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TAXIENT INSIGHTS

INDIRECT TAXATION

Week 1 & 2 of May 2026

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1. HIGH COURT RULINGS

1.1. No ITC, if the tax charged on the supply has not been actually paid to the Government by the supplier

The Petitioners challenged the constitutional validity of Section 16(2)(c) of the CGST Act, which denies ITC to a purchaser if the tax charged on the respective supply has not been actually paid to the Government by the supplier. The Petitioners argued that penalizing a bona fide purchaser for a supplier's default is manifestly arbitrary, violative of Articles 14, 19(1)(g) and 300A of the Constitution, and runs contrary to the doctrine of *lex non cogit ad impossibilia* (the law does not compel the impossible).

The High Court rejected the challenge and upheld the vires of Section 16(2)(c) and also refused to read down the provision. The Court observed that ITC is not a constitutional or vested right, but a statutory concession and the conditions for its availment must be strictly complied with. It emphasized that GST regime as a destination based tax. If ITC is allowed without actual tax being paid, it can disturb the financial balance. In such cases, the originating state would have to transfer funds to the destination state even though it never received that tax. The Court further noted that the statutory framework contains adequate safeguards specifically Section 41(2) of the CGST Act and Rule 37A of the CGST Rules which require a temporary reversal of the ITC but permit the purchaser to re-avail the ITC once the supplier ultimately discharges the tax liability. However, the Court also recognized the genuine difficulties faced by genuine buyers.
It urged the Government to introduce strong, real-time systems to track whether suppliers have paid tax. It also advised that recovery should first be made from defaulting suppliers instead of targeting buyers.

[Maruti Enterprise v. Union of India & Ors., 2026-VIL-432-GUJ]

Taxient Comments: The ruling has significantly intensified the ongoing debate around Section 16(2)(c) of the CGST Act. By upholding the constitutional validity of the provision and refusing to read it down, the Court has taken a strict, revenue-oriented approach. This stands in direct contrast with the more taxpayer-friendly rulings delivered by the High Courts of Tripura, Gauhati, and Karnataka. As a result, the issue has now evolved into a clear judicial conflict across jurisdictions. Such divergence creates uncertainty for taxpayers and administrators alike. It also makes a final and authoritative ruling by the Supreme Court increasingly inevitable.

At the core of the issue is the ‘bona fide buyer’s dilemma.’ Section 16(2)(c) links ITC to actual tax payment by the supplier, exposing genuine buyers to denial of credit despite fulfilling all conditions like valid invoices, receipt of goods, and proper payment. The challenge is that buyers have no control over supplier compliance. While some High Courts have applied the doctrine of impossibility to protect such buyers, the Gujarat High Court has taken a stricter view, prioritizing legislative intent and revenue protection.

The Court has justified its position by referring to the structural design of GST as a destination based tax and by relying on provisions such as Section 41 and Rule 37A. These provisions allow temporary reversal of ITC with the possibility of re-availment once the supplier pays the tax. However, this reasoning is not free from criticism. Section 41 in its current form is applicable only from October 1, 2022, leaving earlier periods open to continued disputes. Further, the judgment arguably shifts a disproportionate burden onto buyers by effectively treating them as a fallback recovery mechanism for the Revenue. The suggestion that contractual safeguards or indemnities can protect buyers also appears impractical in real world scenarios, especially where suppliers become financially weak or untraceable.

Given the divergent judicial views, the legal position remains unsettled and fact-dependent across jurisdictions. In such cases, the principle laid down in **CIT v. Vegetable Products Ltd.** becomes relevant, allowing taxpayers to adopt an interpretation favorable to them where no binding adverse precedent exists. This offers some relief but does not eliminate the underlying uncertainty. A balanced resolution from the Supreme Court is therefore crucial. Such a resolution should ideally uphold the validity of the provision while introducing safeguards for bona fide buyers. Until then, taxpayers must strengthen their documentation and compliance processes to demonstrate the genuineness of their transactions and defend their ITC claims.

1.2. Corporate Guarantee to a related person without consideration is not a taxable

The Petitioner executed Corporate Guarantees in favor of banks to secure term loans advanced to its subsidiary companies. These guarantees were executed strictly without any consideration, fee, or commission and explicitly declared in the respective guarantee deeds. The Revenue, relying on the amended Rule 28(2) of the CGST Rules and **Circular No. 204/16/2023** dated **October 27, 2023**, initiated proceedings and issued a SCN alleging non-payment of GST on the provision of these Corporate Guarantees. The Petitioner challenged the proceedings, arguing that the activity was not a taxable supply and simultaneously contested the constitutional validity of Rule 28(2).

The High Court quashed the proceedings initiated against the Petitioner. It observed that for an activity to qualify as a taxable supply under the CGST Act, there must be a 'provider' and a flow of 'consideration'. Relying squarely on the Supreme Court's jurisprudence in **Commissioner of CGST & Central Excise vs. Edelweiss Financial Services Ltd., 2023-VIL-34-SC-ST**, the Court held that a Corporate Guarantee issued to safeguard the financial health of an associate enterprise without consideration is an in-house arrangement and lacks the essential element of consideration required to constitute a taxable service. The Court further distinguished this from bank guarantees, noting the Petitioner was not engaged in the regular business of providing guarantees. However, the Court rejected the challenge to the constitutional validity of Rule 28(2), reaffirming that the scope of judicial interference in fiscal statutes is severely limited and that the Legislature possesses wide flexibility in adjusting taxation systems unless the provision is manifestly arbitrary.

[D P Jain & Co. Infrastructure Private Limited v. UOI, 2026-VIL-474-BOM]

Taxient Comments: The ruling gives rise to an important legal issue under the GST framework. The High Court has placed considerable reliance on the **Edelweiss** decision and on the absence of consideration. However, under GST, the position is not the same as it was under the service tax law. Schedule I of the CGST Act specifically provides that certain transactions between related persons can be treated as supplies even where no consideration is charged. Therefore, it may be argued that the judgment does not fully address the effect of this deeming provision while examining the taxability of corporate guarantees between related parties.

The ruling also leaves a further legal question open. The Court has upheld the validity of Rule 28(2), which prescribes the valuation mechanism for corporate guarantees, but at the same time it has held that the transaction in question was not a taxable supply. This creates a legal friction, because a valuation provision normally operates only where the underlying transaction is first held to be taxable. Therefore, while the decision gives relief to the taxpayer on the facts of the case, it does not finally settle the broader issue of taxability of corporate guarantees under GST. The matter is therefore likely to remain open to further dispute and future litigation.

1.3. Proceedings initiated against a non-existent amalgamated entity are *void ab initio*

The Petitioner, a banking company absorbed its subsidiary companies pursuant to a scheme of amalgamation approved by the National Company Law Tribunal ('NCLT'). Consequent to the merger, the GST registration of the amalgamating entity ('CFL') was formally cancelled. Despite the Petitioner repeatedly informing the authorities that CFL had ceased to exist, the Revenue initiated multiple proceedings, including audits and SCN, which ultimately culminated in a substantial tax demand against the CFL. The Revenue justified its actions by relying on Section 87 of the CGST Act, which governs tax liabilities during corporate amalgamations. The Petitioner challenged the validity of these proceedings and argued that any action against a defunct entity was *non-est* in law.

The High Court quashed the impugned orders and assessment proceedings. It held that any action initiated against a non-existent entity is fundamentally *void ab initio*. Relying heavily on the Supreme Court's jurisprudence in **Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Limited, 2019-VIL-87-SC-DT**, the Court observed that upon the approval of an amalgamation scheme, the amalgamating company loses its legal entity status and no proceedings can be legally sustained against it. Crucially, the Court clarified the scope of Section 87 of the CGST Act, ruling that its provisions are strictly limited to treating the entities as distinct only for the 'intervening period' between the effective date of the merger and the date of the Tribunal's order. The Court held that this statutory provision does not empower the Revenue to issue notices or pass assessment orders against a dead entity post-amalgamation.

[IDFC First bank v. State of Maharashtra & Ors., 2026-VIL-480-Bom]

Taxient Comments: The ruling reiterates the settled principle that once a company is amalgamated and ceases to exist, it cannot be proceeded against in its former name. The Court has rightly clarified that Section 87 of the CGST Act is limited in scope and cannot be stretched to treat a non-existent entity as continuing indefinitely for assessment purposes.

The judgment also brings out a larger administrative concern. Where tax authorities continue proceedings despite being informed of the amalgamation, successor entities are forced into avoidable procedural disputes. Unless restructuring orders are properly reflected in tax administration systems, such litigation is likely to continue.

1.4. Independent IGST levy on transportation services in CIF contracts is untenable

The Petitioner was engaged in the business of providing vessel services on a hire and freight basis. The Revenue issued a SCN and subsequently passed an assessment order raising a tax demand on the basis that the place of supply in respect of transportation of goods was in India and, accordingly, the Petitioner was liable to discharge IGST under the forward charge mechanism. The Petitioner challenged these proceedings and argued that the goods were imported by the Indian buyer on a Cost, Insurance, and Freight ('CIF') basis and the buyer had already discharged customs duty on the composite value (which included the freight component).

The High Court quashed the impugned SCN and assessment order and held that where goods are imported on a CIF basis and customs duty has already been paid by the buyer, the same amount cannot again be subjected to IGST in the hands of the transportation service provider. Relying on the decision of the Supreme Court in **Union of India v. Mohit Minerals Pvt. Ltd.**, the Court observed that in a CIF contract, the supply of goods, transportation and insurance constitutes a composite supply. The Court further held that a separate levy on the transportation component would be contrary to Section 8 of the CGST Act. Accordingly, the demand was set aside and the Revenue was directed to grant consequential refund along with applicable interest.

[Midas Tankers Private Limited v. UOI, 2026-VIL-465-BOM]

Taxient Comments: The Court's reliance on **Mohit Minerals** is open to some doubt. In **Mohit Minerals**, the Supreme Court was dealing with IGST on the importer under the reverse charge mechanism on ocean freight. In the present case, the issue is the taxability of transportation services provided by the shipping line itself. On this basis, it can be argued that the shipping service is an independent supply of service for consideration and does not automatically merge into the importer's composite import transaction merely because customs duty has been paid on the CIF value.

The finding that the levy amounts to impermissible double taxation is also not entirely free from debate. The position is more complex where the taxable person, the charging provision and the nature of the levy are different. In such circumstances, the application of the composite supply principle in this context may require closer examination than what appears in the judgment. Otherwise, there is a risk that the reasoning could be invoked in other situations involving notional additions to import value, such as royalties, on which the importer also pays IGST as an import of service, even though such cases may not satisfy the test of composite supply.

A similar note of caution applies to the effect of the omission of Section 13(9) of the IGST Act. The mere omission of a statutory provision does not, by itself, extinguish existing liabilities or pending proceedings. In view of the settled position that an omission is in substance a form of repeal, Section 6 of the General Clauses Act would ordinarily preserve such liabilities and proceedings unless the statute clearly indicates a contrary intention. Therefore, while the petitioner’s contention based on the omission raises an important question, it may not be sufficient on its own to conclude that the tax exposure has been retrospectively wiped out.

2. ADVANCE RULINGS

2.1. Electric Buses with operators attract 18% GST as 'Electricity' does not qualify as 'Fuel'

The Applicant was engaged in the end-to-end operation and maintenance of Electric Buses and entered into an agreement to supply, operate, and maintain these buses for a municipal transport company. The commercial arrangement followed a Gross Cost Contract methodology, wherein the consideration was a fixed amount payable strictly on a per-kilometer basis of bus operation. The Applicant sought an advance ruling on whether the services in question would fall under the specific GST entry relating to rental of passenger motor vehicles, where fuel cost is included in the consideration, so as to attract GST at 5% or 12%, instead of being taxed at the residual rate of 18% applicable to transport vehicles provided with operators.

The AAR relied on Supreme Court's jurisprudence requiring the strict interpretation of taxing statutes and observed that 'Electricity' cannot be legally or scientifically classified as 'Fuel'. The AAR distinguished the two and noted that while fuel is a primary energy source containing chemical potential energy released through combustion, electricity is merely a secondary energy carrier. The AAR further noted that the legislature explicitly distinguishes between 'motor vehicles' and 'electrically operated vehicles' in other notifications, indicating a clear legislative intent to treat them as distinctly separate categories under the GST law. Consequently, because electricity is not a fuel, the statutory prerequisite of 'fuel costs' being included in the consideration could not be satisfied. Accordingly, the AAR held that the renting of Electric Buses falls under the residual entry and is taxable at the rate of 18%.

[JBM Ecolife Mobility Surat P Ltd., 2026-VIL-94-AAR]

Taxient Comments: The ruling adopts a strict interpretation of the relevant GST entry, but in doing so it exposes a policy gap in the law. Since electricity has not been treated as 'fuel', Electric Bus rentals are denied the concessional rate available to conventional passenger vehicles, resulting in an uneven tax outcome. This creates an inconsistent position where cleaner green transport options suffer a higher tax burden.

The AAR also appears to have overlooked the practical reality that 'Electricity' is the functional equivalent of 'Fuel' in electric fleet operations. By restricting the analysis to the literal meaning of the expression, the ruling leaves electric mobility operators at a disadvantage. A specific clarification or concessional entry may therefore be required to remove this imbalance.

3. OTHER UPDATES

3.1. Principal Bench of GST Appellate Tribunal to act as National Appellate Authority

The Central Government on the recommendations of the GST Council has issued a notification in exercise of the powers conferred by Section 101A(1A) of the CGST Act. The notification formally empowers the Principal Bench of the Appellate Tribunal in New Delhi, to act as National Appellate Authority and hear appeals under Section 101B. This administrative empowerment has explicitly granted retrospective effect and is deemed to have come into force from April 1, 2026.

[Notification No. 02/2026 - Central Tax, dated 07.05.2026]

Taxient Comments: The issuance of this notification is an important, though belated, step towards operationalizing the advance ruling appellate structure envisaged under the GST law. By authorizing the Principal Bench at New Delhi to hear appeals under Section 101B, the Government seeks to address the existing jurisdictional gap which has, so far, compelled taxpayers to approach High Courts directly under writ jurisdiction for conflicting advance ruling.

At the same time, a key legal anomaly remains. Section 101B, which was inserted by the Finance Act, 2019, has itself not yet been brought into force. Therefore, even though the Principal Bench has now been notified as the forum to hear appeals under this provision, the substantive appellate remedy continues to be inoperative. In effect, the present notification has limited immediate practical effect, because an appellate forum cannot meaningfully exercise powers under a statutory provision that is still not notified.

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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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