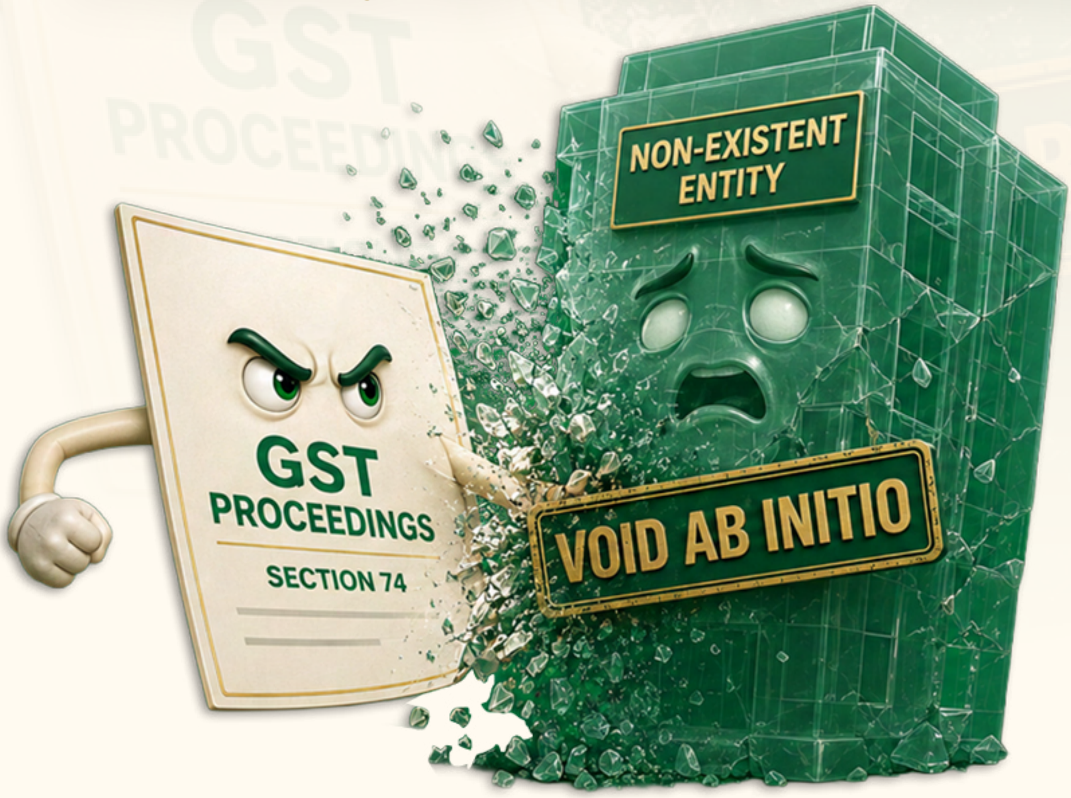
GSTATION

A Monthly GST Litigation Newsletter

JULY 2026



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Editor's Note

Non-Existence, our cover story this month examines whether GST proceedings can survive against an entity that has already ceased to exist after amalgamation. We unpack how the Bombay High Court draws a clear line between the survival of tax liability and the validity of proceedings initiated against the wrong legal person.

This edition also explores the limits of transit-State enforcement under Section 129, the artificial treatment of contractual obligations as consideration, and the pre-amendment position on ISD, cross-charge, and ITC distribution under GST. Across these rulings, courts are asking a sharper threshold question before tax consequences follow: who is being taxed, where does jurisdiction arise, and is there a real taxable supply or only an administrative assumption?

To cap it off, this edition brings you key case law developments, regulatory updates, and curated GST trainings and events.

Let's dive in.

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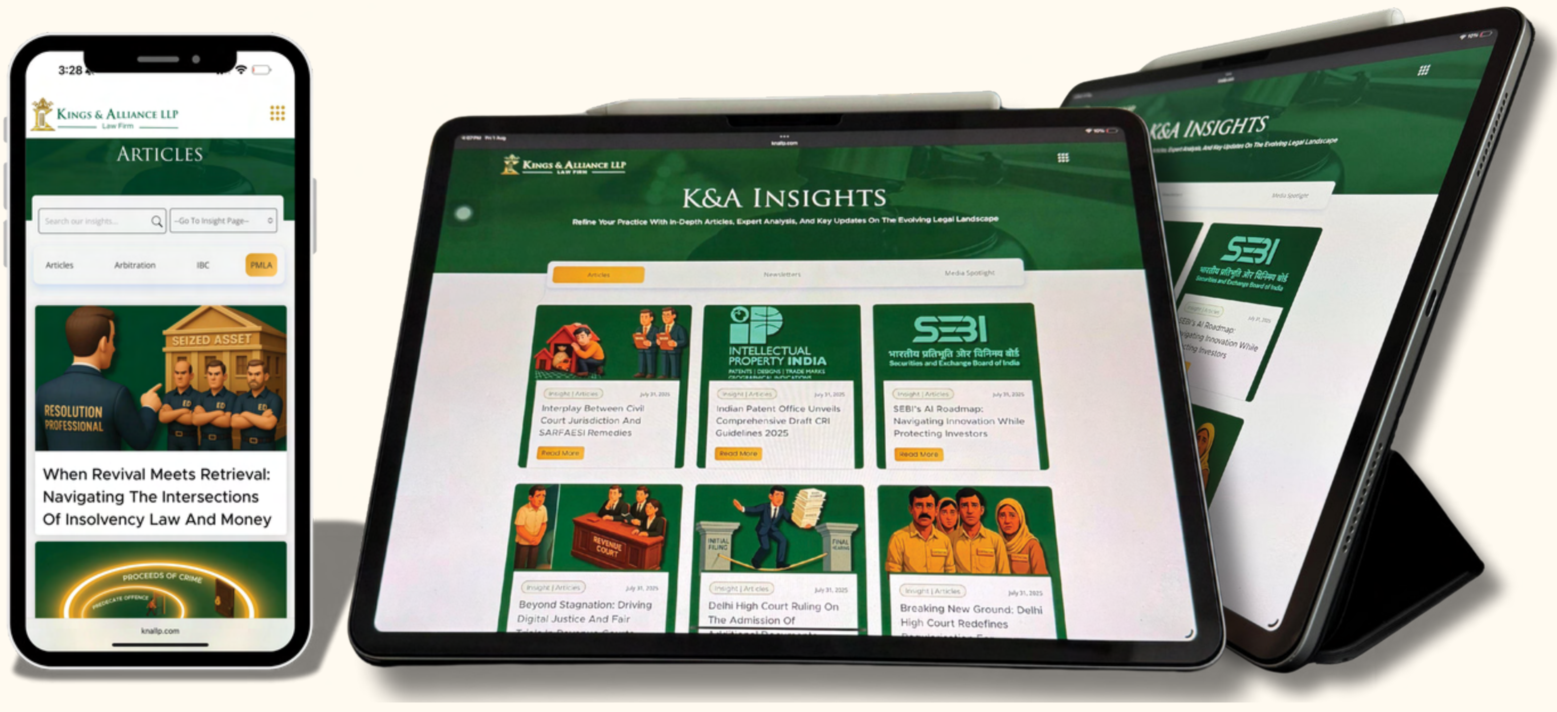

INDEX

COVER STORY

Bombay High Court Rules GST Proceedings Against Amalgamated Entity Are Void Ab Initio

Can tax authorities continue legal proceedings against a company that has already ceased to exist after a merger? More importantly, can statutory recovery provisions under the GST framework cure proceedings initiated against an entity that no longer exists in the eyes of law?

These questions formed the foundation of the recent decision delivered by the Bombay High Court in Kanakia Spaces Realty Private Limited v. Union of India & Ors., a dispute involving GST proceedings initiated against a company that had already merged into another entity years earlier. The ruling revisits an increasingly litigated issue in tax jurisprudence: whether proceedings initiated against a non-existent entity can survive merely because the underlying tax liability may continue against the successor company. In setting aside the impugned GST proceedings, the Bombay High Court reiterated a settled but critical principle of law once an amalgamating company ceases to exist pursuant to a sanctioned merger scheme, any proceedings initiated against such entity are void ab initio, particularly where the Department had prior knowledge of the merger. The dispute arose pursuant to a scheme of amalgamation sanctioned by the Bombay High Court on 29 November 2016 involving Kanakia Supremo Construction Private Limited (KSCPL) and Kanakia King Style Construction Private Limited, both of which merged into the petitioner company, Kanakia Spaces Realty Private Limited (KSRPL), with retrospective effect from 1 April 2015. Following the amalgamation, the names of the transferor companies were...

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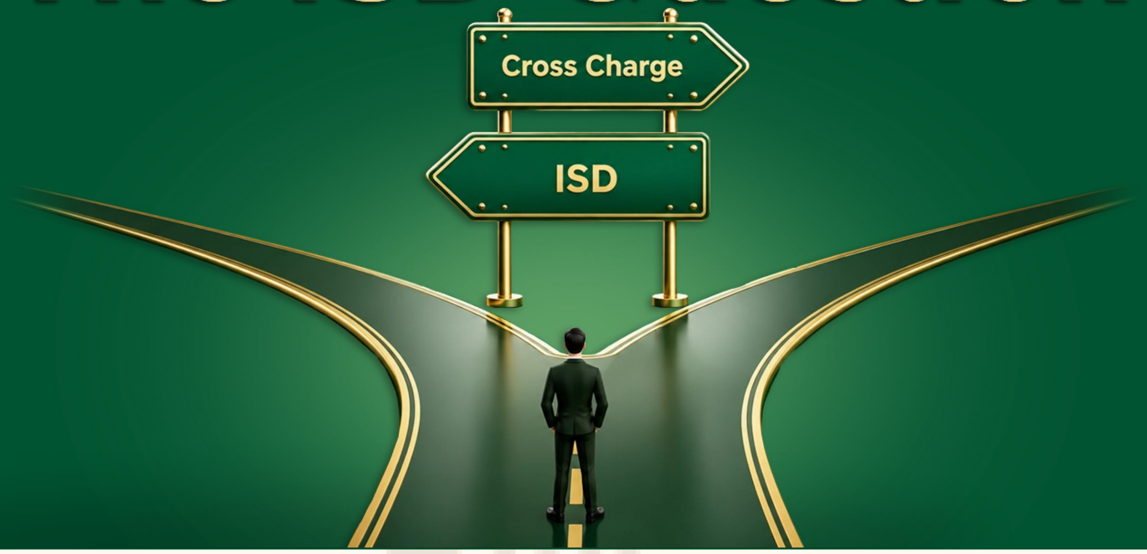
PIVOTAL ISSUES

Kerala High Court on ISD, Cross-Charge and ITC Distribution Under GST

The ISD Question



Can GST authorities deny input tax credit and impose tax demands merely because an assessee distributed common credits without obtaining an Input Service Distributor (ISD) registration? This question came before the Kerala High Court in Intertek India Pvt. Ltd. v. Assistant Commissioner of Central Taxes and Central Excise, where the Court examined the validity of a demand exceeding ₹2.62 crore arising from imported services and the distribution of credits among multiple GST registrations. The decision is significant because it addresses a long-standing controversy under GST: whether ISD registration was mandatory before the Finance Act, 2024 amended the statutory framework.

Intertek India, a multinational enterprise with registrations across several States, received IT infrastructure and support services from its foreign parent company. Although the foreign supplier's invoice was issued in the name of the company's Delhi office, payment was made by the Kerala registration, which discharged GST under the reverse charge mechanism (RCM) and availed input tax credit (ITC). Since the services benefited multiple registrations across India, the costs and credits were subsequently allocated among the various units. During a GST audit, the department challenged this arrangement on two grounds. First, it argued that the Kerala registration could not avail ITC because the original invoice was issued to the Delhi registration. Second, it contended that the company had distributed credits to...

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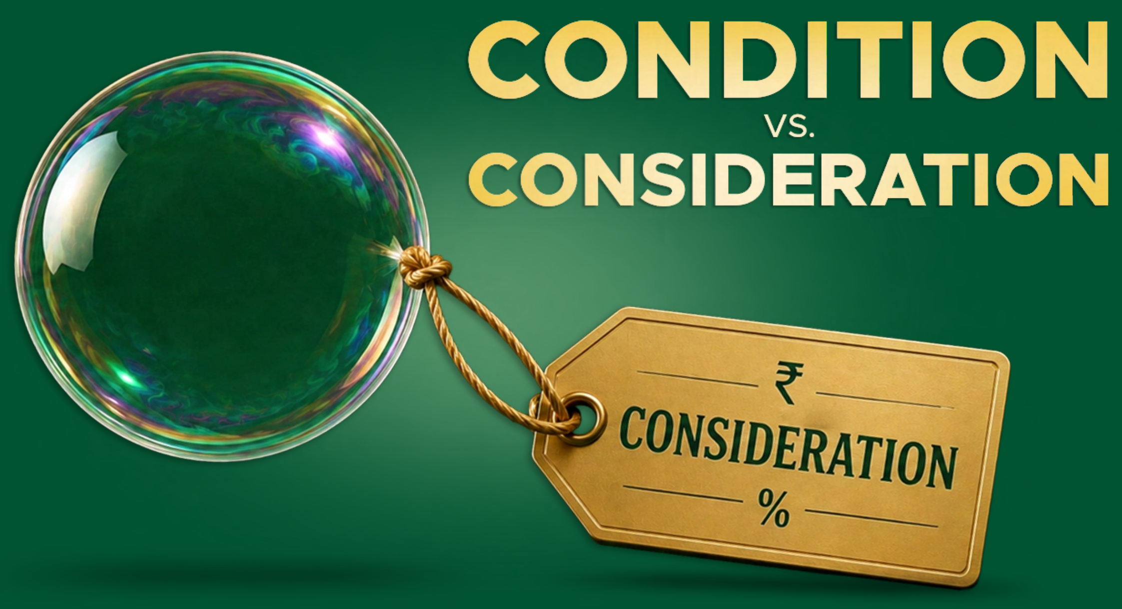
PIVOTAL ISSUES

Can a Contractual Obligation Constitute Consideration? Karnataka High Court Clarifies the Scope of Service Tax in Canara Bank



Can the mere contractual obligation of a bank customer to maintain a Minimum Average Balance (MAB) be artificially treated as a "non-monetary consideration" to levy service tax on otherwise free banking facilities? In a landmark verdict delivered in Canara Bank v. The Union of India (with connected matters), the High Court of Karnataka has decisively answered this question in the negative. Ruling that maintaining a minimum balance is a condition of the contract rather than a reciprocal consideration for services rendered, the Court clarified that no service tax can be demanded on imputed or notional values where no actual charge was levied.

The factual matrix leading to this significant legal battle stems from a batch of writ petitions filed under Article 226 of the Constitution of India by prominent financial institutions, including Canara Bank, Bank of Baroda, and The Karnataka Bank Ltd., before the High Court of Karnataka. The dispute arose when the Directorate General of Goods and Service Tax Intelligence and associated GST commissionerates issued a series of Show Cause Notices (SCNs) to these banks. These notices sought to recover unpaid service tax for various periods up to June 30, 2017 the pre-GST regime governed by the Finance Act, 1002 (as amended in 2012). The Revenue Department constructed a novel theory: it alleged that when a customer maintains the stipulated MAB, the bank provides a basket of free services in exchange for a "non-monetary consideration". To quantify this intangible exchange, the department ascribed a deemed or notional value equivalent to the penalty charges that...

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PIVOTAL ISSUES

Allahabad High Court on GST Transit-State Powers: Limits on Section 129 Penalties, Cross-Empowerment, and Interstate Goods Detention

In a significant ruling on the limits of GST enforcement powers, the High Court of Judicature at Allahabad, in a batch of five writ petitions led by M/s Maruti Enterprises v. State of U.P. & Others, examined whether GST authorities of a transit State can invoke Section 129 of the CGST Acts against interstate consignments merely passing through their territorial jurisdiction.

The Division Bench comprising Hon'ble Justice Saumitra Dayal Singh and Hon'ble Justice Swarupama Chaturvedi was called upon to consider a jurisdictional issue under the GST regime: while transit-state authorities unquestionably possess powers to intercept, stop, inspect, physically verify, and temporarily detain goods in transit for verification under Section 68 and Rules 138A to 138C, can they proceed further to initiate seizure, confiscation, and penalty proceedings under Section 129 where no tax liability arises within that State? The judgment draws a distinction between regulatory verification powers and substantive enforcement jurisdiction, while also discussing the constitutional protection of interstate trade under Article 301 of the Constitution. The judgment disposed of five connected writ petitions arising from interception of consignments of Areca nuts travelling across different interstate routes. The consignments involved transportation from West Bengal to New Delhi, Assam to Delhi, Assam to Nagpur, and Bhojpur, Bihar to New Delhi. While the goods were passing through Uttar Pradesh, GST authorities intercepted the vehicles and scrutinised the accompanying documents. The consignments carried valid e-way bills and physical tax...

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SIGNIFICANT CASE LAWS

Transitional VAT Input Tax Credit Carried Forward Into GST Regime Cannot Be Claimed as Cash Refund

In Dilip Babubhai Patel v. State of Gujarat & Anr., the Gujarat High Court addressed whether transitional VAT Input Tax Credit (ITC) carried forward into the GST regime through Form TRAN-1 can subsequently be claimed as a cash refund under the inverted duty structure. The Division Bench comprising Justices A.S. Supehia and Vaibhavi D. Nanavati held that Section 142(3) of the CGST Act creates a clear statutory separation between the pre-GST and GST regimes, and a taxpayer must make an election between the two remedies. Accordingly, once the taxpayer opts to carry forward eligible VAT credit into the Electronic Credit Ledger (ECL) under GST, the same credit cannot later be re-characterised and claimed as a refund in cash under GST provisions. At the same time, the Court ensured that the substantive credit was not rendered illusory and directed the authorities to consider re-crediting the disputed amount back into the petitioner's ECL through Form GST PMT-03 within a period of 12 weeks, thereby preserving the taxpayer's legitimate entitlement within the GST framework.

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SIGNIFICANT CASE LAWS

GST Late Fees and General Penalties Apply Simultaneously for Total Failure to File Annual Returns

In Tvl. KPK Fuel Services v. State Tax Officer, Hosur, the Madras High Court considered whether a taxpayer who completely fails to file the annual return in Form GSTR-9 can be subjected simultaneously to late fee under Section 47(2) and a general penalty under Section 125 of the CGST Act. Justice Senthilkumar Ramamoorthy held that the levy of late fee is automatic under Section 47(2) once the statutory deadline is breached, and it continues to accrue irrespective of whether the return is eventually filed or not. The Court further clarified that a complete non-filing of the mandatory annual return constitutes an independent statutory default, and since the Act does not prescribe a specific penal consequence for such total omission beyond the general penalty provision, invocation of Section 125 is legally sustainable. Rejecting the taxpayer's contention that late fee is limited only to delayed filings, the Court upheld the simultaneous imposition of both late fee and general penalty, observing that they operate in distinct fields and address different aspects of statutory non-compliance under the GST framework.

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SIGNIFICANT CASE LAWS

The Gujarat AAR Precedent: Income Tax Registration Does Not Grant Blanket GST Immunity

In the recent ruling In re: M/s Sanskar Foundation, the Gujarat Authority for Advance Ruling (AAR) firmly established that holding a charitable trust registration under Section 12AB of the Income Tax Act does not automatically shield an entity from Goods and Services Tax (GST) liabilities. The applicant, a registered public charitable trust under the Bombay Public Charitable Trust Act, contended that its various educational, self-defense, and vocational training initiatives qualified for full tax exemption under Notification No. 12/2017-Central Tax (Rate). While the bench acknowledged that specified public welfare training modules explicitly backed by central or state government programs (such as the National Mental Health Mission or PM Vishwakarma Scheme) are legally exempt under GST, they clarified that any secondary, commercialized vocational training, blood donation camps, or non-specified activities remain fully taxable. The AAR emphasized that GST exemptions are strictly transaction-specific and tied to the narrow definition of "charitable activities" defined under GST laws, rather than the broader operational exemptions granted under direct tax frameworks.

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SIGNIFICANT CASE LAWS

Delhi High Court Seeks Response on GSTAT Appeal Filing Deadline and Transitional Hardship

In GSTAT Appellate Tribunal Bar Association v. Union of India & Ors., the Delhi High Court issued notice to the Central Government on a petition challenging the validity and practicality of the June 30, 2026 deadline prescribed for filing appeals before the newly operationalised Goods and Services Tax Appellate Tribunal (GSTAT) in respect of orders communicated prior to April 1, 2026. The petitioner-Bar Association contended that the timeline was unreasonably short, effectively leaving stakeholders with barely 15 days to process and file appeals against a substantial backlog of adjudication orders, compounded by initial technical glitches on the e-filing portal and delays in procedural clarifications. A vacation bench comprising Justices Mini Pushkarna and Vinod Kumar declined to grant interim relief at this stage; however, the Court directed that the matter be listed for detailed consideration before the regular roster bench after receiving responses from the Ministry of Finance and the Central Board of Indirect Taxes and Customs (CBIC), thereby keeping the issue of transitional procedural fairness open for further judicial scrutiny.

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SIGNIFICANT CASE LAWS

GST Liability of Deceased Taxpayer: Proceedings Maintainable Against Legal Heirs Under CGST Act

In V. Damayanti v. The Superintendent of GST and Central Excise, the Madras High Court considered whether GST proceedings can be initiated against the legal heirs of a deceased taxpayer under Section 93 of the CGST Act, particularly in a situation where no assessment or recovery action had been taken during the lifetime of the assessee and the business had already been discontinued. The Court held that the statutory scheme expressly permits the determination and recovery of tax liability even after the death of the taxable person, and therefore rejected the contention that legal heirs fall outside the scope of a "person chargeable with tax." At the same time, the Court significantly protected the interests of the heirs by clarifying that their liability cannot extend beyond the value of the estate inherited from the deceased, thereby ensuring that recovery proceedings remain confined to the extent of assets received and do not impose personal liability on family members beyond such inheritance.

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Seigniorage Fee Discrepancy as Valid Basis for Section 74 GST Proceedings

In KPR Enterprises v. The State Tax Officer, the Madras High Court held that a substantial mismatch between seigniorage fees paid for mineral extraction and the value of outward supplies declared in GST returns can constitute sufficient material to form a prima facie case of turnover suppression. Justice C. Saravanan upheld the assessment orders covering the period 2018–2021, observing that the tax authorities were justified in relying on the "National Standard Method" to estimate escaped turnover where inconsistencies in reported figures indicated potential under-declaration. The Court further ruled that such foundational discrepancies provide adequate grounds for invoking the extended limitation period under Section 74 of the CGST Act for cases involving alleged fraud or wilful suppression. While upholding the validity of the proceedings, the Court nonetheless permitted the petitioner to pursue appropriate statutory appellate remedies in accordance with law.

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