



TAXIENT INSIGHTS

Week 2 - July 2025

July 16, 2025

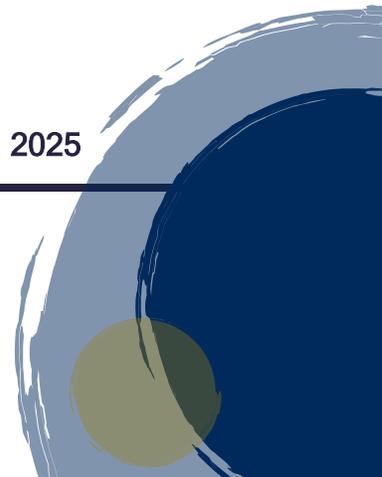


TABLE OF CONTENTS

1. WRIT PETITIONS _____	3
1.1. Validity of Notifications under Section 168A of CGST Act _____	3
1.2. Validity of GST adjudication orders with 'Cut and Paste' reasoning _____	4
1.3. Validity of summary of SCN without valid signature under GST _____	4
1.4. Section 74 cannot be invoked in the absence of suppression or fraud _____	5
2. CESTAT RULINGS _____	7
2.1. Investment in Mutual Funds is not sale & purchase (trading) of securities _____	7

1. WRIT PETITIONS

1.1. Validity of Notifications under Section 168A of CGST Act

The Petitioners challenged Notification Nos. 9/2023 and 56/2023 - Central Tax, issued under Section 168A of the CGST Act, which extended the time limit for passing orders under Section 73(10) for FY 2017-18 to 2019-20. The core contention was that the conditions precedent for invoking 'force majeure' were not met, and the GST Council's recommendation was vitiated due to non-consideration of relevant materials.

The High Court held that Section 168A is a form of delegated legislation, and any notification issued under it must strictly comply with statutory preconditions. The Court observed that the Revenue's inability to act was due to systemic deficiencies (e.g., lack of IT infrastructure, staff shortages), not a proximate force majeure event. Further, Notification No. 56/2023 was issued without prior recommendation of the GST Council, violating the statutory mandate.

Interestingly, the Court also clarified that the Supreme Court's order under Article 142, which excluded the period from March 15, 2020 to February 28, 2022 for limitation purposes, remains operative and cannot be supplanted by the impugned notifications. The notifications, by providing a shorter limitation period, were held to be arbitrary, illegal, and void.

[M/s Tata Play Ltd. & Ors. v. Union of India & Ors., 2025-VIL-708-MAD]

Taxient Comments: This decision reaffirms the necessity of strictly construing exceptions to legislative policy, particularly in the domain of taxation. It reinforces that delegated legislation must be backed by valid recommendations and statutory mandate. Notably, the Hon'ble Supreme Court has already issued notice in a Special Leave Petition challenging the Telangana High Court ruling that upheld the validity of Notification Nos. 13/2022 and 09/2023 - Central Tax. The matter is now pending before the Apex Court and is likely to attain finality in due course.

Interestingly, the Hon'ble High Court's slightly divergent interpretation from the commonly understood scope of the Supreme Court's order under Article 142 may potentially open a Pandora's box of litigation. The Court held that the entire period from March 15, 2020 to February 28, 2022 must be excluded while computing any limitation period, and accordingly, the residual period should be made available afresh from March 1, 2022.

1.2. Validity of GST adjudication orders with 'Cut and Paste' reasoning

The Petitioner challenged an adjudication order issued under Section 73(9) of the CGST Act, 2017, alleging it was passed with complete non-application of mind and violated natural justice. The adjudicating authority had mechanically copied and pasted allegations from the SCN verbatim into its order without independently addressing the Petitioner's submissions.

The High Court held that adjudication orders must demonstrate independent application of mind and provide reasoning based on a careful examination of submissions made by the taxpayer. The Court emphasized that the statutory obligation to 'consider' representations under Section 73(9) necessitates a deliberate and attentive mental process. Simply transcribing allegations from the SCN without genuine deliberation does not fulfil this obligation. Furthermore, the Court noted the requirement under Section 75(6) to explicitly outline the basis of the decision, which was not met by the impugned order.

Accordingly, the Court quashed the impugned adjudication order and remanded the matter for fresh consideration.

[Globeop Financial Services v. DC of State Tax, Mumbai, 2025-VIL-695-BOM]

Taxient Comments: This issue is common at the level of adjudicating authorities. They often confirm the tax demand without providing any reasoning or addressing the taxpayer's submissions, merely reiterating the same allegations made in the show cause notice. This judgment highlights the statutory requirement for adjudicating authorities to genuinely apply their minds, considering taxpayer submissions and providing clear reasoning for their decisions. Mere reproduction of allegations from SCNs does not meet the statutory and judicial expectations of reasoned adjudication orders. Taxpayers encountering mechanically issued orders without proper reasoning can rely on this decision to challenge such practices effectively.

1.3. Validity of summary of SCN without valid signature under GST

The Petitioner received a summary of SCN in GST DRC-01, accompanied by an attachment regarding tax determination but without a separately authenticated SCN. Subsequently, an order was issued in GST DRC-07 for recovery of the demand. The Petitioner challenged the validity of the proceedings due to the absence of a proper SCN and lack of digital or electronic signature authentication by the Proper Officer.

The High Court held that a summary of SCN (GST DRC-01) with an attachment for tax determination cannot substitute a properly authenticated SCN as mandated by Section

73(1) of the CGST Act, 2017, and Rule 142(1)(a) of the CGST Rules, 2017. The Court noted that the summary is supplementary and not a substitute.

The Court also held that Rule 26(3) of the CGST Rules mandates that all notices and orders must be digitally or electronically authenticated by the proper officer. Despite Rule 26(3) being under Chapter III (Registration), the Court extended its applicability to Chapter XVIII (Demand and Recovery), citing absence of specific rules governing authentication under Demand and Recovery.

Furthermore, the Court emphasized compliance with Section 75(4) of the CGST Act, requiring an opportunity for personal hearing when an adverse decision is contemplated, irrespective of whether a reply is submitted.

Accordingly, the High Court set aside the impugned order for non-compliance with statutory provisions and violation of natural justice principles, granting liberty to the authorities to initiate fresh proceedings with exclusion of time already elapsed.

[Haemotocon 2017 v. State of Assam & Ors., 2025-VIL-685-GAU]

Taxient Comments: This ruling reiterates that procedural compliance under GST laws is crucial. It clarifies that merely issuing a summary of SCN in GST DRC-01 without a properly authenticated SCN is legally insufficient. The judgment also highlights that digital authentication of notices and orders by the Proper Officer is mandatory for their enforceability. Taxpayers receiving summary notices without accompanying authenticated SCNs can rely on this decision to challenge such proceedings. Additionally, the decision highlights the indispensable requirement of providing a hearing opportunity before passing an adverse order.

1.4. Section 74 cannot be invoked in the absence of suppression or fraud

The Petitioner executed works contracts for the Public Works Department ('PWD') and transparently disclosed the transactions to both the Income Tax Department and GST authorities. However, due to non-receipt of differential GST amounts from the PWD, the Petitioner delayed GST payments. The authorities initiated proceedings under Section 74 of the CGST Act, 2017, considering it a case involving suppression or fraud.

The High Court held that while there was admittedly a short payment of GST by the petitioner, there was no suppression, fraud, or wilful misstatement involved. The fundamental distinction between Sections 73 and 74 is whether short payment is due to fraud, wilful misstatement, or suppression of facts. Since the Petitioner transparently disclosed transactions, the Court directed the adjudication order to be treated as one passed under Section 73 of the CGST Act instead of Section 74.

Accordingly, the Writ Petition was allowed.

[Shri Basavaraj V. Sajjan v. DD/AD, Belgavi & AC of Central Tax, 2025-VIL-691-KAR]

Taxient Comments: Nowadays, it is quite common for tax authorities to invoke Section 74 to allege fraud, suppression, etc., either to cover a larger period or impose heavy penalties. However, the Court has always emphasized the point of active suppression, fraud, or wilful misstatement to invoke Section 74. This judgment also provides crucial clarity regarding the differentiation between Sections 73 and 74 of the CGST Act. It highlights that short payment of GST alone does not automatically imply fraudulent intent or suppression of facts.

2. CESTAT RULINGS

2.1. Investment in Mutual Funds is not sale & purchase (trading) of securities

The Appellant, engaged in natural gas transportation, invested surplus funds in mutual funds and redeemed them periodically. Revenue alleged that the activity amounted to trading in securities, which qualifies as an exempted service and requires credit reversal under Rule 6 of the Cenvat Credit Rules, 2004 ('CCR, 2004').

The Tribunal held that subscription and redemption of mutual fund units does not constitute sale and purchase (i.e. trading) of securities. Trading involves transfer of title between parties, whereas mutual fund transactions occur only through the Asset Management Company and cannot be transferred to third parties. Relying on well-established jurisprudence, the Tribunal concluded that investment in mutual funds does not constitute sale and purchase and, therefore, does not qualify as an exempted service. Consequently, no payment was required under Rule 6(3) of the CCR, 2004, and the demand was set aside.

**[East West Pipelines Pvt. Ltd. v. Commissioner Of CGST & CE, Balapur,
2025-VIL-1054-CESTAT-MUM-ST]**

Taxient Comments: This ruling is well-reasoned and holds equal relevance under the GST regime. Similar to Rule 6 of the CCR, 2004, the GST law prescribes Rule 42 of the CGST Rules, which mandate reversal of Input Tax Credit ('ITC') on common inputs and input services used for making exempt supplies. Notably, the Explanation to Chapter V read with Section 17(3) of the CGST Act provides that for the purpose of computing the value of exempt supply, the value of securities shall be deemed to be 1% of the sale value.

This decision provides much-needed clarity on the treatment of mutual fund investments under the erstwhile regime, reaffirming that mere financial investments do not constitute provision of service and hence cannot be treated as exempted services for the purpose of Rule 6 compliance. The same principle applies under the GST framework, i.e. transactions in mutual funds should not be treated as exempt supplies, and consequently, no ITC reversal should be warranted under Rule 42.

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.



Let's Stay Connected

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

 **Phone:** +91-87507-83879

 **Email:** rohit.kumar@taxient.in

 **Website:** www.taxient.in

 **Follow us** for updates on [LinkedIn](#)