



TAXIENT INSIGHTS

Week 3 - July 2025

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1. WRIT PETITIONS

1.1. Pre-deposit through Electronic Credit Ledger is permissible

The Petitioner challenged the Appellate Authority's order, which had dismissed the Petitioner's appeal on the ground that it had deposited the statutory pre-deposit by debiting its Electronic Credit Ledger ('Credit Ledger'). The Appellate Authority relied upon the Patna High Court's Flipkart Internet decision rather than the jurisdictional Bombay High Court ruling in **Oasis Realty v. Union of India, 2022-VIL-674-BOM**.

The High Court set aside the dismissal and held that the Appellate Authority was bound to follow the Division Bench decision in Oasis Realty, which allowed payment of the pre-deposit through the Credit Ledger in accordance with Section 49(4) read with Rule 86(2).

[Navnit Motors Pvt. Ltd. v. Comm. of CGST & CE, 2025-VIL-735-BOM]

Taxient Comments: This ruling is correct and affirms that jurisdictional authorities must accept pre-deposit payments through the Credit Ledger. It also underscores the doctrine of *stare decisis*, specifically *vertical stare decisis*. It requires that lower courts strictly adhere to the rulings and legal principles set by higher courts in their jurisdiction.

In **Oasis Realty** (supra), the Court read Section 107(6)(b) broadly. It ruled that the words 'has paid' cover Input Tax Credit ('ITC') utilization for the pre-deposit. It also relied on CBIC **Circular No. 172/04/2022 - GST** dated **July 6, 2022** and noted that it also clarifies that amounts 'payable as a consequence of any proceedings' count as output tax and Rule 86(2) therefore lets taxpayers use Credit Ledger for the purpose of pre-deposits.

1.2. Advisory issued by tax authority is only an intimation, not a recovery notice

The Petitioner filed a writ petition challenging an advisory issued by the tax authority which sought to recover interest for delayed payment of self-assessed tax under Section 50(1) read with Section 79 of the CGST Act. The Petitioner contended that the advisory had no statutory basis, initiated recovery without adjudication, and was issued without affording any opportunity to be heard.

The High Court observed that Section 75(12) permits direct recovery of unpaid interest on self-assessed tax, but, after the insertion of Rule 142B, tax authority must first issue an intimation in DRC-01D. That intimation becomes the recovery notice and entitles the taxpayer to reply and, if requested, obtain a hearing under Section 75(4). The Court also noted that the impugned advisory is only a preliminary communication that enables the Petitioner to prepare its defense. As no DRC-01D has yet been served, recovery proceedings have not begun. Accordingly, the Court dismissed the writ petition.

[Reliance Formulation Pvt. Ltd. v. AC of State Tax, 2025-VIL-729-GUJ]

Taxient Comments: The ruling correctly holds that a mere advisory cannot constitute a recovery notice, at best, it is only an intimation. Furthermore, Rule 142B provides taxpayers with a clear safeguard by mandating that tax authorities serve DRC-01D before taking any coercive action under Section 79.

Earlier decisions like **Mahadeo Construction Co. v. Union of India, 2020-VIL-185-JHR** which also invalidated direct recoveries without adjudication were delivered before Rule 142B existed and do not override the current procedure. If tax authorities skip DRC-01D and directly invokes Section 79, taxpayers can still approach the High Court for relief.

2. ADVANCE RULINGS

2.1. ITC allowed on construction of water-storage and effluent-storage tanks

The Applicant was engaged in the manufacture of gelatin. It planned to build a 2,000-KL fresh-water tank and a 7,000-KL guard pond to support continuous production and meet effluent norms. The Applicant sought advance ruling regarding whether ITC is available on goods and services used in constructing these tanks.

The Authority for Advance Ruling ('AAR') ruled in the Applicant's favour. It held that the tanks are fixed to earth and serve essential production functions, so they fall within the definition of 'plant and machinery' in the Explanation to Section 17(6). The AAR also noted that they are not mere civil structures, the restriction under Sections 17(5)(c) and (d) does not apply.

[Nitta Gelatin India Limited, 2025-VIL-111-AAR]

Taxient Comments: This is a rare but welcome ruling in which the AAR has allowed ITC on storage tanks. Tax authorities usually classify such tanks as civil structures and deny ITC on them. The ruling correctly relies on the Supreme Court's 'functionality test' from **Safari Retreats, 2024-VIL-45-SC**.

The central issue around these types of disputes is whether a particular structure qualifies as 'plant and machinery' or, instead, as a 'civil structure.' This question was addressed by the Apex Court in **Safari Retreats** (supra). The Supreme Court applied the functionality or essentiality test, stating that if construction is necessary for carrying out the business of supplying taxable services, ITC should not be denied solely due to the character of the property as immovable.

It is also important to recognize that the application of the functional test depends on the specific facts and business context of each case. Therefore, its application cannot be generalized or applied universally. Each determination must be made case by case, considering the unique circumstances involved.

2.2. ITC allowed on construction of rooftop solar power plants

The Applicant provided renting and common-area maintenance ('CAM') services (for example, lighting, HVAC, CCTV, lifts, and other shared facilities). It installed a rooftop solar power plant to generate electricity for these services. The Applicant sought an advance ruling to confirm whether ITC could be claimed on the purchase, installation, and commissioning costs of the solar power plant.

The AAR ruled in the Applicant's favour. The AAR noted that the solar panels, inverters, and consumables are bolted to the roof and parking structure and are 'fixed to earth by foundation

or structural support.’ They therefore fall within the definition of ‘plant and machinery’ in the Explanation to Section 17(6) and are not hit by the restrictions in Sections 17(5)(c) or (d).

[Grand Centre Mall, 2025-VIL-111-AAR]

Taxient Comments: This ruling is correct and consistent with previous decisions, notably in **Unique Welding Products, 2024-VIL-07-AAR** and **KLF Nirmal Industries, 2021-VIL-224-AAR**, which also recognized eligibility for ITC on solar power plants. While such installations, once fixed, are typically classified as immovable property, the distinction between movable and immovable is a separate legal debate. Under GST law, ITC is permissible on ‘plant and machinery’ regardless of whether it is movable or immovable.

3. REGULATORY UPDATES

3.1. Recent developments regarding import standards for steel and steel products

- The steel sector in India is regulated for quality through various Indian Standards ('IS') and Quality Control Orders ('QCOs') issued by the Ministry of Steel. All imports of steel and steel products must comply with these standards, with product registrations managed via the Steel Import Monitoring System ('SIMS') portal.
- **On August 29, 2024**, the Steel and Steel Products (Quality Control) Order, 2024 ('QCO') was notified, incorporating 151 Indian Standards that cover a wide range of products under Chapters 72 and 73 of the ITC (HS) codes.
- **Effective June 16, 2025**, the CBIC and the Ministry of Steel mandated that both finished steel products and their input materials must comply with these mapped standards for all imports. Accordingly, **Instruction No. 16/2025 - Customs** dated **June 18, 2025** ('Instruction No. 16'), was issued.
- Subsequently, CBIC issued **Instruction No. 23/2025 - Customs** dated **July 15, 2025**, which modified the earlier Instruction No. 16 by **introducing following new exemptions** based on the Ministry of Steel's order dated **July 11, 2025**:
 - **Imports with Bill of Lading dated on or before July 15, 2025**, are exempted from the new mandatory input material standards, providing relief for shipments already dispatched before the widespread dissemination of these requirements.
 - **Integrated Steel Plants ('ISPs')**: Final products supplied by ISPs are exempt from the input steel compliance requirement, but only after verification of BIS licenses. ISPs must communicate their details to the Ministry of Steel.

Taxient Comments: Recently issued Instruction No. 23 provides much-needed relief to importers by introducing a transition period for shipments with a Bill of Lading dated on or before July 15, 2025. This exemption helps avoid immediate compliance challenges for goods already in transit, thereby reducing disruption in supply chains and preventing potential financial losses from non-compliant consignments.

Moreover, the exemption for final products supplied by ISPs, subject to BIS license verification, recognizes the unique production processes of ISPs and eases compliance burdens while maintaining quality assurance.

Importers should promptly review their current and upcoming shipments to determine which products are subject to the new mandatory input material standards and ensure their registration on the SIMS portal is up to date. They need to verify compliance with all relevant IS under the QCO and coordinate with suppliers, particularly ISPs, to confirm valid BIS licenses and timely submission of required documentation to the Ministry of Steel.

4. OTHER UPDATES

4.1. GST Portal introduces Appeal option for rejected waiver applications

- GSTN has enabled filing of Appeals i.e. APL-01 against waiver-application rejection orders issued in SPL-07.
- Taxpayers who had earlier sought waiver of interest or penalty or both through SPL-01 / SPL-02 and thereafter received a rejection order in SPL-07 may now contest that decision online.
- To initiate the appeal, navigate to **Services** → **User Services** → **My Application**, choose **“Appeal to Appellate Authority”**, click **New Application**, and under *Order Type* select **“Waiver Application Rejection Order”**. Complete the details and submit APL-01.
- GSTN has also clarified two practical points:
 - The portal does not allow withdrawal of Appeals filed under the waiver scheme, so taxpayers should exercise caution before proceeding.
 - If a taxpayer decides not to Appeal the SPL-07 but instead wishes to revive the original Appeal that was withdrawn while seeking the waiver, this can also be done by filing an undertaking available under the “Orders” tab inside the waiver-application folder.

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Thank You!

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



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