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When The Legislature Erases A Law - *Do 'Omissions' Count as a 'Repeal' Under the General Clauses Act?*

An Analysis Through the Lens of Proposed Omission of Section 13(8)(b) of the IGST Act, 2017 by the Finance Bill 2026

The global economy is undergoing a structural shift marked by the rise of the services sector as the principal engine of growth. From India's standpoint, the services sector contributes more than 50% of the Gross Value Added and to further strengthening the same, Government of India in its Finance Act 2026 omitted the Section 13(8)(b) of the IGST Act, shifting the place of supply for intermediary services from the location of the supplier of services to the recipient's location. Effectively converting a taxable domestic supply into a zero-rated export of services. A master stroke that could enhance India's intermediary services attractiveness in the global market. However, the omission does not come with a saving clause, immediately triggering the question of whether eight years of pending proceedings, demands, and disputes survive. The answer hinges on whether 'omission' amounts to 'repeal' under Section 6 of the General Clauses Act - a question four landmark cases have debated but not yet definitively settled.

Introduction

The Finance Act, 2026, has made an important legal development under the Goods and Services Tax (GST) framework. Including the several amendments across various tax laws, one amendment stands out not because of its prospective commercial impact, but for the profound retrospective legal questions it has triggered. The government has omitted Section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act), which governs the place of supply (POS) provision in case of intermediary services.

Under the pre-omitted provision, the POS in case of intermediary services is the location of the supplier of services, which indirectly means that Indian intermediaries providing services to foreign clients are considered as a domestic supply within India, making the said supply outside the scope of 'export of services' and attracting GST. The omission of this provision has remove this specific rule from the statute book entirely, with the consequence that the determination of POS for intermediary services has fallen back upon the general provision covered in Section 13(2) of the IGST Act, 2017. The result is dramatic as what was previously a taxable supply within India becomes, in one legislative amendment, a zero-rated export of services, eligible for refund of input tax credit or integrated tax paid.

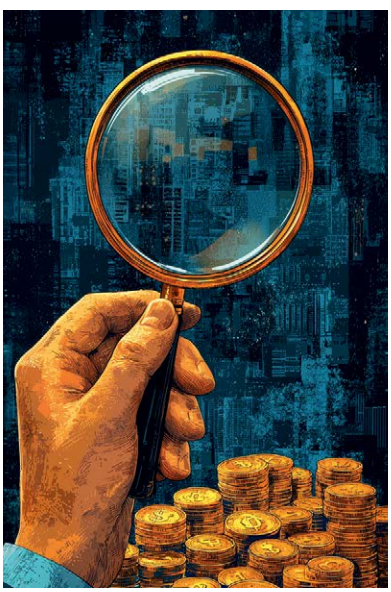
Large number of taxpayers, especially, exporters of services have suffered (i) denial of export refund and (ii) demand for output tax, on account of their services that were classifiable elsewhere whose POS would have been under Section 13(2) are left to suffer POS in section 13(8)(b) of IGST Act by altering their classification to 'intermediary' services. Rule 86(4B) of the CGST Rules mandates that where an erroneous refund is repaid along with interest, the refund will be recredited via PMT3A to the Electronic Credit Ledger (ECrL) that will be available to discharge output tax on inter-State supplies. With this amendment by way of omission of clause (b), either the amendment will date back to 1 Jul 2017 and give *quietus* to all these disputes or be prospective from 30th Mar 2026 and leave all these disputes to be resolved on their own merits, which could take decades.

On the face of it, the proposed change is a welcome liberalisation - but whether its legal consequences are equally welcome is the question this article sets out to answer.

Liberalisation Without a Safety Net: The Problem Section 13(8)(b) Leaves Behind

Judicial decisions across multiple High Courts and CBIC's own clarificatory Circular No. 159/15/2021-GST have repeatedly stressed that whether a cross-border services are an intermediary service or a normal export service depends entirely on the substance of the transaction. As Intermediary services broadly classification depend upon four limbs: (i) minimum three parties, (ii) two or more distinct supplies, (iii) supplier does not act as a principal to the main transaction, and (iv) the supply must be facilitative, not principal-to-principal.

This fact-dependence of the intermediary classification has made the law complex and litigation-prone. Tax authorities have often applied the intermediary tag mechanically, leading exporters to litigate by pointing to the actual contract and operations. Once that tag is applied, the POS shifts from outside India into India resulting what would have been a zero-rated export of services into a normal taxable supply and denial of GST refund. This ongoing factual inquiry and the cascading impact it has on a supplier's cost structure, pricing, and working capital underscore why intermediary status remains a frequent flashpoint in indirect tax disputes. High Courts have intervened in numerous cases to remand or set aside orders when the authorities failed to examine the agreements or the "real nature" of the supply. However, a large number of these cases are still pending and are yet to attain finality.



While the Government's change in the Finance Act 2026 seeks to eliminate this structural anomaly, the omission has been introduced without any saving clause to protect pending proceedings, demands, and disputes that have arisen over the past eight years under Section 13(8)(b). And this is precisely where the storm began. The absence of a savings clause immediately triggers a *'centuries-old common law doctrine'*, one that is simultaneously codified in Indian statute, with potentially seismic consequences for both the government exchequer and the industry.

The Common Law Foundation: What Happens When a Statute Is Erased?

The Rules of Common Law are unwritten legal principles developed through centuries of judicial decisions in England, inherited by India during the colonial period, and have been consistently applied by courts as interpretative aids, unless expressly displaced or codified by statute. The most foundational of these in the context of statutory removal is the Common Law Doctrine of Statutory Obliteration when a provision is repealed or omitted, it is treated as erased from the statute book as completely as if it had never been enacted.

However, the common law itself recognises an important qualification: the principle of *'transactions past and closed.'* Even the most complete obliteration cannot disturb matters that had already attained finality while the provision was in force. Where rights have been fully determined, and no further proceedings or appeals remain pending, those outcomes are insulated from subsequent statutory removal.

In respect of omission of Section 13(8)(b): businesses whose intermediary classification disputes have attained complete finality and no appeal, revision or writ pending before any forum, in that case, the matters are considered as closed transactions beyond the reach of the proposed omission. The far more significant category is matters still alive in litigation, like demands under challenge and show cause notices not yet adjudicated. For these, the question of whether omission extinguishes the jurisdictional foundation of the proceedings becomes urgently relevant.

The General Clauses Act, 1897

Section 6 of the General Clauses Act, 1897, provides the statutory answer to the chaos that unguarded removal of legislation could cause:

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

a. *revive anything not in force or existing at the time at which the repeal takes effect; or*

b. *affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*

c. *affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*

d. *affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*

e. *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;*

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

The animating philosophy of Section 6 operates on the doctrine of saving, which rests on a foundational legal distinction: repeal of a law is not the same as declaring that the law never existed. When a statute is repealed, its past operations and the rights & obligations born under it do not simply disappear into thin air; rather, they continue to cast their legal shadow even after the statute itself has ceased to operate. To give formal and automatic effect to this principle, Section 6 creates a statutory saving clause which states when a Central Act or regulation repeals another enactment, without requiring the repealing enactment to say so expressly, and which can be displaced only when the legislature specifically manifests a "different intention" through clear and unambiguous language in the repealing Act.

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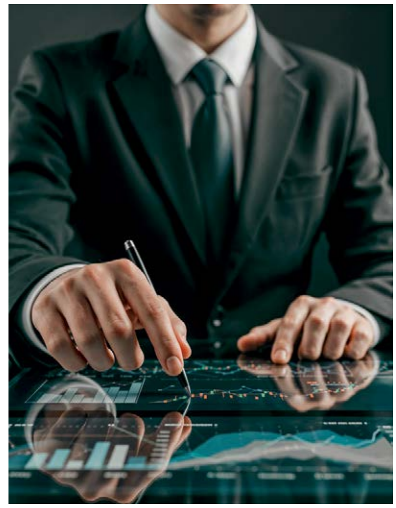
Applied to the present case, if Section 6 is attracted to the omission of Section 13(8)(b) of the IGST Act, then all pending proceedings, demands, show cause notices, assessments, and disputes arising under that provision would survive the omission and could be continued and enforced exactly as if the omission had never taken place. The government's demands for GST on intermediary services, including those spanning the eight years since GST's introduction, would remain alive and prosecutable.

But there is a threshold question - a question that has generated one of the most enduring debates in Indian statutory interpretation - that must be answered before Section 6 can be pressed into service here. The question is deceptively simple: the Finance Act 2026 does not say it is 'repealing' Section 13(8)(b). It says it is 'omitting' that provision. Does an 'omission' fall within the word 'repeal' in Section 6 of the General Clauses Act? On this single question, the Indian courts have produced four landmark pronouncements spanning over five decades - and the answers have been anything but uniform.



The Four Pillars of the Debate: A Journey Through the Case Law

1. **Rayala Corporation (P) Ltd. v. Director of Enforcement (1969) 2 SCC 412**

   A five-judge Constitution Bench held that Section 6 could not apply to the omission of Rule 132-A of the Defence of India Rules. Two reasons were given. The first - that the word 'repeal' in Section 6 does not encompass 'omissions' - was stated categorically but without any analytical discussion of what distinguishes the two concepts as a matter of legislative interpretation. The second - and more legally durable - reason was purely textual: Section 6 requires that the repeal be effected through a Central Act or Regulation. Rule 132-A was omitted by a Ministry notification, itself subordinate legislation and not a Central Act or Regulation. Since the repealing instrument was not a Central Act, Section 6 was inapplicable on this ground alone.

2. **Kolhapur Canesugar Works Ltd. v. Union of India (2000) 2 SCC 536**

   A fresh Constitution Bench affirmed the judgement of Rayala Corporation on both grounds. Rules 10 and 10-A of the Central Excise Rules - again omitted by subordinate legislation - were held unprotected by Section 6. The Court also laid down a structured three-tier framework for the fate of pending proceedings upon omission of a rule: such proceedings survive only if (i) the new rule expressly provides for their continuance; or (ii) Section 6 of the General Clauses Act applies; or (iii) a pari materia provision exists in the parent statute. Only in the absence of all three does a pending proceeding lapse.

3. **M/S Fibre Boards (P) Ltd. v. CIT Bangalore (2015) 10 SCC 333**

A two-judge bench comprising Justices R.F. Nariman and A.K. Sikri delivered a remarkable analytical judgement by challenging the established position. Section 280ZA of the Income Tax Act was omitted and simultaneously re-enacted with modification of Section 54G. A notification of 1967, declaring Thane an 'urban area' under the old provision, was claimed to survive under Section 24 of the General Clauses Act. The Revenue objected that omission is not repealed and Section 24 cannot apply.

The Court dismantled the prior precedents through three analytical prongs. First, it observed that Rayala Corporation's primary ground - that the repealing instrument was not a Central Act - was entirely self-sufficient to dispose of that case. The additional statement that omission is not repeal was therefore

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wholly superfluous to the outcome and could not be ratio decidendi; it was obiter dicta, and obiter of a Constitution Bench does not carry binding force.

Second, the Court introduced a provision neither Constitution Bench had noticed: Section 6A of the General Clauses Act, which itself uses the word 'repeal' to describe an act accomplished through 'express omission.' Since Section 6A is part of the same statute, the word 'repeal' in both Section 6 and Section 24 must, as a matter of consistent statutory interpretation, carry the same meaning and therefore include repeals by express omission. It was precisely because neither Rayala Corporation nor Kolhapur Canesugar had noticed Section 6A - a provision that directly illuminated the meaning of the very word 'repeal' they were construing - that both Constitution Bench decisions were rendered per incuriam on this point, undoing their binding effect on whether omission falls within the word repeal.

Third, an earlier Constitution Bench in State of Orissa v. M.A. Tulloch & Co. (1964) had held that even an implied repeal - where no express words of removal appear - falls within 'repeal' under Section 6. If even an implied repeal

qualifies, an express and deliberate omission must all the more qualify. The Rayala and Kolhapur benches had not engaged with this earlier Constitution Bench at all. Applying these principles, the Court held the simultaneous omission and re-enactment constituted a repeal and re-enactment with modification, attracting Section 24, and the 1967 notification survived.

4. **Hikal Limited v. Union of India (Bombay High Court, 2025)**

The most recent case arose from the GST regime itself. Rules 89(4B) and 96(10) of the CGST Rules, 2017 were omitted by a notification dated 8 October 2024 without any savings clause. The Revenue argued creatively that since these Rules were made under Section 164 of the CGST Act - a Central Act - they should be treated as part of the Central Act, attracting Section 6 protection. The Court firmly rejected this.

The answer, the court held, lies in Section 6 own text. Section 6 list of qualifying repealing instruments is exhaustive, covering only the General Clauses Act itself, any Central Act as defined under Section 3(7), or any Regulation as defined under Section 3(50). The notification through which the omission took place was none of these three — it was nothing but a Rule. The Court held that a rule made under a Central Act does not cease to be subordinate legislation by reason of its parentage, and since the repealing instrument was subordinate legislation and not a Central Act or Regulation, Section 6 was simply not attracted.

Following Rayala Corporation and Kolhapur Canesugar on their primary and surviving ground, the Bombay High Court held that pending show cause notices and orders not yet final lapsed with the omission of the impugned rules. The Court also held that the *Constitution Bench, having concluded that "Section 6 of the General Clauses Act was not applicable to a "repeal" by a Rule, should not have gone further and commented on the distinction between an omission and the repeal. The observations regarding the distinction only were therefore held to be obiter dictum and departed from."*

The Legal Landscape Today - Where Do the Four Cases Leave Us?

Reading these four cases together, the law currently operates on a clear bifurcation - but the dividing line is not what is commonly assumed.

For subordinate legislation - Act or rules omitted by other subordinate

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instruments - Rayala Corporation, Kolhapur Canesugar, and Hikal are unambiguous: Section 6 does not apply, and pending proceedings lapse unless a savings clause or pari materia provision exists. The primary and surviving reason is textual: Section 6 requires the repealing instrument to be a Central Act or Regulation. A Ministry notification or amended Rules simply do not qualify, and for a good reason.

Section 6 was never designed to respond to every instrument that repeals. It was designed to respond only to those instruments that carry parliamentary authority. A Rule made by the Executive under delegated power does not carry that authority, regardless of which Central Act empowers it.

For Central Act provisions omitted through a Finance Act or other Parliamentary legislation, Fibre Boards represents the current judicial position: the word 'repeal' in both Section 6 and Section 24 includes express omissions, by virtue of Section 6A. The second reason in Rayala Corporation and Kolhapur Canesugar - that omission categorically differs from repeal - has been identified as obiter dicta and per incuriam, and therefore as not binding on this question.

Omission of Section 13(8)(b) of the IGST Act sits squarely in this second category. It has been effected through the Finance Act 2026 - a Central Act of Parliament - w.e.f. 30th March 2026. The repealing instrument satisfies Section 6's textual requirement. The first and primary reason on which Rayala, Kolhapur and Hikal denied Section 6 protection - the repealing instrument was not a Central Act - is entirely absent here. On the Fibre Boards analysis, Section 6 is attracted, and all pending proceedings under Section 13(8)(b) survive the omission.

Do the Issues Actually been Resolve?

Yet the law on this point cannot be stated without acknowledging a fundamental constitutional tension that Fibre Boards itself did not fully resolve. The decision was rendered by a two-judge bench. The Constitution Bench decisions it effectively overrides on the 'omission vs. repeal' question for Section 6, were each decided by five judges. In India's constitutional hierarchy, a two-judge bench cannot, strictly speaking, override a Constitution Bench - even if its reasoning is more analytically rigorous and textually sound.

In practice, this means the question of whether the omission of Section 13(8)(b) attracts Section 6 of the General Clauses Act is genuinely litigable.

Second Side of the coin

Omission does come with relief for taxpayers providing intermediary services to foreign clients, but this is only one side of the coin. When we examine the other side, it becomes clear that it also entails new compliance consequences. Indian businesses receiving intermediary services from suppliers outside India, prior to the omission, operate in a framework where the POS for such services fell outside India because of Section 13(8)(b). However, with the omission of Section 13(8)(b), the general rule under Section 13(2) now applies, shifting the POS for such inbound services to the location of the recipient, squarely within India, making RCM liability unambiguous.

Conclusion - A Legislative Proposal That Demands a Legal Answer

Omission of Section 13(8)(b) of the IGST Act in Finance Act 2026 is commercially a liberalising measure that the intermediary services sector has been waiting for since services tax regime. In addition to correcting a structural anomaly that subjected Indian service exporters to domestic GST treatment despite serving foreign clients and revising consideration in foreign currency, it also improves India's attractiveness as a global hub, particularly for the GCC. But from the perspective of legal principles, its implementation as a bare omission without any saving clause, transitional provision, or express statement of legislative intent regarding past transactions has opened a significant arena of legal uncertainty.

Transactions since the introduction of GST, thousands of pending show cause notices, ongoing litigation in various forums, and significant GST deposits and credit claims all await a judicial determination of one foundational question: does an omission of an enactment through Central Act or regulation amount to a repeal for the purposes of Section 6 of the General Clauses Act or not?

The four cases examined above collectively illuminate both the depth of the debate and the absence of a final authoritative resolution. Rayala Corporation and Kolhapur Canesugar established their primary and still-surviving textual ground that Section 6 requires the repealing instrument and not omission. Using Section 6A and the per incuriam concept, Fibre Boards demonstrated with compelling analytical force that the word 'repeal' in Section 6 includes express omissions of enactment.

Fibre Boards also noted that this was not an argument of first impression. In General Finance Company & Anr. v. Assistant Commissioner of Income Tax (2002) 7 SCC 1, the Court had itself acknowledged that the argument - that 'omission also amounts to a repeal of an enactment' - was forceful and worthy of a larger bench reference, but declined to refer it solely because the cases affected were few and far between on facts. The merits of the argument were left entirely open - a gap that Fibre Boards subsequently resolved.

Hikal confirmed the orthodoxy for subordinate rules while simultaneously endorsing the Fibre Boards critique of the Constitution Bench obiter on omission versus repeal.

The Fibre Boards ruling is a powerful compass. But it is a two-judge compass pointing against two constitutional bench decisions, and it has not yet received the endorsement of a larger bench. Until Supreme Court through a Constitution Bench, determines whether or not "repeal" in Section 6 includes the express omission of a provision through Central Act or regulation, every stakeholder in the intermediary services ecosystem, either service providers seeking refunds or Revenue authorities prosecuting past demands, should navigate a landscape where the law is not yet fully settled.

The Finance Act 2026 could have addressed this issue more effectively by including a savings clause that outlines how previous transactions and ongoing

legal proceedings will be handled. If such a clause had been included in the Act, it would have completely closed the legal gap and made the five-decade-old argument between repeal and omission completely irrelevant to this specific legislative endeavour. In its absence, that debate is not merely academic; it is live, consequential, and headed to court. The courts will be the cartographers until the legal requirements in this case are mapped out. The stakes are extremely high for both parties.

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- *Hikal Limited v. Union of India, 2025:BHC-AS:37892-DB*
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