

GST
TAX UPDATE

CST

Recent Judgements and Amendments

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Amendment to Section 17(5) (d) – Block Credit

Clause (d) of sub-section (5) of section 17 is being amended to substitute the words "plant ~~or~~ machinery" with words "plant **and** machinery"

The explanation in the Goods and Services Tax (GST) Act, 2017 clarifies the interpretation of the term "**plant or machinery**" as used in **clause (d)** of the relevant provision. The key points of this explanation are:

- 1. Retrospective Clarification** – It states that the phrase "**plant or machinery**" should always be understood as "**plant and machinery**", meaning the interpretation applies not just going forward but also retrospectively.
- 2. Overrides Judicial Interpretations** – It explicitly overrides any **judgment, decree, or order** by a court, tribunal, or authority that might have interpreted the phrase differently.
- 3. Legal Intent** – The government ensures that wherever the term "**plant or machinery**" appears, it should **not be interpreted as two separate categories** (i.e., either plant or machinery separately), but rather as a combined category.

Implication:

- This clarification helps in ensuring uniformity in tax treatment and avoids any potential disputes regarding whether something qualifies as **plant or machinery** for GST purposes.

Effective Date: 1st July 2017

Finance Bill Clause: 119

Compulsory reversal of ITC – Section 34(2)

Proviso inserted to Section 34(2)

“Provided that no reduction in output tax liability of the supplier shall be permitted, if the—

- (i) input tax credit as is attributable to such a credit note, if availed, has not been reversed by the recipient, where such recipient is a registered person; or*
- (ii) incidence of tax on such supply has been passed on to any other person, in other cases.”*

Effective Date: Yet to notify

Finance Bill Clause: 121



Step towards implementation of IMS

Section 38, is being amended to substitute the expression “an auto generated statement” to “a statement” with respect to statement of input tax credit.

Effective Date: Yet to notify

Finance Bill Clause: 122



**Reduction in
mandatory
pre-deposit
penalty -
Appeal to
Appellate
Authority**

Section 107(6) is being amended to provide for 10% mandatory pre-deposit of penalty amount for appeals before Appellate Authority in cases involving only demand of penalty without any demand for tax

Currently no pre-deposit is required in case demand is only for Penalty.

Effective Date: Yet to notify

Finance Bill Clause: 124



Reduction in mandatory pre-deposit penalty - Appeal to Appellate Tribunal

Section 112(8) is being amended to provide for 10% mandatory pre-deposit of penalty amount for appeals before Appellate Tribunal in cases involving only demand of penalty without any demand for tax ***in addition to the*** amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.”.

Effective Date: Yet to notify

Finance Bill Clause: 125



Amendment to Schedule III

Following transaction will not be treated as Supply :

“8(aa) Supply of goods warehoused in a Special Economic Zone or in a Free Trade Warehousing Zone to any person ***before clearance*** for exports or to the Domestic Tariff Area”

No refund of tax already paid will be available for the aforesaid activities or transactions.

Effective Date: Yet to notify

Finance Bill Clause: 128 & 129



Track and trace mechanism for certain goods.

- Section (116A): “unique identification marking” means the unique identification marking referred to in clause (b) of subsection (2) of section 148A and includes a digital stamp, digital mark or any other similar marking, which is unique, secure and non-removable;
- New section 148A is being inserted to provide for an enabling mechanism for Track and Trace Mechanism for specified goods persons or class of persons who are in possession or deal with such goods, .

This mechanism involve:

- Affix on the said goods or packages, a unique identification marking containing goods information
- Furnish information & maintain records
- Furnish details of the machinery installed including the identification, capacity, duration of operation

Penalty for Track and Trace Mechanism

New section 122B is being inserted to provide penalty for contraventions of provisions related to the Track and Trace Mechanism provided under section 148A.

Penalty will be as follows:

- a. Penalty under Chapter XV or the provisions of this Chapter **AND**
- b. Penalty equal to an amount of one lakh rupees or ten per cent of the tax payable on such goods, whichever is higher.

Effective Date: Yet to notify

Finance Bill Clause: 116, 126 & 127

Condonation of Delay in GST Appeals

- ❖ Case: S.K. Chakraborty & Sons vs. Union of India (Calcutta HC, 01-12-2023)
- ❖ Relevant Section: Section 107, CGST Act, 2017 & Section 5, Limitation Act, 1963
- ❖ Key Judgment:
 - Section 107 of CGST Act does not exclude Section 5 of the Limitation Act.
 - Appellate Authorities can consider condonation of delay beyond the prescribed period.

Whether GST is leviable on the assignment of leasehold rights of industrial plots?

- ❖ Case: Gujarat Chamber of Commerce & Industry vs. Union of India (Gujarat HC) - 03-01-2025
 - ❖ Relevant Section: Section 7, CGST Act, 2017 (Scope of Supply)
 - ❖ Key Judgment:
 - ◆ 99-year leasehold rights & assignments – Constitute a transfer of immovable property.
 - ◆ Schedule III of GST Act – Excludes sale of land/buildings from GST.
- Panacea Biotec Ltd. vs. Union of India (Bombay HC, 21-01-2025) – Remanded back the matter.

Time Limit Extension Declared Ultra Vires

- ❖ Case: Central Board of Indirect Taxes & Customs vs. Barkataki Print & Media Services (Gauhati HC, 07-01-2025)
- ❖ Relevant Section: Section 168A, CGST Act, 2017
- ❖ Key Judgment:
 - Notification extending time limit for financial years 2018-19 and 2019-20 was declared ultra vires.
 - Subsequent ratification by GST Council cannot substitute a prior recommendation.

ITC Denial for HVAC & Cooling Systems - AAAR

- ❖ Case: Wago (P.) Ltd., In re (AAAR-Gujarat, 29-05-2024)
- ❖ Relevant Section: Section 17(5)(c), CGST Act, 2017
- ❖ Key Judgment:
 - ITC on air conditioning and cooling systems was denied as they were considered part of immovable property.
 - Advance ruling authority's decision was upheld.

Anticipatory Bail for Tax Practitioner in Fake GST Registration Case

- ❖ Case: Satya Prakash Singh vs. State of Jharkhand (Jharkhand HC, 20-01-2025)
- ❖ Relevant Section: Section 132, CGST Act, 2017 & Section 438, CrPC
- ❖ Key Judgment:
 - A tax practitioner accused of facilitating fake GST registration was granted anticipatory bail.
 - Court ruled that verifying client documents is not the tax practitioner's responsibility.

GST Demand for Mismatch Between GSTR- 3B and GSTR-1 – Demand issued under Section 74

- ❖ Case: Xiaomi Technology India (P.) Ltd. vs. Additional Commissioner, CGST Delhi (Delhi HC, 29-10-2024)
- ❖ Relevant Section: Section 74, CGST Act,
- ❖ Key Judgment:
 - Mere mismatch between GSTR-3B and GSTR-1 does not justify invoking Section 74 unless fraud or misstatement is proven.
 - Tax demand raised without evidence of fraud was quashed.

ITC Denial for Loss of Inputs in Manufacturing Process

- ❖ Case: ARS Steels & Alloy International (P.) Ltd. vs. State Tax Officer (Madras HC, 24-06-2021)
- ❖ Relevant Section: Section 17(5)(h), CGST Act, 2017
- ❖ Key Judgment:
 - ITC cannot be reversed for input loss inherent to the manufacturing process.
 - Court held that such loss is not covered under Section 17(5)(h) restrictions.

Refund on Supplies to SEZ

- ❖ Case: Lenovo (India) (P.) Ltd. vs. Joint Commissioner of GST (Appeals-1) (Madras HC, 06-11-2023)
- ❖ Relevant Section: Section 16 of IGST Act, Section 54, CGST Act, 2017
- ❖ Key Judgment:
 - Time limit fixed under section 54 (1) is directory in nature and it is not mandatory; refund application can be made even beyond two years.
 - Assessing Officer to make endorsement in time, assessee could not be found fault with.

**GST is
applicable on
liquidated
damages under
contractual
agreements**

- ❖ Case: Aavanti Solar Energy (P.) Ltd. vs. Joint Commissioner of Central Tax (Karnataka HC, 09-09-2024)
- ❖ Relevant Section: Section 7 of CGST Act
- ❖ Key Judgment:
 - The department failed to consider Circular No.178/10/2022/GST (03-08-2022), which provides guidelines on GST applicability for liquidated damages.

Thank You..



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