JUDICIAL PRONOUNCEMENTS

1. **GST Portal Cannot Impose restriction beyond the Statute; Inter-State ITC Transfer on NCLT-Approved Amalgamation Upheld [Emerson Process Management (India) Pvt. Ltd. v. Union of India & Ors. - Gujarat High Court - R/Special Civil Application No. 7006 of 2024]**

Background

The Petitioner, Emerson Process Management (India) Pvt. Ltd., a manufacturer of safety valves and components registered under GST in multiple states, amalgamated M/s. Pentair Valves and Controls India Pvt. Ltd. pursuant to a scheme of amalgamation approved by the NCLT vide order dated 14.11.2019. Under the scheme, all assets and liabilities of the transferor company stood transferred to the petitioner. The unutilized ITC balance lying in the books of the transferor company was also required to be transferred to the petitioner. When the petitioner attempted to file Form GST ITC-02 on the GST portal to effectuate this transfer, the portal threw an error message stating: "Transferee and Transferor should be of the same State/U.T." Despite multiple follow-ups and reminder letters to department, no resolution was provided by the department, compelling the petitioner to approach the Gujarat High Court.

Issue Involved

Whether the transfer of unutilized ITC from a transferor company to a transferee company, pursuant to an NCLT-approved scheme of amalgamation, can be denied on the ground that the two entities are registered in different States/ Union Territories?

Contentions of the Respondent

The Revenue contended that under the prevailing GST framework, ITC transfer in cases of amalgamation or merger is restricted to entities within the same State, and that cross-state transfer of ITC is impermissible. It was further argued that permitting inter-State ITC transfer would introduce audit challenges and increase the risk of tax evasion and fraud, thereby compromising the integrity of the GST system. Reliance was placed on Circular No. 133/03/2020-GST dated 23.03.2020 on apportionment of ITC in business reorganisations. The Revenue also sought to distinguish the Bombay High Court ruling in Umicore Autocat India (P) Ltd. v. Union of India and pointed out that the said judgment is pending challenge before the Supreme Court by way of SLP (Civil) Diary No. 67126 of 2025, wherein notices have been issued.

Court's Observations

The Court examine that neither Section 18(3) of the CGST Act nor Rule 41 of the CGST Rules contains any express prohibition or restriction on the transfer of ITC where the transferor and transferee are located in different States. The department cannot, through a portal restriction, introduce a condition absent from the statute.

The Court concurred with the reasoning of the Bombay High Court in Umicore Autocat India (P) Ltd. and found no convincing reason to take a contrary view. It reaffirmed that the legislative intent behind ITC was to provide a continuous chain of set-off and eliminate the cascading burden of taxes, and that CGST credit — being a Central levy — does not cause any financial loss to the Union even when utilised across State lines.

The Court also noted that the ITC balance had already been manually transferred in the books of accounts of the petitioner, making the portal restriction contrary to the very scheme approved by the NCLT.

Since the petitioner has restricted his transfer of ITC to the CGST only, the transfer of ITC relating to the GST enactments are not touched upon by us also since before the Bombay High Court, the petitioner therein had given up the claim for unutilized ITC.

Order

The Court held that the departmental endorsement on Form GST ITC-02 denying inter-State ITC transfer is de hors the statutory scheme. The Court further directed that until a proper amendment or mechanism is incorporated in the GSTN portal for uploading Form ITC-02 in such cases, the department shall accept manually filed ITC-02 forms and process the same within six weeks from the date of receipt of the Court's order.

2. **Same-Month Rule Under Rule 39(1)(a) Cannot Mandate Distribution Merely on Invoice Issuance [Reliance Jio Infocomm Ltd. v. Union of India - High Court of Judicature at Madras - W.P. Nos. 27038 & 28371 of 2025]**

Background

The Petitioner, Reliance Jio Infocomm Ltd., a telecom company with GST registrations across States/UTs, was also registered as an Input Service Distributor (ISD) for distributing common input service among its branch offices.

Before 01.04.2025, Section 20 of the CGST Act did not empower the Government to prescribe a time limit for ISD credit distribution. Such power was introduced only w.e.f. 01.04.2025 by amendment to Section 20(2).

Show Cause Notices were issued for FY 2018-19 to 2023-24, alleging contravention of Rule 39(1)(a) on the ground that ITC was not distributed in the same month as receipt of the underlying input service invoice.

Issue Involved

whether the statutory mandate engrafted in Rule 39(1)(a) of the CGST Rules is ultra vires the enabling Act and whether the legal requirement of distribution of credit by the distributor in the same month of receipt of invoice is manifestly arbitrary and violative of Article 14 of the Constitution of India.

Whether the SCNs alleging delayed distribution from the date of invoice issuance were legally sustainable.

Contentions of the Respondent

Rule 39(1)(a) was validly framed under Section 164 read with Section 20 of the CGST Act; the same-month requirement is neither impossible nor arbitrary and serves the legitimate purpose of preventing revenue leakage.

The amendment to Section 20(2) w.e.f. 01.04.2025 is merely clarificatory, making explicit what was always implicit in the rule-making power, and validates the pre-existing Rule 39(1)(a).

ISD distribution is merely an internal accounting adjustment — a book entry — and is distinct from actual availment of ITC under Section 16. Conditions under Section 16(2) are relevant only when the recipient branch avails the credit, not when the ISD distributes it.

Section 16(4) has no connection with the ISD's obligation to distribute credit and the petitioner's attempt to conflate the two must be rejected.

The SCN is based on detailed audit findings revealing systematic contraventions and lack of cooperation during audit proceedings.

Court's Observations

The Court observed that the argument that Section 20(2) of the CGST Act requires the ISD to distribute credit in the same month of receipt of invoice, at first blush appears to be attractive; however, on a deeper examination, such an interpretation would lead to a situation where the ISD, whether or not entitled to avail ITC under Section 16 of the CGST Act, would be required to distribute credit as per the invoice alone, which cannot be the legislative intent.

Adverting to the scheme of the CGST Act, the Court noted that there is no discernible guiding principle or rationale as to what purpose would be served in providing for distribution without fulfilment of conditions for taking ITC under Section 16; significantly, had such been the legislative intention, the legislature could well have incorporated an express provision to that effect, however, it has not chosen to do so.

On the language of Section 20, the Court found that the said provision does not speak of distribution of "invoice" but of "credit"; merely because the expression employed is distribution of credit upon receipt of "invoice", it cannot be taken to mean that the legislative intention is to mandate distribution of credit indicated in the invoice even before the registered person becomes entitled to claim ITC under the Act.

Applying the principle of harmonious construction, the Court concluded that the expression "credit available for distribution" in Rule 39(1)(a) of the CGST Rules is required to be interpreted in consonance with Sections 16 and 20 of the CGST Act to mean credit that has become available in accordance with law, i.e., upon fulfilment of mandatory conditions prescribed under Section 16(2); the stage of distribution, therefore, arrives only upon such fulfilment and not otherwise.

Order

The Court held that Rule 39(1)(a) of the CGST Rules is not ultra vires the enabling Act and sustained the same, construing the expression "ITC available for distribution in a month" to mean ITC available upon fulfilment of conditions under Section 16(2).

Consequently, it was held that the distribution requirement under Rule 39(1)(a) shall mean distribution in the month in which the registered person becomes entitled to ITC under Section 16(2), and not in the month of invoice issuance.

The Court further directed that the show cause notices, to the extent they allege contravention on account of delayed distribution, shall be adjudicated afresh by the concerned authority in light of the interpretation laid down herein.

Accordingly, the writ petitions were allowed to the extent stated.

3. Affiliation Fees Collected by Statutory University Not Liable to GST — Proper Officer Lacked Jurisdiction to Invoke Section 74 [University of Mumbai v. Union of India & Ors. — High Court of Judicature at Bombay — WP No. 4389 of 2025]

Background

The Petitioner, University of Mumbai, a statutory university constituted under the Maharashtra Public Universities Act, 2016, was issued a show cause notice under Section 74 of the CGST Act proposing to demand GST on affiliation fees collected from colleges for the period FY 2017-18 to 2022-23. The adjudicating authority confirmed the GST demand of Rs. 16,90,05,337/- along with equivalent penalty. The rectification application filed by the Petitioner was also rejected. The Petitioner challenged the order-in-original, the rectification order and the circulars No. 151/07/2021-GST dated 17/06/2021 issued by CBIC before the High Court.

Issue Involved

Whether the collection of affiliation fees by the petitioner, which is a statutory University, would attract levy of the GST?

Whether the proper officer had jurisdiction to issue show cause notice and pass the order-in-original under Section 74 demanding GST on affiliation fees?

Contentions of the Respondent

The activities of the petitioner are clearly in the nature of supply, which includes all forms of services made for consideration; the term "business" under Section 2(17) is of wide amplitude covering activities irrespective of profit motive, and systematic collection of fees for affiliation constitutes supply attracting levy under Section 9.

The exemption notification dated 28 June 2017 is applicable to educational institutions and not to the University itself; the decision of Goa University is distinguishable on facts and does not lay down a universal proposition; taxability under GST is activity-specific and must be independently examined.

Court's Observations

The Court observed that on a plain reading of Section 7(1)(a), the expression "supply" contemplates all forms of supply such as sale, transfer, barter, exchange, licence, rental, lease or disposal made for a consideration in the course or furtherance of business. The words "furtherance of business" cannot be read in isolation but must be read in the context of the preceding contents of clause (a). None of those contents would imply inclusion of statutory activities of granting affiliation or collection of affiliation fees therefor.

Adverting to the scheme of the Maharashtra Public Universities Act, 2016, the Court noted that all activities under Chapter X relating to affiliation are within the statutory framework and not for any profit or per se any service being provided under any business as the law would envisage; the considerations of commerce are alien to the object and purpose of a statutory university founded under law. (Para 20)

On the definition of "business" under Section 2(17)(a), the

Court found that applying the rule of ejusdem generis, the said provision contemplates activities of commercial or pecuniary character; it is difficult to accept that the activities of the University, which are singularly and purely intended to further the object of the statute, can at all be categorized as trade, commerce, manufacture, profession, vocation, adventure or wager.

The Court further observed that to regard the petitioner-university as undertaking "business" in collecting affiliation fees would amount to doing violence to the purpose and intention of the legislation and would be a gross absurdity; once the activity itself is not a "supply" and not in the course or furtherance of business, Section 9 being the charging provision would be inapplicable, and consequently the proper officer lacked jurisdiction to invoke Section 74.

Additionally, the Court observed that even assuming affiliation fees were to attract GST, the exemption notification covering services under heading 9992 or heading 9963 relating to education would also extend to the University; affiliation forms part of the educational framework through which colleges admit students, conduct courses and lead to conferment of degrees, and such services cannot be read so narrowly as to exclude the University.

Order

The Court held that the collection of affiliation fees by the statutory University in discharge of its statutory functions does not constitute "supply" under Section 7 of the CGST Act and Section 9 being the charging provision is consequently inapplicable; the proper officer therefore lacked jurisdiction to issue the show cause notice and pass the order-in-original under Section 74.

The Court clarified that the challenge to the circulars was not adjudicated; however, it was observed that no circular which is not conforming to the substantive provisions of law can stand and be applied.

The writ petition was accordingly allowed in terms of prayer clauses (a) quash the order in original and (b) Rectification Order.

4. **Omission of Rule 96(10) Without Saving Clause — All Pending Proceedings Stand Lapsed — SCNs and Orders Quashed [Rohan Dyes and Intermediates Ltd. v. Union of India — High Court of Gujarat at Ahmedabad — R/Special Civil Application Nos. 8472 & 8790 of 2025]**

Background

The Petitioner, a member of Gujarat Dyestuff Manufacturers' Association, had claimed IGST refund on export of goods. On the basis of specific intelligence received from Deputy Commissioner, Customs, Mundra, it was alleged that the Petitioner had availed IGST refund in violation of Rule 96(10) of the CGST Rules. Accordingly, proceedings were initiated, summons were issued, and a show cause notice was issued on 24.08.2023 without considering the reply of the Petitioner. An order was thereafter passed denying the refund claim. The Petitioner challenged the said SCN and order by way of writ petitions before the High Court.

Issue Involved

Whether the omission of Rule 96(10) of the CGST Rules by Notification No. 20/2024 dated 08.10.2024, without any saving clause, would apply to pending proceedings including the impugned show cause notices and orders?

Court's Observations

The Court observed that the issue raised in the present writ petitions was squarely covered by the decision of the coordinate bench of this Court dated 20.11.2025 in J.J. Plastalloy (P.) Ltd. v. Union of India, which had extensively considered the effect of Notification No. 20/2024 dated 08.10.2024 omitting Rule 96(10).

Placing reliance on the coordinate bench decision in Addwrap Packaging Pvt. Ltd., the Court noted that the omission of Rule 96(10) by Notification No. 20/2024 would apply prospectively but also to all pending proceedings and cases where final adjudication had not taken place as on 08.10.2024; accordingly, no further proceedings were required to be carried forward and the petitioners would be entitled to maintain refund claims of IGST paid on export of goods.

Adverting to the decision of the Bombay High Court in Hikal Ltd. v. Union of India, the Court noted that under common law, the repeal or omission of a statute without a saving clause obliterates the repealed provision completely as if it had never existed; all pending proceedings including undisposed show cause notices, orders not yet finalised due to appeals or challenges before the Court, not constituting "transactions past and closed", would not be preserved and would stand lapsed. (Para 7)

The Court further observed that since the Appellate Tribunal is not yet constituted, the remedy of filing an appeal is not available to the petitioners; it cannot therefore be said that the orders-in-appeal have become final, and hence such orders will not constitute "transactions past and closed" and will stand lapsed in view of the omission of Rule 96(10).

Order

The Court held that the omission of Rule 96(10) by Notification No. 20/2024 dated 08.10.2024, without any saving clause and without aid from Section 6 of the General Clauses Act, would apply to all pending proceedings/cases/petitions; the impugned orders dated 10.10.2024 and 24.03.2025 were accordingly quashed and set aside.

The Court further directed that the Petitioners are entitled to refund; all pending applications for refund shall be processed and, in case of rejection, the same shall stand restored and be further processed within a period of twelve weeks from the date of receipt of the order. Rule made absolute. No order as to costs.

5. **Penalty Not Specified in Statutory Form GST DRC-01 Cannot Be Confirmed in Adjudication Order — Procedural Defect Vitiates Demand [M/s Comfort Battery v. Additional Commissioner, Central Goods and Services Tax — High Court of Judicature at Allahabad — Writ Tax No. 2097 of 2026]**

Background

The Petitioner was issued a show cause notice dated 24.06.2025 along with Form GST DRC-01 dated 26.06.2025 under Section 74 of the CGST Act for the period FY 2018-19 to 2022-23 alleging wrongful availment of ITC of Rs. 4,36,18,072/-. However, in the column of Form GST DRC-01 meant for specification of proposed penalty, the amount was described as "0". The adjudicating authority thereafter passed an order dated 15.12.2025 confirming penalty equivalent to Rs. 4,36,18,072/-, though no such amount was specified in the statutory Form DRC-01. The Petitioner challenged both the show cause notice and the adjudication order before the High Court. (Paras 2, 3, 4)

Issue Involved

Whether a penalty demand can be confirmed in an adjudication order when the proposed penalty was not specified in the statutory Form GST DRC-01 but was mentioned only in the annexed detailed show cause notice for which no statutory form is prescribed.

Whether the absence of clear specification of proposed penalty in Form DRC-01 constitutes a procedural defect vitiating the adjudication order.

Contentions of the Respondent

Though no amount of penalty was mentioned in Form DRC-01, there was a clear recital of the demand of penalty in Clause 16(3) of the detailed show cause notice dated 24.06.2025, wherein it was clearly stated that penalty equivalent to the ITC disallowed and demanded should not be imposed under Section 74 of the CGST Act.

Court's Observations

The Court observed that Rule 142 of the CGST Rules prescribes Form GST DRC-01 as the statutory form which must accompany a notice issued under Section 74, and the said form itself contemplates clear disclosure of the amounts proposed towards tax, interest, penalty and other dues in a tabular format; it would be dangerous to allow the Revenue to pursue confirmation of demand solely on the strength of disclosures made in an annexure to the statutory form, for which no form is prescribed. (Paras 13, 14)

Adverting to Section 74(8) of the CGST Act, the Court noted that the noticee has a statutory right to conclude the proceedings by paying the tax along with interest and a penalty equivalent to twenty-five percent of the proposed demand within thirty days of issuance of the notice; to avail of this statutory right, the amount of tax, penalty and other dues must be clearly and unambiguously specified in Form DRC-01, failing which the noticee is effectively deprived of this right.

The Court further observed that there is no warrant to allow the Revenue any margin to not specify the amount of tax or penalty in the statutory Form DRC-01, or to seek confirmation thereof on the strength of disclosures made otherwise in the annexure to the statutory form; the demand may either be confirmed by following the statutory prescription or not at all.

Order

The Court held that since the amount of penalty confirmed in the adjudication order was not specified in the statutory Form DRC-01, a procedural error had crept into the proceedings which did not permit the demand to be confirmed in the face of such ambiguity; the impugned adjudication order dated 15.12.2025 was accordingly set aside.

The adjudicating authority was permitted to issue a rectified show cause notice within one week, specifying the exact demand of tax, penalty and interest; the Petitioner was granted two weeks to file a final reply, followed by a personal hearing with fifteen days advance notice, and the proceedings were directed to be concluded by a reasoned order on or before 30.06.2026.

6. Erroneous claim and distribution of Input Tax Credit – Ignoring material evidence on record, including audit report – Fresh adjudication directed [Abbott Healthcare Pvt. Ltd. Versus Union of India & Ors. - Himachal Pradesh High Court - CWP No. 2696 of 2024]

Background

The petitioner, Abbott Healthcare Pvt. Ltd., challenged an adjudication order passed by the Additional Commissioner, CGST, wherein a substantial demand was raised on account of alleged wrongful availment and distribution of Input Tax Credit (ITC) through its Input Service Distributor (ISD) mechanism for the financial years 2018–19 and 2019–20. The department alleged that ITC amounting to ₹17.67 crore had been wrongly distributed and was recoverable under the provisions of the CGST Act read with IGST Act. The petitioner, however, relied heavily on an audit conducted under Section 65(6) of the CGST Act, which reportedly gave it a clean chit regarding the disputed ITC. Despite this, the adjudicating authority proceeded to confirm the demand without adequately addressing or evaluating the audit report. Aggrieved by this omission and the adverse findings, the petitioner approached the High Court seeking relief against the impugned order.

Issue Involved

The central issue before the Court was whether the adjudication order could be sustained when a crucial piece of evidence—namely the audit report under Section 65(6) that allegedly exonerated the petitioner—was not considered by the adjudicating authority. The question essentially revolved around the principles of proper adjudication, application of mind, and whether failure to consider material evidence vitiates the order.

Contentions of the Respondent

The respondents (Revenue authorities) defended the adjudication order and sought time before the Court to respond to the petitioner's reliance on the audit report. However, notably, they failed to place any material on record to rebut or contradict the findings of the audit report that had been relied upon by the petitioner. Their stance remained largely procedural, without substantively addressing the evidentiary value of the audit findings.

Court's Observation

The High Court observed that the audit report under Section 65(6), which allegedly gave a clean chit to the petitioner, constituted a vital piece of evidence that ought to have been considered by the adjudicating authority. The Court noted that the respondents had not produced any material to counter the petitioner's reliance on the audit report. Therefore, the failure to consider such relevant material indicated non-application of mind and rendered the adjudication process defective. Importantly, the Court clarified that it was not expressing any opinion on the merits of the case, including the correctness of the ITC claim or the legality of the show cause notice. Instead, its interference was limited to the procedural lapse of non-consideration of relevant evidence, which is a violation of principles of natural justice and fair adjudication.

Order

The Court set aside the impugned adjudication order dated 29.12.2023 and remanded the matter back to the Additional Commissioner for fresh adjudication. It directed that the authority must consider all submissions and material on record, including the audit report, and pass a reasoned order. The Court further directed that the exercise be completed expeditiously, preferably within two months. All issues on merits were left open for fresh consideration.

7. **Grant of bail in economic offences – Presence of prima facie case – Seriousness of offence weighed [Hansraj Gurjar vs Union of India - Rajasthan High Court - 2026: RJ - JP:16356]**

Background

This case involved a bail application filed by the petitioner, Hansraj Gurjar, who had been arrested in connection with alleged large-scale GST fraud involving fake invoicing, bogus e-way bills, and fraudulent ITC claims. The Directorate General of GST Intelligence (DGGI) accused the petitioner of operating multiple fake firms and being part of a syndicate engaged in tax evasion exceeding ₹48 crore. The petitioner had been in judicial custody for a significant period and sought bail under the provisions of the Bharatiya Nagarik Suraksha Sanhita (BNSS), particularly invoking Section 480(6), arguing delay in trial and prolonged detention.

Issue Involved

The primary issue was whether the petitioner was entitled to bail considering the nature of the offence, the period of custody, and the applicability of Section 480(6) BNSS. Another important issue was whether delay in trial automatically entitles an accused to bail in economic offences.

Contentions of the Respondent

The respondent authorities strongly opposed the bail application, arguing that the petitioner was actively involved in a well-organized GST fraud syndicate. They contended that the petitioner played a key role in creating fake firms, issuing bogus invoices, and facilitating wrongful ITC claims. The magnitude of tax evasion was substantial, and the offence was cognizable and non-bailable. The respondents further argued that economic offences are grave in nature and affect the economy, and therefore require a stricter approach in bail matters.

Court's Observation

The Court observed that the material on record, including documentary evidence and statements recorded under Section 70 of the CGST Act, prima facie established the petitioner's involvement in the alleged fraud. It emphasized that economic offences constitute a separate class of offences requiring stricter judicial scrutiny, as held by the Supreme Court in Y.S. Jagan Mohan Reddy case. The Court also clarified that Section 480(6) BNSS does not create an automatic right to bail but only confers discretion upon the Court. It further held that mere length of custody is not a decisive factor in serious economic offences, especially when the allegations involve deep-rooted conspiracies and significant loss to the public exchequer.

Order

The High Court dismissed the bail application, holding that the petitioner was not entitled to bail in view of the seriousness of the offence, the magnitude of tax evasion, and the prima facie evidence on record. It concluded that continued detention was justified at this stage.

8. **Parallel proceedings under GST – determination of identical subject matter – dispute relating to wrongful input tax credit – breach of principles of natural justice – availability of alternate remedy – bar under Section 6(2)(b) against Section 74 proceedings where Section 73 already invoked for another period [M/s Ramada Engineering Industry vs Additional Commissioner (Adjudication) - Delhi High Court -W. P. (C) 1036/2026]**

Background

The present case arose out of a writ petition filed by M/s Ramada Engineering Industry challenging an adjudication order passed under Section 74 of the CGST Act for the Financial Year 2018–2019. The petitioner was a registered partnership firm engaged in the supply of scientific products and was duly compliant under the GST regime. Prior to the impugned proceedings, the department had already initiated action against the petitioner under Section 73 of the SGST Act for the Financial Year 2019–2020, alleging discrepancies in the declaration of tax liability in its annual returns and wrongful availment of Input Tax Credit (ITC). That proceeding culminated in confirmation of demand through an Order-in-Original. Subsequently, the department issued another show cause notice under Section 74 of the CGST Act for Financial Year 2018–2019, alleging wrongful availment of ITC based on invoices issued by a non-existent entity, namely M/s Sawariya Traders. The demand raised in this proceeding was also confirmed through an adjudication order dated 30th September 2025. Aggrieved by this second proceeding, the petitioner approached the High Court contending that such parallel proceedings were barred under Section 6(2)(b) of the CGST Act and also alleging violation of principles of natural justice.

Issue Involved

The principal issue before the Court was whether the proceedings initiated under Section 74 of the CGST Act for Financial Year 2018–2019 were barred by virtue of Section 6(2)(b), given that earlier proceedings under Section 73 had already been initiated for Financial Year 2019–2020. The Court was required to examine the scope and applicability of the "same subject matter" test under Section 6(2)(b). A secondary issue was whether the adjudication order suffered from violation of principles of natural justice, particularly whether the petitioner's reply had been duly considered and whether proper opportunity of hearing had been granted.

Contentions of the Respondent

The respondent authorities contended that the proceedings under Section 74 were valid and not barred under Section 6(2)(b), as the two proceedings pertained to different financial years and different factual matrices. It was argued that the earlier proceedings under Section 73 related to discrepancies in tax declarations without any allegation of fraud or suppression, whereas the later proceedings under Section 74 involved serious allegations of fraudulent ITC claims through goods-less invoices issued by a non-existent entity. The respondents further submitted that the impugned order had been passed after due consideration of the petitioner's reply, and therefore, there was no violation of principles of natural justice. It was also contended that the petitioner had an effective alternative remedy by way of appeal under Section 107 of the CGST Act, and hence, the writ petition was not maintainable.

Court's Observation

The Delhi High Court undertook a detailed analysis of Section 6(2)(b) of the CGST Act and clarified that the bar on parallel proceedings is not absolute but is attracted only when both proceedings relate to the "same subject matter." The Court explained that for the bar to apply, the proceedings must involve the same tax liability, arise from the same set of facts, relate to the same contravention, and pertain to the same period. Applying this test, the Court found that there was no overlap between the two proceedings in the present case. The proceedings under Section 73 pertained to Financial Year 2019–2020 and were based on discrepancies in tax declarations, whereas the proceedings under Section 74 related to Financial Year 2018–2019 and involved allegations of fraudulent ITC claims based on fictitious transactions. The Court emphasized that proceedings under Section 73 and Section 74 operate in distinct fields, the former dealing with non-fraud cases and the latter addressing fraud, suppression, or willful misstatement.

On the issue of natural justice, the Court observed that the impugned order clearly reflected consideration of the petitioner's reply and submissions. Therefore, the contention regarding non-consideration of reply was rejected. The Court also noted that the petitioner had an efficacious alternative remedy of appeal under Section 107, which further weighed against interference under writ jurisdiction.

Order

Based on the above findings, the High Court dismissed the writ petition. It held that the proceedings under Section 74 for Financial Year 2018–2019 were not barred by the earlier proceedings under Section 73 for Financial Year 2019–2020, as the two did not involve the same subject matter. The Court further held that there was no violation of principles of natural justice and that the petitioner should avail the statutory appellate remedy. However, it granted relief to the extent of directing that the period spent in pursuing the writ petition would be excluded while computing the limitation period for filing the appeal.

9. **Non-speaking cancellation of GST registration – rejection of revocation request – failure to provide reasons or grant personal hearing – breach of natural justice [Skva Rubber Solution Private Limited Versus Union of India - Bombay High Court - Writ Petition No. 17755 OF 2024]**

Background

The present writ petition was filed by Skva Rubber Solution Pvt. Ltd., a company engaged in the business of trading crumb rubber granulate, challenging the cancellation of its GST registration and the subsequent rejection of its application for revocation of such cancellation. The petitioner had obtained GST registration in Maharashtra in July 2018 and was initially compliant in filing returns. However, due to financial difficulties during the financial year 2018–19, the petitioner failed to discharge its tax liabilities and file returns within the prescribed timelines, which ultimately led to suspension of its business operations from February 2020 onwards. Thereafter, a show cause notice dated 31st December 2020 was issued proposing cancellation of registration. Subsequently, the registration was cancelled by an order dated 2nd February 2021 with retrospective effect from 1st May 2019. The petitioner contended that this cancellation was effected without granting any opportunity of personal hearing.

In order to regularize its compliance and avail the benefit of the amnesty scheme, the petitioner filed pending returns and later applied for revocation of cancellation in June 2023. Another show cause notice was issued regarding the revocation application, to which the petitioner submitted a reply along with supporting documents. Despite this, the application for revocation was rejected by order dated 30th August 2023 without proper consideration of submissions. The appeal filed by the petitioner was also rejected on the ground of limitation without examining the merits. Aggrieved by the entire chain of actions, the petitioner approached the Bombay High Court under Article 226.

Issue Involved

The key issue before the Court was whether the cancellation of GST registration and rejection of the revocation application were valid in law when passed without granting an opportunity of personal hearing and without recording proper reasons. The Court also examined whether such non-speaking orders and procedural lapses amounted to a violation of the principles of natural justice. Additionally, the Court considered whether dismissal of appeal solely on limitation, without examining the legality of the foundational order, was justified.

Contentions of the Respondent

The respondent authorities contended that the cancellation of GST registration was justified on valid grounds, namely that the petitioner had failed to file returns within the prescribed time and had not discharged its tax liabilities. It was also argued that the petitioner's place of business was found to be non-operational, thereby warranting cancellation of registration. The respondents defended the orders passed by the adjudicating authority and opposed the relief sought by the petitioner. They maintained that due procedure had been followed and that the petitioner's non-compliance justified the action taken.

Court's Observation

The Bombay High Court, after examining the facts and records, observed that the impugned show cause notices and consequential orders did not reflect due consideration of the petitioner's submissions. The Court noted that both the cancellation order and the order rejecting the revocation application were non-speaking in nature, as they failed to record any reasons or address the petitioner's contentions. It emphasized that cancellation of GST registration has serious civil consequences, as it effectively disables a taxpayer from carrying on business, and therefore strict adherence to principles of natural justice is mandatory.

The Court further observed that no opportunity of personal hearing had been granted to the petitioner before passing the cancellation order, which was a clear violation of procedural fairness. It also criticized the appellate authority for adopting a hyper-technical approach by rejecting the appeal solely on the ground of limitation without examining the legality of the underlying order, particularly when the foundational order itself appeared to be void and arbitrary. The Court reiterated that non-speaking orders passed without affording an opportunity of hearing are liable to be quashed, as consistently held in various precedents. It stressed that authorities must pass reasoned orders demonstrating application of mind and proper consideration of submissions.

Order

In light of the above findings, the Bombay High Court allowed the writ petition and set aside the impugned show cause notices as well as the consequential orders cancelling the GST registration and rejecting the revocation application. The Court remanded the matter back to the original adjudicating authority with directions to decide the case afresh in accordance with law. It specifically directed that the petitioner be given an opportunity to submit its contentions and be afforded a personal hearing. The authority was further instructed to pass a reasoned and speaking order within a stipulated time frame. The Court also clarified that all contentions of both parties were kept open and that the department was at liberty to initiate fresh proceedings in accordance with law.

10. **Impugned assessment orders upheld – appeal rejected as time-barred – delay exceeding condonable limit – requirement of pre-deposit – mismatch-based GST liability – remand for de novo adjudication on compliance [Tvl. J.V.N Enterprises & vs Assistant Commissioner - Madras High Court - WP Nos.13180 of 2026]**

Background

The present batch of writ petitions was filed by Tvl. J.V.N Enterprises and connected petitioners challenging the impugned GST assessment orders passed for different financial years, primarily arising out of mismatch-related demands. The disputes related to inconsistencies between returns filed under various GST forms such as GSTR-3B, GSTR-9, and reconciliation statements in GSTR-9C, as well as mismatches with Form 26AS under the Income Tax Act. The department had issued show cause notices (DRC-01) for the relevant tax periods, followed by adjudication orders confirming the demands. Aggrieved by these orders, the petitioners had filed statutory appeals under Section 107 of the CGST Act after depositing the mandatory pre-deposit of 10% of the disputed tax. However, the appeals were dismissed by the appellate authority on the ground that they were filed beyond the prescribed limitation period, including the condonable period. Subsequently, the petitioners approached the Madras High Court under Article 226 seeking relief against both the assessment orders and the appellate orders rejecting their appeals. During the hearing, the petitioners expressed willingness to deposit the balance disputed tax and sought an opportunity for fresh adjudication on merits.

Issue Involved

The primary issue before the Court was whether the dismissal of statutory appeals on the ground of limitation, when filed beyond the condonable period, was legally sustainable. The Court also had to consider whether, despite such dismissal, it could grant relief by directing fresh adjudication on merits subject to certain conditions. Another issue was whether the assessment orders arising from mismatch-based demands warranted interference at the writ stage, particularly when statutory remedies had been exhausted or were no longer available due to limitation.

Contentions of the Respondent

The respondent authorities contended that the dismissal of appeals by the appellate authority was strictly in accordance with the statutory provisions governing limitation under Section 107 of the CGST Act. It was argued that once the appeal is filed beyond the condonable period, the appellate authority has no power to condone the delay, and therefore, the rejection of appeals was legally justified. The respondents further submitted that the impugned assessment orders were based on valid grounds, namely mismatches in returns and discrepancies identified through departmental scrutiny, and that due process had been followed, including issuance of notices and intimations. They also relied on judicial precedents of the Supreme Court to assert that statutory timelines must be strictly adhered to and cannot be relaxed by the High Court in writ jurisdiction.

Court's Observation

The Madras High Court upheld the legal position that the appellate authority was correct in dismissing the appeals on the ground of limitation, as the delay was beyond the condonable period prescribed under the statute. The Court referred to established precedents of the Supreme Court, including cases like Singh Enterprises and Hongo India Pvt. Ltd., to reiterate that statutory limitation provisions are mandatory and cannot be extended beyond the permissible limits. Accordingly, the Court declined to interfere with the appellate orders rejecting the appeals.

However, the Court took a pragmatic and equitable approach while dealing with the substantive dispute. It noted that the assessment orders were based on mismatch-related issues and that the petitioners had expressed willingness to comply with the requirement of depositing the disputed tax. Considering this, the Court exercised its writ jurisdiction to provide an opportunity for fresh adjudication on merits. It directed that the impugned assessment orders be treated as addenda to the show cause notices and that the petitioners be allowed to file detailed replies along with supporting documents. The Court emphasized that such relief was conditional and intended to balance the interests of revenue with the need to provide a fair opportunity to the taxpayers.

Order

The Madras High Court disposed of the writ petitions by sustaining the appellate orders dismissing the appeals on limitation, thereby affirming the strict application of statutory timelines. However, it granted conditional relief by remanding the matter to the original adjudicating authority for fresh adjudication on merits. The Court directed the petitioners to deposit the balance disputed tax (generally 90% or as applicable in specific cases) within a stipulated period and to submit detailed replies to the show cause notices along with supporting evidence. Upon such compliance, the adjudicating authority was directed to pass fresh reasoned orders within a specified timeframe. The Court also ordered that any bank attachment would be lifted upon compliance with the deposit conditions. It further clarified that failure to comply with these conditions would result in revival of recovery proceedings.