



TAXIENT INSIGHTS

Week 4 of Jan & Week 1 of Feb 2026

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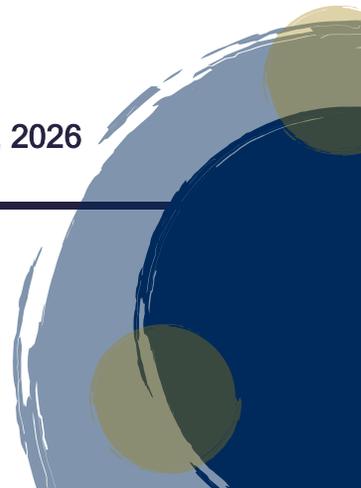


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1. WRIT PETITIONS

1.1. Transfer of business as a going concern between distinct units of the same entity is allowed

The Petitioner, a pharmaceutical company with units in Andhra Pradesh and Karnataka, transferred its R&D unit in Andhra Pradesh to its Bangalore unit as a going concern for zero consideration. The Petitioner sought an advance ruling on the taxability of this transaction and the transferability of unutilized ITC. While the Authority for Advance Ruling ('AAR') held the transaction to be exempt and allowed the ITC transfer, the Appellate Authority for Advance Ruling ('AAAR') set aside this order, which led to the writ petition before the High Court. The AAAR held that the transaction was a taxable supply of goods and that the Petitioner was not entitled to transfer the unutilized ITC because the transfer occurred between two units of the same legal entity and there was no 'change in constitution' of the registered person as required by Section 18(3) of the CGST Act.

The Court held that Section 7(1)(a) as well as Section 7(1)(c) read with Para 2 of Schedule to the CGST Act applies only where a supply is made in the course or furtherance of business. It concluded that the transfer of an entire R&D business undertaking as a going concern does not constitute a supply of goods or services under the CGST Act. In reaching this conclusion, the Court observed that the definition of 'supply' under the GST regime is conceptually aligned with the definition of 'sale' under the erstwhile sales tax and VAT laws and relied upon earlier jurisprudence, including **Coromandal Fertilizers Ltd. v. State of Andhra Pradesh, 1998-VIL-27-AP**, and **Paradise Food Court v. State of Telangana, WP No. 2167 of 2017**. Accordingly, only transactions effected in the course or furtherance of business, and not the transfer of the business itself are liable to tax under the CGST Act.

The Court also rejected the AAAR's narrow interpretation of Section 18(3). It held that the phrase 'change in the constitution of a registered person' includes the transfer of business from one registered person to another. Since the Petitioner's units in Andhra Pradesh and Karnataka are separately registered, they are treated as 'distinct persons' under the CGST Act. Therefore, the transfer of business between them qualifies for the transfer of unutilized ITC under Section 18(3). Basis this, the Court set aside the AAAR order.

[Shilpa Medicare Limited. v. Union of India & Ors., 2026-VIL-108-AP]

Taxient Comments: The Court's reliance on *Coromandel Fertilizers Ltd.* (supra) and *Paradise Food Court* (supra) appears debatable. The decision in *Coromandel Fertilizers* was rendered in the context of a comparatively narrower definition of 'business' under the erstwhile regime. The Court itself noted that, had the legislature intended the sale of an entire undertaking to qualify as a business activity, it would have articulated such intent in clear and explicit terms. In contrast, under the GST regime, the definition of 'business' is significantly wider in scope and expressly includes supplies of goods or services in connection with the closure of business. This broader statutory formulation could potentially justify a different interpretative outcome.

Similarly, Paradise Food Court (supra) held that the sale of a business does not qualify as a sale of goods. In the GST context, however, the characterization of such a transaction assumes a different dimension, and it may be argued that the transfer could qualify as a supply of services. At the same time, a contrary position may be advanced that the transfer of a business as a going concern is not a service rendered in connection with the closure of business, but a transfer of the business itself, and therefore does not fall within the scope of 'supply.'

With respect to ITC, the expression 'change in constitution of the registered person' has been interpreted broadly so as to permit the transfer of unutilized ITC from one entity or registration to another. The ruling adopts an expansive construction, enabling ITC transfer even in situations that may have been excluded under a narrower interpretation.

1.2. Amendment to Rule 89(5) held to be clarificatory and retrospective in nature

The Petitioner, an importer and supplier of edible oil, filed writ petitions challenging the rejection of its refund applications for accumulated ITC under the inverted duty structure. The refund claims for the periods of November 2018, March 2019, and April 2019 were rejected by the Adjudicating Authority, and such rejection was subsequently confirmed by the Appellate Authority, on the specific ground that the formula under Rule 89(5) of the CGST Rules precluded the grant of such refund. The Petitioner challenged these orders before the High Court, contending that the subsequent amendment to Rule 89(5) was introduced to remove anomalies in the refund formula and should be applied retrospectively to pending or disputed claims.

The Court noted that the amendment to Rule 89(5) was clarificatory in nature. It was introduced to correct anomalies acknowledged by the GST Council, particularly in light of observations made by the Supreme Court in **Union of India vs. VKC Footsteps India Pvt. Ltd., 2021-VIL-81-SC**. The Court also relied on the decision of the Gujarat High Court in **Tirth Agro Technology Pvt. Ltd. vs. Union of India, 2025-VIL-16-GUJ**, which had set aside the restrictive portion of **Circular No. 181/13/2022-GST** that limited the amendment to prospective application. Basis this, the Court held that a clarificatory amendment must apply retrospectively to claims that had not attained finality, and therefore the rejection and appellate orders were set aside, with directions to reprocess the refund applications by applying the amended formula.

[AWL Agro Business Limited v. Union of India & Ors., 2026-VIL-81-AP]

Taxient Comments: This ruling provides an important relief for taxpayers by firmly establishing that the amendment to the formula under Rule 89(5) of the CGST Rules is clarificatory and therefore applies retrospectively. By relying on the Gujarat High Court's decision in Tirth Agro Technology, the Andhra Pradesh High Court rejected the Department's Circular No. 181/13/2022-GST dated November 10, 2022, which sought to restrict the benefit of the amended formula prospectively from July 5, 2022. The ruling discusses the legal principle that once a Central Circular is set aside by one High Court, it is invalidated nationally, allowing taxpayers who have kept their refund claims alive through continued litigation to demand re-adjudication

based on the corrected, more beneficial formula, even if their initial rejection orders were passed prior to the amendment.

1.3. Meaning of expression 'relevant period' in the formula for granting refund of ITC

The Petitioner, engaged in manufacture of bio stimulants and potash, filed a writ petition challenging the partial rejection of its refund claim for accumulated ITC on zero-rated exports for the month of March 2025. The dispute centered on the interpretation of the term 'relevant period' within the refund formula prescribed under Rule 89(4) of the CGST Rules. The Petitioner contended that for the purpose of the formula, the 'relevant period' for calculating turnover should be the month of March, whereas 'Net ITC' should be construed to include the full ITC accumulated throughout the year but availed in March.

The Court held that the expression 'relevant period', defined in Rule 89(4), applies uniformly to all variables in the refund formula and therefore Net ITC, turnover of zero-rated supply, and adjusted total turnover must relate to the same period. The Court rejected the practice of applying a month's turnover ratio to a larger pool of accumulated ITC, holding that such an approach disturbs the statutory formula and defeats its intent. Accordingly, the Court disposed of the petition by permitting the Petitioner to submit a fresh manual application where the 'relevant period' is applied consistently for all terms.

[Sea 6 Energy Private Limited v. ACCT, 2026-VIL-128-MAD]

Taxient Comments: This ruling adopts an interesting interpretation of Rule 89(4), which may require reconsideration of its interplay with **Circular No. 125/44/2019-GST** dated **November 18, 2019**. The Circular permits inclusion of ITC based on the timing of availment in GSTR-3B rather than a strict correlation with the turnover period, and the approach reflected in the judgment could give rise to interpretational and practical considerations in this regard.

The ruling also highlights a potential need to distinguish between different factual scenarios in refund matters such as cases involving deliberate deferment or consolidation of ITC availment, and those involving genuine timing differences arising from statutory requirements (like fulfilment of Section 16(2) conditions). The application of the principle laid down in the ruling may vary depending on the factual matrix of each case.

2. ADVANCE RULINGS

2.1. Presence of employees and temporary storage in another state does not require separate GST registration

The Applicant, a company registered in Maharashtra, trades in laboratory equipment and provides repair and maintenance services (AMC/CMC) to customers in Odisha. All contracts, invoicing, and inventory management are executed by the Head Office ('HO') in Maharashtra. To ensure timely service, the Applicant deploys Field Service Engineers ('FSEs') in Odisha to visit customer locations and occasionally stores tools or leftover spare parts temporarily with these engineers. The AAR ruled that the presence of these FSEs and the temporary storage of parts constituted a 'Place of Business' and a 'Fixed Establishment' in Odisha, thereby requiring a separate GST registration in the State. The Applicant filed an appeal against this ruling before the AAAR, arguing that the FSEs are merely employees coordinating with the HO and do not operate an independent business establishment in Odisha.

The AAAR set aside the AAR ruling and held that deployment of employees in a state does not constitute a 'place of business', as employees acting under employer control cannot be treated as agents carrying on business independently. It further held that temporary storage of spare parts with engineers does not amount to a 'fixed establishment' since such arrangements lack sufficient permanence and an independent organizational structure. Consequently, the location of supplier remained the Head Office, being the establishment most directly concerned with the supply, and separate GST registration in the state was not mandatory.

[Thermo Fisher India Private Limited, TS-54-AAAR(OD)-2026-GST]

Taxient Comments: This ruling significantly reduces the compliance burden for companies with centralized operations and distributed field service teams by establishing that the mere presence of employees and the temporary storage of spare parts in a State do not constitute a 'Fixed Establishment' or 'Place of Business' requiring separate GST registration. It validates the business model where the HO retains full control over contracting, invoicing, and inventory management, treating remote engineers as employees executing specific instructions rather than independent agents or business verticals. Consequently, businesses can avoid the administrative costs and complexities of multi-state registrations and stock transfers, provided they maintain centralized management and do not set up permanent physical infrastructure in the states where services are executed.

3. OTHER UPDATES

3.1. GSTN advisory on interest and GSTR-3B changes from January 2026 onwards

- The interest calculation has been updated to align with Rule 88B(1) of the CGST Rules. The system now accounts for the minimum cash balance available in the Electronic Cash Ledger when calculating interest on delayed filings.
- The interest auto-populated in Table 5.1 of GSTR-3B represents the minimum interest required. Taxpayers cannot amend this value downward but must amend it upward if their self-assessed liability is higher.
- To assist in accurate reporting and interest alignment under Section 50, the portal will now auto-populate the 'Tax Liability Breakup Table' in GSTR-3B. This is based on the dates of documents for supplies from previous tax periods that are reported in the current period's GSTR-1, GSTR-1A, or IFF.
- From January 2026 onwards, once the available IGST ITC is fully exhausted, the portal allows taxpayers to pay the remaining IGST liability using available CGST and SGST ITC in any sequence.

Taxient Comments: This system change differs from the utilisation order prescribed under Section 49 of the CGST Act, which requires SGST ITC to be used for IGST liability only after fully utilising CGST ITC. Accordingly, taxpayers should ensure that ITC utilisation follows the statutory provisions, even if the portal allows greater flexibility.

- If a cancelled taxpayer files their last applicable GSTR-3B after the due date, the interest applicable on that delay will now be levied and collected through the Final Return (GSTR-10).

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