by the GIC cannot substitute a recommendation by GST Council for the purpose of exercising powers conferred under Section 168A.
 - Post-facto ratification by GST Council would not validate issuance of NN 56/2023. Section 168A contemplates the issuance of a notification 'on' the recommendation of the GST Council and where a statute requires a particular act to be done in a particular manner that act has to be done in that manner and no other.
 - NN 56/2023 is contrary to the maxim 'delegatus non potest delegare', i.e., a delegate cannot delegate.
- **Effect of Supreme Court Order in Re: Cognizance for Extension of Limitation⁴⁵ ('SC extension order') issued under Article 142 of the Constitution of India ('Constitution')**
 - The directions under Article 142 of Constitution would govern and be binding only when the legislature/executive steps in to substitute the vacuum filled by the judicial order. The SC extension order would cease to have effect with the introduction of section 168A with effect from 31 March 2020 and with the issuance of NN 13/2022, in any view, with effect from 5 July 2022.
- The Covid-19 pandemic constitutes force majeure for the purpose of section 168A and NN 9/2023 was issued validly and in compliance with the mandate of section 168A. Covid-19 not only affected the implementation/administration of GST law, in terms of issuing notices and passing orders during the pandemic but also resulted in a huge backlog as regards audit/scrutiny, assessment and adjudication. This was a direct and proximate effect of pandemic (even after Covid-19 cases had declined)⁴⁶.
- Examination of availability or non-availability of materials and adequacy thereof for the GST Council to make its recommendation under Section 168A, in view of force majeure, is beyond the scope of judicial review. Further, the recommendation of the GST Council is not mandatory⁴⁷.
- The term force majeure is very wide and the expression 'otherwise' used in the explanation to section 168A would also include in its ambit any event, including systematic inefficiency and lack of personnel which affects the implementation of the provisions of the CGST Act.
- **Additional submissions on the validity of NN 56/2023**
 - The GST Council had approved the constitution of various committees including the GIC in its meetings and had resolved that it may delegate power upon GIC to decide on urgent matters and also prescribe the procedure for obtaining views/comments and approval of Council.
 - During Covid-19 pandemic, in view of difficulties in convening meetings, GIC was required to make recommendations, which were circulated to the members of GST Council and thereafter approved by the GST Council.
 - The procedure adopted for framing a recommendation by GST Council is protected by Article 279A(10) of Constitution and the recommendation for issuance of NN 56/2023 was circulated to Members of the GST Council and the same was also ratified by the GST Council in its 53rd meeting, in consonance with procedure adopted by the GST Council in its 17th Meeting.
- **Effect of the SC extension order issued under Article 142 of Constitution**
 - The SC extension order would save the validity of notices/orders of adjudication from limitation. The power of the Supreme Court under Article 142 of the Constitution is to do complete justice and cannot be limited or restricted by the provisions of a statute⁴⁸.
 - Orders issued under Article 142 of the Constitution do not lose their effect with the issuance of notifications under Section 168A, i.e., NN 13/2022⁴⁹.



CONTENTIONS OF THE TAX AUTHORITIES

- **Submissions on the validity of Impugned Notifications**
 - NN 9/2023 was issued pursuant to 49th GST Council meeting after taking into account difficulties faced by tax authorities during the Covid-19 pandemic due to reduced staff, staggered timing and the exemption to certain categories of employees from attending offices resulting in delays in scrutiny and audit.

⁴⁵ Miscellaneous Application No. 408 of 2022 and connected matters, granted the exemption / relaxation of limitation between 15 March 2020 and 28 February 2022.

⁴⁶ M/s.Brunda Infra Pvt. Ltd. and Ors. Vs. Additional Commissioner of Central Tax, Hyderabad and Ors. [2025 SCC OnLine TS 145] and M/s.Graziano Transmissioini (supra)

⁴⁷ Union of India and Anr. Vs. M/s.Mohit Minerals Pvt. Ltd. [2022 (10) SCC 700]

⁴⁸ Delhi Judicial Services Association, Tiz Hazari Court, Delhi Vs. State of Gujarat and Ors. [1991 (4) SCC 406]

⁴⁹ V.S. Patanivel Vs. Sri Lakshmi Hotels Pvt. Ltd. [2025 (1) SCC 559] and GPR Power Solutions Pvt. Ltd. Vs. Supriyo Chaudhuri [2021 (17) SCC 312]

OBSERVATIONS AND RULING OF THE MADRAS HIGH COURT

- **Whether section 168A of CGST Act is a conditional or a delegated legislation?**
 - A conditional legislation contains no element of delegation of legislative power and is not open to be challenged on the ground of excessive delegation. However, a delegated legislation confers some legislative powers on some outside authority and is therefore open to challenge on the ground of excessive delegation⁵⁰.
 - As a matter of policy, limitation is prescribed for completion or compliance of actions under the CGST Act. However, the legislature introduced section 168A as there may be circumstances which would warrant a departure from the prescribed limitation period.
 - Pursuant to section 168A, the legislature has given discretion to the Government to extend the prescribed time limits due to a force majeure event. The said discretion is more in the nature of a delegated legislation and not a conditional legislation since it results in modification of the limitation period provided under CGST Act.
- **Whether section 168A is to be construed strictly?**
 - Limitations are stipulated by the legislature with a view to ensure finality and certainty and are part of public policy. They are essential for public order so as to ensure that there is no insecurity and uncertainty⁵¹.
 - Section 168A read with the Impugned Notifications is in the nature of an exception to section 73, which reflects the legislative policy for limitation periods under the CGST Act. It is a trite law that an exception ought to be strictly construed⁵² and hence, section 168A and the Impugned Notifications must be construed strictly.
- **Whether the GST Council had considered the relevant factors for recommending the exercise of powers under section 168A of CGST Act?**
 - A delegated legislation can be challenged on the ground that it has failed to take into account relevant facts⁵³. Occurrence of a force majeure event as per the explanation to section 168A is a sine qua non/condition precedent and it is undisputed that Covid-19 was a force majeure.
 - As regards the scope of the phrases “due to” and “cannot” referred to in Section 168A, it is apparent that force majeure must be the most proximate cause for the inability to complete prescribed actions within the prescribed time limit. Thus, a mere casual connection between force majeure event and inability may not be adequate for exercising power under section 168A. Further, such event, if not an impossibility, must be an impracticality or a statutory mandate which is unachievable and not a mere inconvenience or an element of disadvantage.
 - On perusal of the relevant materials, it appears that all Government employees were required to attend office regularly with effect from 7 February 2022 and by March 2022, the impact of Covid-19 pandemic had
 - also declined and there was no requirement to issue any orders or guidelines under the Disaster Management Act, 2005.
 - Further, the relevant materials considered in 47th GST Council Meeting to recommend to the issuance of NN 13/2022 were the very same materials as the ones considered in the 49th GST Council Meeting to recommend the issuance of NN 9/2023. Thus, the reason for the inability of the tax authorities to comply with the time limits was not attributable to Covid-19 pandemic but to systemic deficiencies and failure to recruit/appoint adequate officers. Covid-19 was only one of the reasons and not the proximate/primary cause. Hence, the GST Council could not have recommended to issue a Notification for further extending time limit prescribed under Section 73 by invoking powers under section 168A.
 - Relying on the principle of Ejusdem Generis, the term “otherwise” used in the Explanation to section 168A would be controlled by the preceding events defined as force majeure and the said expression cannot be isolated from the remaining part of the Explanation. If the said term is interpreted as wide enough to include any event/calamity affecting implementation of the provisions of CGST Act, it would render the enumeration of various events such as war, flood, etc. redundant. Even if it is assumed that the term “otherwise” qualifies any other calamity, by no conceivable process of reasoning it would cover self-inflicted inefficiencies.
 - Reference was also made to earlier precedents⁵⁴ and it was noted that the relevant materials were not placed before the Courts at the time of rendering those decisions.
 - Failure to consider the relevant materials which ought to have been taken note of by the GST Council while making the recommendation under section 168A vitiates such recommendation of GST Council.
 - Consequently, in the absence of a valid recommendation, the Impugned Notifications do not comply with the mandate of section 168A. Hence, the Impugned Notifications is unsustainable in law.
- **Recommendation of GST Council is mandatory under section 168A**
 - The requirement of a recommendation by the GST Council under section 168A is a mandate by the Parliament and when law requires a particular act to be done in a particular manner the act ought to be done in that manner and no other⁵⁵.
 - Reliance placed by the tax authority on Mohit Minerals (supra) is wholly misplaced as while it was held that a recommendation of GST Council may not be binding when a competent legislative body is exercising its legislative power, it made it clear that the recommendation of GST Council would be binding on the Government when it exercises its power to notify secondary legislation.

⁵⁰ Hamdard Dawakhana Vs. Union of India [1959 SCC OnLine SC 38]

⁵¹ Pundlik Jalam Patil Vs. Executive Engineer, Jalgaon Medium Project [2008 (17) SCC 448] and Prahlad Raut Vs. All India Institute of Medical Sciences [2021 (14) SCC 472]

⁵² Project Officer, IRDP and Ors. Vs. P. D. Chacko [2010 (6) SCC 637]

⁵³ Indian Express Newspapers (Bombay) Pvt. Ltd. Vs. Union of India [1985 (1) SCC 641]

⁵⁴ Faizal Traders (supra), Graziano Transmissions (supra), Barhonia Enigcon (supra) and Brunda Infra (supra).

⁵⁵ Competent Authority Vs. Barangore Jute Factory [2005 (13) SCC 477]

- In the context of issuance of notifications under section 168A, it appears that while the recommendation of GST Council is mandatory, it may still not be binding on the Central Government as it is still open to the Central Government to either act or not to act on the recommendation⁵⁶.
- **Ratification of GIC recommendation by the GST Council post issuance of NN 56/2023**
 - GIC is neither the GST Council and nor can it be a substitute for the GST Council. The submission of tax authorities that post-facto ratification by GST Council constitutes sufficient compliance with the requirement of section 168A lacks merit. It is a settled law that the power to be exercised on recommendation of a named authority cannot be exercised without recommendation of such authority⁵⁷.
 - NN 56/2023 was issued without the recommendation of the GST Council and hence, the mandate of section 168A was not complied with. The recommendation by GST Council was only by way of ratification subsequent to the issuance of NN 56/2023, which would not constitute compliance with the mandate of Section 168A.
 - Issuance of NN 56/2023 could very well constitute an abdication of authority by GST Council or arrogation/usurpation of power conferred on the GST Council under the CGST Act, by GIC, which would vitiate the recommendation⁵⁸.
- **SC extension order binding after introduction of section 168A**
 - 'Period of limitation' and 'computation of limitation' are distinct aspects. While the orders under Article 142 of the Constitution dealt with 'exclusion of limitation' and thus dealt with 'computation of limitation', the notifications issued under Section 168A provided for 'extension of time', thus dealing with 'period of limitation'. In other words, the former dealt with computation of limitation, while the latter with period of limitation. The two deal with different aspects and thus, the question of supplanting or overlap may not arise.
 - On perusal of NN 13/2022, it appears that the above distinction has been legislatively recognised under the CGST Act and use of the expressions 'extension' and 'exclusion' in NN 13/2022 would indicate that the Government was conscious of distinction between the two.
 - By excluding the period from 15 March 2020 to 28 February 2022 in terms of the SC extension order, the limitation available to the tax authorities for issuing notices and passing orders under Section 73(10) would be larger than the limitation available due to extension under the Impugned Notifications.
- The Impugned Notifications also suffers from the vice of arbitrariness, thereby offending Article 14 of Constitution and also fall foul of the object and purpose of section 168A. The exercise of power which diminishes limitation available under the CGST Act would not be in conformity with section 168A and is therefore, invalid.
- Accordingly, the tax authorities shall, in accordance with SC extension order, have the benefit of excluding the period from 15 March 2020 to 28 February 2022 while computing the limitation under sections 73(2) and 73(10).
- In view of the above, it was held that the Impugned Notifications stand vitiated and are illegal. However, since there were also issues relating to violation of principles of natural justice, lack of jurisdiction, errors apparent on the face of record, etc., the matters require re-adjudication by the tax authority and hence, it is remanded back to the adjudicating authority for passing fresh orders in a timely manner.

CONCLUSION

By holding that the Impugned Notifications are ultra vires, the Court reaffirmed the settled law that delegated legislative powers must be exercised strictly within the contours of statutory authorisation and only upon valid recommendations by the GST Council.

The High Court also held that the SC extension order is applicable to adjudication proceedings under the CGST Act. However, the said conclusion has been reached without considering the impact of the clarification provided by circular no.:157/13/2021⁵⁹ wherein it was clarified that SC extension order may not be applicable to issuance of show cause notices, granting time for replies and passing of orders, even though they are quasi-judicial proceedings, as the SC extension has only been made applicable to matters relating to petitions/applications/suits, etc. Based on the aforesaid principle, an appeal was filed against the aforesaid ruling of Tata Play. Vide order dated 17 October 2025, the Division Bench of the Madras High Court⁶⁰ dismissed the appeal and held that the SC Ruling applies to all judicial or quasi-judicial proceedings, including the proceedings under sections 73 and 74 of CGST Act. It will be interesting to see how the Government and the taxpayers respond and what future actions or clarifications emerge from this ruling and what would be the final word on this issue, as per the Supreme Court order, since the issue is likely only to be settled at Supreme Court level, considering the multitude of High Court judgments.

⁵⁶ Barkatki Print and Media Services (supra)

⁵⁷ Barangore Jute Factory (Supra)

⁵⁸ State of U.P. Vs. Maharaja Dharamder Prasad Singh [1989 (2) SCC 505]

⁵⁹ Dated 20 July 2021

⁶⁰ Oasys Cybermatics Pvt. Ltd. Vs. State Tax Officer, Chennai [TS-900-HC(MAD)-2025-GST]

GLOBAL TRENDS

VAT/ GST NEWS

International



France: Bill proposes higher VAT exemption thresholds for micro-entrepreneurs and small businesses

On 15 October 2025, the French Senate accepted for consideration a Bill which introduces increased turnover thresholds for VAT exemption applicable to micro-entrepreneurs and small businesses from 1 March 2026. Key measures include thresholds of €93,500 (from €85,000) for deliveries of goods and services, on-site sales and accommodation services, €41,250 (from €37,500) for services and liberal activities, excluding lawyers, €55,000 (from €50,000) for regulated legal professions and activities involving works delivery and royalties transfers and €38,500 (from €35,000) for unregulated legal professions and other activities.

(Source - [France VAT exemption thresholds raised for small businesses in 2025 - Global VAT Compliance](#))



Finland: Finland to Lower Reduced VAT Rate to 13.5% on Key Goods and Services from 2026

Finland will lower its reduced VAT rate from 14% to 13.5% with effect from 1 January 2026. The new rate will apply to food, catering, transport, accommodation, medicines, cultural services, books, sports and certain broadcasting services. The change will amend relevant VAT laws and align VAT treatment across Åland, mainland Finland and the EU. The proposal is part of the 2026 State Budget and is under parliamentary review, with expected adoption by late 2025.

(Source - [Finland to Lower Reduced VAT Rate to 13.5% on Key Goods and Services from 2026 - VATupdate](#))



USA: Florida Eliminates Sales Tax on Commercial Real Estate Leases Effective October 2025

Effective 1 October 2025, Florida will eliminate state and local sales tax on commercial real-estate leases. The repeal applies to leases of office space, retail units, warehouses and similar properties, while exclusions include short-term residential rentals, parking spaces, boat slips and aircraft hangars. Thus, no sales tax is due for occupancy periods starting on or after 1 October 2025.

(Source - [Florida Eliminates Sales Tax on Commercial Real Estate Leases Effective October 2025 - VAT update](#))

India



Festive boom! India's Diwali 2025 trade hits record INR 6.05tn on GST 2.0, Swadeshi push: CAIT survey

The 2025 Diwali season saw India's trade reach an unprecedented INR 6.05tn, driven by a focus on local products and GST 2.0 which reduced GST rates across key consumer and retail categories such as confectionery, home décor, footwear, ready-made garments, consumer durables and daily-use items. The 25% sales increase from 2024 was accompanied by a decline in demand for Chinese goods, boosting Indian manufacturers and creating nearly 5 million temporary jobs across various sectors like logistics, packaging, transportation, hospitality and delivery services, giving a strong boost to small and medium enterprises.

(Source - [Festive boom! India's Diwali 2025 trade hits record ₹6.05 lakh cr on GST 2.0, Swadeshi push: CAIT survey](#))

After rate cuts, GST collections up 4.6% YoY at INR 1.96tn in October

GST collections grew 4.6% year-on-year to INR 1.96tn in October 2025 (for sales in September). GST collections registered an increase despite staggering tax rate cuts for over 375 items effective September 22. The GST revenue collection numbers are expected to improve in November when the full-month impact of the rate cuts would be visible and is expected to have translated into a consumption push.

(Source - [After rate cuts, GST collections up 4.6% YoY at Rs 1.96 lakh crore in October | Business News - The Indian Express](#))

Rural India steers auto sector back to growth after GST revamp

The 2025 festive season delivered a strong boost to India's automobile industry. GST rationalisation reduced prices by up to 10%, enhancing affordability across segments. Rural markets outperformed urban regions, signalling improved farm incomes and rising consumer confidence. Two-wheeler (2W) sales surged 22%, while passenger vehicle (PV) sales rose 21% compared with the 2024 season, driven by GST cuts, rural demand, and attractive offers.

(Source - [Rural India steers auto sector back to growth after GST revamp - The Hindu Business Line](#))

CUSTOMS NEWS

INTERNATIONAL



South Korea: S Korea announces lowering of tariffs as part of new US trade deal

The US and South Korea have reached a broad trade deal whereby South Korea's presidential aide, Kim Yong-beom said that the two sides will reduce reciprocal tariffs from 25% to 15%. South Korea will also invest USD 350bn in the USA, including USD 200bn in cash investment and USD 150bn in shipbuilding.

(Source - [S Korea announces lowering of tariffs as part of new US trade deal](#))



USA: U.S. Signs Trade Deals with Malaysia, Cambodia, Thailand, Vietnam

The US has signed reciprocal trade agreements with Malaysia and Cambodia and reached basic agreements related to trade pacts with Thailand and Vietnam. The agreements with Malaysia and Cambodia were formalised through a joint statement and fact sheet, while those with Thailand and Vietnam were documented as frameworks.

(Source - [U.S. Signs Trade Deals with Malaysia, Cambodia, Thailand, Vietnam](#))



China: US-China Trade Deal: President Trump's Tariff Cut, President Xi's Rare Earth Pledge and Why the World Is Watching

US President Donald Trump lowered tariffs on China from 57% to 47%, easing some of the tensions between the two largest economies in the world. The development came after the American leader met with Chinese President Xi Jinping in Busan, South Korea, which marks a tentative step towards an improvement in relations between the two superpowers.

(Source - [US-China Trade Deal: Trump's Tariff Cut, Xi's Rare Earth Pledge and Why The World Is Watching](#))



India



CBIC merges 31 customs duty notifications into a single framework to simplify trade

On 25 October 2025, in a major trade-facilitation step, effective 1 November 2025, the Central Board of Indirect Taxes and Customs has consolidated 31 Customs tariff notifications into a single, unified notification. As per the new notification, exemption and concessional duty provisions previously scattered across multiple older documents is now be merged. CBIC also assured that all existing benefits and duty exemptions are being retained, except two changes. Overall, the move is in tandem with the Government's broader push to simplify indirect tax regulation and create a more conducive environment for global trade.

(Source - [CBIC merges 31 customs duty notifications into a single framework to simplify trade](#))

New facility for voluntary correction

Effective 1 November 2025, CBIC has introduced the Customs (Voluntary Revision of Entries Post Clearance) Regulations, 2025 to allow importers and exporters to self-correct errors in customs declarations (Bills of Entry/Shipping Bills) after clearance of goods.

(Source - [Malaysia: India, US sign 10-year defence pact to boost indigenous production, security - India Today](#))

India-EFTA trade pact comes into force, set to unlock USD 100bn investments and 1 million jobs

The landmark Trade and Economic Partnership Agreement between India and the European Free Trade Association bloc comprising of Iceland, Liechtenstein, Norway and Switzerland officially came into force on 1 October 2025. The deal, signed in March 2024, aims to mobilise USD 100bn in investments in India over the next 15 years and create one million direct jobs.

(Source - [India-EFTA trade pact comes into force, set to unlock \\$100 bn investments and 1 million jobs](#))



ABOUT BDO GLOBAL

BDO is an international network of independent public accounting, tax and advisory firms. We support organisations with an unwavering focus on quality, industry expertise, and the innovative use of technology to deliver impactful solutions. Our commitment to people, clients, and communities is at the core of everything we do. With our people-first culture, we foster an environment where diversity thrives, growth is nurtured, and continuous learning drives lasting progress for a sustainable future.



*As of September 2024

ABOUT BDO INDIA

BDO India offers Assurance, Tax, Advisory, Technology Products & Solutions, Digital Transformation, and Managed Services & Outsourcing to domestic and international clients across various industries. Bringing together expertise, innovatively driven and delivered through technology, we empower businesses to navigate their unique challenges with transformative, impactful, client-centric solutions. The team in India comprises over 11,000* professionals, led by more than 350 Partners and Directors, operating out of 20 offices across 14 key cities.



*Includes employees from BDO RISE and BDO EDGE

OUR SERVICES

ASSURANCE

- Financial Statement Audit and Attestation Services

MANAGED SERVICES

- Accounting Advisory
- Compliance Management
- Finance & Accounting
- Human Resource Outsourcing (HRO) and Payroll
- Tax Compliance

BDO EXECUTIVE SEARCH SERVICES

- Board Services
- Executive Assessments
- Executive Search
- Forensic Talent Diligence
- HR Advisory

TAX

- Customs & International Trade
- Goods & Services Tax (GST)
- Indirect Tax Assessment & Litigation Assistance
- Incentives & ESG
- Tax Technology
- Corporate Tax Services
- Financial Services Tax
- Global Employer Services
- International Tax Services
- Private Client Services
- Tax Outsourcing
- Transfer Pricing

BDO DIGITAL

- Digital Services
- Technology Products and Solutions

ADVISORY

- Actuarial Services
- Forensics
- Government Advisory
- IT Risk Advisory & Assurance
- Management Consulting
- Risk Advisory Services
- Sustainability & ESG
- Business Restructuring Services
- Corporate Finance and Investment Banking
- Deal Value Creation Services
- Financial Due Diligence
- M&A Tax and Regulatory
- Strategy & Commercial Due Diligence
- Valuations
- Research & Insights

CONTACT US

For any content related queries, you may write in to taxadvisory@bdo.in or get in touch with,



GYANENDRA TRIPATHI
Partner & Leader (West)
Indirect Tax
gyanendratripathi@bdo.in



DINESH KUMAR
Partner
Indirect Tax
dineshkumar@bdo.in



KARTIK SOLANKI
Partner
Indirect Tax
kartiksolanki@bdo.in

For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO INDIA OFFICES

Ahmedabad

BDO India LLP
Westgate Business Bay, Block - A,
Level-6, Opp. Nirvana Party Plot,
S.G. Highway, Ahmedabad - 380051, INDIA

Bhopal

11th Floor, EL-012 to EL-021,
Bansal One Building,
Rani Kamlapati Railway Station,
Bhopal 462016, India

Coimbatore

Pacom Square, Floor 3, 104/1, Sakthi
Main Road, Bharathi Nagar, Ganapathy
Coimbatore 641006, INDIA

Goa

BIZ - Nest, Floor 7
A Wing, Sunteck Corporate Park
Opp. Shram Shakti Bhavan, Patto
Panaji, Goa 403001, INDIA

Kolkata

Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 3

Floor 20, 2001 & 2002 - A Wing, 2001-
F Wing Lotus Corporate Park, Western
Express Highway, Ram Mandir Fatak Road,
Goregaon (E) Mumbai 400063, INDIA

Pune - Office 2

Floor 2 & 4, Mantri Sterling, Deep Bunglow
Chowk, Model Colony, Shivaji Nagar
Pune 411016, INDIA

Bengaluru - Office 1

Prestige Nebula, Floor 3
Infantry Road
Bengaluru 560001, INDIA

Chandigarh

Plot no. 55, Floor 5
Industrial & Business Park
Phase 1, Chandigarh 160002, INDIA

Delhi NCR - Office 1

Magnum Global Park, Floor 21, Archview
Drive, Sector 58, Golf Course Extn Road
Gurugram 122011, INDIA

Hyderabad

1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Mumbai - Office 1

The Ruby, Level 9, North West &
South East Wings, Senapati Bapat Marg
Dadar (W), Mumbai 400028, INDIA

Mumbai - Office 4

2nd floor, Empire Complex
414, Senapati Bapat Marg
Lower Parel West,
Mumbai 400013, INDIA

Vadodara

1008, Floor 10, "OCEAN", Sarabhai
Compound, Nr. Centre Square Mall,
Dr. Vikram Sarabhai Marg Vadodara
390023, INDIA

Bengaluru - Office 2

SV Tower, No. 27, Floor 3 & 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Chennai

Olympia Cyberspace, Floor 10, Module 4
No: 4/22 Arulayiammanpet, SIDCO Industrial
Estate Guindy, Chennai 600032, INDIA

Delhi NCR - Office 2

Windsor IT Park, Plot No: A-1
Floor 2, Tower B, Sector 125
Noida 201301, INDIA

Kochi

XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Mumbai - Office 2

601, Floor 6, Raheja Titanium, Western
Express Highway, Geetanjali Railway
Colony, Ram Nagar Goregaon (E),
Mumbai 400063, INDIA

Pune - Office 1

Floor 6, Building No. 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Ahmedabad | Bengaluru | Bhopal | Chandigarh | Chennai | Coimbatore | Delhi | Goa | Hyderabad | Kochi | Kolkata | Mumbai | Pune | Vadodara

This publication has been carefully prepared, but it has been written in general terms and should be seen as containing broad statements only. This publication should not be used or relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained in this publication without obtaining specific professional advice. Please contact BDO India Services Private Limited to discuss these matters in the context of your particular circumstances. BDO India Services Private Limited, its directors, promoters, employees and agents do not accept or assume any responsibility or duty of care in respect of any use of or reliance on this publication, and will deny any liability for any loss arising from any action taken or not taken or decision made by anyone in reliance on this publication or any part of it. Any use of this publication or reliance on it for any purpose or in any context is therefore at your own risk, without any right of recourse against BDO India Services Private Limited or any of its directors, promoters, employees or agents.

BDO India Services Private Limited, a private limited company incorporated in India, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member entities.

BDO is the brand name for the BDO network and for each of the BDO Member Entities

Copyright © 2025 BDO India Services Private Limited. All rights reserved. Published in India.

Visit us at www.bdo.in

