GSTATION

A Monthly GST Litigation Newsletter

AUG 2026

COVER STORY

SIGNIFICANT CASE LAWS

PIVOTAL ISSUES

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Editor's Note

Upstream, our cover story this month examines how far a purchaser's responsibility for GST compliance travels through the supply chain. Through Safecon and Bhandari Scrap Traders, we unpack the evolving contours of ITC denial, the significance of an immediate supplier's tax compliance, and when Section 74 can enter the picture.

This edition of **GSTATION** also turns to the taxability of leasehold rights, examining the treatment of an assignment that transfers the underlying interest in immovable property rather than merely its use or enjoyment.

We then explore the limits of retrospective taxation through the Supreme Court's Asia Sugar ruling, particularly the consequences of withdrawing a tax exemption retrospectively and the distinct treatment of tax, penalty, and interest.

Our final in-depth analysis moves from substantive liability to appellate procedure, examining whether a statutory pre-deposit made through **Form GST DRC-03** can satisfy the requirement in a legacy tax appeal, and why the Bombay High Court has called for greater administrative clarity on the issue.

From **ITC and Section 74 to leasehold rights, retrospective taxation, and appellate procedure,** this edition captures some of the questions currently shaping GST litigation.

Let's dive in.

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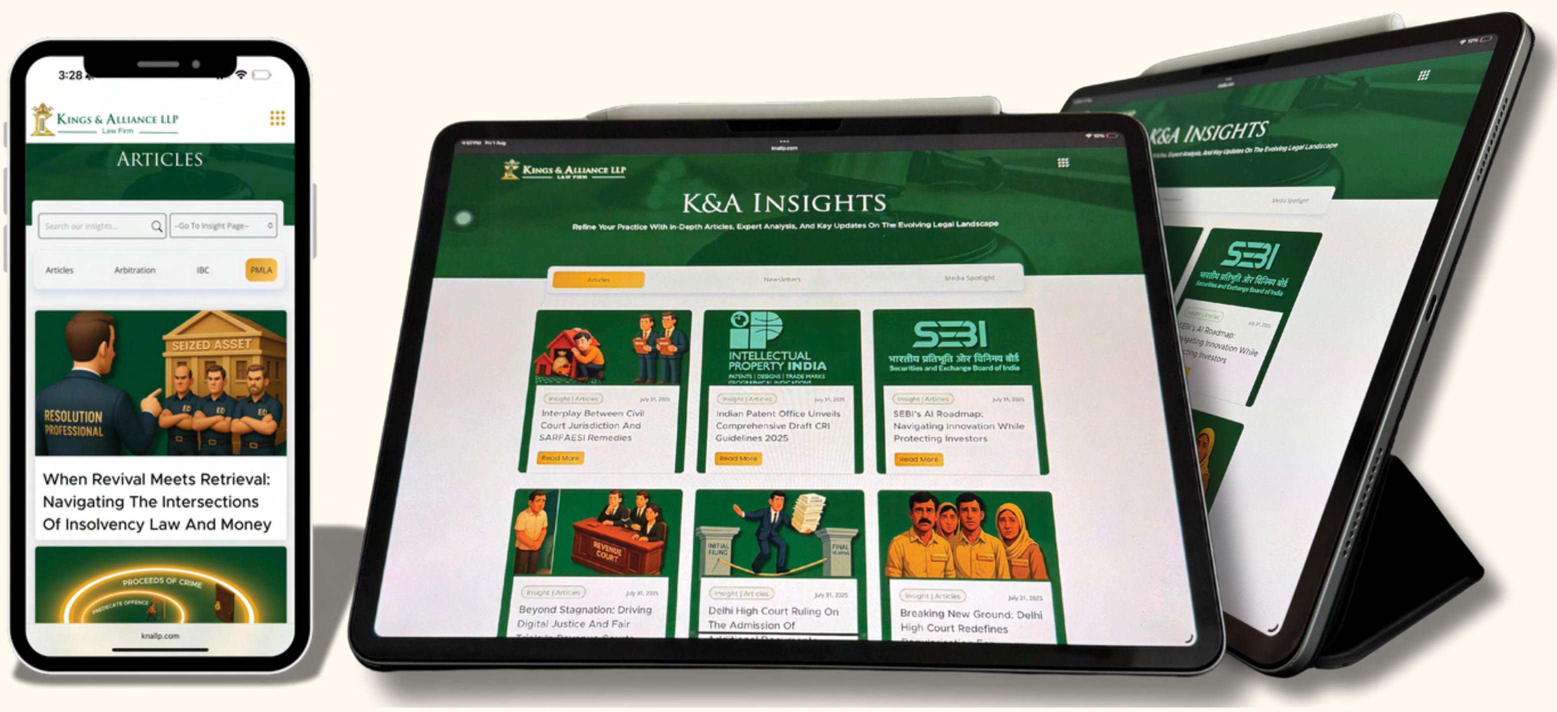

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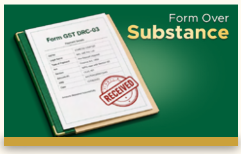
Form Over
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CASE

COVER STORY

Upstream GST Default, ITC Denial and Section 74: Safecon after Bhandari Scrap Traders

Chain Reaction

A purchasing dealer receives the goods, pays the entire invoice value through banking channels and retains the tax invoice, e-way bill and transport documents. The transaction appears in the GST returns of both the purchaser and its immediate supplier. The supplier also discharges the tax disclosed in its return.

The Department subsequently discovers that an entity situated further upstream in the supply chain did not deposit tax or was not conducting genuine business. Can that default travel through every subsequent transaction and extinguish the purchasing dealer's input tax credit? More importantly, can the Department invoke the fraud machinery under Section 74 of the Central Goods and Services Tax Act, 2017 against the purchaser without establishing its knowledge, participation or collusion? These questions were placed in sharp focus by the Allahabad High Court in M/s Safecon Lifescience Private Limited v. Additional Commissioner Grade 2 and Another. Safecon had purchased pharmaceutical products from Unimax Pharma Chem. The transaction was supported by an invoice, e-way bill, transport bill, banking-channel payment and return disclosures. The immediate supplier had filed GSTR-1 and GSTR-3B. The Department nevertheless denied ITC because the supplier had allegedly purchased goods from other firms that had not deposited tax. The High Court quashed the proceedings. It found that the evidence establishing movement of goods, payment and return disclosure had not been rebutted. There was no finding that Safecon's immediate supplier was involved in any irregularity, much less that Safecon had committe...

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PIVOTAL ISSUES

Assignment of Leasehold Rights: Is It Taxable under the GST Regime? Supreme Court in Union of India v. Gujarat Chamber of Commerce and Industry

An industrial entity holding a plot allotted by the Gujarat Industrial Development Corporation on a 99-year lease assigns its leasehold rights in the land and building to a third-party assignee for a lump-sum consideration. Does this assignment amount to a supply of service under the GST framework, or is it a transfer of an interest in immovable property?

The issue arose before the Gujarat High Court in Gujarat Chamber of Commerce and Industry v. Union of India, where the tax authorities sought to levy GST at 18% on consideration received for the assignment of long-term leasehold rights. The High Court held that such an assignment was not covered within the scope of supply and that GST could not be levied on the consideration paid by the assignee to the assignor. The ruling gained wider significance when the Supreme Court, by its order dated 21 July 2026 in Union of India v. Gujarat Chamber of Commerce and Industry, dismissed the Union of India's Special Leave Petitions making it a persuasive precedent on the GST treatment of comparable assignments of industrial leasehold rights. The dispute arose from the structure under which GIDC develops and allots industrial land in Gujarat. GIDC acquires land, develops industrial estates and provides supporting infrastructure such as roads, water supply, street lighting and drainage. Industrial plots are then allotted to eligible entities on long-term leases, ordinarily for 99 years. The allottee initially enters into a licensing agreement with GIDC for setting...

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Retrospective Withdrawal of Tax Exemption: Supreme Court's Ruling in Asia Sugar on Imported Sugar, Penalty and Interest

Retrospective tax legislation occupies a peculiar constitutional space. Legislatures possess broad authority to rewrite fiscal policy with backward effect, yet that authority is not a licence to recreate historical defaults where none existed. The real constitutional question is therefore not whether a State may withdraw a tax exemption retrospectively, but whether retrospective law can also retrospectively manufacture culpability.

The Supreme Court's decision in Asia Sugar & Chemical Co. v. State of Karnataka confronts precisely this tension. While affirming Karnataka's legislative competence to retrospectively restrict a sales tax exemption available to imported sugar, the Court simultaneously refused to permit retrospectivity to become punitive. The judgment draws an important distinction between validating a tax demand and reconstructing a taxpayer's past obligations. The dispute began with an exemption that contained no territorial qualification. Section 8 of the Karnataka Sales Tax Act, 1957 exempted goods specified in the Fifth Schedule. Sugar was initially covered by Entry 31-B. From 1 April 1992, the entry referred to "sugar as described from time to time" in Column 3 of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. When the entry was renumbered as Entry 51 from 1 April 1998, its substance remained unchanged. At no stage did the provision say "sugar produced in India", "sugar manufactured in India" or "indigenous sugar". That statutory silence shaped commercial conduct. Asia Sugar & Chemical Co. imported substantial quantities of sugar between 1994 and 1996. Indian Sugar and General...

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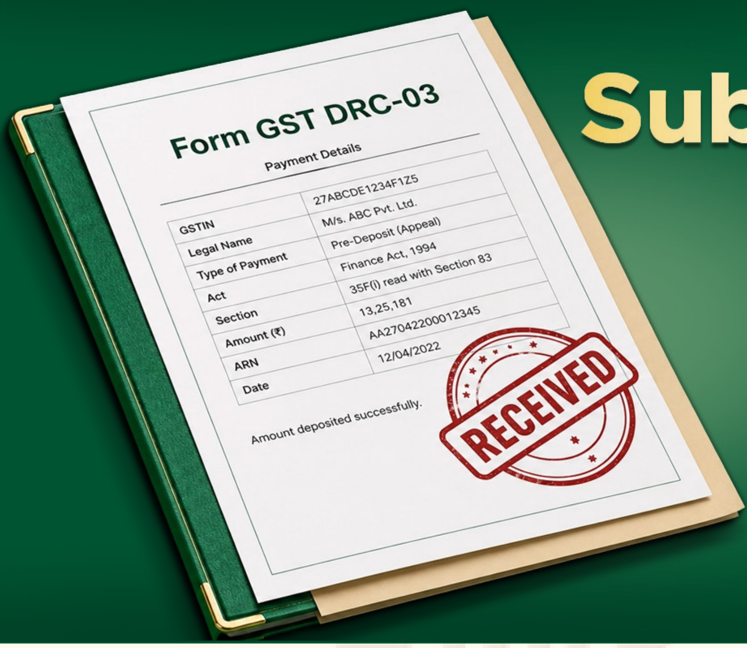
Bombay High Court Calls for Administrative Clarity on Pre-Deposits Through Form GST DRC-03 in Legacy Tax Appeals



Form Over
Substance

The transition from the erstwhile indirect tax regime to the Goods and Services Tax (GST) framework has presented taxpayers with several procedural challenges, particularly in respect of pending proceedings under the legacy tax laws. One such issue came before the Bombay High Court in Sodexo India Services Pvt. Ltd. v. Union of India & Ors, where the Court considered whether statutory appeals under the Finance Act, 1994 could be dismissed solely because the mandatory pre-deposit had been made through Form GST DRC-03 on the GST portal. The decision highlights the need for administrative certainty where taxpayers have admittedly deposited the mandatory pre-deposit, but ambiguity persists regarding the prescribed mode of payment.

Sodexo India Services Pvt. Ltd. filed four appeals under Section 85 of the Finance Act, 1994 challenging service tax orders. As a statutory precondition for maintaining the appeals, the petitioner deposited ₹13,25,181 and ₹5,01,859 towards the mandatory pre-deposit under Section 35F(i) of the Central Excise Act, 1944, as made applicable to service tax proceedings through Section 83 of the Finance Act, 1994, by using Form GST DRC-03 on the GST portal. The appellate authority accepted and registered the appeals, allotted appeal numbers, and afforded the petitioner an opportunity to present submissions during a personal hearing. However, by four separate orders dated 13 April 2022, the Commissioner (Appeals) dismissed all the appeals without examining their merits. The appeals were dismissed solely on the ground that the mandatory pre-deposit had been made through Form GST DRC-03...

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Luxmi Traders v. Union Territory of Chandigarh & Ors.

The Punjab and Haryana High Court considered whether merely uploading a show cause notice or adjudication order under GST on the "View Additional Notices and Orders" tab of the Common Portal constitutes valid service under Sections 169 and 146 of the CGST Act, and consequently triggers limitation for an appeal under Section 107.

The Court held that mere uploading on the Common Portal is not, by itself, valid statutory service. Section 169 prescribes specific modes of service, while neither the Rules nor the notifications issued under Section 146 had authorised the GST Common Portal as a mode for service of notices or orders. An email merely intimating that an order has been uploaded also cannot substitute for service of the order itself.

The Court, however, distinguished cases where the assessee had actually responded to the SCN. Once a taxpayer acknowledges the proceeding and contests it, the defect in service cannot subsequently be used to invalidate the adjudication.

For cases where an SCN was only uploaded and an ex parte order followed, proceedings were restored to the SCN stage. Where a contested order was served only through portal upload, limitation for appeal was held not to have commenced. Appeals already dismissed as time-barred on this basis were directed to be restored. The ruling has significant procedural consequences for GST litigation. Tax authorities must ensure statutory service rather than treating portal upload as sufficient, while taxpayers who have participated in proceedings cannot later rely solely on a technical objection to service.

VIEW JUDGEMENT

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M/s Chaitanya Enterprises v. Commercial Tax Officer & Ors.

The Telangana High Court examined whether a best judgment assessment could be sustained against a works contractor who had opted for the composition mechanism under Section 4(7)(b) of the Andhra Pradesh VAT Act, 2005.

Chaitanya Enterprises executed electrical works and had opted for composition. Tax was deducted from its contractual payments and remitted to the Department. Despite the petitioner submitting returns, tax deduction certificates and other available records, the Department passed a best judgment assessment raising a demand of approximately ₹28.09 lakh, principally on the ground that books of account had not been produced.

The High Court found that the Assessing Authority had failed to consider the documents furnished by the petitioner and had not dealt with the specific objections raised in response to the show cause notice. The Court emphasised that the petitioner had opted for the composition scheme and had produced the records required under the applicable rules.

Accordingly, the assessment was held to be a non-reasoned order, contrary to Section 4(7)(b), and therefore unsustainable. The impugned order dated 6 July 2009 was quashed and the writ petition allowed.

For legacy indirect tax disputes, the ruling reinforces that best judgment powers do not dispense with the obligation to examine material placed by the assessee and provide reasons addressing the taxpayer's defence.

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Smt. P.S. Shamala v. Deputy Commissioner, Kodagu District & Ors.

The Karnataka High Court considered whether GST could be deducted from compensation payable for compulsory acquisition of land and structures for a national highway project.

Compensation of approximately ₹1.21 crore had been determined for the acquired property, from which ₹18,39,252, representing 18% GST, was deducted. The authorities argued that although compensation for land itself might not attract GST, the structural component could be taxable.

The Court rejected that position. It observed that buildings attached to land constitute immovable property and held that compulsory acquisition through the State's power of eminent domain is neither a sale of goods nor provision of a service. The transaction was characterised as statutory expropriation rather than a taxable supply. The respondents also failed to identify any provision under which compulsory acquisition of the land or structure could constitute a supply under GST.

The deduction was consequently held to be beyond the authority's powers. The Court directed refund of ₹18,39,252 with interest at 15% per annum from the date of the award, and imposed costs of ₹50,000. It further directed that the interest payable on the deducted GST be recovered personally from the concerned officer.

The ruling provides a clear distinction between a voluntary taxable supply and compulsory divestment of immovable property under statutory acquisition powers.

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CBIGS Apparels and Jewels v. Joint Commissioner, Nungambakkam Assessment Circle, GST & Ors.

The Madras High Court examined the reach of GST recovery provisions where tax arrears of a private company were sought to be recovered from a former director and connected entities.

CBIGS Advertising Private Limited had outstanding GST liabilities for 2017-18 and was subsequently ordered to be voluntarily wound up and liquidated by the NCLT. N. Seetha had been a director of the defaulting company during the relevant tax period. Recovery notices under Section 79(1)(c) and Rule 145 were issued seeking attachment of bank accounts connected with her and related entities.

The Court relied principally on Section 88(3), under which a person who was a director during the period for which tax became due can be jointly and severally liable where dues of a private company in liquidation cannot be recovered. The statutory escape is available where the director proves before the Commissioner that non-recovery cannot be attributed to gross neglect, misfeasance or breach of duty. Since Seetha had been a director during the relevant period, the Court declined to interfere with recovery of approximately ₹2.66 crore against her and left her to establish the statutory defence before the Commissioner.

The Court also noted the recurring family links among the companies and partnerships and found prima facie scope for lifting the corporate veil in relation to Yantur Manufacturing Private Limited. All three writ petitions were ultimately dismissed.

The judgment underlines the potential personal exposure of directors under Section 88(3) when a private company enters liquidation with unrecovered GST dues.

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SLV Elite Spaces LLP & Ors. v. State of Andhra Pradesh & Ors.

The Andhra Pradesh High Court considered whether goods and a vehicle could continue to be detained under Section 129 merely because the accompanying e-way bill had expired shortly before inspection.

The consignment was travelling from Vizianagaram to Vijayawada. Its e-way bill expired at 11:59 pm on 13 April 2026. The vehicle had already reached Vijayawada but suffered a breakdown and was parked while steps were being taken to have the e-way bill reissued. At approximately 10:00 am the following morning, the authorities inspected the vehicle and issued Form GST MOV-06 solely on the ground that the e-way bill had expired.

The High Court noted that the vehicle had reached Vijayawada within the validity period, the remaining distance to the destination was less than eight kilometres, and the detention order disclosed no allegation other than expiry of the e-way bill.

On the facts, the Court found no tax evasion and regarded invocation of Section 129 as an excessively technical approach. It directed the Department to drop all further proceedings and allowed the writ petition.

The decision is important for transit disputes because it reinforces the need to examine the surrounding circumstances and the existence of any actual attempt at tax evasion rather than treating every technical expiry of an e-way bill as sufficient, by itself, for detention.

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Commissioner of Service Tax, Mumbai v. M/s Bharat Petroleum Corporation Ltd. & Ors.

The Supreme Court examined whether BPCL and HPCL were purchasing CNG from Mahanagar Gas Limited for resale on a principal-to-principal basis or were acting as agents providing taxable Business Auxiliary Services to MGL.

The dispute arose from arrangements under which CNG was supplied through BPCL and HPCL outlets. The Department had raised substantial service-tax demands, including approximately ₹7.20 crore and ₹1.40 crore against BPCL, and ₹6.86 crore and ₹1.21 crore against HPCL for different periods, together with applicable interest and penalties.

The Supreme Court focused on the substance of the agreements. It found that title in the CNG never passed to BPCL or HPCL; MGL retained ownership and control, the corporations facilitated sale to vehicle users, and the amounts described as commission or profit margin were remuneration linked to the quantity sold. The relationship was therefore one of principal and agent, rather than buyer and seller.
Their activities consequently fell within Section 65(19) of the Finance Act as Business Auxiliary Service, with the corporations functioning as commission agents and marketing promoters for MGL.

The Supreme Court set aside the CESTAT order, restored the adjudicating authority's demands and allowed the Revenue's appeals.

The ruling reinforces that the tax character of a commercial arrangement turns on its substantive contractual attributes, particularly passage of title, control, risk and remuneration, rather than the nomenclature adopted by the parties.

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