Tax Year Book – 2024

(The Young Turks of Swamy Associates, Coimbatore)

Another year has passed by. Both for the indirect tax landscape as well as for Swamy Associates, its neither "yet another" nor "just another" but really significant and meaningful. In 2024, we all witnessed landmark judgments, some marking newer milestones and some overturning settled cornerstones. From addressing credit disputes to resolving ambiguities in taxability, these rulings have not only clarified legal positions but also reinforced the principles of justice, equity, and efficiency in tax administration, and most of all, the trust with the judiciary. This attempt is to encapsulate the distilled essence of some of the pivotal judgments serve to our eco-system, which we truly feel as our obligation.

1. Amnesty or Atonement :

Input Tax Credit (ITC) is the skeleton of any indirect tax architecture, more so under GST. It has always been a coffee-toffee debate as to whether ITC is a statutory entitlement or a concession given to the taxpayers, which can be availed and utilized subject to the prescription of conditions under the Act and Rules. In a landmark decision of ***M/s. M. Trade Links & Ors., 2024 (6) TMI 288 - KERALA HIGH COURT***, the Hon'ble Kerala High Court has upheld the constitutional validity of Sections 16(2)(c) and 16(4) of the Central Goods and Services Tax (CGST) Act, 2017. These provisions, which impose conditions and time limit for claiming ITC, were challenged on grounds of arbitrariness and unconstitutionality. The Court dismissed the petitions challenging these sections by holding that that **ITC is not an absolute right but a statutory concession.** While acknowledging the challenges faced by the taxpayers in meeting complex compliance during the early stages of GST implementation, the Court went on to underscore the importance of adhering to statutory requirements to maintain a uniform and transparent tax system.

That be so, the ever "reactive-responsive" Government, took due cognizance of the nation-wide challenges and brickbats by various Courts regarding the difficulties faced by the taxpayers during the formative years. In the 53rd meeting, the GST Council had recommended a scheme for allowing ITC pertaining to the financial years 2017-18 to 2020-21, which was taken belatedly but on or before November 30, 2021. And Sec 16(5) has been introduced. Though this is celebrated as an "amnesty" by many, to us, it is nothing but an "atonement" of the Government for the flawed legislation and fractured implementation.

In the meanwhile, the Hon'ble Madhya Pradesh High Court in the case of ***M/s. Anand Steel & Ors., 2024 (11) TMI 1332 - MADHYA PRADESH HIGH COURT*** taking cue of the above amnesty, adopted a more taxpayer-centric stance and observed that as Section 16(2) has already sets the eligibility conditions for ITC, the timeline prescription under Section 16(4) is unwarranted. It further observed that the late fees under Section 47 and interest under Section 50 are adequate penalties, making any additional disallowances unjust.

2. The High-Five:

In ***M/s. Bharti Airtel Ltd, 2024 (11) TMI 1042 - SUPREME COURT,*** the Hon'ble Supreme Court ruled on the eligibility of mobile service providers (MSPs) to claim CENVAT credit on excise duties paid for mobile towers and prefabricated buildings, under the legacy laws. The essence was whether said items were to be classified as "capital goods" or "inputs" under the CENVAT Credit Rules, 2004. The Apex Court's decision was anchored based on past rulings, legal definitions and tests of "goods" as defined under the Sale of Goods Act, "movable property", "immovable property" and "attached to earth" under the General Clauses Act as well as the Transfer of Property Act. Upon applying five cardinal tests to determine movability, namely:

1.Nature of annexation (considering removal without damage);

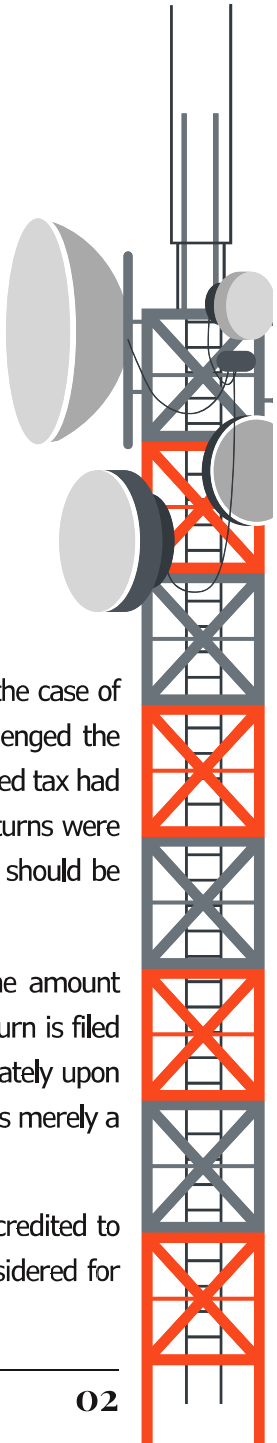
2.Object of annexation (assessing if attachment serves the land or the item);

3.Intendment of the parties (examining intended permanence);

4.Functionality test (checking for damage-free relocation); and

5.Marketability test (considering market saleability).

The Hon'ble Apex Court held that credit is admissible on telecom towers and pre-fabricated buildings as they are "goods" and not immovable property.



Under GST, the Telecom Towers found a categorical restriction for availment of ITC under Sections 17(5)(c) and 17(5)(d) of the CGST/SGST Act, 2017, read with the Explanation appended thereunder. Despite the above explicit restriction, basing on the celebrated Apex Court decision supra, the Hon'ble Delhi High Court in the case of ***M/s. Bharti Airtel Limited & Ors., 2024 (12) TMI 998 - DELHI HIGH COURT*** has held that telecommunication towers would not fall within the ambit of Section 17 (5) (d) of the Act and consequently, allowed ITC on the same.

3. Better sense prevailed:

Under GST, levy of interest on delayed filing of GST returns has always been a point of bother. In the case of ***M/s. Eicher Motors Limited, 2024 (1) TMI 1111 - MADRAS HIGH COURT***, the Petitioner challenged the imposition of interest for the delayed filing of GSTR-3B returns. The Petitioner argued that the required tax had been deposited into the Electronic Cash Ledger (ECL) before the due date, but delay in filing the returns were caused by issues related to the migration of Transitional Credit to GST, and therefore, no interest should be levied for the delayed filing of the returns.

The Court ruled in favour of the Petitioner, holding that interest would not be applicable on the amount deposited into the ECL within the prescribed time limit for payment of tax, even if the GSTR-3B return is filed belatedly. The Court noted that the amount in ECL is credited to the Government's account immediately upon deposit. Therefore, the tax liability is deemed to be discharged and the filing of the GSTR-3B return is merely a procedural formality for accounting purposes.

Subsequently, the Government amended Rule 88B of the CGST Rules, to clarify that any amount credited to the ECL on or before the due date but debited after the due date for tax payment will not be considered for interest calculation, if it remains in the ledger between the due date and the debit date.

4. Can(n)on got backfired:

The hotly debated question of whether a DRI officer is a proper officer u/s 28 of the Customs Act, 1962, for the purpose of issuing SCN was finally put to rest in the review petition filed in the case of ***M/s. Canon India Pvt. Ltd., 2024 (11) TMI 391 - SUPREME COURT (LB)***, where the Court held in negative. Little did the legal world anticipate that a review petition would overturn the said judgment with regard to the above question. The review was allowed by holding that Section 6 was not applicable to DRI officers, the Circular No. 4/99-Cus dated 15.02.1999 was not brought to the notice during the earlier proceedings, the decision failed to consider the statutory scheme of Sections 2(34) & 5 and that it was not necessary that only the proper officer under Section 17 (assessing officers) should issue the notice under Section 28.

5. Hypersomnia is an incurable dis"order":

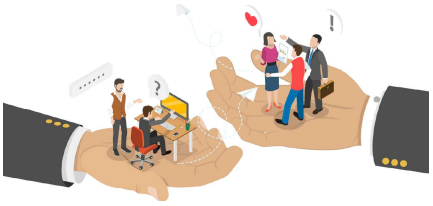
The phrase "where it is possible to do so" finds its place after the time limit of 6 months / 1 year as prescribed in Section 73(4B) of the Finance Act, 1994 & in Section 28(9) of the Customs Act, 1962, both of which deals with statutory timelines to complete adjudication. This phrase arms the Department with fenceless discretion in extending adjudication timelines. May not be anymore. In the case of ***M/s. VOS Technologies India Pvt. Ltd, 2024 (12) TMI 624***, the Hon'ble High Court of Delhi had observed that, "where it is possible to do so" cannot be countenanced as a license to keep matters unresolved for years. The flexibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence. Even in instances of keeping the matters in the "call book", that action would have to be preceded by the assessee being placed on due notice coupled with a periodic review of the matters placed in abeyance. The Court also took due cognizance that the said phrase has been omitted vide The Finance Act, 2018. Further in the case of ***M/s. L.R. Sharma and Co., 2024 (12) TMI 1145 - DELHI HIGH COURT***, the Hon'ble High Court neutered the Department's contention that the phrase "where it is possible to do so" makes Section 73(4B) suggestive and not mandatory by observing that, even if the prescribed time limit in Section 73 (4B) of the Finance Act, 1994 is only suggestive, it would still be unreasonable to validate the re-initiation of proceedings by the Department after 9 years from the issuance of the SCN.

6. Party is not yet over:

A number of Writ petitions were filed by the taxpayers before various High Courts challenging the Notification No. 56/2023-CT dated 28.12.2023 which extended the time limit for passing order Section 73 for the years 2018-19 and 2019-20. The Hon'ble Gauhati High Court in the case of ***Barkataki Print and Media Service and Ors., 2024 (9) TMI 1398*** has held that, whenever there is a requirement of a recommendation by the GST Council in the Act, it has to be construed to be a sine qua-non for exercise of power. Further, as the condition of force majeure was not placed before the GST Council, there was no occasion to consider the same. Finally, there was a huge sigh of relief to the taxpayers as Notification 56/2023-CT was held ultra vires to the Act. Before the smiles could disappear, the Division Bench of the Telangana High Court in the case of ***Brunda Infra Pvt. Limited and Ors., 2025 (1) TMI 299 - TELANGANA HIGH COURT*** has upheld the validity of the said Notification 56/2023-CT by disposing a bunch of Writ petitions relying on the judgement of Allahabad High Court in the case of Graziano Transmissions.

7. Secondment gets a second look:

Tax liability on services arising from the secondment of foreign employees to domestic companies has been a tussle both under the legacy laws as well as under the GST. Under the erstwhile Service Tax regime, the issue has been settled in favour of the Revenue in the case of ***M/s Northern Operating Systems Pvt. Ltd, 2022 (5) TMI 967 - SUPREME COURT***. When the Hon'ble High Court of Delhi had an occasion to revisit the said issue under the GST regime, in the case of ***Metal One Corporation India Pvt. Ltd., 2024 (10) TMI 1534 - DELHI HIGH COURT***, the Court examined Circular No. 210/4/2024-GST issued by the CBIC, which clarifies that when no invoice is raised for services rendered by a foreign affiliate to a related domestic entity, the value of such services is deemed "Nil" and treated as the open market value for the purposes of the Second Proviso to Rule 28 of the CGST Rules, 2017. The Court also held that the absence of invoices in the present case invalidated the basis for demanding GST, as no taxable value could be ascribed to the services rendered. Given this clarification, the Court ruled that no interest or penalty would be applicable in cases where the tax had been paid and the ITC had been claimed.



8. Sir Newton's Third law:

Blocking of ITC under Rule 86A of the CGST Rules, 2017 is one of the deadly arrows used by the department against the taxpayers and an important judgement by the Division Bench of Karnataka High Court in ***K-9 Enterprises, 2024 (10) TMI 491*** serves as a saviour. The Court emphasized that although Rule 86A does not explicitly provide for adherence to the principles of natural justice, a post-decisional hearing is no substitute for a pre-decisional hearing when blocking ITC. The officers exercising the power must independently satisfy themselves after conducting an inquiry and cannot act solely on information from another authority.

Further, on the quantum of ITC that can be blocked, the Hon'ble Delhi High Court in ***Best Crop Science Pvt. Ltd., 2024 (9) TMI 1543*** has held that, Rule 86A clearly refers to the ITC lying in ECL as on the date of blocking, thus **rendering negative blocking impermissible**. However, in the case of ***Skanthaguru Innovations Pvt. Ltd., 2024 (12) TMI 143***, the Hon'ble Madras High Court took a contrary view that, blocking of ITC can be made to the extent of wrongful availment of credit and the availability of ITC in the ECL is immaterial, thereby rendering negative blocking permissible.

9. Lets State "Royalty is mine":

The dispute over the distribution of legislative powers between Union and States on taxation of mineral rights has been ongoing since 1989. A nine-judge bench of the Hon'ble Apex Court in the case of ***Mineral Area Development Authority & Anr., 2024 (7) TMI 1390 - Supreme Court (LB)***, put to rest this controversy by upholding States unbridled constitutional power of levying tax on mineral rights and mineral-bearing land, notwithstanding Union's regulatory control on the subject matter. The Court held that, royalty is a consideration paid by mining lessee to lessor and the liability to pay royalty arises out of the contractual conditions of the mining lease, not compulsion. Thus, royalty is an income paid to essor and cannot be deemed to be a tax merely because the statute provides for their recovery as arrears. Regarding the operation of the decision, the Apex Court in ***Mineral Area Development Authority & Anr., 2024 (8) TMI 956 - SUPREME COURT (LB)***, held that the States cannot demand for transactions that occurred before 01.04.2005. Additionally, the Supreme Court ordered that the payment of demands be distributed over a timeframe of 12 years, starting from 01.04.2026, and waived all interest and penalties for the period preceding 25.07.2024.

10. Natural Justice Principle is Principal:

In an assertive judgement on procedural fairness, the Kerala High Court in the case of ***Nishad K.U, 2024-TIOL-2146-HC-KERALA-GST*** overturned a staggering ₹18.8 crore penalty, citing violations of natural justice. The case arose after tax authorities denied the petitioner's request to cross-examine 20 individuals whose statements formed the basis of the allegations. Highlighting that such denials undermine procedural fairness, the Court ruled that the right to cross-examination, though not explicitly stated in the GST Act, is inherent under Section 75(4) and must be treated as fundamental. It rejected the Department's argument that the petitioner should appeal under Section 107, pointing out that appellate authorities cannot remand cases, making appeals ineffective when foundational errors like denial of justice occur. The Court directed reassessment after granting cross-examination, setting a precedent for fair trial standards in tax disputes. This ruling safeguard taxpayer rights, deters arbitrary penalties, and pushes tax authorities to adopt transparent and just practices, reinforcing the balance between compliance enforcement and procedural fairness in India's evolving GST regime.

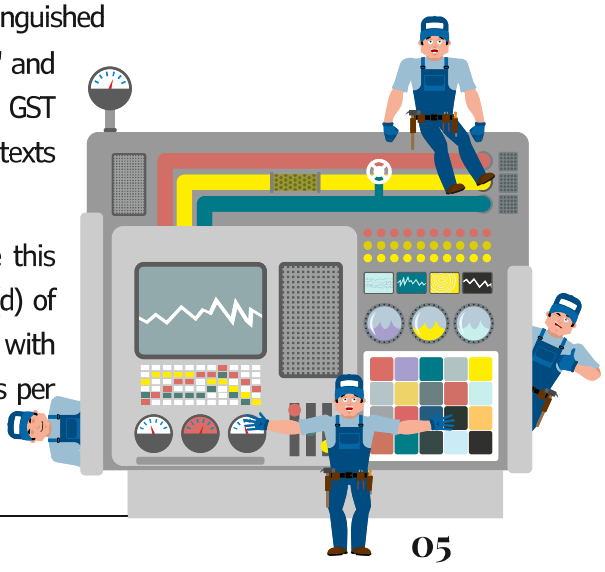
11. Togetherness is a tax taboo:

The well-established principle of mutuality as affirmed by the Hon'ble Apex Court in the Calcutta club ruling was overcome by the retrospective amendment w.e.f. 01.07.2017 made to the GST Act by inserting Section 7(1)(aa) of the CGST Act, 2017 on 01.01.2022. This amendment said that the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another. The Kerala Chapter of ***Indian Medical Association, 2024 (7) TMI 1448 - KERALA HIGH COURT*** challenged the constitutional validity of this amendment by contending that mere amendment in GST Act without constitutional amendment in Article 246(A) of the Indian Constitution cannot do away with the 'principle of mutuality' as the Article 246A read with Article 366(12A) of the Indian Constitution empowering the Central and State Governments to levy tax on supply of goods and services requires two persons/entities. The Hon'ble Kerala High Court held that in absence of reference to the term "person" in Articles 246A or 366 (12A) , the amendment is constitutionally valid but operates prospectively from 01.01.2022 owing to settled principle of mutuality being in vogue prior to the amendment.

12. The open-and-shut Pandora box:

In relation to eligibility of ITC on construction of malls, warehouses etc. the Hon'ble Apex Court in ***M/s. Safari Retreats Private Limited., & Ors., 2024 (10) TMI 286 - SUPREME COURT*** distinguished between the phrases "plant or machinery" and "plant and machinery" and emphasized that absence of definition of the term "plant" under the GST statute, necessitates the use of its ordinary meaning in commercial contexts based on functionality tests, thus the eligibility of credit.

However, the 55th GST Council meeting quickly moved to neutralize this ruling retrospectively by recommending amendment to section 17(5)(d) of CGST/SGST Act, 2017, to replace the phrase "plant or machinery" with "plant and machinery", so that the said phrase may be interpreted as per the Explanation at the end of section 17 of the Act, 2017.



Before Parting...

Its said that, **"Reason, is the soul of law"**. But Indian tax laws enjoy an exemption. First of all, the lawmakers draft laws with holes beating any sieve. Then they enforce it in a hurry. When those half-baked hurried are buried by the Judiciary, instead of learning and correcting their mistakes, the Government turn into ugly vampires and suck the blood and trust of its tax payers, with their satanic sword – Retrospective legislation.

Wayback in 2015, when our country was accused of tax-terrorism, our beloved Prime Minister promised that his Government won't resort to any "retrospective taxation amendments" and ensured stability. But what is the ground-reality?

This 2025, our sincere new-year prayers would be, before any next retrospection let there be an honest introspection!

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