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Advisors LLP

# TAXIENT INSIGHTS

## INDIRECT TAXATION

Week 3 & 4 of May 2026

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# 1. SUPREME COURT RULINGS

## 1.1. Assignment of long term leasehold right - SC dismisses Revenue's SLP

The Petitioner was the lessee of an industrial plot allotted by MIDC under a 95-year lease. With the prior consent of MIDC and upon payment of the applicable additional premium charges, the Petitioner assigned its leasehold rights in the said plot to a third party. The Revenue issued a SCN alleging that the assignment of leasehold rights constituted a 'supply of services' taxable at 18% under the residual category of miscellaneous services.

The Bombay High Court quashed the SCN and held that the transaction was neither a lease nor a sub-lease since the assignor's rights stood completely extinguished upon assignment. Rejecting the Revenue's attempt to classify the transaction as 'other miscellaneous services', the Court observed that the residual entry covering services such as washing, cleaning, dyeing, beauty and physical well-being services could not be stretched to cover assignment of leasehold rights in immovable property.

The High Court further held that assignment of a 95-year leasehold right effectively amounts to transfer of benefits arising out of immovable property. Since the transaction related solely to the transfer of rights in immovable property and had no connection with any supply of services in the course or furtherance of business, the basic requirements of Section 7 of the CGST Act were not satisfied. In arriving at this conclusion, the High Court expressly relied upon the Gujarat High Court ruling in **Gujarat Chamber of Commerce and Industry v. UOI, 2025-VIL-21-GUJ**, wherein it was held that assignment/sale/transfer of long-term leasehold rights in industrial plots constitutes transfer of benefits arising out of immovable property and therefore falls outside the scope of 'supply' under the GST law.

Revenue filed an SLP before the Supreme Court against the Bombay High Court ruling. However, the Supreme Court dismissed the SLP by a non-speaking order observing that it was not inclined to interfere with the impugned judgment.

**[AC (Anti Evasion) v. Aerocom Cushions Pvt. Ltd., 2026-VIL-46-SC]**

**Taxient Comments:** An important aspect of the Bombay High Court's decision in *Aerocom Cushions* (supra.) is that apart from holding that assignment of leasehold rights is not in the course or furtherance of business, the Court also substantially adopted and affirmed the reasoning earlier laid down by the Gujarat High Court in *Gujarat Chamber of Commerce* (supra.).

The Gujarat High Court drew a crucial distinction between:

i.) The original grant of lease by industrial development corporations such as GIDC/MIDC, which may amount to supply of services, and ii.) Subsequent assignment of leasehold rights by the lessee to a third party, which results in complete extinguishment of the assignor's rights and therefore operates as transfer of immovable property itself.

Notably, the SLP filed against the Gujarat High Court ruling in *Gujarat Chamber of Commerce* (supra.) is still pending before the Supreme Court and the matter is currently listed for further hearing in July 2026.

It is important to note that the dismissal of the Revenue's SLP against the Bombay High Court ruling in *Aerocom Cushions* (supra.) does not technically amount to affirmation of the Bombay High Court judgment on merits. In **Kunhayammed v. State of Kerala, 2000-VIL-31-SC**, the Supreme Court clarified that dismissal of an SLP in limine by a non-speaking order does not attract the doctrine of merger and does not constitute a declaration of law binding under Article 141 of the Constitution. The legal implication is only that the Supreme Court declined to exercise its discretionary jurisdiction under Article 136 in that particular matter.

Furthermore, dismissal of the SLP arising from the Bombay High Court judgment does not bar the Supreme Court from considering the pending SLP against the Gujarat High Court judgment. As there is neither merger nor any declaration of law through such non-speaking dismissal, the Supreme Court remains fully competent to examine the issue independently in the Gujarat matters and to settle the legal position authoritatively.

Therefore, while the judgment of the Bombay High Court undoubtedly gains substantial persuasive force after dismissal of the SLP, the wider controversy concerning the taxability of assignment of leasehold rights cannot yet be said to have been finally settled by the Supreme Court.

# 2. HIGH COURT RULINGS

## 2.1. Solar inverters qualify as integral parts of solar power generating systems

The Petitioner is engaged in the manufacture of electrical goods and supplied solar inverters mainly for use in solar power projects. The Revenue initiated proceedings and passed orders classifying the solar inverters as ‘general electrical devices’ under Heading 8504, and on that basis demanded GST at the residual rate of 18%. The Petitioner challenged the said orders on the ground that the inverters formed part of solar power generating systems and were therefore entitled to the concessional GST rate of 5% under **Entry 234** of **Notification No. 1/2017-CT(R)** dated **June 28, 2017**.

The High Court set aside the impugned orders and held that solar inverters are integral parts of a solar power generating system. Relying on the decision of the Supreme Court in **CCE vs. Hewlett Packard India Sales Pvt. Ltd., 2007-VIL-24-SC-CU**, the Court observed that where different components function together to produce the intended result, they constitute a ‘system’. Since solar panels generate direct current (DC), the inverter is essential to convert such power into alternating current (AC) for effective use. The Court further held that the expression ‘for use’ in the exemption notification means ‘intended for use’ and not actual use, and that such intention could be established from documentary evidence.

**[ABB India Limited v. JCCT, 2026-VIL-506-KA]**

**Taxient Comments:** The Court rightly observed that solar inverters are functionally essential, since electricity generated by solar panels is in direct current (DC) form and must be converted into alternating current (AC) for practical use. Accordingly, an inverter cannot be treated as a standalone electrical device but must be regarded as an integral part of the solar power generating system.

The ruling is further significant in clarifying that the phrase ‘for use’ in the concessional notification denotes ‘intended for use’ and not actual end use, thereby easing the evidentiary burden on suppliers, who may establish such intended use through purchase orders, project documents and similar records.

## 2.2. ECOs are not liable to collect TCS where the consideration is not collected by them

The DGGI issued a SCN under Section 74 of the CGST Act against the Petitioner, an E-Commerce Operator (‘ECO’) managing a B2B portal. It was alleged by the Revenue that the Petitioner had failed to collect TCS under Section 52 and had further failed to proportionately restrict ITC under Section 17(2) in relation to promotional activities, which were sought to be treated as ‘exempt supplies’. The Petitioner contested the SCN on the ground that its role was confined to providing access to the portal, while logistics and payment collection were undertaken by separate independent empaneled entities.

The High Court quashed the SCN and held that the obligation to collect TCS under Section 52 arises only where the ECO itself collects the payment or consideration for the supplies. Since the Petitioner did not collect any such payment, Section 52 was held to be inapplicable. The Court also rejected the reliance on Section 17(2), clarifying that promotional activities undertaken for the benefit of the Petitioner's own business cannot be treated as 'exempt supplies'. The Court also held that the basic jurisdictional requirements for invoking Section 74, namely willful suppression and intent to evade tax, were completely absent, and therefore the impugned SCN was without authority of law.

**[Hiveloop Technology Private Limited v. ADGGI, 2026-VIL-490-KAR]**

**Taxient Comments:** The ruling is significant on two counts. First, it clarifies that free promotional and business development activities undertaken for one's own business cannot be regarded as 'exempt supplies' merely because no separate consideration is charged, and that Section 17(2) applies only where an actual exempt supply. Second, on the issue of TCS, the Court has held that Section 52 is attracted only where the ECO actually collects the consideration for the supply. This position had also been noted in our earlier Taxient Insights – Week 3 & 4 of March 2026 in the context of A V Cargo Migrators LLP, 2026-VIL-69-AAR. The ruling therefore provides judicial support to that view, while also emphasizing that Section 74 is not intended to be invoked in a mechanical manner in purely interpretational disputes.

### 2.3. A transit State cannot penalize an inter-State transaction merely because the goods pass through its territorial limits

The Petitioners had undertaken inter-State purchases of goods from West Bengal and Assam for destination in Delhi and Nagpur. During transit through the State of Uttar Pradesh, the conveyances were intercepted by the State GST authorities, who imposed substantial penalties under Section 129 of the CGST Act on the basis of alleged discrepancies, including non-availability of an E-Invoice and issues concerning the supplier's registration. The Petitioners assailed the jurisdiction of the Uttar Pradesh authorities, contending that a transit State cannot penalize inter-State transactions which merely pass through its territorial limits.

The High Court quashed the penalty orders and directed the release of the goods. The Court held that while transit State authorities are empowered to stop and physically verify goods to enforce regulatory compliance, this power is strictly limited to noting and reporting deficiencies to the competent authorities in the States of origin and destination. The Court clarified that the statutory cross-empowerment under Section 6 of the CGST Act operates exclusively between Central and State authorities with respect to taxable transactions within that specific State, not between authorities of different States. Since no tax incidence arises in a pure transit State, the authorities inherently lack the jurisdiction to levy penalties for inter-State anomalies.

**[Maruti Enterprises v. State Of UP, 2026-VIL-515-ALH]**

**Taxient Comments:** After the Andhra Pradesh High Court's decision in **Golden Traders v. DCST., 2026-VIL-318-AP**, the Allahabad High Court has now adopted a similarly restrictive approach to transit State enforcement under GST. The ruling highlights the destination based nature of IGST and indicates that a pure transit State cannot, merely because goods pass through its territory, assume penal jurisdiction over the transaction.

The Court further clarifies that Section 6 does not contemplate a roving enforcement power in every transit State. While verification by transit State officers may still be permissible, substantive penal action must remain with the competent authorities of the originating or destination State, thereby reducing the risk of repeated multi-State penalties for the same movement.

### 2.4. Statutory timelines for Appellate Authority for Advance Ruling are directory

The Petitioner sought an advance ruling on whether the value of diesel supplied free of cost ('FOC') by the service recipient was liable to be included in the taxable value of the transportation services. The AAR accepted the Petitioner's contention and held that the value of the FOC diesel was not includable in the taxable value. The Revenue thereafter filed an appeal, to which the Petitioner raised preliminary objections on the grounds of expiry of the 90 day limitation period, absence of locus on the part of the CGST officer who had not participated earlier, and estoppel operating against the State

The High Court dismissed the writ petition and upheld the decision of the Appellate Authority to hear the Revenue's appeal on merits. The Court held that the 90 day period prescribed under Section 101(2) of the CGST Act is directory and not mandatory, observing that a strict interpretation would defeat the statutory right of appeal merely by lapse of time. The Court further held that CGST and SGST officers exercise distinct jurisdictional powers and therefore have independent locus to file an appeal, irrespective of whether they participated in the AAR proceedings. Lastly, the Court reiterated that the doctrine of estoppel cannot be invoked against the State in matters involving taxation and discharge of statutory functions.

**[Giri Transport Company v. AAAR, Rajasthan, 2026-VIL-520-RAJ]**

**Taxient Comments:** The ruling reflects a broad administrative approach to the GST advance ruling mechanism. By treating the 90 day period under Section 101(2) as directory rather than mandatory, the Rajasthan High Court has favored adjudication on merits over strict procedural finality. At the same time, the judgment notes the practical concern that a mandatory construction could result in pending appeals becoming infructuous solely due to lapse of time, which may undermine the statutory right of appeal.

The decision also reiterates two important principles. First, CGST and SGST authorities operate with independent statutory locus within the dual GST framework, irrespective of whether a particular officer had participated before the AAR. Second, estoppel does not operate against the Revenue in taxation matters merely because a departmental officer had earlier supported the taxpayer's position. Accordingly, a favorable stand taken at the departmental level does not by itself ensure finality unless it is sustained by the competent appellate forum.

# 3. ADVANCE RULINGS

## 3.1. Last-mile E-Commerce delivery services do not constitute GTA services

The Respondent proposed to transport goods purchased through ECO portals by collecting them from a 'Source Mother Hub' and delivering them to end customers through various transit points and independent delivery partners. It sought ruling on whether this activity would qualify as a GTA service exempt from GST when rendered to unregistered customers. The West Bengal AAR initially ruled in favour of the Respondent.

In appeal, the West Bengal AAAR reversed the ruling and held that the activity was properly classifiable as a taxable courier, logistics, or fulfilment service. The AAAR held that classification must be determined by the substance of the transaction, rather than by its contractual label alone. It observed that the end customer does not separately engage the Respondent for transport or control the movement of goods and that the overall activity involving collection, sorting, tracking, and last-mile delivery more closely resembles an organized courier operation than a GTA service. The AAAR also clarified that the issuance of a document termed as a 'consignment note' is not by itself determinative of the true nature of the supply.

**[Flipkart India Private Limited, 2026-VIL-17-AAAR]**

**Taxient Comments:** This ruling marks a departure from the earlier taxpayer friendly view taken by the West Bengal AAR and from a similar GTA oriented position earlier adopted by the Tamil Nadu AAR in comparable last mile delivery models. The West Bengal AAAR has instead focused on the actual commercial substance of the arrangement, holding that hub-based collection, sorting, tracking, transshipment and doorstep delivery collectively resemble organized courier or logistics fulfilment services rather than conventional GTA transport. The ruling also highlights practical issues around the 'goods carriage' requirement, particularly where last mile delivery is carried out through two-wheelers or e-vehicles.

The decision is also significant for its application of the substance over form doctrine to disregard contractual structuring aimed at obtaining exemption benefits. It remains to be seen how this principle develops under GST law, especially in the absence of a dedicated GAAR framework comparable to income tax law, and whether the Tamil Nadu AAAR will continue with its earlier view or adopt a similar substance oriented approach.

# 4. OTHER UPDATES

## 4.1. All GSTAT appeals to be initially listed before Division Benches regardless of monetary limits

The President of the GSTAT has issued an administrative directive regarding the creation of benches and the listing of appeals, invoking the powers to remove difficulties under Rule 123 of the GSTAT (Procedure) Rules, 2025. Section 109(8) of the CGST Act, 2017, read with Rule 110A(1) of the CGST Rules, statutorily provides that matters involving tax liabilities under ₹50 lakhs and not involving any question of law may be listed before a Single Bench after scrutiny. To streamline the functioning of the newly constituted benches, the Tribunal has also classified various appellate matters into three distinct operational categories (Category I, II, and III) encompassing issues ranging from classification and ITC to cancellation of registration and confiscation.

To address difficulties in the formation of benches, the GSTAT President has directed that all pending matters and future filings before the Principal Bench or the State Benches shall invariably be listed before a Division Bench first. The Order specifies that only if the Division Bench reaches a conclusive finding that a case does not involve any question of law, it may record its reasons and place the matter before the President or Vice Presidents for appropriate directions regarding Single Bench listing. Furthermore, the Order explicitly delineates the rosters for various State Benches, assigning specific categories of cases to dedicated Judicial and Technical Members across designated days of the week.

**[Office Order No. 3/GSTAT/PB/2026, dated 14.05.2026]**

**Taxient Comments:** This administrative order appears to alter the procedural design of the GSTAT by giving the Division Bench a dominant role at the threshold stage. Although issued as a curative measure under the rule on removal of difficulties, it may be seen as weakening the statutory intent behind Section 109(8) of the CGST Act, which envisages that low value appeals below ₹50 lakhs should ordinarily be heard by a Single Bench to reduce litigation burden for small taxpayers.

The requirement that a Division Bench first determines whether a question of law arises before a matter can be sent to a Single Bench may make the Single Bench route difficult in practice. While the classification of disputes into three categories may improve roster management, the mandatory initial scrutiny by two members may also create a bottleneck at the appellate stage. This may, at least until the GSTAT's broader institutional structure is fully functional, affect the objective of speedy relief in small value cases.

### 4.2. Capturing the ‘Ship To GSTIN’ is now mandatory while generating an E-way Bill

The GSTN has issued an advisory detailing functional enhancements to the e-Way Bill (EWB) portal aimed at improving traceability. In Bill-To/Ship-To transactions, the ‘Ship To GSTIN’ must be mandatorily captured at the time of generation of the E-way Bill. Where GSTIN is not available, URP shall be mentioned. The advisory also introduces a voluntary E-way Bill closure facility, enabling the supplier, recipient, or transporter to close the E-way Bill immediately upon delivery of the goods.

**[GSTN Advisory, Dated: 20.05.2026]**

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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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