

# GSTATION

A Monthly GST Litigation Newsletter



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**The GST of Tolerating' a Breach**  
Delhi High Court Protects IndiGo from ₹458  
Crore Demand on Operational Compensation 04

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  - In re Unitech Engineers (2026)
  - Deputy Commissioner, Central GST v. Shree Ambica Geotex Pvt. Ltd. (2026)
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**Recharacterisation**, our cover story this month examines the Delhi High Court's relief to IndiGo in a ₹458 crore GST dispute, and the continuing challenge of distinguishing genuine compensation from taxable consideration.

This edition also explores the expanding contours of **anti-profiteering liability in real estate transactions**, the limits of taxing settlements as a form of **tolerating an act**, the Supreme Court's consideration of the GST treatment of **online gaming**, and the Delhi High Court's latest guidance on the distinction between **export of services and intermediary services**.

A common thread running through these developments is the judiciary's effort to define the true character of a transaction before determining its tax consequences.

To cap it off, we bring you noteworthy **case law developments** and a curated selection of GST-focused **trainings and events**.

Let's dive in.

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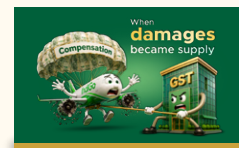




## COVER STORY

04

The GST of 'Tolerating' a Breach: Delhi High Court Protects IndiGo from ₹458 Crore Demand on Operational Compensat



## PIVOTAL ISSUES

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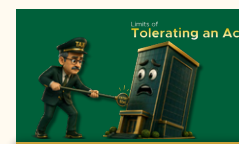
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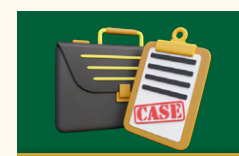
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## TRAINING & EVENTS

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# COVER STORY

The GST of 'Tolerating' a Breach: Delhi High Court Protects IndiGo from ₹458 Crore Demand on Operational Compensation

When  
**damages**  
became supply



Can an airline be taxed for suffering a business loss? This is the core conundrum the Delhi High Court recently grappled with in Interglobe Aviation Vs Additional Commissioner CGST, a case that highlights the aggressive lengths to which tax authorities often go to classify purely compensatory remedies as taxable transactions. At its heart, the dispute questions whether financial compensation received by an airline for defective machinery qualifies as a taxable "supply" under the Goods and Services Tax (GST) framework. In a significant relief to InterGlobe Aviation (the parent company of IndiGo Airlines), a Division Bench comprising Justices Nitin Wasudeo Sambre and Ajay Dignpaul answered this in the negative. Passing an interim order, the Court observed that prima facie, the monetary relief received by IndiGo appeared to be genuine compensation for losses rather than consideration for rendering any service, thereby protecting the airline from a massive tax demand of approximately ₹458 crore and an equivalent penalty. The facts of this dispute traces back to the financial years 2018–19 and 2019–20. IndiGo had imported aircraft equipped with foreign-supplied engines, paying the requisite Integrated GST (IGST) at the time of customs clearance. However, a series of engine malfunctions forced the airline to ground several aircraft for safety reasons, triggering severe commercial disruptions. To mitigate this, a supplementary agreement was executed between IndiGo and the foreign engine supplier, under which the supplier issued credit notes worth roughly ₹2,000 crore to compensate the airline for lost flying hours and business damage. Instead of treating this as a standard commercial settlement for non-performance, the tax department creatively interpreted the transaction...

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# PIVOTAL ISSUES

Expanding Scope of Anti-Profiteering Liability Under Section 171 in Real Estate Transactions

# EXPANDING

Scope of Section

# 171



The anti-profiteering framework under Section 171 of the CGST Act was introduced to ensure that the structural tax efficiencies promised by GST are ultimately transferred to consumers through reduced pricing. In its early application, the provision largely operated on a straightforward premise where GST widened the availability of Input Tax Credit (“ITC”), and suppliers could not retain the resulting tax advantage. Over time, however, real estate disputes have exposed a more difficult question beneath this framework: does anti-profiteering liability arise merely upon availability of additional ITC, or only when such credit translates into an actual economic gain through utilisation?

That distinction has increasingly shaped litigation strategy in the real estate sector. Developers have sought to argue that accumulated or unutilised ITC under inverted duty structures does not reduce actual project cost and therefore cannot constitute a “benefit” capable of being passed on under Section 171. In substance, the argument attempts to shift anti-profiteering analysis from statutory entitlement to commercial realisation. It was this evolving conflict that came up for consideration before the Principal Bench of the GST Appellate Tribunal (“GSTAT”) in DGAP v. Bengal Shapoorji Housing Development Pvt. Ltd., decided on 27 April 2026 by a Single Member Technical Bench comprising Shri A. Venu Prasad. The Tribunal was required to examine whether additional ITC that remained accumulated or unutilised could...



# PIVOTAL ISSUES

Limits of “Tolerating an Act” Under GST: Bombay High Court Draws a Boundary Around Taxability of Arbitral Award Settlements

## Limits of Tolerating an Act



Few provisions under the GST framework have witnessed interpretive expansion as aggressively as Entry 5(e) of Schedule II to the Central Goods and Services Tax Act, 2017 (“CGST Act”), which treats “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” as a supply of services. What was originally conceived as a narrowly tailored deeming fiction has increasingly been invoked to tax liquidated damages, termination payments, contractual penalties, and commercial settlements. The central debate has now moved beyond contractual compensation and into the terrain of adjudicated liabilities. The real question confronting courts is whether every monetary settlement arising from breach of contract can itself be recharacterized as consideration for “tolerating” a breach under the GST framework. Such an approach effectively collapses the distinction between compensation arising from breach and consideration flowing from consensual performance.

It was this issue that came up before the Division Bench of the Bombay High Court in Tata Sons Pvt. Ltd. v. Union of India, decided on 30 April 2026 by Justice G.S. Kulkarni and Justice Aarti Sathe. The central issue before the Court was whether the settlement payments made by Tata Sons to NTT Docomo originating from an arbitral award and formalized via consent terms fell within the tax net of Integrated GST (IGST). The Bombay High Court rejected this formulation. In doing so, the Court drew a significant doctrinal boundary between consensual contractual forbearance and adjudicated damages arising from breach of...

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# PIVOTAL ISSUES

Gameskraft and the GST Treatment of Online Gaming: Supreme Court on Skill-Based Gaming, Actionable Claims and the 2023 Amendment



## Skill, Stakes and GST The Supreme Court's Decision

Can a game that is legally recognised as a game of skill be treated as "betting and gambling" merely because it is played for stakes? More importantly, can tax authorities impose GST on the entire amount deposited by players by treating online gaming operators as suppliers of actionable claims relating to betting and gambling? These questions came before the Supreme Court in Director General of GST Intelligence & Ors. v. Gameskraft Technologies Private Limited & Ors., a batch of matters concerning the GST treatment of online gaming. The dispute arose from a series of show cause notices issued to online gaming operators on the premise that games played for stakes constituted betting and gambling and that GST was therefore payable on the full value of player deposits rather than on the platform fee retained by the operators.

While the dispute concerned the levy and valuation of GST, it also required the Court to examine the long-settled distinction between games of skill and games of chance, the treatment of actionable claims under the Central Goods and Services Tax Act, 2017 ("CGST Act"), and the significance of the legislative changes introduced in 2023 governing online money gaming. Gameskraft and other online gaming operators provide digital platforms through which users participate in games such as rummy, fantasy sports and poker. Under this model, participants contribute entry amounts to contests, a portion of which is retained by the platform as a fee for providing its services while the remaining amount forms the prize pool. Historically, operators discharged service tax, and later GST, only on the platform fee...

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# PIVOTAL ISSUES

Export of Services vs. Intermediary Services: The Delhi High Court Draws the Line in Fateh Education

## Agent or Exporter?



Can an Indian consultancy providing counselling and recruitment support services to foreign universities lose its status as a service exporter merely because it receives commission-based remuneration linked to student admissions? This important question formed the centre of the Delhi High Court's ruling in Fateh Education Consulting Private Limited v. Assistant Commissioner, CGST Division, Wazirpur. The dispute concerns the recurring issue of classification of cross-border consultancy services as 'intermediary services' under Section 2(13) of the Integrated Goods and Services Tax Act, 2017, thereby denying exporters the benefits available to zero-rated supplies under Section 16 of the Integrated Goods and Services Tax Act, 2017. "The case raised the issue whether such services qualified as 'export of services' or fell within the ambit of 'intermediary services' under Section 2(13) of the IGST Act," while also examining "whether receipt of consideration by way of commission, by itself, could render the petitioner an intermediary." The petitioner, Fateh Education Consulting Private Limited, had entered into agreements with foreign universities, including University of Manchester, for providing educational counselling, marketing, and recruitment support services in India. The petitioner raised invoices directly upon the foreign universities, received consideration exclusively in convertible foreign exchange, and did not charge any fee from Indian students. Based on these transactions, the petitioner filed a refund claim of approximately ₹2.63 crore under Section 54 of the Central Goods and Services Tax Act, 2017 on the ground that the services qualified as exports. However, the refund application was rejected by the department on the

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# SIGNIFICANT CASE LAWS

## Legal Jurisprudence on Bail and Asset Preservation in Economic Offenses

In the landmark ruling of *Radhe Shyam & Anr. vs Assistant Commissioner*, the Supreme Court of India detailed the crucial balance between personal liberty and asset preservation within the jurisprudence of complex white-collar economic offenses. A Division Bench comprising Chief Justice Surya Kant and Justice Joymalya Bagchi adjudicated on the necessity of prolonged pre-trial detention in a multi-crore service tax evasion dispute that intersected with separate, high-value predicate cheating allegations. From a legal standpoint, the apex court reinforced the foundational criminal law principle that continued incarceration serves no legitimate statutory or investigative purpose during trial pendency when the revenue interests of the state are already comprehensively secured via massive asset enforcement. By evaluating the attending circumstances without expressing any definitive opinion on the substantive merits of the prosecution's case, the Bench effectively decoupled the tax liability proceedings from the broader criminal trials to prevent pre-trial confinement from turning into a punitive measure. Crucially, the ruling establishes a stringent regulatory mechanism for attached properties, ordering that the multi-crore frozen bank accounts and immovable assets linked to the corporate entity and its associates remain strictly locked under supreme judicial oversight. The Court explicitly divested subordinate judiciaries of the autonomous power to alter these interim freeze orders, stipulating that no lower court may de-freeze or release these assets without the explicit prior permission of the Supreme Court. The only narrow legal exception carved out by the Bench allows for asset disposal or account operation if it directly facilitates the operational reimbursement of verified claims to affected investors and consumers. Ultimately, this judgment refines the legal framework for economic offenses by prioritizing structured asset attachment over indefinite detention, ensuring that while the accused's right to bail is protected, the financial restitution framework for victims remains legally insulated.



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# SIGNIFICANT CASE LAWS

## Procedural Due Process and the Validity of GST Arrests

In the significant ruling of *Keyur Jayendrabhai Patel v. State of Gujarat & Ors.*, a Division Bench of the Gujarat High Court, comprising Justice Sangeeta K. Vishen and Justice D. M. Vyas, adjudicated on the procedural boundaries governing arrests under the Goods and Services Tax (GST) regime. The legal controversy arose from a habeas corpus petition challenging the validity of a detention executed by the Directorate General of GST Intelligence, focusing strictly on procedural compliance rather than the substantive merits of the tax fraud. The primary legal issue before the Bench was whether the statutory prerequisite of formulating and recording the "reasons to believe" necessitates providing an exact, verbatim signed copy of the Commissioner's internal office noting sheet to the arrestee at the time of apprehension. In analyzing this requirement, the Court drew a clear jurisprudential distinction between the mandatory disclosure of the substantive grounds of arrest and the literal reproduction of confidential internal administrative records. The High Court ultimately ruled that the absence of a physical, verbatim copy of the internal note does not vitiate the arrest or invalidate subsequent judicial remand, provided that the essential substance and material justifying the detention are meaningfully communicated to the accused. The Bench emphasized that the constitutional threshold under Article 22(1) is fully met if the individual is given sufficient information to facilitate an informed legal challenge before a court of competent jurisdiction. Additionally, the judgment refined the scope of extraordinary writ jurisdiction in fiscal offenses, clarifying that a writ of habeas corpus cannot be granted for minor administrative variances when robust, independent reasons have been recorded in the official files and explained to the arrestee. By validating this approach, the ruling balances state investigative powers in complex financial crimes with individual liberty, reinforcing that due process demands real, substantive communication rather than rigid compliance with administrative technicalities.



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# SIGNIFICANT CASE LAWS

## Statutory Classification of Digital Platform Licensing vs. Educational Services under GS

In the notable advance ruling of *In re Unitech Engineers (2026)*, the Odisha Authority for Advance Ruling (AAR) meticulously delineated the thin legal line separating the active provision of educational services from the passive facilitation of digital content access under the Goods and Services Tax (GST) framework. The principal legal controversy revolved around the statutory classification of bulk user license supplies to a state-promoted body, testing whether such transactions qualify for sovereign tax exemptions under Heading 9992 or remain taxable as electronic distributions under Heading 9973. From a strict jurisprudential standpoint, the Bench, comprising CGST Member Harsh Vardhan and SGST Member Pratima Mohanty, clarified that a service can only be classified as an "education service" if the supplier retains direct pedagogical responsibilities, including faculty deployment, curriculum formulation, and active instructional oversight. Because the underlying transaction merely granted a non-exclusive right to access proprietary software where the actual teaching was executed by third-party global universities, the AAR held that the activity constitutes a licensing service for the right to use computer software and databases under Service Accounting Code (SAC) 997331, making it fully liable to an 18% GST levy. Crucially, the ruling addresses a vital constitutional and administrative law query regarding the legal status of state instruments under fiscal statutes, specifically evaluating eligibility under Serial No. 72 of Notification No. 12/2017-Central Tax (Rate). The Authority reaffirmed the settled canon of statutory interpretation that tax exemption notifications must be construed with utmost strictness, leaving no room for equitable expansions or intentional ambiguities. In applying this principle, the Bench ruled that an autonomous society registered under the Societies Registration Act, 1860, possesses a distinct legal personality and cannot be treated as the "State Government" for the purposes of claiming fiscal immunities. By refusing to extend sovereign exemptions to secondary state-backed entities, this landmark ruling clarifies that digital platform delivery cannot be legally conflated with institutional education, setting a firm precedent for how software-as-a-service contracts are taxed in the evolving digital public infrastructure landscape.



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# SIGNIFICANT CASE LAWS

## Judicial Discipline and Tariff Classification of Geomembranes under GST

In the notable appellate ruling of Deputy Commissioner, Central GST v. Shree Ambica Geotex Pvt. Ltd. (2026), the Gujarat Appellate Authority for Advance Ruling (GAAAR) reinforced the foundational principles of judicial discipline and hierarchical precedence within fiscal statutory frameworks. The central legal controversy centered on the complex tariff classification of "geomembranes," specifically adjudicating whether these technically engineered, laminated waterproof sheets should be categorized as plastic articles under HSN Heading 3926 or as specialized textile products for technical use under HSN Heading 5911. From a strict jurisprudential perspective, the Bench comprising SGST Member Arti Kanwar and CGST Member Sunil Kumar Mall shifted the focus away from a de novo evaluation of the manufacturing processes to anchor its decision firmly on the doctrine of stare decisis. The Authority observed that because the jurisdictional Gujarat High Court had already conclusively determined in a parallel matter (M/s Ananta Synthetic Innovations) that identical technical textiles belong under Chapter 59, subordinate tax tribunals and advance ruling authorities are constitutionally and administratively bound to conform to that superior interpretation. Furthermore, the GAAAR highlighted a critical rule of appellate finality, noting that since the Revenue had failed to file a Special Leave Petition (SLP) before the Supreme Court of India against the High Court's judgment, the legal characterization of the product had reached absolute finality. In addressing the Revenue's reliance on conflicting historical precedents, the Bench articulated a precise rule of distinction in tax classification disputes, clarifying that judgments governing general plastic fabrics cannot be blindly transposed to products woven specifically from extruded polymer strips or tapes. Ultimately, this ruling stands as a significant administrative precedent, reaffirming that the certainty of jurisdictional High Court mandates overrides conflicting lower-tier advance rulings, thereby ensuring predictability, reducing frivolous tax litigation, and stabilizing the regulatory environment for technical textile manufacturers under the GST regime.



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# SIGNIFICANT CASE LAWS

## Retrospective Statutory Relaxation and Revival of Time-Barred Input Tax Credit under GS

In the significant ruling of M/s ABE Security Mechanics Pvt. Ltd. v. The Superintendent of the Central Tax, a Single Judge Bench of the Karnataka High Court, presided over by Justice S. Sunil Dutt Yadav, extensively evaluated the temporal application of fiscal limitations concerning the availment of Input Tax Credit (ITC) under the Central Goods and Services Tax (CGST) Act, 2017. The primary legal controversy centered on the structural conflict between the rigid statutory limitation period outlined in Section 16(4) and the newly enacted, retrospective relief mechanism introduced via Section 16(5) by the Finance (No. 2) Act, 2024. From a jurisprudential standpoint, the High Court focused on the interpretive weight of the non-obstante clause anchoring Section 16(5), ruling that its explicit legislative phrasing intentionally overrides the restrictive deadlines previously mandated under Section 16(4) for the financial years 2017–18 through 2020–21. The Court articulated a vital principle of statutory construction, establishing that when Parliament enacts a retrospective amendment specifically designed to relax limitation boundaries, such an amendment effectively revives statutory eligibility for tax credits that were otherwise deemed time-barred under former rules. Furthermore, the Court integrated administrative guidance into its reasoning, referencing Circular No. 237/31/2024-GST issued by the Central Board of Indirect Taxes and Customs (CBIC) to reaffirm that the state consciously intended to provide a sweeping, retrospective relaxation of historical cut-off periods. Consequently, the Bench determined that the revenue authorities cannot lawfully sustain the mechanical denial of ITC solely on limitation grounds if a taxpayer has successfully filed the relevant returns under Section 39 on or before the newly designated legislative milestone of November 30, 2021. By setting aside the impugned show-cause notice and the subsequent Order-in-Original, the judgment mandates a fresh, legally aligned adjudication process that honors the updated statutory paradigm. Ultimately, this decision serves as a powerful judicial precedent reinforcing that legislative correctives aimed at curing procedural hardships must override strict administrative finality, thereby stabilizing the remedial framework governing credit entitlement under indirect tax law.



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# SIGNIFICANT CASE LAWS

## Jurisdictional Invalidity of GST Demands Against Non-Existent Entities Post-Merger

In the landmark ruling of *IDFC First Bank Limited Versus The State of Maharashtra & Ors.*, a Division Bench of the Bombay High Court, comprising Justice G.S. Kulkarni and Justice Aarti Sathe, delivered a vital judgment clarifying the jurisdictional boundaries of tax administrations executing recovery actions post-corporate amalgamation. The primary legal controversy centered on whether the Goods and Services Tax (GST) authorities could validly initiate or continue scrutiny, audit, and tax demand proceedings against an erstwhile corporate entity that had ceased to exist following a National Company Law Tribunal (NCLT) approved scheme of amalgamation. From a strict jurisprudential standpoint, the High Court held that any assessment, notice, or demand order issued against a non-existent corporate entity is fundamentally void ab initio and entirely unsustainable in law for want of jurisdiction. The Bench reinforced the foundational doctrine of corporate dissolution, establishing that upon the judicial sanction of a merger, the transferor company completely loses its distinct legal personality and can no longer be recognized as a "taxable person" capable of being a party to legal or fiscal proceedings. Crucially, the judgment delivers an essential interpretation of Section 87 of the Central Goods and Services Tax (CGST) Act, 2017, which the Revenue had invoked to justify its multi-crore demand against the defunct entity. The Court rejected the department's expansive view, clarifying that Section 87 is a limited transitional provision governing tax liabilities for transactions between amalgamating entities during the specific interim window prior to the final merger order, and it does not grant statutory authorization to initiate separate assessment proceedings against an entity that has already dissolved. Furthermore, the Bench articulated a critical rule regarding waiver and acquiescence, ruling that the active participation or administrative correspondence by the surviving, amalgamated entity during the tax inquiry cannot operate as an estoppel, nor can it cure a fundamental jurisdictional defect or validate a state action that was illegal from its very inception. By transposing the established Supreme Court precedent of *PCIT v. Maruti Suzuki India Limited* from direct tax jurisprudence into the evolving GST framework, this ruling provides robust protection to corporate entities undergoing restructuring, emphasizing that due process demands tax enforcement be directed exclusively against the surviving legal entity.



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# SIGNIFICANT CASE LAWS

## Void Ab Initio Status of Post-Merger GST Proceedings Against Defunct Entities

In the significant appellate ruling of Vodafone Idea Ltd. Vs Union of India & Ors., a Division Bench of the Bombay High Court, comprising Justice G. S. Kulkarni and Justice Aarti Sathe, conclusively determined the jurisdictional limitations of tax administrations enforcing liabilities post-corporate amalgamation. The core legal controversy concentrated on whether the indirect tax authorities could validly issue a show cause notice and subsequent adjudication order against an erstwhile corporate entity that had ceased to exist following a National Company Law Tribunal (NCLT) approved scheme of arrangement. From a strict jurisprudential perspective, the High Court held that any tax enforcement action or investigative proceeding initiated against a non-existent corporate entity is fundamentally void ab initio for total want of jurisdiction. The Bench reinforced the foundational doctrine of corporate dissolution, establishing that upon the judicial finalization of a merger, the transferor company completely loses its distinct legal personality and can no longer be categorized as a "taxable person" under fiscal statutes. Crucially, the judgment delivers an essential, restrictive interpretation of Section 87 of the Central Goods and Services Tax (CGST) Act, 2017, flatly rejecting the Revenue's expansive argument that the provision grants a blank check to pursue defunct entities for pre-merger periods. The Court clarified that Section 87 is merely a transitional statutory mechanism designed to govern the tax treatment of transactions occurring between the merging corporate entities during the specific intervening window prior to the amalgamation order, rather than a tool to bypass corporate extinction rules. Furthermore, the Bench seamlessly transposed established direct tax jurisprudence into the GST framework by relying on the Supreme Court's landmark ruling in PCIT v. Maruti Suzuki India Ltd., thereby confirming that the rules governing extinct entities apply uniformly across all taxing frameworks. Ultimately, this judgment stands as a definitive administrative precedent, clarifying that due process demands state investigative mechanisms be directed exclusively toward the surviving, amalgamated legal entity rather than resurrecting a legally defunct enterprise.



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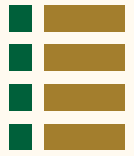
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