



TAXIENT INSIGHTS

Week 3 & 4 - August 2025

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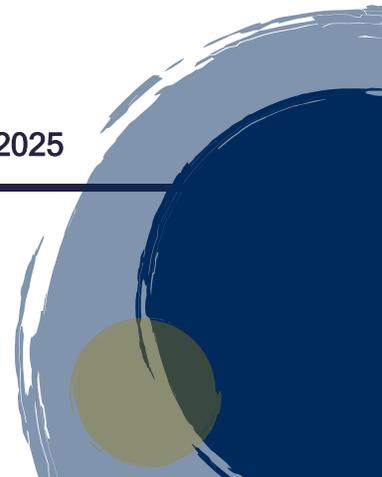


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1. WRIT PETITIONS

1.1. Issuance of 'summons' is not 'initiation of proceedings'

The Petitioner filed Special Leave Petition ('SLP') challenging the Delhi High Court decision. In this decision, the High Court dismissed the writ petition filed by the Petitioner holding that the expression 'any proceeding' in Section 6(2)(b) of the CGST Act, 2017 cannot be construed to include a search or investigation. The High Court took the view that a summons or investigation pursuant to a search constitutes only a precursor to the formal proceedings. It distinguished such summons from assessment, noting that summons is primarily intended to elicit information.

The Supreme Court ('SC') reviewed multiple High Court decisions and dismissed the SLP filed by the Petitioner in this matter. The key findings and reasoning behind the decision are as follows:

- The SC held that issuance of a summons under Section 70 does not amount to initiation of proceedings within the meaning of Section 6(2)(b). A summons is part of inquiry or investigation to collect information, documents, or evidence. Formal 'proceedings' are deemed initiated only upon the issuance of a SCN, e.g., under Sections 73/74, which marks the start of quasi-judicial adjudication.
- The 'subject matter' for Section 6(2)(b) is crystallized only upon issuance of a detailed SCN, which establishes the specific tax liability / contravention. Vague or general inquiries or summons do not clarify the subject matter. The scope / details in the SCN define what the authority is proceeding against.
- Actions like search, seizure, or summons are considered preliminary inquiries and do not invoke the bar under Section 6(2)(b). The bar aims to prevent parallel adjudicatory proceedings and conflicting orders, not legitimate initial intelligence-based inquiries by either tax authority.
- Both Central and State authorities may investigate intelligence-based matters but cannot pursue parallel adjudication for the same matter.
- Assessee must cooperate with authorities during inquiry and has the right (upon evidence of overlap) to seek clarification or relief as per guidelines.
- If authorities cannot agree, the first to initiate continues, with court intervention if necessary.
- Tax authorities should adhere strictly to the specified guidelines to avoid taxpayer harassment and judicial intervention.

Taxient Comments: While the Apex Court has rightly clarified that the issuance of summons under Section 70 is merely a preliminary inquiry step and does not amount to the 'initiation of any proceedings,' certain practical complexities remain for taxpayers. In real business scenarios, especially during audits or investigations, authorities may issue preliminary findings or communicate potential liabilities. Prompted by such preliminary reports, many taxpayers opt to pay the demanded amount for closure or out of caution, despite no formal SCN having been issued.

In these situations, although no SCN exists, the process may feel and function more like a substantive proceeding than a mere inquiry or evidence gathering step. This creates a grey area. Strictly following the above judicial principle, 'proceedings' only commence with the issuance of an SCN, meaning any actions or payments made prior are not counted as part of the proceedings.

Therefore, while the SC's findings are legally sound and offer clarity for the standard case, it may have harsh consequences for taxpayers who, based on preliminary audit communications or investigation findings, choose to pay the demand. Thus, it remains to be seen how future Courts will treat audits, investigations etc. that move beyond pure inquiry but fall short of the formal SCN stage.

1.2. Renewal of provisional attachment post one year is not permissible

The Petitioner filed SLP challenging the Gujarat High Court decision. The Petitioner challenged subsequent provisional attachment order issued post expiry of initial attachment orders which ceased to have effect after one year as per Section 83(2) of the CGST Act. The High Court dismissed the writ petition filed by the Petitioner holding that the law does not place any embargo for a second provisional attachment order to be issued after lapse of the earlier order.

The SC held that Section 83(2) provides that every provisional attachment shall cease to have effect after one year from the date of issuance. The statute contains no provision for extending or renewing the provisional attachment beyond one year. Accordingly, the Court set aside the renewal orders and directed immediate de-freezing of Petitioner's bank accounts, while permitting the GST authorities to continue investigations and proceed with lawful recovery mechanisms.

The key findings and reasoning behind the decision are as follows:

- The Court observed that unlike the Excise Act and Customs Act, which allow extensions of provisional attachment periods, the CGST Act has deliberately omitted any such provision, reflecting clear legislative intent against renewal.

- Issuing a fresh provisional attachment order on the pretext of 'renewal' after the initial one has lapsed is legally impermissible, as it defeats the legislative intent and renders Section 83(2) ineffective.
- The Court reaffirmed that provisional attachment under Section 83 is a draconian and pre-emptive measure solely meant to protect government revenue during investigation, and not a tool for recovery.
- The Court also noted the misalignment between the CGST Act and CGST Rules regarding release of attachment post expiry of one year, recommending amendment to Rule 159 to align it with the statutory provision.

[Kesari Nandan Mobile v. Office of AC of State Tax, ED, 2025-VIL-65-SC]

Taxient Comments: This landmark judgment provides a shield against the misuse of provisional attachment powers under GST. The SC delivers much needed clarity and relief to businesses burdened by repeated or prolonged freezing of assets under the guise of 'renewal' of provisional attachments. Taxpayers facing provisional attachments must vigilantly monitor the validity period of such orders and assert their rights to have them released once the statutory one-year limit lapses.

1.3. ITC on telecommunication tower allowed

The SC dismissed the SLP filed by the Revenue against the Delhi High Court's decision.

Earlier, the High Court allowed the writ petition filed by the taxpayer, holding that telecommunication towers cannot be treated as immovable property based on the principles laid down by the SC in **Bharti Airtel Ltd. vs. Commissioner of Central Excise, Pune (2024-VIL-49-SC-CE)**. For telecommunication towers to fall under the restriction in clause (d) of Section 17(5), they must qualify as immovable property. However, applying tests of permanency, intention, functionality, and marketability, the SC in *Bharti Airtel* (supra) held that these towers are movable property and allowed ITC on them.

[Commissioner, CGST Appeal-1, Delhi v. Bharti Airtel Limited, 2025-VIL-62-SC]

Taxient Comments: This dismissal affirms the High Court's view and offers strong persuasive support for the classification of telecommunication towers as movable property for availing ITC under the GST law.

1.4. Appellate Authority cannot remand cases back to Adjudicating Authority

The Petitioner filed a writ petition challenging the order passed by the Appellate Authority. The Petitioner's GST registration was cancelled after a SCN was issued based on a formal inquiry. When the Petitioner's application for revocation of the cancellation was rejected, they filed an appeal before the Appellate Authority. The Appellate Authority allowed the appeal, quashing the SCN and cancellation order, but sent the matter back to the original tax officer for verification of facts and compliance.

The High Court examined Section 107(11) of the CGST Act and held that if the Appellate Authority finds the cancellation order vague, lacking clear reasons, and unsustainable, it cannot send the matter back to the tax officer for a 'second chance'. Allowing such remand after quashing the order would be a misuse of process and defeat the purpose of the appeal. Therefore, the Court set aside the remand and related orders passed by the Appellate Authority.

[Kanha Shree Steels v. ADC, CGST Division-VI, Ghaziabad, 2025-VIL-867-ALH]

Taxient Comments: This ruling clarifies the principle of finality and scope of remand in GST appeals. Importantly, this principle applies uniformly to all GST appeals and not just those concerning cancellation or revocation of registration. Once the appellate authority sets aside, modifies, or annuls an order, it must decide the matter finally and cannot send it back to the lower authority for a 'second inning.' This ensures timely resolution of disputes, reduces procedural delays, and safeguards taxpayers from prolonged litigation.

2. ADVANCE RULINGS

2.1. ITC eligible on accommodation provided to employees and student trainees

The Applicant engaged a third-party accommodation service provider to offer dormitory facilities near its factory to both employees and student trainees. The service provider raised monthly invoices for the accommodation, along with GST at 18%. The Applicant recovered a nominal amount from both groups. The Applicant approached the Authority of Advance Ruling ('AAR') seeking clarity on two core issues:

- Applicability of GST on the amounts recovered from employees and student trainees for the provision of accommodation.
- Eligibility to avail ITC for GST charged by the service provider on accommodation provided to both groups.

The AAR, referring to CBIC **Circular No. 172/04/2022-GST dated July 6, 2022**, held that accommodation provided to employees as a perquisite under the employer-employee relationship does not qualify as a 'supply' under GST. Consequently, no GST is payable on amounts recovered from employees. In contrast, student trainees are not employees of the Applicant. The accommodation provided to them is liable to GST as it constitutes a taxable supply, and GST is therefore applicable to amounts recovered from student trainees.

Regarding ITC, the AAR cited Section 17(5) of the CGST Act and clarified that ITC is not blocked for such business-related expenses. The accommodation provided to employees does not fall under 'personal consumption'. The Applicant is entitled to claim ITC on the GST charged by the service provider, but only to the extent of the accommodation cost actually borne by the company (excluding any portion recovered from employees). For student trainees, as GST is discharged on the full amount recovered and the cost is borne by the Applicant for business purposes, ITC on the GST paid to the service provider is fully available to the Applicant.

[Suzuki Motor Gujarat Pvt. Ltd., 2025-VIL-135-AAR]

Taxient Comments: On the ITC front, AAR's conclusions are noteworthy. Allowing ITC on accommodation expenses without treating them as personal consumption marks a very welcome and pragmatic stance under the GST law. This approach rightly distinguishes between personal and business uses, recognizing that accommodation provided to employees, directors, or expatriates is fundamentally a business related expense.

It is important for taxpayers to proactively avail ITC of accommodation services extended to employees, directors or expatriates. Typically, these accommodations are also accounted for as 'perquisites' under Income Tax laws, which further strengthens the argument that such expenses are incurred for business purposes and are integral to employment terms rather than personal

indulgences. Taxpayers are therefore urged to review and align their tax and HR policies accordingly to maximize rightful ITC benefits on accommodation extended to employees, directors, and expatriates.

3. OTHER UPDATES

3.1. Hon'ble Prime Minister unveils next generation GST Reforms on 79th Independence Day

The Central Government has proposed significant GST reforms aimed at building an 'Atmanirbhar Bharat', focusing on three key pillars:

Pillar 1: Structural Reforms

- ✓ **Correction of inverted duty structures:** Align input and output tax rates to reduce accumulation of input tax credit and boost domestic value addition.
- ✓ **Resolving classification issues:** Streamline GST rate structures to minimize disputes, simplify compliance, and promote consistency across sectors.
- ✓ **Stability and Predictability:** Provide long-term clarity on GST rates and policies to build industry confidence and aid business planning.

Pillar 2: Rate rationalisation

- ✓ **Tax reduction on common and aspirational goods:** Lower taxes to improve affordability and stimulate consumption for broad sections of society including the common man, women, students, middle class, and farmers.
- ✓ **Slab reduction:** Move towards a simplified GST structure with essentially two slabs—standard and merit—with special rates reserved for select items.
- ✓ **Compensation cess:** End of compensation cess provides fiscal space and increased flexibility for sustainable tax rate realignment.

Pillar 3: Ease of living

- ✓ **Seamless registration:** Faster, technology-driven registration processes, especially benefiting small businesses and startups.
- ✓ **Pre-filled returns:** Reduce manual interventions by implementing pre-filled returns, minimizing errors and mismatches.
- ✓ **Faster refunds:** Automated refund processing particularly for exporters and those affected by inverted duty structures.

The proposal has been submitted to the Group of Ministers ('GoM') for further examination and consensus-building. The Central Government emphasizes cooperative federalism, aiming for a

broad consensus with States and early implementation during the current financial year. The GST Council will deliberate on the GoM's recommendations in the upcoming meeting.

Taxient Comments: The proposed reforms exhibit a positive and forward-looking approach towards refining the GST regime. The focus on rationalizing rates and simplifying the structure should reduce disputes and compliance burdens, while the emphasis on ease of living through technology-driven processes reflects current global best practices.

However, as with any significant tax reform, the devil lies in the details. Taxpayers and stakeholders should watch closely for the finer aspects of implementation, particularly around classification clarity, rate adjustments, and operationalization of new return and refund processes. The upcoming GST Council meeting scheduled for 3rd and 4th September, 2025 is expected to shed further light on these proposed reforms.

Overall, these reforms appear promising and well-intentioned, aiming to balance taxpayer relief with revenue sustainability. Stakeholders would do well to prepare for changes but should also await the detailed guidelines and notifications before making major strategic or compliance moves.

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