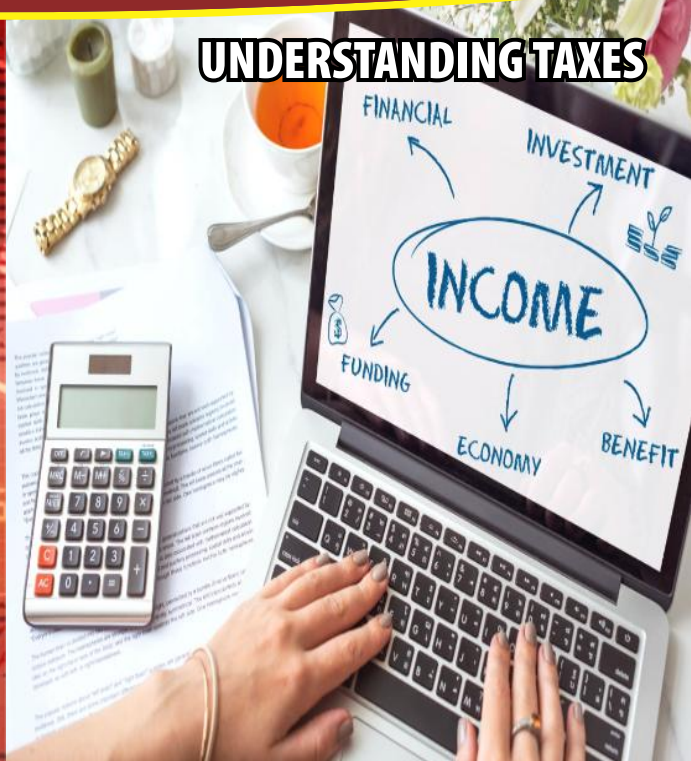


THE MONTHLY MAGAZINE FROM CASC

GST UPDATES



UNDERSTANDING TAXES



RECENT JUDGEMENTS



TAX TREATY



VOLUME-4

ISSUE-5

MAY 2025



CASC BULLETIN

INDEX

Subject	Author	Page No.
Recent Judgments in VAT / CST / GST	CA. V.V. Sampathkumar	12
Case Laws - GST	CA. Vijay Anand	23
Summary of AAR/AAAR	CA. Aman Goyal & CA. Venkadathri Rajaraman	57
Understanding Taxes, Duties, Tariffs and Cess - A Refresher	CA Rajasekaran	66
Controversies Around Tax Treaty Overrides And Multilateral Instruments (MLIS)	Eshaan Singal	75

Date	Topic	Speaker
08.05.2025 (Thursday)	FEMA - Capital account and Cross Border Transactions	Mr. S. Mohammed Kader Abdullah
29.05.2025 (Thursday)	Preparation of Financial Statements for Non-Corporate Entities	CA.S. Ramesh

The meetings will be held at CASC at 6.30 p.m. and will be preceded by fellowship over High Tea at 6.00 p.m

**CASC Annual Members are requested to renew their
subscription for 2025 - 2026**

Dear Professional Colleagues,

GST Appellate Tribunal Procedure Rules, 2025 – A New Dawn in GST Litigation:

The Government has taken a decisive step toward strengthening India's GST dispute resolution framework with the notification of the GST Appellate Tribunal (GSTAT) Procedure Rules, 2025. This long-awaited development marks a crucial milestone in bringing efficiency, uniformity, and greater taxpayer confidence in GST administration.

Way Forward - While the Procedure Rules lay a strong foundation, the success of GSTAT will depend on timely appointments of judicial and technical members, infrastructural readiness, and adherence to the spirit of swift and fair justice. A proactive approach by all stakeholders – Government, judiciary, and professionals – is critical to realize the full potential of this reform. The notification of the GSTAT Procedure Rules, 2025 is not just a procedural advancement, it is a reaffirmation of the commitment towards a fair, efficient, and taxpayer-friendly GST regime.

Let us, as members of the Chartered Accountants community, be prepared to embrace this change, guide our clients, and contribute constructively to India's evolving tax jurisprudence.

Special Acknowledgment:

We are honored to share that the Chartered Accountants Study Circle has received an endowment from M/s. Southern Electronics (Bangalore) Private Limited., graciously sponsoring our regular meetings in memory of their esteemed Senior Director, Late Shri. CA.G. Narayanaswamy. As a mark of this legacy, our first monthly meeting under the title "Shri G. Narayanaswamy CA Study Circle Meeting." Was held on 24th April 2025. We express our heartfelt gratitude to M/s. S Venkatraman & Co. for their generous contributions, and we are proud to honor Shri G. Narayanaswamy's enduring commitment to excellence, ethics, and education in the accounting profession. His values continue to inspire us in our journey of learning and service.

Annual Tax Convention 2025 - A Grand Success

The Chartered Accountants Study Circle (CASC), in association with the Hindustan Chamber of Commerce, successfully organized the Annual Tax Convention 2025 on 18th and

19th April 2025 at the MMA Centre, Chennai. The convention, themed “Mastering the Tax Landscape – Bridging Practice with Emerging Paradigms,” brought together leading experts, practitioners, and thought leaders across taxation domains. The event was inaugurated by Hon’ble Mr. Justice C. Saravanan, Judge, Madras High Court, who delivered inspiring insights on the evolving landscape of tax litigation and judicial approaches.

Across two packed days, participants benefited from rich technical sessions covering a wide range of critical topics – including valuation principles under various enactments, succession planning, enforcement proceedings, ITC frameworks, TDS compliance for NRI payments, block assessments, and the GST impact on cross-border transactions. The high-quality deliberations, interactive discussions, and practical perspectives shared by eminent speakers made the convention a resounding success, offering participants valuable knowledge to navigate the dynamic tax environment with greater confidence.

We extend our heartfelt thanks to all the distinguished speakers, delegates, organizing teams, and sponsors for their enthusiastic participation and support in making this event a memorable milestone for CASC.

Appeal

We, at Chartered Accountants Study Circle, request members to contribute articles for the bulletin and you may contact the editorial board regarding the same. We have been regularly conducting technical programmes every month. Members are requested to attend the programmes conducted by CASC and are also requested to send their suggestions and / or value additions to the services provided by CASC including this Bulletin. The same can be sent as hard copy to the office of the CASC or emailed to admin@casconline.org or to any of the members of the Management Committee of the CASC. Any member interested in using the CASC platform for addressing our members on technical topics may kindly feel free to contact us by way of email at admin@casconline.org.

For and on behalf of the Editorial Board

Bhuvaneshwari.R.V.

CA. BHUVANESWARI R.V

GLIMPSES FROM THE ANNUAL TAX CONVENTION JOINTLY WITH HCC HELD ON APRIL 18th & 19th, 2025



**INAUGURATION
BY
HON'BLE JUSTICE
SRI.C. SARAVANAN
JUDGE
MADRAS HIGH COURT**

**VALEDICTORY BY
CHIEF GUEST
SRI. KALANATHI VEERASAMY
Member of Parliament**



GLIMPSES FROM SHRI G.NARAYANASWAMY CA STUDY CIRCLE MEETING HELD ON 24.04.2025

SPEAKER : CA.REKHA UMA SHIV

TOPIC - AI IN/AUDIT



GLIMPSES FROM THE INAUGURATION OF Shri G.NARAYANASWAMY CA STUDY CIRCLE MEETING HELD ON 24.04.2025



FELICITATION AND HONOURING OF CA.G.SUNDARAMAN



INTRODUCTORY SPEECH BY CA.R.SUNDARAJAN



SPECIAL ADDRESS BY CA.G.SUNDARAMAN

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ANNOUNCEMENTS

1. The copies of the material used by the speakers and provided to CASC for distribution, for the regular meetings held twice in a month is available on the website and is freely downloadable.
2. Earlier issues of the bulletin are also available on the website in the "News" column.
The soft copy of this bulletin will be hosted on the website shortly.

READER'S ATTENTION

You may please send your Feedback / Contributions / Queries on Direct Taxes, Indirect Taxes, Company Law, FEMA, Accounting and Auditing Standards, Allied Laws or any other subject of professional interest to admin@casconline.org

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RECENT JUDGEMENTS IN VAT / CST / GST

Rectification and refund: Assessment order was passed by the respondent and later the consequential recovery notice was issued. Thereafter, a representation has been filed by the petitioner for rectification and refund of amount recovered by the respondent. Based



CA. V.V. SAMPATHKUMAR

on the said representation, the respondent had rectified the assessment order and released the bank account of the petitioner. However, they had refused to refund the excess amount of Rs.3,51,070/-. In spite of the repeated requests made by the petitioner, the aspect of refund was not at all considered and disposed of by the respondent till date. Hence, this petition has been filed. After hearing the respondent, this Court directs the respondent to consider the representation filed by the petitioner on the aspect of refund and dispose of the same on its own merits and in accordance with law within a period of 4 weeks from the date of receipt of a copy of this order. **M/s.Lakshmi Frames Vs. The Assistant Commissioner, Moore-Market Assessment Circle, W.P.No.6686 of 2025 Dated : 26.02.2025**

Opportunity: The petitioner submitted that all notices/communications were uploaded by the respondent in the GST portal. Though the petitioner entrusted his consultant, the said consultant had neither filed reply nor appeared for personal hearing. Under these circumstances, the impugned order came to be passed by the respondent without providing any opportunity of personal hearing to the petitioner. Hence, this petition has been filed. Ld Government Advocate appearing for the respondent would submit that the respondent had uploaded the notices in the GST Online Portal. But the petitioner failed to avail the said opportunity. Further, she has fairly admitted that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. That apart since the petition has been filed within the limitation, she requested this Court to remit the matter back to the respondent, subject to the payment of 10% of the disputed tax amount by the petitioner. The Court held that no opportunity of personal hearing was provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order was passed in violation of principles of natural justice since it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and set aside the impugned order with certain directions.

**Ms. Periyandichi Amman Timber Mart Vs State Tax Officer,
Roving Squad II/Adjudication, Intelligence, Salem -7
W.P.No.6909 of 2025 Dated : 28.02.2025**

Personal hearing: Show cause notice(SCN) was issued by the respondent on 27.04.2023, for which a detailed reply was filed by the petitioner. Thereafter, the notice with regard to the personal hearing was uploaded by the respondent in the GST portal. Since the petitioner was not aware of the said notices, they failed to appear before the respondent. Under these circumstances, the impugned order came to be passed by the respondent without providing any opportunity of personal hearing to the petitioner. Hence, this petition has been filed. This Court after hearing the respondent held that the impugned order was passed in violation of principles of natural justice since it is just and necessary to provide an opportunity to the petitioner to establish their case on merits and set-aside the orders with directions. **M/s.National Store Vs The State Tax Officer (ST), Cuddalore, Chidambaram II, Tamil Nadu W.P.No.6920 of 2025 Dated :28.02.2025**

Principles of Natural Justice : Assessment Order passed by the second respondent dated 13.09.2023 is an ex parte order, as the

petitioner has not been heard before passing the same, since, all the notices/communications, which culminated in the impugned assessment order have been merely uploaded in the GST Portal through online service and have not been served on the petitioner through physical mode, the same were unnoticed by the petitioner. That apart, the petitioner's GST Registration was also cancelled by the respondent-GST Department way back in the year 2017 itself pursuant to the request made by the petitioner, hence, certainly, the petitioner would have had no occasion to follow the GST communications. However, when the petitioner challenged the impugned assessment order and preferred Appeal, the first respondent/Appellate Authority also dismissed the Appeal on the ground that the same has been filed with a delay of 196 days, which necessitated the petitioner to approach this Court. Therefore, in the light of the above facts and circumstances of the case, this Court set aside both the impugned assessment order passed by the second respondent/AO, as the same suffers from violation of principles of natural justice and the order of dismissal passed by the Appellate Authority/first respondent, ((since, he has no power to condone the delay beyond the period of 30 days). Impugned order dated 13.09.2023 is set aside and the order passed by the first Appellate Authority dated 25.10.2024 is also set aside

with conditions. **M/s. Bhavani Agro Agencies, Vs.1. The Deputy Commissioner (CT) (FAC), GST (Appeal), Appellate Authority, Salem-7. 2. The CTO/ STO, Erode, Erode-1. W.P.No.6672 of 2025 DATED : 27.02.2025**

Non-speaking order: on perusal of the impugned order, it is seen by the Court that the respondent-Department has made a vague statement that “taxpayer (petitioner) has not produced valid documentary evidence. Hence, the taxpayer reply was not acceptable”. In what way, the reply/objections made by the petitioner is not acceptable, in what manner, does the respondent is disagreeable to the points raised by the petitioner in their reply/objection, and how come the reply/objections filed by the petitioner is not acceptable has not been set out clearly by the respondent, rather, the respondent has passed the impugned order, which is nothing but verbatim reproduction of the reply filed by the petitioner, and finally, in a single line, stated that the reply was not acceptable and the documents filed by the petitioner were not valid documents, which per se shows the non-application of mind on the part of the respondent in passing such order. Further, before passing the impugned order, the petitioner has not been afforded with any opportunity of personal hearing. Therefore, this

Hon'ble Court held that the impugned order passed by the respondent is a non-speaking order and suffers from violation of principles of natural justice and issued orders/directions. **M/s.Exim Ink Co. Vs The Commercial Tax Officer, Thiruvanmiyur Assessment Circle, Chennai - 35. W.P.No.6720 of 2025 DATED : 27.02.2025**

Input tax credit: The orders impugned in all Writ Petitions are quashed insofar as it relates to the claim made by the petitioners for ITC which is barred by limitation in terms of Section 16 (4) of the CGST Act, 2017 but, within the period prescribed in terms of newly inserted Section 16 (5) of the said Act. **M/s. R K Invent Weld Automation Private Limited Vs 1 DSTO II Varadarajapuram, Chennai-123. 2. Assistant Commissioner (ST) (FAC). Kuntratur Assessment Circle. 3.Deputy Commissioner (ST), Kanchipuram Zone Kanchipuram 631 501 W.P.No.6872 of 2025 DATED: 27.02.2025**

Limitation and rectification petition: Show cause notice is dated 28.04.2022. According to the petitioner the SCN is barred by limitation. Hence, the petitioner has not chosen to file reply/objection. However, the first respondent passed an order dated

28.02.2023, confirming the proposals contained in the SCN. The petitioner filed a Petition seeking for rectification of the order passed by the first respondent dated 28.02.2023, on 22.01.2025, on the ground that the entire proceedings is bared by limitation, since the limitation period for issuance of SCN expired as early as on 25.10.2021. However, since the said Rectification Petition has not yet been disposed of, the present Writ Petition is filed seeking disposal of the same. Whether the issue as to whether the SCN dated 28.04.2022 issued by the first respondent is barred by limitation or not cannot be raised in Rectification Petition, this Court is of the view that it is for the first respondent to decide the maintainability of the Rectification Petition, and in case, the first respondent finds that there is no error apparent on the face of record, he is empowered to reject the same, instead of doing so, the first respondent cannot keep the matter pending. Therefore, this Court directed the first respondent to dispose of the said Rectification Petition filed by the petitioner dated 22.01.2025 as expeditiously as possible, preferably, within a period of four weeks from the date of receipt of a copy of this order.

M/s. Standard Painting and Decorators, Vs.1. The Deputy Commissioner, Mylapore Division, Chennai North Commissionerate, Chennai-34. 2. The Joint Commissioner

of GST & CE, Mylapore Division, Chennai North
Commissionerate, W.P.No.6893 of 2025 DATED : 27.02.2025

GST payment in instalments: Though the relief sought for in this writ petition is for a larger relief, the learned counsel appearing for the petitioner submitted that it would suffice if the petitioner is permitted to pay the tax liability in instalments for the reason that due to financial constraints the petitioner could not run the business and it was closed. After hearing both sides this Court directed that the petitioner may be permitted to pay the tax liability in five instalments. and passed the order with related other directions. **M/s.Sukumar Welding Works, Vs. The Assistant Commissioner (ST), Kodumudi Assessment Circle, Erode.W.P.No.5202 of 2025 Dated : 24.02.2025**

Opportunity Granted: Even after the issuance of DRC-01 notice, the petitioner has been issued with three reminder notices granting opportunities to the petitioner to file reply and appear before the respondent and on two occasions, the petitioner has requested for time, which were also granted and it is the petitioner, who failed to utilize those opportunities granted, and therefore, it cannot be stated that no fair opportunity was granted to the petitioner nor it

can be stated that the petitioner was unaware of the impugned proceedings. As pointed out by the learned Special Government Pleader for the respondent, the petitioner invited the impugned order on their own volition and the respondent cannot be found fault with. Therefore, this Court was not inclined to interfere with the impugned order by invoking power under Article 226 of the Constitution of India. Stating so, the Writ Petition is dismissed. It is open to the petitioner to approach the Appellate Authority by way of an Appeal challenging the impugned order and agitate their rights in the manner known to law. **M/s Chennai Diamonds Jewellers Pvt Ltd Vs. The Assistant Commissioner (ST)/Inspection, Chengalpattu Intelligence Division, Chengalpattu-1 W.P.No.5921 of 2025 DATED : 24.02.2025**

Order passed in the name of dead person: Impugned order came to be passed against the Petitioner's husband who is no more, this Court is inclined to set aside the impugned order and passed the following order: (i) The impugned order is set aside and the matter is remanded for fresh consideration. (ii) The petitioner is directed to file an affidavit informing about the death of the Petitioner-s husband along with reply to the SCN dated 27.12.2023, within 3

weeks from the date of receipt of a copy of this order. (iii) On receipt of the same, the Respondent is directed to pass orders on merits and in accordance with law. **D.Kamalammal Vs.The Deputy State Tax Officer 1, Ponneri Assessment Circle, W.P.No.5079 of 2025 Dated : 17.02.2025**

Documentary evidence : Though the learned counsel for the petitioner repeatedly made a submission that the respondents have wrongly issued two show cause notices and passed two assessment orders for the same discrepancies pertaining to the year 2019-2020, he has not produced any documentary evidence to substantiate the same. Stating so, the Court held that there was no merit in the present writ petition and the same is liable to be dismissed. **M/s.Madha & Co, Kolathur, Vs.1.The Deputy Commercial Tax Officer, Surapattu Assessment Circle, W.P.No.887 of 2025 Dated : 14.02.2025**

Interest and Penalty: There was a delay of 94 days in filing the appeal which appeal petition was summarily rejected, without giving any opportunity of hearing to the petitioner on the ground that there was a delay. Further it was submitted that once input tax was reversed and the balance remain unutilised from the date of

claim of Input Tax Credit, at no point of time, Input Tax Credit was either availed or utilized and therefore, penalty and interest cannot be imposed and produced a copy of the order dated 11/6/2024, passed in W.P.(MD) No.26254 of 2022, wherein it was held that once the ITC was neither availed nor utilised by the petitioner, question of imposing the penalty does not arise. Similar view was also taken by this Court in KUMARAN FILAMENTS (P) LTD Vs. COMMR OF CGST AND CE, MADURAI AND OTHERS (2021 SCC ONLINE MAD 12062) and also by the DB of the Patna High Court in COMMERCIAL STEEL ENGG CORPN Vs. STATE OF BIHAR AND OTHERS (2020) 74 GSTR 51: 2019 SCC ONLINE PAT 3363. In such a view of the matter, this Hon'ble Court set aside the order impugned in this WP and the matter is remitted back to the second respondent. **M/s. Fairmacs Shipstores Private Limited Vs 1. The Deputy Commissioner (ST), GST Appeal, Chennai. 2. The Deputy Commercial Tax Officer, Harbour: North I: Chennai North Writ Petition No.39022 of 2024 Dated: 12/2/2025**

(The Author is a Chennai based Chartered Accountant in Practice. He can be reached at vvsampat@yahoo.com)

CASE LAWS - GST

1. GST - DEMAND WITHOUT CONSIDERING REPLY TO SCN - EXPLAINING THE DIFFERENCE IN TURNOVER AND THE ELIGIBILITY UNDER DECLARATION OF OUTPUT TAX - NOT SUSTAINABLE



CA. VIJAY ANAND

In Holy Land Marketing Pvt. Ltd. v. STO, Avato Ward, Delhi 2025(94) GSTL 13/(2025) 26 Centax 131 (Del.), the petitioner was given an opportunity to show cause as to why they had not declared the correct tax liability in the annual returns of GSTR-09 owing to a difference in the turnover of the company and there is an under-declaration of the output tax and, accordingly, they were directed to pay the tax liability which was replied by the petitioner on 14th June, 2024 explaining in detail the position. Thereafter, reminder notices were issued by the Department against the petitioner which was also replied on 13th August, 2024 submitting various documents along with its reply consequent to which an order dated 31st August 2024 was passed. On a writ petition challenging the order, the high court observed as under:-

-
1. None of the contentions raised by the petitioner in response to the Show Cause Notice have even been adverted to in the impugned order which is completely silent on the grounds and the reasons for which the reply of the petitioner has not been considered or has been rejected.
 2. This is yet another case where the order has been passed by the same Proper Officer in Ward Nos. 202, 203 and 205 Mr. Subhash Kumar Jha, who has used identical language even in earlier cases which the same Court had clearly frowned upon.
 3. In the case of Indian Highways Management Company Ltd. v. Assistant Commissioner Delhi Department of Trade and Taxes Order dated 12th November, 2024 in W.P.(C) No. 15701 of 2024 [(2025) 26 Centax 359 (Del.)], the coordinate bench of the Delhi High Court had already taken note of similar orders and set aside the same.
 4. In Chetak Logistics Ltd. v. Union of India (2025) 26 Centax 221 (Del.) the order which had identical language and complete non-application of mind was set aside by the court.
 5. In view of the lack of reasoning, non-consideration of the reply and non-application of mind in passing the impugned order was not tenable and deserves to be set aside.

Hence, the impugned order was set aside and the matter was remanded to a different officer for fresh consideration on the replies given by the petitioner and pass a fresh order, after affording an opportunity of being heard.

Hence, the petition was disposed of.

2. GST - ORDER WITHOUT SIGNATURE - NOT SUSTAINABLE

In *Usman Enterprises v. AC(ST), GST Audit, Vijayawada* 2025(94) GSTL 50/(2025) 26 Centax 280 (AP) the petitioner was served with an assessment order in Form GST DRC-07, dated 18.05.2024 which was challenged by a writ petition on various grounds, including the ground that the said proceeding does not contain the signature of the assessing officer. The high court observed as under:

1. The effect of the absence of the signature, on an assessment order was earlier considered in *A.V. Bhanoji Row v. The Assistant Commissioner (ST), in W.P.No.2830 of 2023* on 14.02.2023 wherein a Division Bench of the Andhra Pradesh High Court held that the signature, on the assessment order, cannot be dispensed with and that the provisions of Sections

160 & 169 would not rectify such a defect. This was followed by the same court in the case of M/s. SRK Enterprises v. Assistant Commissioner, in W.P.No.29397 of 2023, decided on 10.11.2023 wherein the impugned assessment order was set aside.

2. Another Division Bench of the Andhra Pradesh high court in M/s. SRS Traders v. The. Assistant Commissioner ST & Ors, in W.P.No.5238 of 2024 in its Judgment, dated 19.03.2024, held that the absence of the signature of the assessing officer, on the assessment order, would render the assessment order invalid and set aside the said order.
3. Arising out of the above, the impugned assessment order would have to be set aside on account of the absence of the signature of the assessing officer, on the impugned assessment order.

Accordingly, the impugned assessment order was set aside with liberty to the adjudicating authority to conduct fresh assessment, after giving notice and by assigning a signature to the said order. The period from the date of filing of the Writ Petition to the date of disposal of the Writ Petition shall be excluded for the purpose of calculating the limitation available for passing the assessment order.

3. GST - ADVANCE RULING - COMPOSITE SUPPLY TO UNDERTAKE EARTH-WORK IN SURFACE EXCAVATION BY USING SUCTION DREDGER AND SOIL REMEDIATION OF EXCAVATED EARTH TO GOVT. OF MANIPUR - EXEMPT UNDER SL.NO.3A OF NOTIFICATION NO.12/2017-CT

In RE: Reach Dredging Ltd. 2025(94) GSTL 103/(2024)25 Centax 322 (AAR.-GST-WB), the applicant provides works contract services to various State Governments, Central Government and Union Territories. The applicant has been rewarded work order by the Government of Manipur (Water Resources Department) (hereinafter referred to as "Govt.") for Development of Water Body/ Reservoir at Lamphelpat, Imphal West, Manipur, India. The applicant entered into contract with the State Government of Manipur (Water Resources Department) vide agreement no. "SE/IC-I/2-37/WB-AGR/2023-24/2 Dated 12/09/2023" for the execution of above- mentioned Works Contract. The purpose of the contract order is to dredge Lamphelpat Waterbody for enhancing the sustainable water potential for supply of water in the Imphal city, creates opportunities for development of new amenities, promote eco-tourism and recreational facilities.

The works contract constitutes mainly of dredging and earthwork excavation which is purely construction and service work. Further, the cost of construction material transferred or consumed for execution & completion of the work contract will be less than 5 (Five) percent of the total work order value as per the original contract agreement.

An application was filed seeking advance ruling as to the following:-

- (i) Will the supply be covered under Sl. No. 3A Notification No.9/2017 dated 28-06-2017 Integrated Tax (Rate) or Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time?
- (ii) What will be the effective GST tax rate applicable to the supply?

The authority observed as under:

1. The applicant has received a letter of acceptance from the Office of the Executive Engineer, Electrical and Mechanical Division, Water Resource Department, Government of Manipur in respect of a contract for execution of project of development of water body/reservoir at Lamphelpat, Imphal West, Manipur,

India under the project name “Rejuvenation of Lamphelpat water body to alleviate urban flooding, providing sustainable water source for Imphal city and promoting eco tourism”.

2. The applicant thereafter has entered into an agreement with the Superintending Engineer, Irrigation Circle-I, Water Resources Department, Imphal to undertake earthwork in surface excavation by using suction dredger, 500 CSD with cutter power 250 ICU and soil remediation of excavated earth. According to the schedules of work apart from the work mention above, the applicant performs re-sectioning of Nambul stream from Hump Bridge to Samushang Nalla.
3. The applicant contends that the aforesaid supply of services get covered under serial no. 3A of Notification No.9/2017 dated 28-06-2017 Integrated Tax (Rate) or entry no. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended.
4. Accordingly, the following points arise for consideration:-
 - (i) Whether the instant supply of services can be regarded as composite supply of goods and services;
 - (ii) Whether the applicant provides services to the Central Government, State Government or Union Territory or local authority; and

-
- (iii) Whether the said services are in relation to any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution of India.
5. A perusal of the records submitted would indicate that works contract constitutes mainly of dredging and excavation which is purely construction and service work and that the cost of construction material transferred or consumed for execution & completion of the work contract will be less than 5 (Five) per cent of the total work order value as per the original contract agreement.
 6. Therefore, the supply of services can be regarded as composite supply of goods and services and have been provided to the State Government.
 7. Now the issue left with us is to decide whether the said services are in relation to any functions entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution of India.
 8. The document also reveals that the project aims to alleviate urban flooding, providing sustainable water source for Imphal city and promoting eco- tourism. In this regard, we like to

mention that we have come across different articles, reports on the internet in respect of instant project wherefrom it is learnt that Lamphalet, which is in the foothills of the Langol hill range, was a natural water reservoir and in the past it served as a reservoir, storing excess water of the Luwangli and Nambul rivers during monsoon.

9. It was used to release water to the rivers during the lean season. The planned water body would store excess water from Nambul River and water collected from various sources and catchment areas would be further treated for use in water supply schemes.
10. The waterbody at Lamphelpat that has a huge storage capacity of 124 million cubic metres, is poised to become the lifeline of over 4 lakh residents of Imphal for providing drinking water. The project focuses on the integrated issues relating to flood risk management to ensure safety and security in the Imphal Valley.
11. Additionally, the rejuvenation effort focuses on preserving the ecological integrity of the Nambul River, enhancing aesthetic values, and promoting eco-tourism potential in Imphal city.

-
12. Dredging of Lamphelpat water body would impart benefits like increasing volume and depth of the water body by eradicating debris, improves water quality which in turn would create a sustainable ecosystem for aquatic flora and fauna.
 13. The work to alleviate urban flooding is not listed in the Eleventh and/or Twelfth Schedule. However, the functions entrusted to a Panchayat or to a municipality as listed in the Twelfth Schedule include the functions viz. (i) drinking water or water supply for domestic, industrial and commercial purposes and (ii) protection of the environment and promotion of ecological aspects.
 14. In the instant case, the objective of the project inter alia includes improvement of water security and enhancement of environmental situation which, according to us, is a subject matter of Twelfth Schedule [Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992].
 15. Consequently, the supply made by the applicant to the Government of Manipur is in relation to a function entrusted to a Municipality under article 243W of the Constitution.

Hence, the authority ruled as under:

Supplies made by the applicant for rejuvenating Lamphelpat waterbody to alleviate urban flooding, providing sustainable water source for Imphal City and promoting eco tourism to the State Government of Manipur are exempted from payment of tax vide serial number 3A of the Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 [corresponding State Notification No. 1136 F.T. dated 28.06.2017], as amended or Sl. No. 3A Notification No.9/2017-Integrated Tax (Rate) dated 28- 06-2017.

4. LEASEHOLD RIGHTS OF PLOT AND BUILDING ALLOTTED BY GIDC - SUBSEQUENT ASSIGNMENT OF LEASEHOLD RIGHTS AND INTEREST THEREOF IN THE PLOT AND THE CONSTRUCTED BUILDING TO A THIRD PERSON SUBJECT TO APPROVAL OF GIDC - NOT A SUPPLY

In Gujarat Chamber of Commerce and Industry v. UOI 2025(94) GSTL 113/(2025)26 Centax 150(Guj.), Gujarat Industrial Development Corporation (GIDC) is established under the Gujarat Industrial Development Act, 1962 and acts as Nodal agency of Government of Gujarat for the purpose of development of industrial estates in the State of Gujarat. GIDC acquires land and develops same as industrial estate by creating infrastructure thereon such as road, water supply,

street light, drainage, etc. and allots plot of land to an industrial entity/person on long term lease for a period of 99 years. The terms and conditions of the allotment letter issued by the GIDC includes the method and manner in which premium and lease rent is required to be paid by the allottee/lessee. A licensing agreement is also executed between GIDC and the allottees/lessees to set up industrial unit subject to approval and permission from the regulatory authorities. Licensing agreement also contains a clause whereby GIDC agrees to execute lease deed for a period of 99 years in favour of the allottee/lessee upon fulfilling the terms and conditions of licensing agreement.

Thereafter on fulfilling the terms and conditions of the license agreement, a registered lease deed is executed by GIDC in favour of the allottee/lessee after payment of applicable stamp duty wherein all terms and conditions of the allotment letter and licensing agreement are incorporated. Lease deed also permits the allottees/lessees to assign the leasehold rights and interest in the plot to any other person subject to approval of GIDC.

GST authorities have issued the summons/show cause notices to the members of the petitioner association who have assigned

the leasehold rights and interest in their plots allotted by GIDC to assignee to show cause as to why GST at the rate of 18% should not be levied on such transaction of assignment of leasehold rights. The petitioner made several representations before the respondents to clarify that the levy of tax under the GST Act is not attracted on transfer of leasehold rights in the plot of land or in alternative in any case input tax credit of such tax would be admissible under the GST Act which haven't been considered consequent to which a writ petition was filed before the high court which observed as under:-

1. It is necessary to determine as to whether the assignment of leasehold rights of the land along with the building thereon would be covered by the supply of goods or supply of services because as per the provision of section 7(1)(a), supply of goods or services or both covers (i) sale (ii) transfer (iii) barter (iv) exchange (v) license (vi) rental (vii) lease or (viii) disposal made or agreed to be made for a consideration by a person in course or furtherance of business.
2. Assignment of leasehold rights would be covered by sale, transfer, exchange for a consideration by a person. It would also be required to be considered as to whether such sale, transfer, exchange for a consideration by a person is in course

or furtherance of business or not because once the transaction of assignment of leasehold rights takes place, business would be transferred by assignor in favour of the assignee.

3. Sub-section(1)(a) of section 7 of the GST Act is amended with effect from 01.07.2017 in place of clause(d) of sub-section(1) whereby reference is made to Schedule-II to treat certain activities or transactions either as supply of goods or supply of services as prescribed therein whereas sub-section(2) of section 7 refers to Schedule III which stipulates activities or transactions which are to be treated neither as supply of goods nor supply of services including the activities and transactions undertaken by the Government or local authority. Sub-section(3) provides for the powers vested with the Government on recommendation of the Council to specify by notification the transactions that are to be treated either as a supply of goods and not as a supply of services and vice-versa.
4. Therefore, the moot question which arises for consideration is whether assignment of the leasehold rights of the land along with the building thereon would be covered by the scope of supply so as to levy GST as per the provisions of section 9 or not?

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5. Section 7 read with Schedule II and Schedule III thereof indicates wide scope for interpretation of concept of supply which is the basis to levy the tax as per the charging provision of section 9 of the GST Act.
 6. A bare perusal of the Statement of Object and Reasons of the Central Goods and Service Tax Bill, 2017 clearly indicates the legislative intention to subsume all the existing indirect taxes in a single tax called Goods and Services Tax to be levied on supply of goods or services or both at each stage of supply chain by converging any tax that was being levied on the supply of goods or services to be converged in the GST Act.
 7. Consequently, section 7 which provides for the scope of supply of good or services or both for the purpose of the GST Act includes all forms of supply of goods or services or both by any form such as transfer, sale, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business has to be read in terms of substantive provision and Schedules which treats the activity as supply of service, particularly, in relation to land and building and includes a lease.

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8. The consideration, therefore, as premium/one time premium is a measure on which tax is to be levied, assessed and recovered. Therefore, when GIDC allots the plot of land on lease of 99 years and charges premium for such allotment followed by periodical lease rent to be paid, is to be considered as supply of service in relation to land and building read with clause 5(a) of Schedule-II which specifically provides that renting of immovable property shall be treated as supply of services.
 9. However, when such leasehold right is transferred by the lessee-assignor in favour of a third person-assignee by execution of deed of assignment, it would be nothing but transfer of an “immovable property” in view of the settled legal position to the effect that lease for 99 years or for a long term in consideration of premium paid is as much an alienation as sale or mortgage.
 10. Corpus Juris Secundum defines the word “property” in a manner which depends on the context with which it is used. Firstly, it is applied to the external things that are the objects of rights or estates that is things that are the object of the ownership and secondly, it is applied to the rights or estates that a person may acquire in or to things. Therefore, in strict

legal parlance, “property” is used to designate a right of ownership or an aggregate of rights that are guaranteed and protected by the Government and has been defined as the right of any person to possess, use, enjoy and dispose of a thing and to exclude everyone else from interfering with it and more succinctly, it has been defined as any vested right of any value which refers to both the actual physical object and various incorporeal ownership rights in the object i.e. plot of land and building thereon in facts of the case as the right to possess, to enjoy the income from, to alienate or to recover ownership from one who has obtained title to the object.

11. Under the GST Act and IGST Act relating to Rate of Tax, Exemption, Reverse Charge Scheme and other matters concerning supply of services are covered by notifications issued in exercise of powers conferred by subsections (1), (3) and (4) of section 9, subsection (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the GST Act on the basis of recommendations of the GST Council.

12. As per the Notification no. 11/2017, lease of property is included in Heading No. 9954 relating to construction services which provides rates of GST involving transfer of land or

undivided share of land, as the case may be, and value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and value of such transfer of land or undivided share of land shall be deemed to be 1/3rd of the total amount charged for such supply and total amount means sum total of consideration charged for the aforesaid service and amount charged for transfer of land or undivided share of land, as the case may be, including by way of lease or sublease.

13. Therefore, levy of GST on construction services are exclusive of 1/3rd of total amount charged for such supply which includes transfer by way of lease or sub-lease meaning thereby even for levy of GST on construction services, value of the land by way of lease is to be excluded considering such value being the value of immovable property which is transferred.
14. As the assignor transfers leasehold rights after receiving the consideration as determined on the basis of value of such leasehold rights, such transaction therefore would of an “immovable property” and cannot be considered as “supply of services” as held by Hon’ble Apex Court in case of Gopal Saran v. Satayanarayana reported in 1989 (3) SCC 56 wherein

definition of “assignment” as stated in Black’s Law Dictionary, Special Deluxe Edition page 106, is referred to as assignment means “is a transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein”. It has further been held that assignment would include “The transfer by a party of all its rights to some kind of property, usually intangible property such as rights in lease, mortgage, agreement of sale or a partnership.”

15. Hence, assignment of leasehold rights is also subject to levy of stamp duty being transfer of “immovable property”.
16. The Hon’ble Apex Court in case of Byramjee Jeejeebjoy (P) Ltd v. State Of Maharashtra reported in AIR 1965 Supreme Court 590 while holding as to what a lease contemplates has observed that a demise or a transfer of a right to enjoy land for a term or in perpetuity in consideration of a price paid or promised or services or other things of value to be rendered periodically or on specified occasions to the transferor. The words “transfer of right to enjoy such property” indicates that all the rights of ownership are not transferred.

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17. Therefore, the significance of those words as indicative of the limited estate transfer is apparent in contrasted which flows in section 54 where a sale is defined as “transfer of ownership in exchange for a price”. Therefore, while assignment conveys the whole interest in the property which passes to the assignee along with rights and liability to sue and be sued upon the covenants in the original lease.
18. In case of Northern India Caterers (India) Ltd. V. Lt. Governor of Delhi reported in (1978) 4 SCC 36, the Hon’ble Apex Court has made a distinction between sale of food and the provisions of services in hotels and restaurants which has led to Constitution 46th Amendment Act by which Article 366 (29-A) was inserted expanding the scope of tax on the sale or purchase of goods artificially, more particularly, by sub-clause (f) thereof which stipulates tax on supply, by way of or part of any service or in any other manner whatsoever of goods being food etc.
19. Therefore, the scope of “supply of services” would not include transfer of leasehold rights as supply of service as it would be transfer of “immovable property” being a benefit arising out of immovable property consisting of land and building.

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20. Clause 5 of Schedule III of the GST Act clearly provides that sale of land cannot to be treated as supply of goods or services. Therefore, leasehold rights which are to be considered as sale of land would be out of purview of the provisions of scope of supply as per section 7 of the GST Act. As the GST Act is nothing but a levy of tax upon all the indirect taxes which were levied under different legislation, it would be germane to refer to definition of “service” as provided in section 2(102) of the GST Act to mean as anything other than goods, money and securities.
21. Considering such definition in juxtaposition to provisions of section 65B(44) of the Finance Act, 1944, there was specific exclusion of transfer of title in immovable property from definition of ‘service’ itself which clearly shows that there was no intention of the legislature to impose tax on transfer of immovable property.
22. Under the Service Tax law, even the development rights which are the benefits arising from land were not liable to tax. Leasehold right is in fact a greater right and interest in land than development rights and the principle under the service tax regime would therefore, continue even to apply under the

GST regime as the object of introduction of GST is to subsume the existing taxes.

23. At the 7th GST Council meeting held on 22nd and 23rd December, 2016, it was decided to defer imposition of tax on land and building and thereafter, clause 5 of Schedule III of the GST Act clearly excludes sale of land and building which fortifies the intention of the GST Council not to impose tax on transfer of immovable property continuing the underlying object of erstwhile service tax regime.
24. In *Munjaal Manishbhai Bhatt v. Union of India* reported in (2022) 104 GSTR 419 (Guj) = 2022 (62) G.S.T.L. 262 (Guj.), the high court observed that the intention of introduction of GST regime was not to change the basis of taxation of the Value Added and Service Tax regime and that supply of land in every form was excluded from the purview of GST Act.
25. Moreover, GIDC had only allotted the plot of land to the lessee who constructed the building and developed the land to run the business or industry for which such plot of land was allotted. Therefore, what is assigned by the lessee/assignor to the assignee for a consideration is not only the land allotted by GIDC on lease but the entire land along with building thereon

which was constructed on such land. The entire land and building is therefore, transferred along with leasehold rights and interest in land which is a capital asset in form of an immovable property and the lessee/assignor earned benefits out of land by way of constructing and operating factory building/shed which constitutes a “profit a pendre” which is also an immovable property and therefore, would not be subject to tax under the GST Act.

26. The decision in case of Legal Hiers of Deceased Fakir Chand Ambaram Patel v. OI of Amruta Mills Ltd. – 2002 (3) GLH 367 holding that lease creates an interest in immovable property which is an intangible asset and therefore, would amount to supply of service, would not be applicable as along with the leasehold rights, there is an absolute transfer of all rights in the land and building.
27. Similarly, decision of Allahabad High Court in case of Greater Noida Industrial Dev Authority v. Commissioner of Customs, Central Excise [2015 (40) S.T.R. 95 (All.)], would also not be applicable in the facts of the case as it related to the demand of service tax on renting of immovable property on lease for any period and the term of lease would not determine the character

of service of renting on property under section 65 (105) (zzzz) of the Finance Act, 1994 as now under Schedule II, clause 5(a) renting of immovable property is deemed to be supply of services.

28. Therefore, there is a thin line of distinction as to renting of immovable property and assignment of such leasehold rights in immovable property for a consideration. In facts of the case, therefore, such assignment of leasehold right for a consideration in immovable property would be out of scope of purview of the supply of service as it would amount to sale of immovable property in form of land and building which would not be covered by definition of section 7(1)(a) read with clause 5 to Schedule III of the Act.

29. Hence, merely because GIDC is having title of the ownership over the land in question would not be sufficient to exclude the assignment of leasehold rights to be included as supply of service as levy of GST would depend upon the nature of transaction in question. In the facts of the case when the lessee/ assignor transfers the land having leasehold rights and building to the assignee, same cannot be considered as supply of service as it would be a transfer of immovable property

30. The levy of GST, considering the nature of transaction, the assignment deed executed by the lessee/assignor is not a composite deed of lease as well as deed of sale but by deed of assignment executed by the lessee there is no lease or sub-lease by the lessee but it is a deed of divesting all the rights of lessee in favour of assignee and the assignee becomes liable to the lessor on the covenants running with the land and liable to the stamp duty, relying on the decision in case of P. Kishore Kumar v. Vittal K. Patkar 2023 SCC OnLine SC 1483 to canvas the proposition that a vendor cannot transfer a title to the vendee better than he himself possesses and the principle arising from the maxim *Nemo dat quod non habet* i.e. “no one can confer a better title than what he himself has” considering the nature of transaction when lessor assignor transfers the entire leasehold rights along with building constructed thereon to the lessee assignee, it would amount to assignment of all the rights in the immovable property by the lessor assignor.

31. Reliance placed by the revenue under Heading 9972 and Group 997212 for rental or leasing service vis-a-vis Group 99979 for other miscellaneous services in which Sub-group 999792 providing for agreeing to do an Act would not attract the transaction of assignment of leasehold rights along with

building on the plot of land as lessee/assignee is not liable to receive any rental from the assignee.

32. Similarly, the reliance placed by the revenue in T.N. Kalyana Mandapam Assn. v. Union of India – 2006 (3) S.T.R. 260 (S.C.) = 2004 (167) E.L.T. 3 (S.C.) for levy of service tax on the mandapkeeper and caterer service provided by them cannot be applied as in case of catering service provided by mandapkeeper it was a tax on service and not a tax on sale or purchase of goods by applying doctrine of pith and substance whereas in the facts of the case there cannot be any element of service for assignment of leasehold rights of the land and building as interest in leasehold rights of land and building would be transfer/sale of the immovable property.
33. In CIT v. Venkateswara Hatcheries (P.) Ltd. – (1999) 3 SCC 632, it was observed that as per principle of interpretation of statute that external aids to other statutes cannot be imported for definition of a word in the statute as the word occurring in the provisions of the Act must take its colour from the context in which they are so used. In other words, for arriving at the true meaning of a word, the said word should not be detached from the context.

34. Therefore, when legislative intent is not to levy GST on the sale of immovable property by specific provision in clause 5 of Schedule-III, then attempt on part of the revenue to consider assignment of leasehold rights equal to the renting of immovable property as per clause 5(b) of the Schedule II would be contrary to such legislative intent consequent to which when the legislature in its wisdom has chosen to exclude the sale of land and building from purview of GST Act, there is no ambiguity that section 7(1)(a) would be applicable to the sale of immovable property and once it is held that assignment of the leasehold rights being the benefit/interest arising out of immovable property would partake the character as such, cannot be covered under the scope of supply of services by any stretch of imagination.

35. Reliance was placed on Articles 24 and 25 of the Council Directive of the Council of the European Union on the common system of value added tax, more particularly, Article 25 which stipulates that a supply of service may consist inter-alia the transaction of assignment of immovable property whether or not the subject to document establishing title, would also be not applicable in facts of the case inasmuch as the assignment of leasehold rights along with building constructed thereon or

otherwise is an immovable property itself and not an intangible property as leasehold rights transferred by lessee/assignee is with the concurrence of lessor GIDC in facts of the case and therefore, transfer charges paid by the assignee, would be subject to levy of GST but at the same time consideration paid by the assignee to the lessee/assignor would amount to transfer of immovable property which would be out of purview of provision of section 7(1)(a) of the GST Act read with Schedule II and Schedule III thereof.

36. The contention of the respondent that activity of lessee/assignor to transfer the leasehold rights is in nature of compensation for agreeing to do the transfer in favour of the assignee is a service classifiable under other miscellaneous service under Group 999792 and taxable at the rate of 18% under serial no.35 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 would not cover the nature of transaction as consideration received by lessee/assignee is not in nature of premium but is a consideration for outright sale of leasehold rights which cannot be equated with subleasing in any manner so as to bring the transaction within the purview of clause 5(b) of Schedule II.

In view of the foregoing, assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of third party-assignee for a consideration shall be assignment/sale/ transfer of benefits arising out of “immovable property” by the lessee-assignor in favour of third party-assignee who would become lessee of GIDC in place of original allottee-lessee. In such circumstances, provisions of section 7(1)(a) of the GST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and same would not be subject to levy of GST as provided under section 9 of the GST Act. Hence, the impugned show cause notices and orders in original or appeal were quashed and set aside.

5. GST - SECRETARY OF NON-GOVERNMENT EMPLOYEES WELFARE SOCIETY CANNOT BE PROCEEDED IN INDIVIDUAL CAPACITY FOR RECOVERY OF VAT DUES OF THE SOCIETY

In *Gunnuru Satya Rama Murthy v. AC(ST)(INT.)* 2025(94) GSTL 417/(2025)26 Centax 178 (A.P.) the petitioner worked as Secretary of a Society, called as Sri Sampath Vinayaka Non-

Government Employees Welfare Society (herein-after referred to as “the Society”). The petitioner sought to raise funds for paying his daughter’s college fee, by mortgaging the agricultural lands situated in Chodavaram Village and Mandal, Anakapalli District, as well as a house situated in Chodavaram Village itself but was informed by the Registration Authorities that this property had been attached by the State GST Department for realization of the sales tax dues of the Society, to an extent of 2.04 Crores. On a writ petition, the high court observed as under:

1. Section 94 of the CGST Act empowers the Tax Authorities to recover the dues of the Society, registered under the Act of 2001, from any of its members. This provision would be applicable where the taxable person is a firm or association of persons or a HUF. Further, this entity should have discontinued business. It appears that the Society had discontinued business and the second condition would be applicable. However, the question of whether the first condition is applicable or not requires to be looked into.
2. The three forms of business, stipulated under Section 94 of the CGST Act are: Firm’, Association of Persons’ and „Hindu Undivided Family.’ The term “Firm” has not been defined

under the provisions of the CGST Act. However, Explanation under Section 94 states that a Limited Liability Partnership should also be considered as a firm. This would mean that the term “Firm”, under Section 94 (1) would be a partnership firm, registered or unregistered, under the provisions of the Indian Partnership Act, 1932, or the Limited Liability Partnership Act, 2008.

3. Obviously, the Society does not answer the description of firm. The term “Hindu Undivided Family” is also not defined under the CGST Act. However, a “Hindu Undivided Family”, under the law, is understood to mean a Joint Family consisting of various coparceners, who are members of such a “Hindu Undivided Family”, on account of their birth. Strangers to the family cannot be a part of a “Hindu Undivided Family”.
4. This leaves only an “Association of Persons” to be considered. An “Association of Persons” is also not defined under the CGST Act. However, the term “person” is defined under Section 2 (84) of the CGST Act in Clause ‘f’, while, “Society” as defined under the Societies Registration Act, 1860 (hereinafter referred to as “the Act of 1860”), is kept in Clause ‘l’. The legislature, clearly, considered these entities to be two separate categories.

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5. Apart from this, an “Association of Persons”, as set out under Section 2 (84) (f), describes it as an association of persons or body of individuals, whether incorporated or not, in India or outside India.
 6. Under the Income Tax Law, an “Association of Persons”, has always been considered to be an association or body of individuals who have joined together for a business venture, on a one-time basis, or for a prolonged period. The terms on which such an association of persons is to be taxed has also been laid down under the Income Tax Act. The Court need not take, even this interpretation, on what amounts to be an “Association of Persons”, under the Income Tax Act, for the purpose of arriving at a decision in the present case.
 7. Section 2 (84) of the CGST Act has already made that distinction by placing “Association of Persons” in Sub-clause ‘f’ while, placing “Society” in Sub-clause ‘l’. In the present case, the Society in question has not been registered under the Act of 1860, but under the Act of 2001.
 8. The purposes, in Section 20, are essentially literary, scientific or charitable purposes and the same can be formed by seven or more persons subscribing to a Memorandum of Association

and filing the same with the Registrar of Companies. In the State of Andhra Pradesh, this provision was amended to stipulate that the Memorandum of Association should be filed with the Inspector General of Registration and not the ROC.

9. Section 3 provides for registration of the Society. Section 5 of this Act stipulates that the property purchased in the name of the Society, if not vested with the members, shall be deemed to be vested in the governing body of such Society. The suits against such Societies can be instituted or defended in the name of the office bearers of the Society.
10. Section 32 of the 2001 Act repealed the provisions the Act of 1860 in its application to the State of Andhra Pradesh. However, the test to be applied is, whether Societies registered or formed, under the Act of 2001, meets the definition of Society under the Act of 1860.
11. The conditions required for creation of a Society under the Act of 2001 are in pari materia similar to the conditions set out in the Act of 1860. Further Sub-section 2 and Sub-section 3 stipulate that a Society in which un-incorporated association of individuals is a member or a firm is a member, is not liable to be registered under the Act of 2001. This would clearly

indicate that a Society registered under the Act of 2001 meets all the requirements of a Society, as defined under the Act of 1860.

12. In view of the above, it must be held that the Society would not fall within the purview of the term “Association of Persons” set out under Section 94 (1) of the CGST/SGST Act.
13. Consequently, no proceedings can be initiated against the petitioner, who was a member/Secretary of the Public Association, registered under the Act of 2001.

Hence, the Writ Petition was allowed and Form GST DRC-16, dated 29.07.2022, the communication of the 2nd respondent to the 3rd respondent, dated 03.11.2022 requesting the 3rd respondent not to permit alienation of the properties of the petitioner and the endorsement, dated 27.06.2023, issued by the 2nd respondent for taking action for recovery of the dues of the Society from the petitioner were set aside.

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SUMMARY OF AAR/AAAR

Eligibility of ITC in relation to expenses incurred for buyback of shares



CA. AMAN GOYAL & CA. VENKADATHRI RAJARAMAN

In the case of M/s. Gujarat Narmada Valley Fertilizers & Chemicals Limited (referred to as “applicant”) (Order No. GUJ/GAAR/R/2025/11 dated March 25, 2025) - Gujarat Authority for Advance Ruling

Facts of the case

- The applicant is a listed company engaged in the manufacturing of fertilizers and chemicals. The applicant has initiated a share buyback program.
- The applicant highlighted that the buyback of shares improves the company’s financial standing, creates value for shareholders, contributes prestige, promotes the company’s image, reduces equity capital, leads to improved shareholders return i.e., it is a simple way to pay off investors & reduce the overall cost of capital.

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- The buyback was initiated pursuant to a resolution passed by the Government of Gujarat directing all State Public Sector Undertakings, to strengthen their financial management in the form of capital restructuring to realize potential for market capitalization.

Interpretation of law by the applicant

- Since the buyback is in the course or furtherance of the business activity, the ITC on expenses incurred towards the buyback process should be considered as an eligible expenditure
- Since buyback of the shares qualifies to be business expenditure, the ITC in relation to the same shall be eligible.
- A harmonized reading of the terms 'in the course' ['In the course' generally means something in the progress of or process of] and 'furtherance', implies that furtherance of business would mean advancement of business or promotion of business; that any activity carried on with a purpose to achieve business objectives, business principles, business continuity and stability would per se amount to an activity in course or furtherance of business

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- The buyback program constitutes a business activity undertaken to achieve its core objectives.
 - The definition of 'business' u/s 2 (17) of the CGST Act, 2017, depicts that the definition is inclusive and encompasses various activities.
 - Clause (b) of the definition of 'business' encompasses activity like buyback of share or issue of shares' by a limited company as these activities are incidental or ancillary to the core business operation outlined in clause (a)
 - While buyback process doesn't directly result in immediate outward supply, it is an essential step towards optimizing financial health and ultimately increase its ability to make taxable supplies
 - The taxes charged on professional fees, legal fees, arrangement of buyback fees etc. incurred for buyback process are eligible for ITC under section 16 (1)
 - Under buy-back of shares, there is no sale and purchase transaction; the shares bought back have to be cancelled by the company after buy-back within the prescribed time-frame.

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- ITC is eligible in case of issuance of fresh shares & hence ITC should be eligible in the case of buy back of shares as well

Question before AAR

- Whether the expenditure incurred by the applicant, a listed entity, for the buyback of its shares in the course of furtherance of business, is eligible for Input Tax Credit (ITC) under the GST regime?

Observations & Ruling of AAR

- In terms of section 16(1), every registered person shall be entitled to take credit of ITC charged on any supply of goods or services or both used or intended to be used in the course or furtherance of business.
- Buy back of shares by the applicant is neither a supply of goods nor supply of services as shares are “securities” outside the ambit of goods or services.
- In terms of section 16(1), the applicant is not eligible for availing ITC on the expenditure incurred for the buyback of its shares, as it is neither goods nor services, which is the primary condition for availment of ITC

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- The applicant is not eligible to avail the ITC involved in the expenditure incurred for buyback of its share and also required to reverse the ITC on common inputs and input services used in relation to the expenditure incurred for buyback of share.

Eligibility of ITC in relation goods lost in transit

In the case of M/s. Inox Air Products Pvt Ltd (referred to as “applicant”) (Order No. GUJ/GAAR/R/2025/10 dated March 25, 2025) - Gujarat Authority for Advance Ruling

Facts of the case

- The applicant is engaged in the manufacture & supply of industrial gases including Oxygen, Nitrogen, Argon in liquid and gaseous form. The gases are removed and transported in special vacuum insulated cryogenic transport tanks.
- Since a portion of the liquid gas may evaporate during transit from the factory to the customer’s premises, the exact quantity of liquid gases received by the customer is unascertainable at the time of removal. It can only be ascertained after the goods are actually decanted from the tanker into the special storage tank (installed at the buyer’s premises)

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- During transit, certain quantity of the liquid gas is converted to gaseous form and evaporates thereby leading to transit loss.
 - The liquid gas is removed under the cover of delivery challan; that since the quantity to be received by the customer is not known at the time of removal, the tax invoice is raised after actual delivery of the gas to the customer.

Interpretation of law by the applicant

- Under GST, the taxable event is 'supply.' There is no supply of gases lost in transit, owing to the fact that it was lost in transit rather than having been supplied to the customer.
- There is no requirement to reverse ITC in terms of Section 17 (5) (h) of the CGST Act, 2017. Section 17(5)(h) applies in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- At the time of availment of ITC, goods were intended to be used in the manufacture of finished goods.
- There is no provision to demand the ITC availed on inputs which have been issued in the manufacture of finished goods that are thereafter lost, stolen or destroyed.

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- In the absence of an enabling provision, the reversal of ITC on inputs already used for manufacture of finished goods that are lost or stolen or destroyed, once availed, cannot be demanded back.
 - The goods which were lost in the transit were finished goods which were never supplied to the customer and accordingly, provisions of section 17 (5) (h), are not applicable.

Question before AAR

- (i) Whether GST is payable on goods lost in transit?
- (ii) If GST is payable, what should be the value of supply for the purpose of payment of GST?
- (iii) If GST is not payable, whether the applicant is required to reverse the ITC in terms of section 17 (5) (h) of the CGST Act, 2017?
- (iv) If the applicant is required to reverse ITC in terms of section 17 (5) (h) of the CGST Act, on what basis should the applicant be required to reverse the ITC?

Observations & Ruling of AAR

- The loss termed as 'transit loss', occurs during the course of transportation and during the course of delivery at buyers premises. The same is on account of the low boiling point and volatility of the goods. It happens before the supply takes place i.e. during the course of transportation from applicant's premises to the buyer's premises.
- In terms of section 10 of the IGST Act, 2017, the place of supply of goods other than supply of goods imported into or exported from India, where the supply involves movement of goods, shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, irrespective of whether the movement of the goods is by the supplier or the recipient or by any other person. The transit loss has occurred before the goods reaching the customer's premises (termination of movement for delivery) i.e., the place of supply.
- The invoice is generated post the supply of goods, before which, the transit loss has occurred.
- There is no supply of the said goods by the applicant to its customer more so since the loss is before the goods are handed

over to the customer. The applicant is not liable to pay GST on the transit loss of the gas.

- The goods as mentioned above are lost/destroyed during the course of transit. It is not a manufacturing loss. Section 16 of the CGST Act, 2017, clearly states that a registered person shall be entitled to avail ITC charged on any supply of goods or services or both which are used/intended to be used in the course or furtherance of business. In this case, as far as the goods lost during the course of transit is concerned, it cannot be said that the inputs involved [in the goods manufactured & subsequently lost in transit] have been used in the course of furtherance of business.
- Credit is not a vested right at the time of receipt of inputs but can only be availed on satisfying all vesting conditions, including its participation in a taxable outward supply.
- The applicant is not eligible for the ITC in respect of inputs used in the goods lost in transit & hence is required to reverse the ITC in terms of section 17 (5) (h) of the CGST Act, 2017

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UNDERSTANDING TAXES, DUTIES, TARIFFS AND CESS - A REFRESHER

INTRODUCTION

In taxation laws, the most common terms one comes across are tariffs, duties, taxes and cess. These terms are often used interchangeably, albeit they do differ in their underlying



CA RAJASEKARAN

meaning, purpose and fiscal objective. The following paragraphs attempt to set out and appreciate the differences amongst these terms.

CONSTITUTIONAL BACKGROUND

The power to make a Tax Law is listed in Articles 245 and 246 which provide for the extent and subject-matter of laws made by the Parliament and State Legislature respectively.

Article 246A provides joint power to both the Parliament and State Legislature to frame laws with respect to GST imposed by the Union or the State.

Article 269A provides for levy of GST on inter-state trade or commerce and shall be apportioned in such manner between the Union and States as provided by the Parliament based on the recommendations of the GST council.

Article 286 restricts a State to impose tax inter-state supply of goods and services or on export or import of goods and services.

Article 246 provides that:

- Parliament has exclusive authority to legislate on matters in the Union List (List I of the Seventh Schedule).
- Both Parliament and State Legislatures can legislate on matters in the Concurrent List (List III of the Seventh Schedule), with Parliament taking precedence.
- State Legislatures have exclusive authority over matters in the State List (List II of the Seventh Schedule), subject to the powers of Parliament.
- Parliament can legislate on matters in any part of India not included within a State, even if those matters are listed in the State List.

Article 265 provides that no tax shall be levied or collected except by authority of law. Article 271 provides for the power of the Parliament to levy surcharge on taxes levied by the Union. Articles 268, 269 and 270 specify the manner in which taxes collected by the Union and States are to be apportioned and distributed amongst themselves.

TAXES

The most common and fundamental term for government levies is tax. Taxes represent the broadest category of revenue source to the Government. Taxes are generally used to finance public expenditure and spending. In most countries, taxes are primarily used to serve revenue generation and are of two types:

- **Direct Taxes:** Tax levied on the income derived by a person from any source of income. Examples include Income tax, Corporate Tax, Wealth tax
- **Indirect Taxes:** Tax levied on the production or sale of goods or supply of services. Examples include the Goods and Services Tax, Value Added Tax.

Article 366(28) of the Constitution of India defines taxation and tax as:

“taxation” includes the imposition of any tax or impost, whether general or local or special, and “tax” shall be construed accordingly.

This means that taxation refers to the process by which the Government can collect revenue from people, by levy or by imposition or for any purpose as it may deem fit and any such

revenue collected in any manner or by any name, falling within such levy or imposition, may be understood as tax.

DUTIES

Duty refers to a tax imposed on specific transactions involving goods - which may be manufactured or produced in a territory or imported or exported in a territory. The WTO definition of duty refers to a custom duty as a tax levied at the border on import goods. WTO envisions different methods to assess custom duties such as:

- **AD VALOREM DUTY (A):** Percentage of the imported goods' value.
- **SPECIFIC DUTY (S):** Fixed amount per unit of quantity (weight, volume, etc.).
- **COMPOUND DUTY (C):** Combination of ad valorem and specific duties (added or subtracted).
- **MIXED DUTY (M):** Duty levied as either ad valorem or specific, whichever meets a defined condition (min, max, less).
- **OTHER DUTY (O):** Any duty structure not fitting the above categories, often with multiple components.

In addition, there may be other duties that may be levied by a country, in the interest of protecting domestic industries or to protect their revenue. Some of them under Customs Tariff Act, 1976 are:

- Protective Duty
- Safeguard Duty
- Countervailing Duty
- Anti-Dumping duty.

Presently, In India, there are 2 main types of duties: Excise Duty (on non-GST items) and Customs Duty (on import or export of goods).

In addition, there is also a levy of Stamp Duty on transactions involving property or specified legal documents under the Indian Stamp Act 1899 and State-specific Stamp Duty laws. Though not related to trade, stamp duty represents a statutory levy on legal documents and is often grouped under duties in a broader sense.

TARIFFS

Tariff is a term that is most used in international trade. The WTO portal, glossary of terms, defines 'tariff' as duty (or tax) levied upon goods transported from one customs area to another either for

protective or revenue purposes. While “tariff” often refers to a comprehensive list or schedule of merchandise with the rate of duty to be paid to the government for importing products listed, the term “duty” applies only to the rate applicable to an individual tariff item.

In other words, a tariff is essentially the structured framework or schedule containing various duty rates, while a duty is the specific rate applied to a particular item of good.

Tariffs are primarily used:

- to protect domestic industries by making imported goods more expensive,
- to generate revenue for the government. It can also be used as a tool in international trade negotiations and to regulate the balance of trade.
- to counter predatory trade or pricing practices (a.k.a. dumping)

In India, separate tariff framework is given for:

- Goods and Services Tax [via India-specific HSN – Harmonized System of Nomenclature and SC – Service Codes].

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- Customs Duty [via HSN-Harmonized System of Nomenclature modelled on the International Trade Classification (ITC) System].

CESS

Cess is a specific-purpose levy and is usually an additional levy on basic tax or duty. Although, in certain instances Government may levy on certain specific activities such as Infrastructure cess, Research and Development Cess.

The nature and purpose of the levy is earmarked and is mainly time-bound or temporary in nature; although the levy of Education cess, Secondary and Higher Education Cess and their present combined version Higher Education Cess have been in vogue for long.

The defining characteristic of a cess is its dedicated nature - the proceeds cannot be legally diverted for purposes other than those specified in the enabling legislation, unlike general taxes that flow into the consolidated fund.

TO SUMMARIZE

Differentiation Table

Feature	Tax	Duty	Tariff	Cess
Definition	Broadest category of government levy. Includes any imposition.	A type of tax imposed on specific goods (manufactured, produced, imported, or exported).	A duty or tax levied on goods transported from one customs area to another. Often a schedule.	A specific-purpose levy, usually an additional levy on basic tax or duty.
Purpose	Primarily for revenue generation to finance public expenditure.	To protect domestic industries or revenue.	Primarily to protect domestic industries, generate revenue, for trade negotiations, and to counter dumping.	Earmarked for a specific purpose.
Scope of Applicability	On income (direct taxes) or production/sale of goods/services (indirect taxes).	On specific goods (excise on non-GST items, customs on imports/exports). Also Stamp Duty on specific transactions.	On goods imported or exported between customs areas.	On basic tax or duty, or on specific activities.
Constitutional Basis	Power to tax in Articles 245 & 246. Definition in Article 366(28). Article 265.	Customs Tariff Act, 1976 mentioned. Indian Stamp Act 1899 mentioned.	Relates to international trade.	Article 271 provides power to levy surcharge
Examples	Income Tax, Corporate Tax, GST, VAT.	Excise Duty, Customs Duty, Protective Duty, Anti-Dumping duty, Stamp Duty.	Duty rates listed in a schedule for imported goods.	Education Cess, Infrastructure Cess, Research and Development Cess, Higher Education Cess.
Inter-Relationship with other levies	Fundamental category under which duties, tariffs, and cesses fall.	A specific form of tax applied to goods	A schedule of duty rates used in international trade; subset of duties	An add-on levy imposed over and above a tax or duty for specific purposes.

CONCLUSION

While often used interchangeably in casual discourse, the terms tax, duty, tariff, and cess carry distinct meanings, legal foundations, and fiscal implications.

A clear understanding of these nuances enables more precise articulation of fiscal policies and ensures greater clarity in professional discourse on taxation matters and is vital for advising clients, interpreting fiscal statutes, and ensuring accurate compliance.

As these terms often surface across GST, customs, income tax, and international trade contexts, this distinction serves as a timely refresher and a valuable addition to one's professional toolkit.

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CONTROVERSIES AROUND TAX TREATY OVERRIDES AND MULTILATERAL INSTRUMENTS (MLIS)

Introduction

The global tax landscape has undergone significant reform over the past decade, with the OECD's Base Erosion and Profit Shifting (BEPS) project at the forefront. One of the most



ESHAAN SINGAL

transformative tools developed under BEPS Action 15 is the Multilateral Instrument (MLI), designed to swiftly update the vast network of bilateral tax treaties to curb tax avoidance. However, the implementation of MLIs has not been without controversy. Questions about the interplay between MLIs and domestic tax law, especially in the context of treaty overrides, have sparked legal, administrative, and practical challenges for multinational enterprises (MNEs), tax authorities, and courts alike.

This article delves deep into the controversies surrounding tax treaty overrides and MLIs, examining legal interpretations, landmark cases, policy debates, and future implications. The aim is to foster a nuanced understanding of how international tax policy collides with sovereign legislative frameworks and the implications for global tax governance.

Understanding the Basics: Tax Treaties and MLIs

What is a Tax Treaty?

Tax treaties, or Double Taxation Avoidance Agreements (DTAAs), are bilateral agreements that allocate taxing rights between two countries and provide mechanisms for resolving disputes and avoiding double taxation. These treaties are traditionally negotiated individually and are based on the OECD and UN Model Conventions. The key objectives of tax treaties include:

- Elimination of double taxation
- Prevention of tax evasion and avoidance
- Promotion of cross-border trade and investment

Introduction to the Multilateral Instrument (MLI)

The MLI is a legal innovation that enables jurisdictions to swiftly modify their tax treaties to implement measures developed under the BEPS project. It allows for simultaneous updates to multiple tax treaties without the need for bilateral renegotiation. It covers provisions such as:

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- Prevention of treaty abuse (e.g., Principal Purpose Test)
 - Dispute resolution mechanisms, including mandatory arbitration
 - Strengthened rules on permanent establishment
 - Addressing hybrid mismatch arrangements that exploit differences in tax systems

As of 2025, over 100 jurisdictions have signed the MLI, and thousands of bilateral treaties have been impacted by its provisions. The MLI thus represents a significant stride toward multilateralism in international tax cooperation.

Treaty Override: A Legal and Constitutional Dilemma

What is Treaty Override?

A treaty override occurs when a country enacts domestic legislation that conflicts with or nullifies an obligation under a tax treaty. This raises concerns about international law, which holds that treaties are binding and should prevail over conflicting

domestic law. However, the supremacy of domestic law, especially in dualist legal systems, can lead to intentional or unintentional treaty overrides.

Legal Standpoint in India

In India, tax treaties are given effect through Section 90 of the Income-tax Act, 1961. The judiciary has consistently held that in case of conflict, the provisions of the treaty will prevail over domestic law (e.g., *Azadi Bachao Andolan* case). However, Section 90(2) allows taxpayers to choose the beneficial provision between the Act and the treaty.

With the introduction of General Anti-Avoidance Rules (GAAR) and MLI, questions have arisen about whether India can override treaty provisions using domestic anti-avoidance laws, especially those enacted after the treaty. This leads to an intricate interplay between statutory law, constitutional provisions, and international obligations.

International Perspective

Different jurisdictions have varied approaches to treaty overrides:

Country	Approach to Treaty Overrides	Legal Basis
USA	Allows overrides via "last-in-time" rule	Supremacy of later domestic law over treaties
UK	Avoids overrides but respects parliamentary supremacy	Parliamentary sovereignty
India	Treaties override domestic law if more beneficial	Section 90(2), Income-tax Act
Germany	Treaties have primacy unless explicitly overridden	Constitutional commitment to international law
Australia	Avoids override; requires express intent	Presumption against implied repeal of treaties

MLIs and Their Interplay with Domestic Law

Opt-in and Opt-out Mechanisms

The MLI operates through a complex framework of reservations and notifications. Countries can opt out of specific provisions or choose to apply them only if their treaty partner agrees. This flexibility, while accommodating sovereignty, also leads to uncertainty and inconsistency in how treaty provisions are applied in practice.

Interaction with Domestic Anti-Avoidance Rules

Many countries, including India, have implemented GAAR. Post-MLI, provisions like the Principal Purpose Test (PPT) mirror GAAR principles. The overlap creates challenges:

- **Double Jeopardy?** Taxpayers may face both GAAR and PPT scrutiny for the same transaction.
- **Conflict of Standards:** PPT is subjective and based on the principal purpose of an arrangement, while GAAR has defined thresholds and procedural safeguards (such as approvals by designated panels).

This dual application creates interpretive confusion and increases litigation risk for cross-border transactions.

Judicial Interpretations

Courts are increasingly being called upon to interpret how MLI-modified treaties interact with domestic law. In India, rulings such as *Seema Sapra v. ITO* have explored MLI application, but definitive jurisprudence is still evolving. Comparative judicial developments in jurisdictions like the UK, Australia, and the Netherlands are also shaping a transnational understanding of MLI principles.

Key Controversies and Debates

1. Retroactive Application of MLI Provisions

Some MLI provisions may apply to tax years prior to the date of signature, depending on domestic ratification and notification timelines. This has raised concerns about legal certainty, protection of legitimate expectations, and whether retroactivity violates taxpayer rights under constitutional or administrative law principles.

2. Supremacy of Domestic Law vs. Treaty Obligations

The question of whether MLI changes, especially anti-abuse provisions, can override domestic law remains contentious. In India, courts have generally supported treaty obligations. However, tax authorities increasingly interpret GAAR and MLI's PPT in tandem, risking the creation of a de facto override that lacks explicit legislative sanction.

3. Complexity and Administrative Burden

The layered structure of the MLI, with multiple opt-outs and treaty-specific positions, has created a compliance nightmare for

MNEs. Even determining the applicable treaty position requires parsing through both countries' MLI notifications, compatibility matrices, and effective dates. Tax administrations face significant training and capacity-building needs to ensure uniform application.

4. Lack of Judicial Clarity and Precedent

Due to the novelty of the MLI, there is limited jurisprudence guiding its interpretation. This creates legal uncertainty, especially in cross-border mergers, financing structures, holding companies, and investment platforms. The lack of common interpretive standards across jurisdictions exacerbates the risk of double taxation or denial of treaty benefits.

Real-World Impact: Case Studies

Case 1: India-Mauritius Treaty Post-MLI

The India-Mauritius treaty, a classic case for treaty shopping, was renegotiated pre-MLI to remove capital gains exemption. The MLI further adds PPT, creating additional scrutiny. Several private

equity funds have restructured their investments by routing them through jurisdictions with more favorable MLI positions or seeking APA (Advance Pricing Agreement) certainty to avoid GAAR and PPT risks.

Case 2: France-Luxembourg Treaty

The application of PPT under MLI led to denial of treaty benefits for a Luxembourg entity by French tax authorities, citing lack of commercial substance and a principal purpose of tax avoidance. The case underscored how MLI provisions empower authorities to pierce through formal structures and assess substance over form.

Case 3: Australia-New Zealand Dispute on Arbitration

Australia and New Zealand opted into mandatory binding arbitration under the MLI. A dispute over the application of mutual agreement procedure (MAP) timelines has highlighted challenges in synchronizing domestic administrative procedures with MLI commitments.

Future Outlook

Harmonization vs. Sovereignty

The MLI represents a move toward tax harmonization, but the sovereignty of domestic law remains a significant hurdle. Countries are unlikely to give up their legislative supremacy easily. This raises the prospect of future conflicts and increased use of dispute resolution mechanisms, such as MAP and arbitration.

Need for Judicial Guidance

As disputes rise, courts will play a pivotal role in shaping the MLI's interpretation. A few landmark decisions could bring much-needed clarity and help balance treaty obligations with domestic priorities. Greater reliance on international jurisprudence and OECD commentary will likely influence local adjudication.

Role of Tax Advisors and MNEs

Given the evolving landscape, proactive tax planning, robust documentation, and risk assessment are essential. MNEs must understand treaty positions, MLI status, and domestic law to

ensure compliance. Advisors must also monitor regulatory developments, participate in policy consultations, and prepare clients for audits involving treaty abuse claims.

Conclusion

The introduction of the MLI has marked a new era in international taxation, aiming to streamline treaty networks and curb tax avoidance. However, its intersection with domestic tax laws, especially in the context of treaty overrides, has opened up a Pandora's box of legal and administrative complexities. While the MLI's intentions are laudable, its success hinges on uniform interpretation, judicial clarity, and cooperative tax administration.

For tax professionals and policymakers alike, the road ahead demands vigilance, adaptability, and a nuanced understanding of both international norms and domestic realities. As the MLI matures and jurisprudence evolves, it will be crucial to align practice with policy to preserve both the integrity of tax treaties and the sovereignty of national legal systems.

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