JUDICIAL PRONOUNCEMENTS

1. Supreme Court Upholds Constitutional Validity of Section 16(2)(c) of the CGST Act. [Bhandari Scrap Traders Versus Union of India - Supreme Court of India - Appeal (C) No. 23931 of 2026 with SLP (C) Nos. 24088 & 24103 of 2026, decided on 24.07.2026]

Background

The dispute arose after the tax authorities denied Input Tax Credit (ITC) to M/s. Bhandari Scrap Traders on the ground that the suppliers had failed to deposit the GST collected from them with the Government. Although the recipients claimed that all other statutory requirements for availing ITC had been fulfilled, the authorities invoked Section 16(2)(c) of the CGST Act, 2017, which makes ITC conditional upon actual payment of tax by the supplier.

The Gujarat High Court, in Maruti Enterprise v. Union of India & Ors., upheld the constitutional validity of Section 16(2)(c) and declined to dilute or read down the provision. Challenging this decision, the petitioners approached the Supreme Court by filing Special Leave Petitions.

Issue Involved

Whether Section 16(2)(c) of the CGST Act, 2017, which makes availability of ITC dependent upon the supplier depositing the tax with the Government, violates Articles 14, 19(1)(g), 265 or 300A of the Constitution of India, or whether the provision should be interpreted in a manner that protects bona fide purchasers from denial of ITC due to the supplier's default.

Contentions of the Respondent

The Revenue argued that:

- Input Tax Credit is a statutory concession & not a vested or constitutional rights. It can be claimed only after satisfying all conditions prescribed under the CGST Act.
- Section 16(2)(c) must be interpreted together with Sections 41, 53 and 155 of the CGST Act and Rule 37A of the CGST Rules, rather than in isolation.
- The statutory framework already provides relief by allowing a recipient to re-avail ITC once the supplier subsequently deposits the tax with the Government.
- The decisions rendered under the Delhi VAT Act cannot be applied to the GST regime because the legislative framework and mechanism governing ITC under the CGST Act are materially different.

Court Observations

The Supreme Court observed that:

- The ITC mechanism under the CGST Act differs significantly from that under the Delhi VAT Act. Therefore, judgments delivered under the Delhi VAT legislation could not be treated as governing precedents for interpreting Section 16(2)(c) of the CGST Act.
- The Gujarat High Court had undertaken a detailed analysis of the GST framework, unlike the approach adopted in the Tripura High Court decision relied upon by the petitioners.
- The statutory scheme, particularly Sections 41, 73 and 74 of the CGST Act, provides a mechanism whereby ITC reversed on account of supplier default may be reclaimed once the supplier discharges the tax liability.
- In view of the comprehensive statutory safeguards, there was no justification for striking down Section 16(2)(c) or giving it a restricted interpretation.

Order

The Supreme Court upheld the judgment of the Gujarat High Court in Maruti Enterprise v. Union of India & Ors. and confirmed the constitutional validity of Section 16(2)(c) of the CGST Act, 2017. The Court concluded that denial of ITC where the supplier has not deposited the tax is consistent with the statutory scheme and that the provision does not infringe the constitutional rights relied upon by the petitioners. Consequently, the Special Leave Petitions filed by M/s. Bhandari Scrap Traders were dismissed.

2. Karnataka High Court Restores Time-Barred GST Appeal in Exercise of Writ Jurisdiction [Sepl Infra Private Limited Versus Joint Commissioner of Commercial Taxes (Appeals) - High Court of Karnataka - Writ Petition No. 104931 of 2026, decided on 09.07.2026]

Background

- The dispute originated from proceedings initiated under Section 73 of the CGST Act for FY 2020-21. Following issuance of a show cause notice, the adjudicating authority passed an order confirming tax, interest and penalty against the petitioner. The petitioner asserted that although the order had been uploaded on the GST portal, it was placed under the 'Additional Notices and Orders' tab instead of the tab 'View Notice & Order tab' which is normally accessed by taxpayers for orders. Department contented that the order has also been communicated through registered post, however the court noted that complete adjudication order was not sent. the petitioner claimed that it remained unaware of the adjudication order for several months and Immediately upon becoming aware, the petitioner sought rectification. After rejection of the rectification request, it preferred an appeal under Section 107 of the CGST Act and deposited the mandatory pre-deposit. The appellate authority, however, declined to examine the merits because the appeal had been filed beyond the period that it was empowered to condone. During pendency of these proceedings, the department also issued a garnishee notice to recover the disputed dues. Challenging the dismissal of the appeal, the original adjudication order and the recovery action, the petitioner invoked the writ jurisdiction of the High Court.

Issue Involved

- The principal question before the Court was whether the High Court, while exercising jurisdiction under Article 226 of the Constitution, could intervene where the statutory appellate authority lacked power to condone delay beyond the prescribed period u/s 107 of CGST Act in exceptional circumstances. The Court also examined whether the circumstances surrounding communication of the adjudication order justified restoration of the appellate remedy. A further issue concerned the validity of continuing coercive recovery proceedings through a garnishee notice when the taxpayer sought restoration of its appeal and had already deposited the prescribed amount.

Contentions of the Respondent

- The revenue authorities argued that the adjudication order had been communicated to the petitioner through the prescribed mode, including registered post, and therefore the petitioner could not contend that it had no knowledge of the order. According to the respondents, the appellate authority functions strictly within the framework of Section 107 of the CGST Act and has no jurisdiction to condone delay beyond the statutory ceiling. Consequently, dismissal of the appeal as time-barred was legally correct. The respondents also maintained that the recovery proceedings were initiated in accordance with law after the demand became enforceable.

Court Observations

- The High Court distinguished the limited statutory powers of the appellate authority from the broader constitutional powers of the High Court. It observed that the right of appeal is a valuable statutory safeguard and should ordinarily be preserved where exceptional circumstances prevented timely filing. The Court considered the peculiar facts, including the placement of the order on an uncommon portal tab, the prompt steps taken by the petitioner after acquiring knowledge of the order, and the fact that the prescribed pre-deposit had already been made. Referring to earlier decisions of various High Courts, the Court reiterated that while an appellate authority cannot travel beyond the limitation imposed by statute, the High Court may exercise writ jurisdiction in exceptional situations to ensure that disputes are decided on merits rather than defeated on technical grounds. The Court also noted that once restoration of the appeal was justified, continuation of coercive recovery would prejudice the taxpayer before adjudication on merits. Therefore, the garnishee proceedings were considered inappropriate in the circumstances. The Court clarified that it was expressing no opinion on the correctness of the tax demand itself and that all issues relating to tax, interest, penalty and input tax credit would remain open before the appellate authority.

Order

- The writ petition was partly allowed. The order dismissing the appeal on limitation was set aside. The delay in filing the appeal was condoned by the High Court in exercise of its extraordinary jurisdiction and the appeal was restored to the file of the appellate authority for disposal on merits. The garnishee notice issued for recovery of the disputed demand was quashed. The petitioner was directed to appear before the appellate authority on the specified date without requirement of any further notice, and the authority was directed to decide the appeal after providing adequate opportunity of hearing. The Court expressly left all questions on the merits of the tax dispute open for independent adjudication by the appellate authority.

3. Transitioned Input Tax Credit Cannot Be Claimed as Refund Under Section 54(3) of the CGST Act [Dilip Babubhai Patel Versus State of Gujarat - High Court of Gujarat - R/Special Civil Application No. 21685 of 2019, decided on 29.06.2026]

Background

- The petitioner, a manufacturer of wooden pallets and boxes, had accumulated input tax credit (ITC) under the Gujarat VAT regime because the applicable VAT on purchases exceeded the VAT payable on sales. On the implementation of the GST regime from 1 July 2017, the petitioner migrated this accumulated VAT credit into the GST system by filing Form GST TRAN-1 under Section 140 of the CGST/GGST Acts. The migrated amount was reflected in the Electronic Credit Ledger (ECL).
- Subsequently, under GST, the petitioner continued to experience an inverted duty structure, resulting in further accumulation of ITC. Accordingly, it filed a refund application under Section 54(3) of the CGST Act, seeking refund of the accumulated unutilised ITC. While a portion of the refund attributable to GST-period ITC was sanctioned, the authorities rejected the component representing the transitional VAT credit on the ground that such credit was barred from refund under the second proviso to Section 142(3) of the Act. Aggrieved by the partial rejection, the petitioner approached the Gujarat High Court seeking refund of the rejected amount and re-credit of the corresponding amount to its Electronic Credit Ledger.

Issue Involved

- The principal questions before the High Court were:

  Whether the transitional VAT credit carried forward u/s 140 & reflected in electronic credit ledger becomes eligible for refund under Section 54(3) of the CGST Act merely because it formed part of the Electronic Credit Ledger.
- Whether the statutory restriction contained in the

second proviso to Section 142(3) prohibited refund of such transitioned credit.

- Whether the department was required to restore the rejected amount to the Electronic Credit Ledger if refund was found to be inadmissible.

Contentions of the Respondent

- The Revenue argued that the transitional provisions contained in Chapter XX of the GST Acts create a distinct statutory framework governing migration from the pre-GST regime to GST. According to the department, Section 140 merely enables eligible taxpayers to carry forward accumulated credit into the GST regime so that it may be utilised towards payment of future GST liabilities. It does not create any right to receive such credit as a cash refund.
- The respondents further submitted that the second proviso to Section 142(3) expressly bars refund of any CENVAT or VAT credit that has already been carried forward under the GST law. Therefore, once the petitioner exercised the option of transitioning its VAT credit through Form GST TRAN-1, it became disentitled to seek refund of the same amount under Section 54(3). According to the Revenue, refund under Section 54(3) is confined only to ITC accumulated under the GST regime due to circumstances specifically recognised by the Act, such as an inverted duty structure or zero-rated supplies, and does not extend to credits originating under the repealed tax laws. The department also relied upon CBEC Circular No. 37/11/2018-GST to support its interpretation that transitioned credit cannot subsequently be claimed as refund.

Court Observations

- The High Court undertook a detailed examination of the statutory provisions governing transitional credit, utilisation of ITC and refund under the GST framework. It observed that the legislative scheme clearly distinguishes between the concepts of utilisation of credit and refund of credit, and these rights cannot be treated as interchangeable.
- The Court noted that Section 140 enables a registered person to preserve accumulated credit earned under the earlier indirect tax regime by carrying it forward into GST. Once such credit is validly transitioned, it becomes available for utilisation towards discharge of GST liability through the Electronic Credit Ledger. However, this transition does not alter the original character or source of the credit so as to automatically qualify it for refund under Section 54(3).
- Interpreting Sections 49, 54, 140 and 142 harmoniously, the Court held that Parliament consciously created two separate mechanisms. A taxpayer may either pursue refund of pre-GST credit under the provisions governing the earlier tax laws or elect to carry that credit into the GST regime for future utilisation. Once the latter course is adopted, the statutory embargo contained in the second proviso to Section 142(3) becomes operative, thereby excluding any subsequent claim for refund of the same transitioned credit under the GST law.
- The Court further observed that Section 54(3) is intended to grant refund only of unutilised input tax credit accumulated under the GST regime in the situations specifically contemplated by the Act. The provision cannot be interpreted to include transitional VAT credit merely because such credit is reflected in the Electronic Credit Ledger. Any contrary interpretation would render the second proviso to Section 142(3) ineffective and defeat the legislative intent behind the transitional provisions.
- The Court also distinguished the earlier Gujarat High Court decisions relied upon by the petitioner, noting that those judgments did not directly consider the effect of the second proviso to Section 142(3). Consequently, those precedents were held to be inapplicable to the facts of the present case. The Court further relied upon CBEC circular no. 37/11/2018-GST, which clarifies that once pre-GST credit has been transitioned into GST, refund of such credit is not permissible.
- With respect to the procedural objection regarding absence of a hearing under Rule 92, the Court observed that remanding the matter would serve no practical purpose because the dispute turned purely on interpretation of law, which had already been comprehensively addressed before the Court. However, regarding Rule 93, the Court accepted the department's statement that the amount representing the rejected refund could be restored to the Electronic Credit Ledger upon the petitioner making the necessary application which shall be examined in accordance with Rule 93 after verification of relevant facts & records

Order

- The High Court partly allowed the writ petition. It upheld the rejection of refund insofar as the claim was related to transitional VAT credit carried forward under Section 140, holding that such credit is not refundable under Section 54(3) because of the express prohibition contained in the second proviso to Section 142(3). At the same time, the Court directed that the amount representing the rejected transitional credit should be re-credited to the petitioner's Electronic Credit Ledger, in accordance with Rule 93 of the GST Rules, enabling the petitioner to utilise the credit for future GST liabilities after following the prescribed procedure.

4. High Court declines to entertain writ petition against Section 74 order, directing the petitioner to avail the statutory appellate remedy [Sodexo India Services Private Limited Versus Union of India - High Court of Delhi - No.- W. P. (C) 9153/2026, decided on 15.07.2026]

Background

The petitioner challenged an Order-in-Original passed under Section 74 of the Central Goods and Services Tax (CGST) Act, 2017, whereby a GST demand of approximately ₹8.75 crore, along with interest and penalty, was confirmed following audit proceedings. The principal dispute related to the taxability of catering services and the sale of pre-packaged food products, which the department treated as a composite supply taxable at 18%.

During the audit and adjudication proceedings, the petitioner participated actively by responding to the Audit Memo, Additional Audit Memo and Show Cause Notice. It also submitted agreements, invoices, reconciliations and other documentary evidence and attended personal hearings before the adjudicating authority. Despite these proceedings, the petitioner approached the Delhi High Court directly under Article 226 of the Constitution instead of filing a statutory appeal under Section 107 of the CGST Act. The writ petition alleged that the adjudication process suffered from procedural deficiencies and violated the principles of natural justice.

Issue Involved

The primary issue before the High Court was whether a writ petition challenging a GST adjudication order is maintainable when an effective statutory appellate remedy is available under Section 107 of the CGST Act.

The Court also considered whether the petitioner had established any exceptional circumstances—such as violation of natural justice or jurisdictional error—that would justify bypassing the statutory appellate mechanism.

Contentions of the Respondent

The respondents raised a preliminary objection regarding the maintainability of the writ petition. They submitted that Section 107 of the CGST Act provides a complete and efficacious appellate remedy empowering the appellate authority to examine both factual and legal issues arising from an adjudication order.

It was further argued that the petitioner had been provided adequate opportunities throughout the proceedings by way of notices, replies and personal hearings. The adjudicating authority had considered the documents placed on record before passing the order. According to the respondents, the petitioner's grievances essentially related to appreciation of evidence and factual findings, which are matters falling within the jurisdiction of the appellate authority and not grounds for invoking the extraordinary writ jurisdiction of the High Court.

Court Observations

The High Court observed that although Article 226 confers wide powers, where a complete and efficacious appellate remedy is provided under Section 107 of the CGST Act, writ jurisdiction is ordinarily exercised with judicial restraint. The appellate authority can examine questions of fact and law, re-appreciate evidence and assess the legality and correctness of the adjudication order. Accordingly, disputes concerning appreciation or sufficiency of evidence, adequacy of material and factual findings should ordinarily be addressed before the statutory appellate authority.

The Court reiterated that availability of an alternative remedy is not an absolute bar to writ jurisdiction. However, interference is ordinarily warranted only in recognised exceptional circumstances, such as violation of fundamental rights, breach of natural justice, lack or excess of jurisdiction, or challenge to constitutional validity. Mere assertion of such grounds is insufficient unless the facts establish a genuine exception.

On the facts, the Court found that the petitioner had actively participated in the audit and adjudication proceedings by replying to the Audit Memo, Additional Audit Memo and SCN, producing agreements, invoices, reconciliations and other documents, and attending personal hearings. Thus, adequate opportunity had been provided and there was no violation of natural justice. The Court further held that natural justice does not require the adjudicating authority, as an inflexible rule, to repeatedly seek documents or clarifications once sufficient opportunity has been afforded. It is for the noticee to place all material supporting its defence.

Whether the material produced was sufficient, whether further documents were required, or whether the adjudicating authority properly appreciated the evidence were merits-related matters falling within the appellate jurisdiction under Section 107.

The Court also distinguished the judgments relied upon by the petitioner, noting that they did not consider the maintainability of a writ petition where an efficacious Section 107 remedy existed or the principles laid down in Assistant Commissioner of State Tax v. Commercial Steel Ltd. Consequently, no recognised exception warranting interference under Article 226 was established

Order

The High Court held that the petitioner had failed to establish any exceptional circumstance warranting the exercise of writ jurisdiction. Accordingly, the writ petition was dismissed as not maintainable, with liberty granted to the petitioner to avail the statutory remedy of appeal under Section 107 of the CGST Act.

The Court further clarified that, if an appeal is filed, the period during which the writ petition remained pending before the High Court shall not be reckoned while considering limitation, subject to the appellate authority deciding the issue in accordance with law. All pending applications were also disposed of.

5. Transfer of Right to Use Goods – Telangana High Court Clarifies Taxability of Common Amenities in Lease Transactions [M/s. SDE Engineers Limited & Others v. Commercial Tax Officer - High Court of Telangana - No.- W. P. Nos. 9991, 3865 & 3866 of 2009 – decided on 03.07.2026]

Background

The petitioners, developers of information technology parks, leased commercial premises to various IT companies along with facilities such as air-conditioning systems, power infrastructure, DG sets, lifts, furniture, fixtures, kitchen and cafeteria facilities, and other common amenities. The lease agreement bifurcated the consideration between rent for building & rent attributable to movable / immovable fixtures & furniture, on which revenue sought to levy tax treating the later component as a transfer of the right to use goods. While the Revenue accepted that the rental income from the immovable property itself was not liable to VAT, it sought to levy tax on the portion of the rent attributable to furniture, fixtures and other movable assets by treating the arrangement as a transfer of the right to use goods under the APGST Act and APVAT Act. The petitioners challenged these tax demands before the High Court.

Issue Involved

The principal issue before the Court was whether the consideration received towards furniture, fixtures and other amenities provided along with the leased premises amounted to a taxable transfer of the right to use goods. The Court also examined whether the agreements constituted independent transactions involving a deemed sale of goods or merely formed part of a composite arrangement for leasing immovable property together with incidental facilities.

Contentions of the Respondent

The Revenue contended that the furniture, fixtures and other equipment provided to the tenants were movable goods which had been leased to the IT companies for consideration. According to the Revenue, the tenants were enjoying and using these goods and, therefore, the arrangement amounted to a transfer of the right to use goods and a deemed sale under Article 366(29A)(d) of the Constitution read with Section 5E of the APGST Act. It was further contended that the fact that certain furniture and facilities were used by more than one IT company would not, by itself, negate a transfer of the right to use goods, so long as the lessees were actually enjoying and using those goods

Court Observations

The High Court examined the lease agreements in light of the principles laid down by the Supreme Court in Bharat Sanchar Nigam Ltd. v. Union of India for determining a transfer of the right to use goods. Applying these tests, the Court found that specific goods were not identified for transfer, there was no consensus ad idem regarding the goods, and effective control and possession remained with the landlords. The tenants did not acquire an independent legal right to use identified goods, while the facilities could be regulated, repaired, suspended or discontinued by the landlords.

The Court further held that the requirement of exclusive use was not satisfied, as several facilities were available to multiple IT companies and, in some cases, the landlords themselves. Accordingly, the furniture, equipment and other movable items were held to be incidental facilities forming part of a composite leasing arrangement, rather than an independent transfer of the right to use goods. The consideration attributable to such facilities therefore arose from a contract of service and did not constitute a deemed sale taxable under the APGST/APVAT Acts. Consequently, the contrary findings of the lower authorities were held unsustainable

Order

The High Court held that the lease arrangements did not amount to a transfer of the right to use goods and, therefore, the levy of tax on the rental component relating to furniture, fixtures and common amenities was unsustainable. Accordingly, the assessment orders and consequential tax demands were set aside, and the writ petitions as well as the connected tax revision case were allowed in favour of the petitioners.

6. GST Portal Upload Alone Does Not Constitute Valid Service of SCN/Order. [Luxmi Traders v. Union Territory of Chandigarh - High Court of Punjab & Haryana - CWP No. 27139 of 2025, decided on 21.07.2026]

Background

The petitioner, a proprietorship firm registered under GST in Chandigarh, was subjected to scrutiny proceedings under Section 61 of the CGST Act, 2017 for the period 2017-18. Following an ASMT-10 dated 29.08.2023 highlighting discrepancies in GSTR-1, GSTR-3B and GSTR-2A, an SCN in Form DRC-01 was issued on 27.09.2023 under Section 73. The petitioner contended that no communication or hearing notice was ever received and that the SCN specified no date, time or venue for personal hearing. Despite this, an ex parte order-in-original dated 28.12.2023 along with DRC-07 was passed. The order was served exclusively by uploading it under the 'View Additional Notices and Orders' tab on the GST Common Portal. The Department treated such portal uploading as valid service triggering the limitation period under Section 107, leaving the petitioner with no statutory remedy.

Issue Involved

"Whether uploading of a notice as well as the order-in-original in the tab 'View Additional Notices and Orders', on the Common Portal, being www.gst.gov.in amounts to proper service of it, on the petitioner in view of Section 169 read with Section 146 of the Central Goods and Services Tax Act, 2017, so as to trigger the period of limitation for filing of appeal under Section 107 of the Act of 2017?"

Contentions of the Respondent

The Revenue contended that uploading on the Common Portal constitutes valid service under Section 169(1)(d) and that the email intimation simultaneously sent satisfies Section 169(1)(c). It was further urged that no separate notification under Section 146 is required, as the Common Portal is already notified for various statutory purposes which encompass service of orders. It was additionally submitted that the improper service argument is raised selectively to claim limitation benefits not contemplated under the statute, and that cases where proceedings were contested on merits should not be permitted to be re-agitated.

Revenue also contended that the common portal was already used by many tax payers & particularly after the

January-2024 portal modification, the notices / orders section was made more accessible; therefore, absence of specific notification u/s 146 should not invalidate portal based service.

Court Observation

The Court held that Section 146 notifies the Common Portal solely for registration, payment of tax, furnishing of returns, settlement of integrated tax, and e-way bills. All three notifications issued under Section 146 — dated 19.06.2017, 23.01.2018 and 13.12.2019 — are confined to these purposes and none authorises the portal for service of SCNs or orders. No rule under the CGST Rules, 2017 prescribes such service through the Common Portal.

The email sent by the Department to the registered email address merely intimates that an order has been uploaded without attaching the notice or order itself, and therefore does not constitute service under Section 169(1)(c). Crucially, the deeming provisions under Section 169(2) and (3) attach only to modes under clauses (a), (b), (e) and (f) — not to clauses (c) and (d).

The Court further noted the cumbersome multi-layered navigation required to locate a notice on the portal — through 'Services' → 'User Services' → 'Notices and Orders' → 'View Additional Notices and Orders' — rendering any assumption of the assessee's knowledge unreasonable. The court also called upon the department to improve the portal based communication mechanism by introducing prominent alerts & other effective means of notifying taxpayers of statutory communications.

Affirming that a statutory act must be done in the manner prescribed and no other manner (Taylor v. Taylor; Khereshwar Mahadev Va Dauji Maharaj Samiti v. State of U.P.), the Court held that mere uploading on 'View Additional Notices and Orders' does not constitute valid service under Section 169.

Order

All writ petitions were disposed of with the following category-wise reliefs:

i) where SCN was served only by upload and ex parte order was passed for want of reply the proceedings restored to SCN stage with liberty to file reply within four weeks;

ii) where order-in-original was passed after contest but served only by upload, limitation for appeal not triggered, right to file appeal within four weeks;

iii) where appeal was dismissed on limitation with the order served only by upload, appellate order set aside and appeal restored to its original number for decision on merits; and

iv) where SCN was uploaded without response, ex parte adjudication order was passed, and the consequent appeal was also dismissed for delay, both orders set aside and proceedings restored to SCN stage with liberty to file reply within four weeks.

v) However, where the assessee had acknowledged the communication or acted upon the SCN and contested proceedings, section 160(2) would prevent the service from being subsequently questioned merely on that ground.

7. Refund Cannot Be Withheld Unless the Statutory Requirements of Section 54(11) are fulfilled [Rashmi Agency v. Deputy Commissioner CT & GST - High Court of Orissa - W.P.(C) No.17470 of 2026, decided on 25.06.2026]

Background

During a search operation conducted by DGGI under Section 67 of the GST Act at Hotel Rashmi Plaza, a sum of Rs. 33,00,000/- was recovered from the petitioner, Rashmi Agency, via DRC-03 and paid under protest. Due to an inadvertent error, the amount was credited to the GSTIN of Rashmi Agency instead of Hotel Rashmi Plaza, which was under investigation. When the petitioner's initial refund claim was rejected vide RFD-06, an appeal was preferred under Section 107, which was allowed in full by the Additional Commissioner of State Tax on 27.02.2026 on the ground that the recovery was made in contravention of CBIC Instruction No. 01/2022-23. Pursuant to this, the petitioner filed a refund application in Form GST RFD-01 on 05.03.2026. However, the Deputy Commissioner, by Order dated 02.05.2026 in Form GST RFD-06, refused to consider the application, citing that the six-month period available to the State under Section 112(3) to prefer appeal before the GST Appellate Tribunal had not yet elapsed, and that granting refund at this stage would be premature and adverse to revenue interest. Notably, no order of the Commissioner in Part A of Form GST RFD-07 existed, and no appeal or proceeding was pending as on the said date. The petitioner contended that the Deputy Commissioner had no jurisdiction to invoke Section 54(11), as only the Commissioner is empowered to withhold refund thereunder, and only where a proceeding is actually pending — not merely contemplated.

Issue Involved

Whether the Deputy Commissioner could lawfully refuse to consider the refund application by relying on the mere possibility of an appeal under Section 112(3), in the absence of any pending proceeding without satisfaction of statutory conditions prescribed u/s 54(11) read with Rule 92(2) i.e. without a Commissioner's order in Part A of Form GST RFD-07.

Contentions of the Respondent

The Revenue contended that if refund were granted before the expiry of the six-month period under Section 112(3), recovery of the amount would become difficult in the event the State's appeal before the Appellate Tribunal were decided in its favour. Reliance was placed on Section 54(11), which empowers withholding of refund where the refund order is the subject matter of an appeal or further proceeding, to argue that consideration of the refund application at this stage would be premature.

Court Observation

The Court held that Section 54(11) vests the power to withhold refund exclusively in the Commissioner and not the Deputy Commissioner. Such power is exercisable only upon satisfaction of two conditions: first, that the refund order is actually the subject matter of a pending appeal or proceeding; and second, that the Commissioner records an opinion that grant of refund is likely to adversely affect revenue. These conditions are not merely procedural but jurisdictional.

Rule 92(2), read with Form GST RFD-07, mandates that an order withholding refund be passed in Part A of the said Form with recorded reasons and neither of which existed in the present case.

The mere possibility of an appeal or the continuation of the period prescribed under Section 112 does not meet the statutory preconditions. On 02.05.2026, no appeal was pending before any forum; the State had filed its appeal only on 24.06.2026, after receiving a copy of the writ petition. The Court further emphasised that the Deputy Commissioner, being a subordinate authority, could not sit over the appellate order of the Additional Commissioner unless the same was stayed by a competent authority.

Order

The Order dated 02.05.2026 was set aside. The matter was remitted to the Deputy Commissioner for fresh consideration of the refund application of Rs. 33,00,000/- within two weeks, with due opportunity of hearing, consideration of the petitioner's reply dated 29.04.2026, and keeping in view CBIC Instruction No. 01/2022-23. The authority was directed to pass a reasoned order in accordance with law.

8. Appellate Authority Exceeded Its Jurisdiction by Remanding the Matter Under Section 107 [Shyam Traders v. State of West Bengal - High Court of Calcutta - W.P.A. No. 2357 of 2025, decided on 09.07.2026]

Background

The Adjudicating Authority passed an ex parte Order-in-Original dated 11.09.2023 under Section 73(9) of the CGST/WBGST Act, 2017, confirming a demand of tax, interest and penalty aggregating to Rs. 18,19,565.91 for FY 2017-18. The demand arose under two heads; tax alleged to have been short-paid on outward supplies and ITC alleged to have been availed in excess of the permissible limit. Aggrieved, the petitioner preferred a statutory appeal under Section 107. The Appellate Authority, by Order-in-Appeal dated 20.05.2024, directed the petitioner to appear before the Adjudicating Authority and produce requisite documentary evidence for allowing admissible ITC and settling the matter. The petitioner contended that this direction amounted to an impermissible remand, as Section 107(11) expressly prohibits the Appellate Authority from referring a case back to the authority that passed the order. A subsequent rectification application filed under Section 161 was rejected on 16.09.2025 solely on the ground of limitation, without any adjudication on the jurisdictional issue raised by the petitioner.

Issue Involved

"Whether the Appellate Authority, while exercising its powers under Section 107 of the said Act, is empowered to remand the matter to the Adjudicating Authority whose order was the subject matter of the appeal."

Contentions of the Respondent

The Revenue contended that since the petitioner had itself invoked the jurisdiction of the Appellate Authority by filing a rectification application under Section 161, and the same was rejected on the ground of limitation, the rectification rejection order had merged with the Order-in-Appeal. It was therefore urged that the writ petition was not maintainable and that the petitioner ought to avail the statutory appellate remedy against the impugned orders.

Court Observation

The Court held that a plain reading of Section 107(11) makes it unequivocally clear that the Appellate Authority is empowered only to confirm, modify, or annul the order under appeal, and is expressly prohibited from referring the case back to the Adjudicating Authority. Where further inquiry is required, the Appellate Authority must conduct such inquiry itself and thereafter adjudicate on merits.

Since the Appellate Authority had already recorded a finding that the excess ITC stood reversed on record, it ought to have logically concluded the proceedings by modifying the demand, rather than relegating the petitioner to the Adjudicating Authority. The remand direction was therefore contrary to the express statutory mandate and was a nullity in the eye of law.

On the question of maintainability, the Court held that rejection of the rectification application on limitation does not result in its merger with the Order-in-Appeal so as to bar the writ petition. The defect was not one of merits but of jurisdiction and the Appellate Authority had exercised a power that the statute expressly withholds.

Such jurisdictional infirmity cannot be rendered immune from writ scrutiny merely because a rectification application was rejected as time-barred. The existence of an alternative statutory remedy is not an absolute bar where the action is ex facie without jurisdiction or in patent violation of an express provision.

Order

The operative remand portion of the Order-in-Appeal dated 20.05.2024 was set aside. Consequently, the order dated 16.09.2025 rejecting the rectification application was also set aside. The matter was remitted to the Appellate Authority for fresh decision strictly within the contours of Section 107(11), without any remand to the Adjudicating Authority, with opportunity of hearing to the petitioner and directions to conclude proceedings preferably within eight weeks.

Contributed by CA Madhav Jha & CA Kapil Sharma