JUDICIAL PRONOUNCEMENTS

1. Playing a Game of Skill for Stakes Constitutes "Betting and Gambling" under GST Law; 28% GST Leviable on Full Face Value of Bet, Not Merely Platform Commission — 2023 Amendments to CGST Act Held Clarificatory and Retrospective. *[Directorate General of Goods and Services Tax Intelligence (HQs) Vs. Gameskraft Technologies Pvt. Ltd. and Others (with connected Civil Appeals, Criminal Appeal, Writ Petitions and Transferred Cases) – Supreme Court of India – Civil Appeal Nos. 8241-8244 of 2026 and connected matters – decided on 27-05-2026]*

Background

Gameskraft Technologies Pvt. Ltd. operates an online platform offering games such as rummy, played with monetary stakes. The Directorate General of GST Intelligence (DGGI) issued show cause notices dated 23.09.2022 u/s 74(1) of the CGST Act, alleging that Gameskraft had evaded GST of approximately Rs. 2,09,89,31,31,501/- (inclusive of interest and penalty) by classifying its taxable supply as a "service" (attracting 18% GST on the platform commission alone) instead of correctly treating it as "betting and gambling" involving actionable claims (attracting 28% GST on the entire amount staked). The Karnataka High Court, by judgment dated 11.05.2023, allowed Gameskraft's writ petitions and quashed the show cause notices, holding that rummy is predominantly a game of skill and therefore falls outside "betting and gambling." The Revenue appealed to the Supreme Court.

This appeal was heard together with a large batch of connected matters raising the same core controversy across the online gaming, fantasy sports and casino industry, including: Civil Appeal No. 8240 of 2024 (P Z Skill Games v. State of Maharashtra, concerning a gaming licence); Criminal Appeal No. 2933 of 2026 (State of Maharashtra v. Gurdeep Singh Sachar, arising from a criminal PIL alleging that Dream11's fantasy sports format constituted illegal gambling and GST evasion, dismissed by the Bombay High Court in 2019); writ petitions filed by E-Gaming Federation, Play Games24x7, Baazi Networks (poker), Golden Peace Infrastructure (a Goa casino operator), and numerous other operators challenging show cause notices and the constitutional validity of Sections 2(31), 2(52), 7, 9 and 15 of the CGST Act, 2017 and Rules 31A, 31B and 31C of the CGST Rules, 2017; and 27 cases transferred from various High Courts raising identical questions.

Issue Involved

1) Whether online gaming activities, including games predominantly involving skill (such as rummy) and fantasy sports, played for monetary stakes, constitute "betting and gambling" so as to give rise to a taxable supply of "actionable claims" under the CGST Act.
2) Whether Sections 2(31), 2(52), 7, 9 and 15 of the CGST Act, 2017 and Rules 31A, 31B and 31C of the CGST Rules, 2017 are constitutionally and statutorily valid.
3) Whether GST is leviable on the entire face value/stake amount (Gross Bet Value) or only on the platform's commission/fee (Gross Gaming Receipt).
4) Whether the amendments introduced by the CGST (Amendment) Act, 2023 (recognising "online money gaming" and inserting Rules 31B and 31C) are clarificatory/retrospective or introduce a fresh levy prospectively.

Contentions of the Respondent

Senior Counsel for Gameskraft and the other gaming/ fantasy-sports operators submitted that rummy and similar formats have been consistently recognised by courts, including in State of A.P. v. K. Satyanarayana and K.R. Lakshmanan v. State of Tamil Nadu, as games predominantly involving skill, and that the "preponderance of skill" test laid down in RMDC-I and RMDC-II excludes such games from the ambit of "betting and gambling," which is confined to games of chance. The mere presence of stakes does not convert a skill-based game into gambling; operators such as Gameskraft function only as intermediary platform providers with no stake in the outcome.

It was further submitted that prior to 2017, and under GST until 2022, the Department itself levied tax only on the commission/platform fee, and the shift to taxing the full stake value was a revenue-driven reinterpretation rather than a change in law. Reliance was placed on the Quistclose trust doctrine to contend that stake and prize-pool amounts held in escrow-like accounts constitute deposits, not consideration, and that winnings/prize pools ought to be excluded from taxable value. It was also contended that Rule 31A(3) lacked the mandatory prior notification under Section 15(5) and was ultra vires Sections 2(31), 7, 9 and 15 of the CGST Act, and that the 2023 amendments, by expressly carving out "online money gaming" for the first time, demonstrated that such transactions were not taxable as betting and gambling under the pre-amendment regime.

Court's Observations

The Court held that every game, whether of skill or chance, involves an outcome that is uncertain at the commencement of play, and the determinative factor of "betting and gambling" is the staking of money or money's worth upon such an uncertain outcome — not the nature of the underlying game. Applying the principles laid down in the connected judgment in State of Tamil Nadu v. Junglee Games India Pvt. Ltd., the Court held that "betting" and "gambling" are composite, interchangeable expressions, and the distinction between games of skill and games of chance becomes relevant only where a statute expressly protects games of skill from penal consequences — such protection does not remove the activity from the ambit of GST. Accordingly, online gaming, fantasy sports and analogous formats involving pooled stakes give rise to actionable-claim supplies exigible to GST.

The Court further held that actionable claims are validly included within "goods" under Section 2(52), and the levy under Section 9(1) is traceable to Article 246A and does not violate Articles 14, 19(1)(g), 21 or 265 of the Constitution. The concept of "supply" under Section 7 was held to extend beyond transfer of pre-existing actionable claims to include their creation within an organised betting/ gambling framework; gaming platforms were held to be suppliers, not mere intermediaries, since players lose control over deposited funds and have no enforceable claim until they win. The entire stake amount was held to constitute "consideration" under Section 2(31), with no statutory basis to deduct winnings or prize pools while computing taxable value.

Rule 31A was upheld as intra vires and traceable to Sections 15(4), 164 and GST Council recommendations, prescribing 100% of face value of the bet as the valid measure of valuation, applicable to betting and gambling generally (not merely horse racing). The 2023 amendments (recognising "online money gaming," amending Entry 6 of Schedule III, and inserting Rules 31B and 31C) were held to be clarificatory and explanatory, and therefore retrospective in operation, rather than creating a fresh levy for the first time. For casino transactions, resort to best-judgment valuation under Rule 31 in the absence of reliable records was upheld as permissible, though actual computation must now align with Rule 31C.

Order

The Supreme Court allowed the Revenue's appeals (Civil Appeal Nos. 8241–8244 of 2026), set aside the Karnataka High Court's judgment dated 11.05.2023, and restored the show cause notices dated 23.09.2022 issued to Gameskraft, granting the assessees liberty to file replies and raise all factual/legal defences before the adjudicating authority. The constitutional and statutory challenges raised in the connected writ petitions and transferred cases were rejected, and those petitions were dismissed subject to the Court's directions. The Criminal Appeal (State of Maharashtra v. Gurdeep Singh Sachar) was allowed to the extent that the Bombay High Court's 2019 finding — that the transactions did not constitute betting/gambling — was set aside.

Time for filing replies to show cause notices was fixed at eight weeks, and for filing appeals against assessment orders at twelve weeks, from receipt of the judgment; adjudicating/appellate authorities were directed to dispose of such matters within twelve weeks thereafter, applying the findings of this judgment (including the retrospective application of Rules 31B and 31C). All interim orders in connected matters stood vacated, with no order as to costs.

2. Denial of Input Tax Credit to a Bona Fide Purchasing Dealer Solely on Account of Selling Dealer's Failure to Deposit Tax is Unjustified; Departmental Remedy Lies Against the Defaulting Supplier *[Metal Syndicate Vs. Union of India – High Court of Gauhati – W.P.(C) No. 2960 of 2026 – decided on 05-06-2026]*

Background

The petitioner, M/s Metal Syndicate, a Silchar-based proprietorship engaged in the scrap battery trade, purchased goods from registered Kolkata suppliers during 2017-18 and 2018-19, paying the value along with GST through banking channels against proper tax invoices. Returns in GSTR-1 and GSTR-3B were duly filed, and ITC for May 2018 to March 2019 was availed in accordance with Section 16(2) of the CGST Act, 2017.

The DGGI, Guwahati, alleged ineligible ITC on invoices without actual receipt of goods and issued summons; the petitioner submitted all relevant records, and a subsequent search on 09.07.2019 yielded no incriminating material, with the petitioner's statement affirming genuine receipt of goods and payment. Nonetheless, a Show Cause Notice dated 28.07.2022 alleged wrongful availment of ITC of Rs. 78,70,952/-, and the petitioner further contended it was denied an effective hearing.

The Assistant Commissioner, CGST & Central Excise, Silchar, confirmed the demand of Rs. 78,70,952/- (IGST Rs. 47,12,010/-, CGST Rs. 15,52,967/-, SGST Rs. 16,05,975/-) with interest and equal penalty vide Order-in-Original dated 19.02.2024, and the petitioner's appeal was rejected by the Additional Commissioner (Appeals) on 14.02.2025. Aggrieved, the petitioner approached the High Court of Gauhati by way of writ petition.

Issue Involved

Whether Input Tax Credit can be denied to a bona fide purchasing dealer, who has transacted with a registered supplier, paid the value of goods along with GST through banking channels, and complied with the statutory conditions under Section 16(2) of the CGST Act, solely on the ground that the selling dealer failed to deposit the collected tax with the Government.

Contentions of the Respondent

The learned Standing Counsel, CGST, appearing for the respondents, fairly submitted that the issue raised in the present proceeding was squarely covered by the Division Bench judgment of the same High Court in National Plasto Moulding v. State of Assam, which, relying on the Delhi High Court's decision in On Quest Merchandising India (P.) Ltd. v. Government of NCT of Delhi, had held that a bona fide purchasing dealer cannot be denied ITC merely because the selling dealer failed to deposit the tax collected from the purchaser. The Standing Counsel accordingly submitted that the writ petition could be disposed of on the same terms, while reserving liberty for the respondent authorities to take action in cases where the purchase transactions were found not to be bona fide.

Court's Observations

The Court noted that both parties were in agreement that the controversy was squarely covered by the Division Bench decision in National Plasto Moulding (supra), which had examined an identical issue and, following the Delhi High Court's ruling in On Quest Merchandising India (P.) Ltd. (supra), held that the expression "dealer or class of dealers" in the analogous provision must be "read down" so as to exclude a purchasing dealer who has bona fide transacted with a validly registered selling dealer holding a proper tax invoice, with no mismatch in the relevant returns. The Court reiterated that a purchasing dealer cannot be expected to do the impossible — namely, to ensure that the selling dealer actually deposits the tax collected from him — and that a provision imposing such a disproportionate burden on a bona fide purchaser would be vulnerable to invalidation under Article 14 of the Constitution.

The Court further noted that the Special Leave Petition against the National Plasto Moulding line of reasoning (as applied by the Delhi High Court) had been dismissed by the Supreme Court, with liberty reserved to the Revenue to move afresh only in specific cases where purchase transactions were shown not to be bona fide. Applying this settled position, the Court held that where a purchasing dealer has entered into transactions bona fide with a registered supplier and has complied with the statutory requirements under Section 16(2) of the CGST Act, denial of ITC solely on account of the supplier's failure to deposit tax is unjustified. The remedy of the Department in such circumstances lies against the defaulting supplier and not against the bona fide purchaser, save where there exists material indicating collusion or lack of bona fides in the transaction.

Since both counsels were in consensus that the present case was fully covered by National Plasto Moulding (supra), the Court held that no further adjudication was required.

Order

The Gauhati High Court set aside and quashed the Order-in-Original No. 22/GST/AC/SIL/2023-24 dated 19.02.2024 and the Order-in-Appeal No. GAPPL/ADC/GSTP/2080/2024-APPEAL-O/OCOMMR-CGST-APPL-GUWAHATI dated 14.02.2025. It was, however, clarified that the respondent authorities would be at liberty to proceed in accordance with law in the event material emerged indicating that the transactions in question were not bona fide or were entered into in collusion with the suppliers, as observed by the Division Bench in National Plasto Moulding (supra). The writ petition was accordingly disposed of.

3. Amount Extracted During Search Proceedings via ITC Reversal and Cash Payment, in the Absence of Prior Self-Ascertainment, Show Cause Notice or Form GST DRC-04 Acknowledgment, cannot be Treated as "Voluntary Payment" under Section 74(5); Refund Directed, though Interest Declined as Premature Pending Investigation *[Baba Contractors and Engineers Vs. Union of India – High Court of Rajasthan at – D.B. Civil Writ Petition No. 21298 of 2025 – decided on 22-06-2026]*

Background

The petitioner, a Sirohi-based partnership firm, was subjected to search proceedings under Section 67(2) of the CGST Act on 11.07.2025 at its business and partners' residential premises, on intelligence of fraudulent ITC availment involving M/s Keshav Cement Agency. During the search, a partner's statement was recorded and records were seized; before the search concluded, the petitioner was made to deposit Rs. 2,35,23,506/- (ITC reversal plus cash) and file Form GST DRC-03 the same evening. By subsequent letters, the petitioner protested that the statement and deposit were made under pressure. No Form GST DRC-04 acknowledgment or show cause notice was ever issued. The petitioner filed this writ petition seeking refund with 12% interest, alleging coercive recovery contrary to CBIC Instruction No. 01/2022-23.

Issue Involved

1) Whether the deposit made through Form GST DRC-03 during search constituted a "voluntary payment" under Section 74(5) of the CGST Act, or was extracted under coercion.
2) Whether the petitioner was entitled to interest on the refunded amount pending completion of investigation.

Contentions of the Respondent

The respondents submitted that the petitioner's partner, when confronted with evidence of fraudulent ITC passed on by the supplier, admitted wrongful availment of Rs. 2,04,55,222/- and voluntarily deposited the amount (tax plus 15% penalty) under Section 74(5) read with Rule 142(2), with Column 8 of Form GST DRC-03 itself recording it as "voluntary payment... upon initiation of enquiry." Since the petitioner used its own portal credentials and bank accounts, the allegation of coercion was baseless. Absence of a show cause notice or DRC-04 did not render the payment involuntary — DRC-04 issuance was itself premature as the petitioner had not paid interest. CBIC Instruction No. 01/2022-23 did not bar voluntary payment during search, and the petitioner's later retraction was an afterthought to derail the investigation.

Court's Observations

Examining Section 74(5)–(7) and Rule 142 of the CGST Rules, the Court held the statutory scheme is meant for genuine pre-notice voluntary compliance, accompanied by a DRC-04 acknowledgment. Relying on Vallabh Textiles, Samyak Metals, Shree Ganesh Molasses Trading Co., Neeraj Paper Marketing Ltd. and J. Ramesh Chand — all holding that deposits made during search without DRC-04 or prior self-ascertainment cannot be presumed voluntary — and the Supreme Court's ruling in Radhika Agarwal v. Union of India (that Section 74(5) "does not postulate payment under force, coercion or threat of arrest," and CBIC Instructions are binding), the Court held voluntariness is a question of fact.

On facts, the Court found no show cause notice existed at the time of deposit; no material showed prior self-ascertainment by the petitioner; the deposit was made while records remained seized; Column 8 of DRC-03 itself confirmed payment followed initiation of enquiry, not preceded it; DRC-04 was never issued, and the respondents' own explanation (unpaid interest) undermined their claim of valid compliance; and safeguards under Bhumi Associate v. Union of India and CBIC Instruction No. 01/2022-23 — requiring voluntary payments only after search concludes and officers leave — were not shown to have been followed. The petitioner had also promptly disputed voluntariness. On this cumulative assessment, the deposit was held not voluntary, and its retention unsustainable.

The following aspects emerge in the present case:- (i) the payment was obtained during search proceedings, (ii) there was no prior ascertainment or determination of liability, (iii) the respondents have failed to establish any independent self-ascertainment by the petitioner, (iv) the petitioner subsequently disputed the voluntariness of the payment, and (v) the directions issued in Bhumi Associate (supra) by the Gujarat High Court as well as in CBIC InstructionNo.01/2022-23 were not adhered to.

On interest, since the investigation had not attained finality and no adjudication of liability was complete, the Court held it premature to determine entitlement to interest, as it remained uncertain whether any liability would ultimately be found or whether the deposit exceeded it.

Order

The High Court partly allowed the writ petition, directing refund of Rs. 2,35,23,506/- within eight weeks, while declining interest as premature pending final determination of liability. The order was clarified to not preclude further assessment or adjudication proceedings, with all contentions on the merits of the ITC allegations kept open.

4. Pre-Adjudication Garnishee Letters to Customers Directing Diversion of Payments Held Invalid – Recovery Permissible Only under Section 79(1)(c) after Crystallization of Liability via Order-in-Original

[Noordeen Enterprises Vs. Additional Director General Directorate of GST Intelligence, Chennai – High Court of Judicature at Madras - W.P. Nos. 6704 & 6705 of 2023 - decided on 03-06-2026]

Background

The petitioner, Noordeen Enterprises, sought a direction to the respondent to issue a “No Objection Certificate” in relation to receipt of payments from persons to whom the petitioner had supplied goods. The petitioner contended that the respondents had issued letters to its customers, who were liable to make payment to the petitioner for goods supplied, directing them to divert such payments towards alleged GST dues of the petitioner. One such customer, Sumangala Steel Private Limited, upon receipt of such a letter, remitted a sum of ₹15 lakhs directly to the GST authorities. The petitioner relied on an earlier decision in MNS Enterprises v. Additional Director General Directorate of GST Intelligence, W.P. No. 20067 of 2021, decided on 04.03.2022, wherein a similarly situated petitioner had challenged identical garnishee-type letters issued to its customers and the Court had expressly held that such recovery could not have been made either u/s 79 or Section 83 of the applicable GST enactments. Relying on this precedent, the petitioner contended that the respondents were liable to withdraw the letters issued to its customers forthwith. Meanwhile, orders-in-original imposing tax and related liabilities on the petitioner had been issued on 28.03.2023, which were the subject matter of separate writ petitions.

Issue Involved

Whether letters issued by GST authorities to customers of a taxpayer, directing diversion of amounts payable to the taxpayer towards alleged GST dues, are valid and sustainable when issued prior to the crystallization of tax liability through an order-in-original.

Contentions of the Respondent

1. The letter addressed to Sumangala Steel merely directed the customer to discharge, by payment into the Government GST account, amounts otherwise due and payable to the petitioner, pursuant to which ₹15 lakhs was remitted.
2. The petitioner in the earlier MNS Enterprises case had been granted leave to apply for refund under Section 54 of the GST enactments but had failed to avail of that remedy.
3. Copies of similar letters allegedly issued to other customers of the present petitioner had not been produced, and the petitioner claimed such copies were not available with it.

Court’s Observations

The Court examined the counter affidavit of the respondents, which confirmed that the communication addressed to Sumangala Steel by the DGGI Chennai Zonal Unit was issued at a stage when a tax proposal had been made but had not yet crystallized into a determined tax liability. The Court noted that in the earlier MNS Enterprises order dated 04.03.2022, it had been categorically held that neither Section 79(1)(c) nor Section 83 of the GST enactments could be invoked for recovery at the pre-adjudication stage, and the petitioner therein had accordingly been granted liberty to seek refund under Section 54 — a course of action that petitioner did not pursue. Applying the same reasoning to the facts of the present case, the Court held that any letters issued to customers of the petitioner prior to the issuance of an order-in-original determining tax liability were without legal basis and could not be relied upon for further recovery action, since the statutory mechanism u/s 79(1)(c) is contingent upon a crystallized liability.

Order

The Madras High Court disposed of the writ petitions holding: (i) any letters issued by the respondents to customers of the petitioner, prior to issuance of the order-in-original determining the petitioner’s tax liability, are invalid and cannot form the basis for further action; (ii) this finding is without prejudice to the respondents’ right to initiate appropriate recovery action, including recourse to Section 79(1)(c) of the applicable GST enactments, pursuant to the orders-in-original already issued; and (iii) there shall be no order as to costs.

5. Restoration of GST Registration Permissible upon Compliance with Proviso to Rule 22(4) despite Dismissal of Appeal – Coordinate Bench Ruling Followed

[Bhushan Chandra Deka Vs. Union of India – High Court of Gauhati - W.P.(C) No. 2730 of 2026 - decided on 01-06-2026]

Background

The petitioner, Bhushan Chandra Deka, proprietor of M/s Rainbow Enterprise engaged in execution of works contract services, was registered under the CGST Act, 2017 and the Assam GST Act, 2017. On account of non-filing of GST returns for a continuous period of six months, the petitioner was served a Show Cause Notice dated 14.05.2024, calling upon him to reply within 30 days and appear on 11.06.2024, failing which the matter would be decided ex-parte. The GST registration was simultaneously suspended with effect from 14.05.2024. Since no reply was submitted, the registration was cancelled by order dated 05.08.2024. The petitioner's counsel submitted that the returns could not be filed due to burn injuries sustained by the petitioner in an LPG cylinder blast at his residence. An appeal against the cancellation was subsequently dismissed by the Additional Commissioner (Appeals), CGST, vide order dated 10.04.2026, and the statutory time limit for filing a revocation application had also lapsed by then. The petitioner, having since updated his GST returns up to April–June 2024, approached the High Court under writ jurisdiction seeking restoration of registration.

Issue Involved

Whether a petitioner whose GST registration was cancelled under Section 29(2)(c) of the CGST Act for non-filing of returns for six months, and whose statutory appeal stood dismissed, is entitled to restoration of registration upon subsequent compliance with the proviso to Rule 22(4) of the CGST Rules, 2017.

Contentions of the Respondent

The learned counsel for CGST fairly conceded that the Dhirghat Hardware Stores judgment was rendered on similar facts and law and would cover the present case.

Court's Observations

The Court examined Rule 22 of the CGST Rules, 2017, governing the procedure for cancellation of registration, and specifically the proviso to sub-rule (4), which provides that where a person served with a show cause notice under Section 29(2)(c) furnishes all pending returns and makes full payment of tax dues along with applicable interest and late fee, the proper officer may drop the proceedings and pass an order in Form GST REG-20. The Court relied on its earlier ruling in Dhirghat Hardware Stores v. UOI, which held that cancellation of registration entails serious civil consequences, and that where the affected person complies with the proviso to Rule 22(4), the proper officer may consider dropping the proceedings and restoring the registration. Finding the facts and law in the present case squarely covered by the precedent, the Court held that the petitioner was entitled to similar relief.

Order

The Gauhati High Court disposed of the writ petition, directing that the petitioner shall approach the concerned authority within 60 days from the date of the order seeking restoration of GST registration. Upon the petitioner filing such application and complying with all requirements under the proviso to Rule 22(4) of the CGST Rules, 2017 (furnishing pending returns and paying arrears of tax, interest, penalty, and late fee), the concerned authority shall consider the application and take steps for restoration of registration as expeditiously as possible.

6. Services Rendered by Foreign Group Entity for Centralized Procurement Held Not "Intermediary Services" but "Import of Services" – Refund of IGST Paid under Reverse Charge Rejected *[Dow Chemical International Pvt. Ltd. Vs. Commissioner of State Tax, Mazgaon, Mumbai – GSTAT, Principal Bench, New Delhi - Appeal Nos. Apl 2 to 7 (PB) of 2026 - decided on 04-06-2026]*

Background

The appellant, M/s Dow Chemical International Private Limited, engaged in manufacturing and distribution of chemical components, entered into a Procurement Agreement dated 01.07.2021 with Dow Europe GmbH, Switzerland, a related entity functioning as the centralized procurement hub of the global Dow group. Under this agreement, Dow Europe undertook identification, selection and approval of foreign suppliers, negotiation of procurement terms, and facilitation of supplies to the appellant. For the period January 2022 to June 2022, the appellant initially paid IGST under the Reverse Charge Mechanism, treating the services as "import of services" under Section 2(11) of the IGST Act. Subsequently, taking the view that the services were "intermediary services" under Section 2(13) of the IGST Act with place of supply outside India under Section 13(8)(b), the appellant reversed the related ITC and filed refund applications aggregating over ₹13 crore across six tax periods. The Adjudicating Authority rejected the refund claims, and the First Appellate Authority (Joint Commissioner of State Tax, Appeals) confirmed the rejection vide order dated 07.08.2023, holding that the intermediary plea was an afterthought and that Dow Europe rendered services on its own account without authority to bind the appellant.

Issue Involved

Whether the services rendered by Dow Europe GmbH to the appellant qualified as "intermediary services" under Section 2(13) of the IGST Act (making the place of supply outside India under Section 13(8)(b)), or as "import of services" with place of supply in India, and consequently whether the appellant was entitled to refund of the IGST paid under reverse charge.

Contentions of the Respondent

Reliance was placed on Columbia Sportswear India Sourcing (P.) Ltd. v. Union of India, (2025) (Kar.), where the Karnataka High Court held that a similarly structured arrangement did not constitute intermediary services.

The exclusionary limb of Section 2(13) — excluding persons supplying services "on his own account" — was equally significant; Dow Europe independently rendered substantive procurement operations (strategy development, governance, supplier risk management, analytics, sourcing) on a principal-to-principal basis, not mere facilitation.

Clause 6(b) of the Procurement Agreement expressly provided that Dow Europe was not appointed as agent and had no authority to bind the appellant to any purchase obligations.

The arrangement was, in substance, a centralized procurement outsourcing arrangement, which the CBIC Circular itself excludes from the intermediary ambit.

Refund under Section 54 could not be invoked to revisit taxability merely due to a subsequent change in the appellant's own interpretation, after it had initially treated the transaction as import of services.

Tribunal's Observations

The Tribunal extensively analyzed Section 2(13) and Section 13(8)(b) of the IGST Act (the latter since omitted by the Finance Act, 2026 w.e.f. 30.03.2026), together with CBIC Circular No. 159/15/2021-GST, which lays down four cumulative prerequisites for intermediary status: (i) minimum three parties, (ii) two distinct supplies (main and ancillary), (iii) a facilitative/subsidiary role akin to an agent or broker, and (iv) exclusion of persons supplying services on their own account, including sub-contractors.

The Tribunal found that while the arrangement satisfied the "minimum three parties" test, it did not satisfy the "two distinct supplies" test, since Dow Europe, as the centralized procurement hub for the entire Dow Group, provided a core, substantive procurement service rather than a mere ancillary facilitation of a main supply between two independent principals. The Tribunal relied on the Delhi High Court ruling in Pr. Commissioner v. Blackberry India (P) Ltd. and the Karnataka High Court ruling in Columbia Sportswear India Sourcing (P.) Ltd., both holding that services rendered by an independent contractor without authority to bind the recipient, on a cost/fee basis rather than a pure agency commission, do not qualify as intermediary services. The Tribunal noted that Clause 6(b) of the Procurement Agreement, denying Dow Europe any authority to bind the appellant, reinforced that Dow Europe acted on its own account. It held that Advance Ruling Authority decisions relied upon by the appellant carry only persuasive value and are binding solely on the applicant concerned under Section 103(1)(a) of the CGST Act, whereas High Court rulings prevail in case of conflict, and that CBIC circulars, while binding on departmental officers, have no binding force on the Tribunal, being of persuasive value only (relying on K.P. Varghese v. ITO and Ellerman Lines Ltd. v. CIT).

Accordingly, the place of supply remained in India under the general rule, rendering the transaction an "import of services" taxable in India. On the refund issue, the Tribunal disagreed with the First Appellate Authority's characterization of the intermediary plea as a mere "afterthought," holding that Section 54 of the CGST Act and Rule 89 of the CGST Rules expressly permit refund claims for tax paid under mistake within prescribed timelines. However, since the services were held to be import of services with place of supply in India, and there was no export, the statutory conditions for refund were not satisfied, and no entitlement to refund arose.

Order

The GSTAT, Principal Bench, New Delhi held that the services provided by Dow Europe GmbH did not qualify as "intermediary services" under Section 2(13) of the IGST Act but constituted "import of services," with the place of supply remaining in India u/s 13(2), attracting IGST under reverse charge. Consequently, the appellant was held not entitled to refund of the IGST paid, as the essential requirement of export was absent. All appeals (Appeal Nos. Apl 2 to 7 (PB) of 2026) were dismissed, and the orders of the First Appellate Authority rejecting the refund claims were confirmed.

7. Bona Fide Purchasing Dealer Cannot Be Denied ITC Merely on Account of Selling Dealer's Failure to Deposit Tax – Orders Set Aside *[Narayan Enterprise Vs. Union of India – High Court of Gauhati - W.P.(C) No. 2933 of 2026 - decided on 04-06-2026]*

Background

The petitioner, proprietor of M/s Narayan Enterprise, engaged in trading of scrap/waste batteries, purchased goods from registered suppliers in Kolkata for the period May 2018 to March 2019 and paid the value of goods along with applicable GST to the sellers through proper banking channels supported by tax invoices. On allegations of availing ineligible ITC on invoices issued without actual receipt of goods, the DGGI, Guwahati Zonal Unit issued summons, and the petitioner appeared on 05.04.2019, submitting GSTR-1, GSTR-3B and purchase invoices. A subsequent search at the petitioner's business premises on 09.07.2019 yielded no incriminating material. Despite this, a Show Cause Notice dated 30.07.2022 was issued alleging wrongful availment of ITC amounting to ₹22,22,695/- in violation of Section 16(2)(a)/(b) of the CGST Act, without actual receipt of goods. The petitioner contended that no effective opportunity of hearing was granted and that notices were served manually beyond the hearing date without being uploaded on the GST portal. The Assistant Commissioner, CGST & Central Excise Division, Silchar, passed Order-in-Original dated 19.02.2024 confirming the demand of ₹22,22,695/- (IGST ₹22,14,393/-, CGST ₹4,151/-, SGST ₹4,151/-) along with interest under Section 50 and an equal penalty under Section 74(1) read with Section 122 of the CGST Act and Section 20 of the IGST Act. The appeal against this order was dismissed by the Joint Commissioner (Appeals), CGST, Guwahati, vide order dated 07.01.2025, prompting the writ petition.

Issue Involved

Whether denial of Input Tax Credit to a bona fide purchasing dealer, who has transacted with registered suppliers and complied with statutory conditions under Section 16(2) of the CGST Act, is justified solely on the ground that the selling dealer failed to deposit the tax collected, in the absence of any evidence of collusion or lack of bona fides.

Contentions of the Respondent

The learned Standing Counsel for GST fairly conceded that the issue was squarely covered by National Plasto Moulding (supra), which relied on the Delhi High Court ruling in On Quest Merchandising India (P.) Ltd. v. Government of NCT of Delhi, 2018 (10) G.S.T.L. 182 (Del.), holding that a bona fide purchasing dealer cannot be denied ITC merely because the selling dealer failed to deposit tax with the Government, and that the writ petition could be disposed of while granting liberty to the Department to proceed where transactions are found not to be bona fide.

Court's Observations

The Court examined the Division Bench ruling in National Plasto Moulding v. State of Assam, which had extensively relied on the Delhi High Court's decision in On Quest Merchandising India (P.) Ltd., interpreting provisions analogous to Sections 16(2)(c) and 16(2)(d) of the CGST/Assam GST Act. The Delhi High Court had held that the expression "dealer or class of dealers" must be read down so as to exclude a purchasing dealer who has bona fide entered into purchase transactions with a validly registered selling dealer issuing proper tax invoices with no mismatch in returns; failing this reading down, the provision would be violative of Article 14 of the Constitution, since it would impose an impossible burden on the purchasing dealer to ensure the selling dealer's compliance. Where the selling dealer fails to deposit tax collected, the Department's remedy lies in proceeding against the defaulting selling dealer, not in denying ITC to the purchasing dealer — except where collusion between the purchasing and selling dealer is demonstrated. The Court noted that the Special Leave Petition against the On Quest Merchandising judgment had been dismissed by the Supreme Court, with liberty granted only to remit specific cases involving non-bona fide transactions. Applying these principles, and noting the consensus between both counsel that the controversy was squarely covered by National Plasto Moulding, the Court held that since the petitioner had dealt with registered suppliers and complied with statutory conditions, and since no material indicating collusion or lack of bona fides was placed on record, denial of ITC solely on account of the supplier's default was unjustified.

Order

The Gauhati High Court set aside and quashed the Order-in-Original No. 23/GST/AC/SIL/2023-24 dated 19.02.2024 passed by the Assistant Commissioner, CGST & Central Excise Division, Silchar, and the Order-in-Appeal dated 07.01.2025 passed by the Joint Commissioner, CGST, Guwahati. The Court clarified that the respondent authorities would be at liberty to proceed in accordance with law in the event materials surface indicating that the transactions were not bona fide or were entered into in collusion with the suppliers, as observed in National Plasto Moulding (supra). The writ petition was accordingly disposed of.