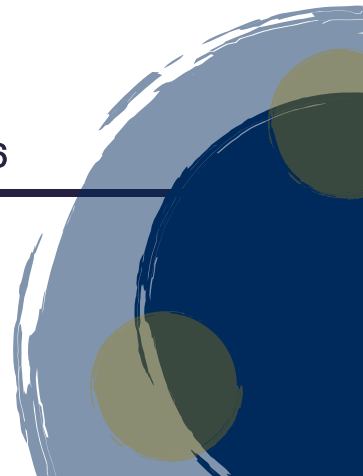




# TAXIENT INSIGHTS

Week 1 & 2 of March 2026

March 20, 2026



# TABLE OF CONTENTS

<b>1. WRIT PETITIONS</b>	<b>3</b>
1.1. Interest on wrongful ITC is automatic	3
1.2. Orders passed against non-existent merged entities are redundant	4
<b>2. TRIBUNAL RULINGS</b>	<b>6</b>
2.1. Reimbursement of expat salaries is not taxable in view of employer-employee relationship	6
<b>3. APPELLATE AUTHORITY RULINGS</b>	<b>7</b>
3.1. Refund rights cannot be defeated by system glitches or procedural delays	7

## 1. WRIT PETITIONS

### 1.1. Interest on wrongful ITC is automatic

The Petitioner approached the High Court to challenge the levy of interest for the 'wrongful availment and utilisation' of excess transitional credit. The Petitioner had claimed transitional credit twice i.e., once through TRAN-1 and once through GSTR-3B and retained the excess amount for 630 days before reversing it. The Petitioner submitted that the levy of interest under Section 50(3) of the CGST Act is unwarranted in the absence of utilisation of the said credit. It was further urged that, in any event, no recovery of interest can be effected without the issuance of a SCN in accordance with law.

The High Court dismissed the petition and ruled that the liability to pay interest was statutory and compensatory. The Court observed that while Section 50(3) now requires both availment and utilisation for interest to be triggered, the Petitioner failed to produce evidence showing that balance was not utilised. Consequently, the Court held that the retention of inadmissible credit for a prolonged period automatically triggered interest liability under Section 42(10), and the Department was justified in adjusting the Petitioner's cash ledger refund against this outstanding interest debt.

**[KJV Alloys Conductors Pvt Ltd v. UOI & Ors., 2026-VIL-222-MP]**

**Taxient Comments:** While it is a settled legal position that the liability to pay interest under Section 50 of the CGST Act is automatic in nature, it is equally well settled that the recovery of a disputed interest demand cannot be effected unilaterally without due adjudication. The Appellate Authority sought to justify the recovery proceedings by placing reliance on Section 75(12) of the CGST Act, holding that since the ITC reversal was self-assessed and accepted by the taxpayer, the consequential interest liability stood automatically crystallized as a confirmed demand. However, this reasoning is fundamentally flawed inasmuch as Section 75(12), particularly in light of the Explanation inserted by the Finance Act, 2021, is expressly confined to recovery of self-assessed tax in cases of mismatch between GSTR-1 and GSTR-3B and cannot be extended to interest arising from an ITC reversal. In our respectful view, Section 75(12) can only be invoked in cases where a self-assessed tax liability, clearly disclosed in returns filed under Section 39, remains unpaid and not in situations involving reversal of wrongly availed and utilised ITC, which necessarily entails a disputed liability requiring adjudication under Sections 73 or 74 of the CGST Act. This interpretation finds direct support in the decision of the Hon'ble Andhra Pradesh High Court in **Sona Enterprises v. Assistant Commissioner of Central Tax, (2026) 39 Centax 145 (A.P.)**, wherein the Court expressly held that allegations of wrong utilisation of ITC do not amount to an admitted self-assessed tax liability, and that coercive recovery proceedings under Section 79(1)(c) without a prior adjudicatory order are illegal and unsustainable.

Further, the Court did not adequately examine this critical distinction between the automatic accrual of interest liability and the legal recoverability of a disputed interest demand, nor did it address the impermissibility of invoking Section 79 in the absence of a completed adjudication process. This approach gives rise to a significant and far-reaching risk that any voluntary reversal of ITC by a taxpayer may be construed as an unqualified admission of liability, thereby enabling the Revenue to invoke Section 75(12) and proceed directly to recovery of interest, entirely bypassing the principles of natural justice and the mandatory adjudication process.

Furthermore, the petitioner did not raise the argument that transitional credit is distinct from ITC under GST law, a distinction which could potentially render Section 50(3) inapplicable. This distinction has been acknowledged in several rulings, including **Sino Resources, 2018 (13) GSTL 421 (AAR-GST)**, **CMI FPE Ltd., 2018 (16) GSTL 311 (AAR-GST)**, and **Sasan Power Ltd., 2018 (16) GSTL 645 (AAR-GST)**. By treating the transitional credit as ordinary ITC, the petitioner effectively assumed the burden of demonstrating non-utilisation of the credit.

## 1.2. Orders passed against non-existent merged entities are redundant

The Petitioner approached the High Court challenging adjudication orders passed in the name of L&T Hydrocarbon Engineering Ltd (LTHE), a subsidiary that had already merged into the Petitioner *via* an NCLT-approved scheme. Despite the Petitioner informing the GST authorities of the amalgamation, the Department continued to issue orders against the old GSTIN of the non-existent entity. The Revenue argued that since the old registration had not been formally cancelled by the Petitioner, they were justified in issuing orders against that active GSTIN.

The High Court disposed of the petitions, ruling that it is settled law that an order cannot be passed in the name of a non-existent entity. The Court introduced a clause deeming that the moment the Department is informed of a merger, the earlier GSTIN is deemed cancelled and the new entity's GSTIN becomes operational for all demands. To resolve the teething issues of the GST portal, the Court directed the Revenue to re-upload the orders on the Petitioner's new GSTIN within one month, ensuring the Petitioner could exercise its right to appeal while protecting the Revenue's ability to recover dues.

**[Larsen and Toubro Ltd & v. UOI & Ors., 2026-VIL-215-RAJ]**

**Taxient Comments:** The Courts have consistently held that once an entity ceases to exist pursuant to an amalgamation, any statutory notice or order issued in its name is legally unsustainable.

However, the present ruling, by introducing a deeming fiction that the GST registration of the amalgamating entity stands cancelled once the Department is informed of the merger, raises certain practical concerns. Section 29 of the CGST Act requires cancellation of registration in case of a change in the constitution of business, and Rule 20 of the CGST Rules mandates that an application for such cancellation be filed within 30 days of the relevant event warranting

cancellation. In practice, taxpayers involved in mergers or amalgamations often face operational challenges in immediately discontinuing the existing GSTIN. To ensure continuity of operations and compliance, taxpayers generally intimate the Department about the amalgamation and request permission to continue using the existing GSTIN for a limited transition period until the new structure stabilizes. If the GSTIN is deemed to be cancelled immediately upon such intimation, as suggested by the ruling, it can create significant transitional difficulties for businesses, particularly in migrating contracts, invoices, compliance systems, and IT infrastructure to the GSTIN of the merged entity. Therefore, while the principle against proceedings in the name of a non-existent entity remains legally sound, the deeming cancellation approach may require further administrative clarity to avoid unintended compliance disruptions.

## 2. TRIBUNAL RULINGS

### 2.1. Reimbursement of expat salaries is not taxable in view of employer-employee relationship

The Appellant approached the CESTAT challenging a demand for Service Tax on salary reimbursements made to its foreign holding company, for expatriate employees deputed to India. The Department alleged that these payments constituted 'Management Consultancy Service' or 'Manpower Recruitment or Supply Agency Service', relying on the Supreme Court's ruling in Northern Operating System. The Appellant contended that the expats were directly employed by them under independent employment agreements, the holding company merely facilitated salary disbursement in foreign currency, and the Appellant exercised full control and supervision over the personnel.

The CESTAT allowed the appeal, ruling that the relationship was a bona fide employer-employee relationship and thus outside the ambit of service tax. The Tribunal distinguished this case from NOS by noting the absence of a formal secondment agreement and the fact that the employment was not tied to a service contract between the two entities. It observed that the Appellant treated the entire remuneration as salary under the Indian Income Tax Act and filed global tax returns for the employees. Consequently, the Tribunal held that for the period prior to July 2012, the activities were 'self-service' and post-July 2012, they fell under the employer-employee exclusion.

[Bharathi Cement Corporation Pvt. Ltd. v. CCT, 2026-VIL-425-CESTAT-HYD-ST]

**Taxient Comments:** This ruling provides a critical roadmap for multinational corporations to distinguish operational structures from the broad 'manpower supply' interpretation in the NOS judgment. By emphasizing the presence of direct, independent employment contracts and the absence of a secondment agreement, the Tribunal reaffirmed that the substance of the relationship i.e., control, supervision, and statutory reporting outweighs the mere route of salary disbursement. This suggests that where an Indian entity acts as the real employer and bears all risks, the administrative facilitation of payments through a foreign parent should not trigger tax under the reverse charge mechanism.

### 3. APPELLATE AUTHORITY RULINGS

#### 3.1. Refund rights cannot be defeated by system glitches or procedural delays

The Appellant approached the Commissioner (Appeals), Ludhiana, after its IGST refund claim for goods exported in April 2021 was rejected as time barred. The Adjudicating Authority held that the refund application filed in April 2024 was beyond the two-year limitation period prescribed under Section 54 of the CGST Act. The Appellant argued that under Rule 96, the Shipping Bill filed on 15.04.2021 was a 'deemed application' for refund and that the subsequent delay was entirely due to the Department's 'Risky Exporter' tag and technical glitches in data transmission between the ICEGATE and GST portals.

The Commissioner (Appeals) set aside the rejection and ruled that the 2024 application must be considered in continuation of the original deemed application filed via the Shipping Bill in 2021. The Authority found that the Appellant had taken all reasonable steps to resolve the technical errors and that the delay in electronic transmission was not attributable to them. Emphasizing that substantive rights cannot be defeated on procedural grounds, the Court held that once the Shipping Bill is filed in time, the subsequent system-driven reprocessing does not constitute a 'fresh' application subject to new limitation periods.

**[Ekam Enterprises, 2026-VIL-01-GSTAA]**

**Taxient Comments:** This ruling serves as a vital check on the 'system-is-law' approach often adopted by tax authorities when dealing with automated refunds. By linking the 2024 filing back to the 2021 Shipping Bill, the Appellate Authority correctly identified that a 'deemed application' under Rule 96 creates a vested right that cannot be extinguished by the Department's internal data-sharing failures. This provides essential relief to exporters whose legitimate refunds are trapped in a limbo of verification and portal non-compatibility.

---

Disclaimer:

This Insight has been prepared exclusively for the use of clients and personnel of Lex Taxient Advisors LLP and is intended solely for general informational purposes. Lex Taxient Advisors LLP disclaims any and all liability for any loss or damage that may arise from reliance on the information contained herein. Recipients are strongly encouraged to obtain appropriate professional advice tailored to their individual facts and circumstances prior to making any decisions or taking any action.

## Thank You!

We sincerely appreciate you taking the time to read our latest update. We hope you found the information both valuable and insightful.

To read our past updates, refer our [website](#).



## Let's Stay Connected

 Office Address: 5th Floor, Wing-A, Statesman House, Barakhamba Road, New Delhi, Delhi 110001

 Phone: +91-87507-83879 / 91151-05773

 Email: [info@taxient.in](mailto:info@taxient.in)

 Website: [www.taxient.in](http://www.taxient.in)

 Follow us for updates on [LinkedIn](#)