GSTATION

A Monthly GST Litigation Newsletter

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2026

COVER STORY

PIVOTAL ISSUES

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Editor's Note

Demarcate, this month's edition of GSTATION examines how the GST framework continues to evolve at the intersection of taxation, statutory authority, and procedural fairness.

Our Cover Story, Can Statutory Building-Plan Approval Attract GST?, explores the Karnataka High Court's distinction between a statutory regulatory function and a taxable "supply", highlighting the importance of identifying the true legal character of an activity before imposing GST.

The In-Depth Analysis section turns to four significant developments. The Delhi High Court's decision on Section 83(2) examines the consequences of allowing provisional bank attachments to continue beyond their statutory life. The Supreme Court's Goodluck India ruling revisits the consequences of statutory omission for pending GST refund proceedings. The Gujarat High Court's decision in Torrent Power examines the valuation of corporate guarantees under Rule 28(2), while Adinath Rice Mill underscores the obligation of appellate authorities to account for applicable notifications.

The Case Laws section further captures emerging questions in GST administration - from the judicial consequences of relying upon AI-generated authorities, to the meaning of "same subject matter" under Section 6(2)(b), GST treatment of advocates acting as insolvency professionals, the evidentiary role of electronic records, and the limits on invoking Section 74 beyond the ordinary limitation period.

Together, these developments illustrate that GST litigation is not confined to questions of tax liability alone. Increasingly, it concerns how, when, and within what statutory limits that liability may be determined.

Let's dive in. [Click Here To Submit Feedback]

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COVER STORY

Can Statutory Building-Plan Approval Attract GST? Karnataka High Court on "Supply" and Regulatory Functions

Does the sanctioning of a building plan by a statutory development authority constitute a "supply" of goods or services liable to GST merely because the applicant is required to pay charges for obtaining the approval? The Karnataka High Court, in Sai Sravanthi Infra Projects Pvt. Ltd. v. State of Karnataka, examined whether the Bangalore Development Authority ("BDA") could collect CGST and SGST in connection with the sanctioning of a building plan. The Court held that the BDA was not entitled to collect CGST and SGST because there was no supply of goods or provision of services in sanctioning the building plan.

The judgment is significant because it treats the statutory act of sanctioning a building plan as distinct from a taxable supply for the purposes of the GST demand in question. At the same time, the Court separately examined whether the BDA possessed statutory authority to impose the underlying charges. It held that, in the circumstances of the case, the BDA lacked authority to collect scrutiny fee, ground rent and security deposit. The decision therefore involved two distinct questions: whether the authority had statutory power to impose a charge and whether the activity connected with the charge constituted a supply for GST purposes. The petitioners owned several parcels of land at Seegehalli Village, Bidarahalli Hobli, Bengaluru East Taluk. Petitioners 2 to 4 had executed a Joint Development Agreement in favour of Petitioner No. 1, Sai Sravanthi Infra Projects Pvt. Ltd., for development of the properties. The petitioners sought sanction of a development plan from the BDA for construction of a multi-storeyed building. In connection with the proposed...

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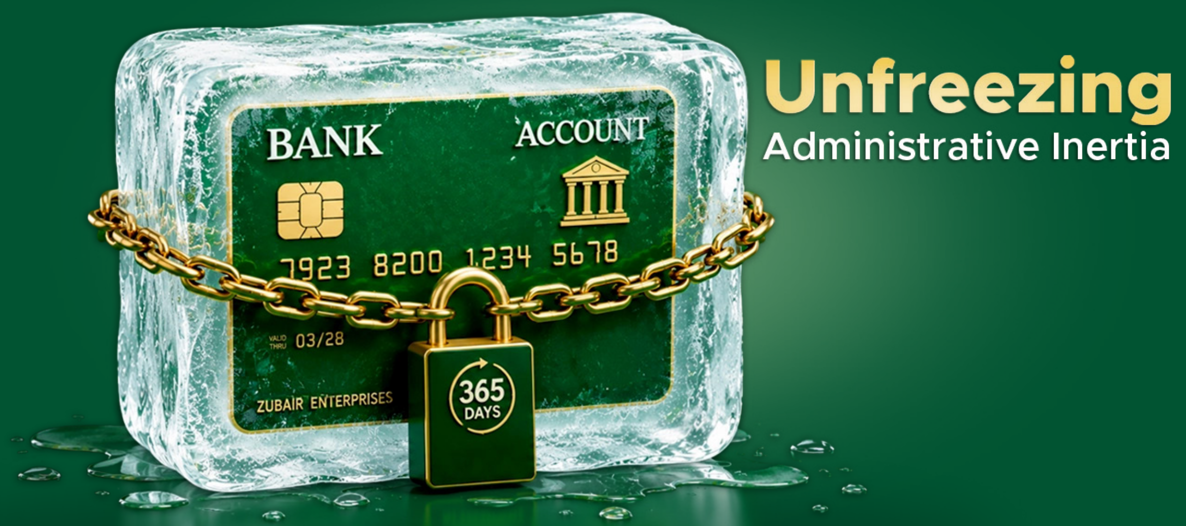
Bridging Law and Execution: How Delhi HC Revived Section 83(2) CGST to End Indefinite Bank Attachments.



Under Section 83 of the Central Goods and Services Tax (CGST) Act, 2017, tax authorities possess extraordinary powers to provisionally attach a taxpayer's bank account to protect revenue during pending proceedings. Recognizing the severe operational impact this measures exerts on business continuity, Section 83(2) explicitly sets a statutory limit: every provisional attachment automatically ceases to have effect after one year. Despite this clear mandate, Section 83(2) functioned as a "dead letter law" in practice. Once GST officers issued an attachment order, banks kept accounts frozen indefinitely. Bank managers routinely refused to release accounts without a formal "de-freezing letter" or No Objection Certificate (NOC) from the tax department; documents that GST officers rarely issued voluntarily. This operational deadlock forced taxpayers into expensive High Court litigation simply to enforce a clear statutory expiry date. In Zubair Enterprises v. Commissioner CGST, the Delhi High Court addressed this systemic failure by issuing binding directions to align real-world banking operations with the text of the law. The issue began when GST authorities provisionally attached Zubair Enterprises' bank account at Jammu & Kashmir Bank on March 9, 2021. Under Section 83(2), the attachment legally expired on March 8, 2022. However, years later, the bank account remained frozen, paralyzing the firm's operations and forcing it to file a writ petition in the Delhi High Court. The High Court confronted a critical operational question: how can the automatic one-year expiry limit under Section 83(2) of the CGST Act be enforced in...

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The Doctrine of Obliteration: How SC's Goodluck India Judgment Unlocks Pending GST Export Refunds

For years, Indian exporters were caught in a statutory "Catch-22" created by Rule 96(10) of the Central Goods and Services Tax (CGST) Rules, 2017. The provision barred exporters from taking advantage of the automatic route for Integrated GST (IGST) refunds on exported goods if they had procured raw materials or inputs by availing certain duty-free or concessional notifications (such as Advance Authorization or EPCG schemes).

When the Central Government finally deleted this restriction via Notification No. 20/2024-Central Tax on October 8, 2024, a fierce litigation battle erupted across High Courts over its temporal effect. Tax authorities argued that the deletion was prospective, continuing to issue Show Cause Notices (SCNs) and freezing refunds for past periods. Exporters contended that the omission applied to all ongoing proceedings. In M/s Goodluck India Limited v. Union of India, a Division Bench of the Supreme Court comprising Justice J.B. Pardiwala and Justice K. Vinod Chandran ended this long-running controversy by applying a well-settled principle of statutory interpretation. The Supreme Court confronted a single, high-stakes question of law: When a statutory rule is omitted without an explicit saving clause, does that omission automatically inure to the benefit of taxpayers in all pending proceedings as of the date of omission? Represented by the Additional Solicitor General, the Union of India urged the Court to limit the omission to future transactions. The Revenue relied heavily on the minutes of the 54th GST Council meeting held in September 2024. They highlighted that the Law Committee had explicitly recommended omitting Rule 96(10) "with...

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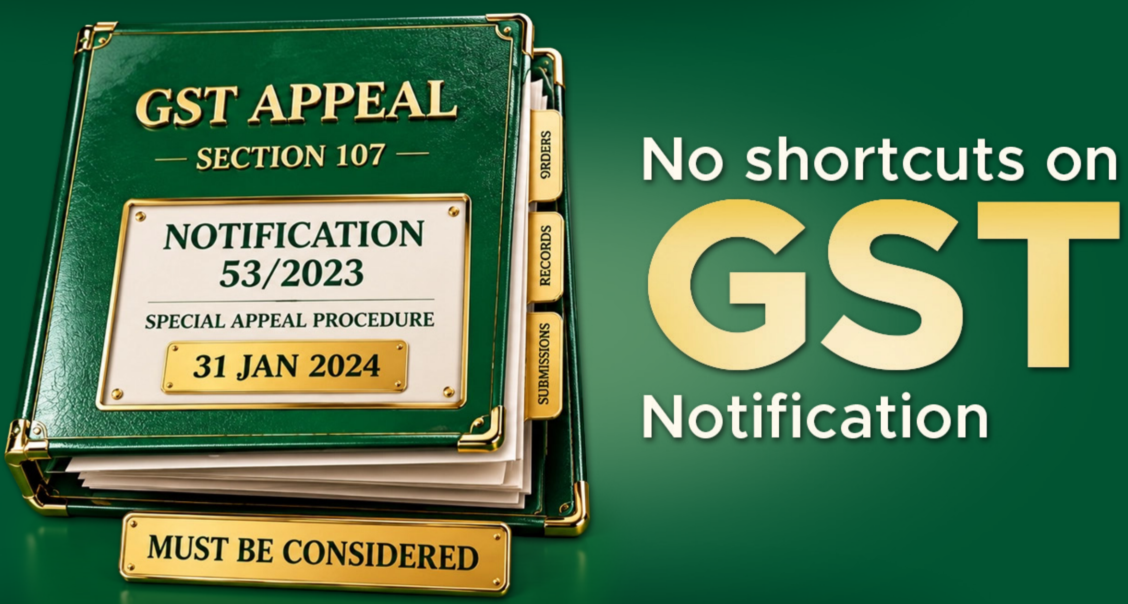
GST on Corporate Guarantees: Gujarat High Court Reads Down “Whichever is Higher” Under Rule 28(2)



The Gujarat High Court, in Torrent Power Ltd. v. Union of India & Ors., has examined the GST treatment and valuation of corporate guarantees furnished between related persons. The judgment arose from a batch of thirteen writ petitions challenging, inter alia, Rule 28(2) of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”), Section 15(4) of the Central Goods and Services Tax Act, 2017 (“CGST Act”), and CBIC circulars concerning corporate guarantees.

The Court upheld the validity of Rule 28(2) and Section 15(4), but read down the expression “whichever is higher” in Rule 28(2). It further held that GST under Rule 28(2) could not be levied on corporate guarantees furnished before 26 October 2023, although the levy would apply from that date where such guarantees continued. The Court also quashed the Section 74 proceedings challenged before it.

The petitions were filed by entities that had furnished corporate guarantees, including guarantees provided by holding companies for the benefit of subsidiaries and other related entities. The principal challenge concerned Rule 28(2), which provides a specific valuation mechanism for corporate guarantees furnished between related persons. The provision prescribed the value as 1% of the amount of the guarantee offered per annum or the actual consideration, whichever is higher The petitioners contended that a corporate guarantee furnished without consideration did not constitute a taxable supply and that Rule 28(2) ....

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GST Appellate Authorities Must Account for Applicable Notifications: Gujarat High Court in Adinath Rice Mill & Anr. v. Union of India & Ors.

The Gujarat High Court has reiterated that statutory appellate authorities under the Goods and Services Tax regime cannot decide matters mechanically without considering applicable government notifications. In Adinath Rice Mill & Anr. v. Union of India & Ors., the Court examined the applicability of Notification No. 53/2023-Central Tax dated 02.11.2023 to an appeal filed beyond the ordinary limitation period under Section 107 of the Central Goods and Services Tax Act, 2017 ("CGST Act").

The Division Bench held that a taxpayer who had filed its appeal before the extended cut-off date of 31.01.2024 could not be denied the benefit of the special procedure merely because the appeal had not been rejected for delay before the notification was issued. Significantly, the Court observed that an appellate authority is presumed to know government notifications governing the statutory provisions it administers and cannot wait for the taxpayer to specifically bring such notification to its attention. The petitioner had been issued a notice under Section 74 of the CGST Act on 07.09.2021 alleging tax evasion. The petitioner contended that the matter concerned belated filing of returns for five months and that the applicable tax, interest and penalty had subsequently been paid. An order-in-original was passed under Section 74 on 27.01.2023 and was physically served on the petitioner on 25.03.2023. The petitioner thereafter filed an appeal under Section 107 of the CGST Act on 28.12.2023. In the intervening period, however, the Central Government had issued Notification No. 53/2023-Central Tax dated 02.11.2023. The notification...

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When AI Misleads: Gujarat High Court on AI-Generated Authorities in GST Adjudication

In Faiz Enterprise through Proprietor Mahetar Mahir Farukbhai v. State Tax Officer, Unit-67, Surat & Anr. 2026 LLBiz HC (GUJ) 117, the Gujarat High Court examined the consequences of relying upon Artificial Intelligence-generated legal authorities in GST adjudication. The petitioner challenged proceedings arising from the cancellation of its GST registration, including the adjudication and appellate orders. The Court found that the impugned order had been passed by placing reliance exclusively on AI-generated case law.

The State Tax Officer subsequently tendered an unconditional apology and disclosed that Artificial Intelligence had been used while drafting the order and referring to the cited authorities. The officer also stated that he had subsequently attended training concerning the use of AI in drafting adjudication and appellate orders. In response, the Additional Commissioner of State Tax issued instructions governing the use of AI by adjudicating and quasi-judicial authorities.The instructions require authorities to independently verify every case law, statutory provision, rule, circular and notification identified through AI against primary sources before relying upon it. Authorities must also verify the authenticity and current legal status of judgments, ensure their relevance, and reproduce the original paragraph where an AI tool has paraphrased a judicial ratio. The instructions further require human oversight and independent application of mind, clarifying that AI may assist reasoning but cannot substitute the authority's own legal reasoning.

The High Court directed that these safeguards be scrupulously followed and observed that violation of the instructions would amount to contempt of court. On the substantive GST proceedings, the Department agreed to issue a fresh notice and reconsider the matter. The Court consequently quashed the show cause notice, GST registration cancellation order, order rejecting revocation, appellate order and consequential GST APL-04. It directed the Department to commence fresh proceedings, consider the petitioner's defence and pass a reasoned order in accordance with law.

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One Tax, Two Fronts: Delhi High Court Clarifies the "Same Subject Matter" under GST

In M.S. Liberty General Insurance Limited v. The Additional Commissioner of CGST, Delhi South Commissionerate & Anr. 2026 LLBiz HC (DEL) 838, the Delhi High Court examined the scope of Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 ("CGST Act"), which restricts initiation of proceedings by a Central GST officer where a State GST officer has already initiated proceedings on the same subject matter. The dispute arose from overlapping proceedings concerning alleged excess availment of input tax credit ("ITC").

The State GST proceedings concerned FY 2020–21 and alleged excess ITC of approximately ₹2.45 crore. Subsequently, Central GST proceedings covered a substantially wider period, from FY 2018–19 to FY 2023–24, and quantified the alleged excess ITC at approximately ₹4.80 crore. The petitioner contended that, insofar as the Central proceedings concerned FY 2020–21, they were barred by Section 6(2)(b) because proceedings concerning the same subject matter had already been initiated by the State authorities.

The Division Bench held that the expression "same subject matter" cannot be determined merely by observing that both proceedings relate to GST or involve ITC for the same financial year. The Court held that the enquiry requires examination of the nature and scope of the respective proceedings, the period involved, the allegations forming their basis, the transactions or ITC under scrutiny, the liability sought to be determined and the material relied upon by the respective authorities.
Since the petitioner had participated in adjudication and an efficacious statutory appeal was available, the Court declined to undertake the necessary factual comparison in writ jurisdiction. It left the issue open for consideration by the appellate authority, directing that the relevant State and Central GST proceedings could be placed before it.

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Beyond Legal Services: Delhi High Court on GST Treatment of Advocates Acting as Insolvency Professionals

In Kanwal Chaudhary v. Insolvency and Bankruptcy Board of India & Ors. 2026 SCC OnLine Del 6015, the Delhi High Court considered whether an advocate acting as an Interim Resolution Professional ("IRP") under the Insolvency and Bankruptcy Code, 2016 ("IBC") could claim the reverse charge mechanism applicable to legal services provided by advocates. The petitioner, an advocate enrolled with the Bar Council of Delhi, had also been registered as an Insolvency Professional and appointed as an IRP. A dispute arose regarding GST liability on his professional fees and whether he was required to issue GST-compliant invoices.

The Court examined the GST framework governing advocates and Insolvency Professionals separately. Under Section 9(1) of the CGST Act, the supplier ordinarily bears the liability to discharge GST under the forward charge mechanism. Section 9(3), however, permits specified categories of services to be subjected to reverse charge. The Court noted that legal services supplied by advocates fall within the notified reverse-charge framework. The Court then distinguished legal services from services rendered by an Insolvency Professional. An Insolvency Professional performs statutory and administrative functions under the IBC, including taking control of the affairs of the corporate debtor, inviting claims, conducting meetings of the Committee of Creditors and undertaking the functions prescribed by the insolvency framework. These services fall within the classification of "insolvency and receivership services" and constitute a distinct category from legal services. The central question was therefore whether the petitioner's professional qualification as an advocate could determine the applicable GST mechanism when he was acting in another statutory capacity. The Court held that the capacity in which the service is rendered, rather than the underlying professional qualification of the individual, determines its GST treatment. An advocate acting as an Insolvency Professional provides insolvency and receivership services and is consequently governed by the forward charge mechanism applicable to that category.

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Evidence Before Appeal: Delhi High Court on Electronic Records in GST Proceedings

In Bhagwati Electronics & Ors. v. Union of India & Ors. 2026 LLBiz HC (DEL) 813, the Delhi High Court considered a batch of writ petitions challenging GST proceedings arising from a common investigation conducted by the Anti-Evasion Branch of the CGST Delhi North Commissionerate. The investigation originated from search proceedings concerning M/s Arora Communication and was subsequently extended to several entities alleged to have purchased electronic goods from the concern. Demand-cum-show cause notices were issued under Section 74 of the CGST Act, followed by orders-in-original against several noticee(s).

The petitioners raised several challenges concerning the investigation and adjudication process, including alleged violations of natural justice, non-consideration of their replies and documents, and reliance by the Department upon electronic data and handwritten "kachcha parchis". The petitioners sought interference under Article 226 of the Constitution and questioned, among other matters, the evidentiary basis of the demands raised against them.

The Division Bench emphasised the existence of an effective statutory appellate remedy under Section 107 of the CGST Act. The Court held that questions concerning the admissibility, authentication and evidentiary value of the electronic records and handwritten material relied upon by the Department were matters that could appropriately be raised before the statutory appellate authority. The Court consequently declined to undertake an assessment of the evidentiary material in writ proceedings. Rather than treating the disputed electronic material as conclusively established or rejected, the Court left such issues open for examination by the appellate forum in accordance with the statutory mechanism. The writ petitions challenging the orders-in-original were therefore dismissed, while the petitioners were left free to pursue their statutory appeals under Section 107.

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Section 74 and the Limits of Protective Tax Notices

In M/s Tata Steel Limited v. Union of India through the Secretary, Ministry of Finance & Ors. 2026 LiveLaw (SC) 862, the Supreme Court examined the validity of a show cause notice ("SCN") issued under Section 74 of the CGST Act for three financial years, 2018–19 to 2020–21. The proceedings arose from an audit objection concerning alleged mismatches in input tax credit and short payment of tax. Tata Steel challenged the invocation of Section 74 on the ground that the SCN did not disclose the foundational facts necessary to establish fraud, wilful misstatement or suppression of facts, which are prerequisites for invoking the extended limitation period.

The Court drew a clear distinction between the ordinary limitation under Section 73 and the extended period available under Section 74. It held that the foundational facts leading to an inference of fraud, wilful misstatement or suppression must be apparent from the SCN itself. The mere mechanical use of these expressions cannot demonstrate the requisite application of mind or justify recovery beyond the ordinary limitation period.

On examining the SCN, the Court found that it did not contain factual material establishing a deliberate device to evade tax or avail excess ITC. The references to suppression were, in the Court's view, insufficient to sustain the invocation of Section 74. Consequently, the SCN dated 13/06/2025 and the consequential Order-in-Original dated 26/12/2025 were set aside. The Court also addressed the Department's attempt to issue the notice as a "protective" measure. It held that such a concept is alien to the GST statutory framework, particularly where proceedings are subject to prescribed limitation periods. A tax authority cannot preserve an otherwise time-bound demand merely by issuing a protective notice without satisfying the statutory conditions for invoking the extended limitation mechanism.

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