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TAXIENT INSIGHTS

Week 2 of February 2026

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1. WRIT PETITIONS

1.1. SCN issuance deadline under Section 73 for financial year 2020-21

The Petitioner, engaged in wholesale trading, challenged a show cause notice ('SCN') issued under Section 73 of the CGST Act, 2017 on the ground that it was not issued at least three months prior to the last date for passing the order under Section 73(10). The Petitioner contended that, since the last date for passing the order was February 28, 2025, the SCN ought to have been issued on or before November 28, 2024. As the SCN was issued on November 29, 2024, it was argued that the SCN was time-barred and liable to be quashed.

The Court examined the provisions of Section 73(2) and Section 73(10) along with the principles contained in Section 9 of the General Clauses Act, 1897. It held that where a statutory period is to be computed, the first day is to be excluded and the last day included. The Court further applied the 'corresponding date rule' and observed that a month in a statute refers to a calendar month and not a fixed number of days. Applying these principles, the Court concluded that a notice issued on November 29, 2024, or even November 30, 2024, would satisfy the requirement of being issued at least three months prior to February 28, 2025. Accordingly, the SCN was held to be within limitation, and the writ petition was dismissed.

[Surya Business Private Limited v. State of Assam & Ors., 2026-VIL-153-GAU]

Taxient Comments: A notable aspect of the judgment is the Court's reliance on the observations in **Dodds v. Walker, [1981] 2 All ER 609**, where the House of Lords explained the corresponding date rule and clarified two key principles. First, that in computing a period expressed in months, the day of the triggering event is excluded, and second, that the period ordinarily expires on the corresponding date in the relevant subsequent month, **subject to limited exceptions where such a date does not exist.** For example, for notices issued on the 30th / 31st of the month, if target month lacks the date (for example, no 30th / 31st in February or 30-day months), the period ends on the last day of that month, even if it shortens the actual days. The Court applied these principles to hold that the computation under Section 73(2) must be made by reference to calendar months and corresponding dates, rather than by counting a fixed number of days.

The judgment also illustrates how the corresponding date rule operates in practice in tax limitation provisions. By treating the date of issuance of notice as the starting point (terminus a quo) and the last date for passing the order as the end point (terminus ad quem), and by excluding the first day in terms of Section 9 of the General Clauses Act, the Court concluded that notices issued even on 29th or 30th November satisfied the statutory requirement of 'at least three months.'

1.2. Remuneration paid to foreign national employees is not subject to GST

The Petitioner filed a writ petition challenging a SCN which demanded IGST on remuneration paid to foreign national employees. The department alleged that the payment of such salaries amounted to the import of manpower recruitment and supply service liable to tax under the RCM. The Petitioner contended that there was an exclusive direct employer-employee relationship, evidenced by employment contracts, inclusion in the payroll, and deduction of Income Tax, implying the transaction was covered under Schedule III of the CGST Act and thus not taxable.

The High Court quashed the SCN and allowed the petition, holding that the transaction is not subject to IGST. The Court observed that a valid employer-employee relationship existed, placing the transaction under Entry 1 of Schedule III of the CGST Act, which specifically excludes services provided by an employee to an employer from the definition of supply. The Court further held that the foreign nationals were residents of India and did not qualify as 'Non-resident Taxable Persons.' Additionally, relying on **Circular No. 210/4/2024-GST** dated **June 26, 2024 ('Circular 210')**, the Court clarified that even if the transaction were considered a supply between related parties, the taxable value is deemed 'Nil' where the recipient is eligible for full ITC and no invoice is raised.

[Huawei Technologies India Pvt. Ltd. v. State of Karnataka & Ors., 2026-VIL-147-KAR]

Taxient Comments: The ruling highlights two important aspects emerging from the Court's reasoning. First, where there is no dispute regarding the existence of a genuine employer-employee relationship, the transaction falls squarely within Entry 1 of Schedule III and no demand can be sustained, as services by an employee to the employer are outside the scope of supply.

Secondly, the judgment also indicates that even in a situation where the characterization of the arrangement is debated, the benefit of **Circular 210** and the principles recognized in **Metal One Corporation v. Union of India, 2024-VIL-1161-DEL**, would become relevant. Accordingly, the demand fails on the primary ground of employer-employee relationship and, alternatively, under valuation principles from the Circular and precedents.

2. TRIBUNAL RULINGS

2.1. GSTAT rules no conversion power for Appellate Authority under Section 107(11)

The Appellant filed a second appeal before the GSTAT against the order of the First Appellate Authority ('AA') which had upheld a tax demand resulting from a mismatch between the output tax liability declared in GSTR-1 and the tax paid in GSTR-3B for FY 2018-19. The Appellant contended that the discrepancy arose due to credit notes and advance adjustments which were accounted for in the books and GSTR-3B but could not be amended in GSTR-1 due to system constraints. The AA accepted that there was no 'intent to evade tax' (rendering Section 74 inapplicable) but suo moto converted the proceedings to Section 73 and confirmed the demand, rejecting the Appellant's reconciliation documents regarding credit notes and ITC reversals.

The GSTAT set aside the orders of the lower authorities and remanded the matter to the Proper Officer for fresh consideration under Section 73. The Tribunal held that while the AA correctly ruled that Section 74 was not applicable due to the absence of fraud or suppression, it erred in converting the proceedings to Section 73 itself. Relying on Section 75(2) of the CGST Act and CBIC **Circular No. 254/11/2025-GST** dated **October 27, 2025**, the Tribunal clarified that if Section 74 charges are not established, the matter must be remitted to the Proper Officer to re-determine the tax deemed as a notice under Section 73. Furthermore, the Tribunal observed that the demand should not be upheld solely on return mismatches without properly verifying the reconciliation records and documentary evidence, especially given the manual filing difficulties and technical constraints prevalent during the initial GST period.

[Sterling & Wilson Pvt. Ltd. v. Commissioner, 2026-VIL-06-GSTAT-DEL-PB]

Taxient Comments: The Tribunal's observation suggesting that the AA may remand matters under Section 74 merits closer examination, as Section 107(11) expressly prohibits remand. The AA can only confirm, modify, or annul the order. The proper mechanism is that, where the AA records a finding that the facts do not attract Section 74, Section 75(2) automatically deems the SCN to have been issued under Section 73, thereby statutorily obligating the Proper Officer to independently re-determine the liability, without any remand direction. Similarly, the AA lacks the power to directly convert proceedings of Section 74 into proceedings of Section 73, since Sections 73 and 74 vest the power of initiation and determination exclusively with the Proper Officer.

3. ADVANCE RULINGS

3.1. Transportation of goods to e-commerce customers qualifies as GTA service

The Applicant (i.e. Flipkart India Pvt. Ltd.) approached the Authority for Advance Ruling ('AAR') seeking clarification on a proposed business model wherein it intends to provide transportation services of goods exclusively by road to customers purchasing goods through E-Commerce Operator ('ECO') portals. Under this model, the Applicant would issue a Consignment Note and transport goods from a 'Source Mother Hub' to the customer's delivery address. The Applicant sought a ruling on whether this activity qualifies as Goods Transport Agency ('GTA') services and whether such services provided to unregistered customers would be eligible for exemption under **S. No. 21A** of **Notification No. 12/2017-Central Tax (Rate)** dated **June 28, 2017** ('Exemption Notification').

The AAR held that the Applicant's activity of transporting goods by road, coupled with the issuance of a Consignment Note, satisfies the legal definition of a GTA. Consequently, the services qualify as GTA services. Furthermore, the AAR also ruled that these GTA services, when provided to unregistered customers who order goods through the ECO portal, are eligible for exemption under the Exemption Notification.

[Flipkart India Private Limited, 2026-VIL-16-AAR]

Taxient Comments: An additional aspect worth noting is the definition of GTA under Explanation 2(ze) of the Exemption Notification, which provides that a GTA means any person who provides service in relation to transport of goods by road and issues a consignment note, but specifically excludes (i) an ECO by whom the services of local delivery are provided, and (ii) an ECO through whom the services of local delivery are provided.

In the present case, the Applicant seeking the advance ruling was Flipkart India Private Limited, which is primarily engaged in B2B trading of goods, whereas the electronic commerce platform is operated by a separate group entity, Flipkart Internet Private Limited. The ruling therefore proceeds on the basis that the transportation services are supplied by an entity that is distinct from the ECO.

From a structuring perspective, this distinction is important for businesses operating in the e-commerce sector. The exclusion under the notification applies specifically to an ECO that provides or facilitates local delivery services. If the transportation service is carried out by a separate entity that is not an ECO and independently qualifies as a GTA, the exclusion may not apply. However, this position would depend on the specific facts of the case, the contractual terms between the parties, and the actual substance of the transaction.

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