

GST ARTICLE

8 Landmark Judgments in 8 Years: GST through the Lens of Supreme Court - Part II

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INTRODUCTION

Introducing GST in 2017 was unarguably the boldest tax reform in India in decades, its implementation over the following eight years has been a filled with experiments by the revenue department on the assessee, and therefore, more often than not, these experiments are subjected to interpretations by the Courts. As with any transformative legal regime, the implementation of GST encountered significant practical and interpretational challenges.

In this second part of the series, we examine how courts have interpreted some of the most complex issues under GST. Notably, in *Satyam Shivam Papers*, the Court held that goods cannot be detained merely because of an expired e-way bill; in *Mohit Minerals*, it struck down the levy of IGST on ocean freight under the reverse charge mechanism; in *Skill Lotto Solutions*, the Supreme Court upheld the constitutional validity of GST on lotteries, betting, and gambling; and in *Radha Krishan Industries*, it reinforced strict safeguards governing provisional attachment under [Section 83](#).

The jurisprudence around GST has thus moved beyond mere statutory interpretation; it now engages deeply with core constitutional principles such as Article 14, Article 19(1)(g), and Article 265. In doing so, the Supreme Court has

been standing firm with the taxpayers looking into economic realities while it balances the interest of the exchequer.

A. E-WAY BILL EXPIRY: IS PENALTY UNDER GST WARRANTED?

In ***Assistant Commissioner (ST) Vs Satyam Shivam Papers Pvt. Ltd.*** [2022-VIL-06-SC](#), the assessee was transporting certain goods along with the valid invoice and E-Way Bill. However, due to a traffic blockade caused by local protests, the vehicle was delayed and could not complete the delivery that evening, and the driver kept the goods at his residence and planned delivery on the next working day. On the faithful day, while en route for delivery, the vehicle of the Petitioner was detained for carrying goods with an expired e-way bill. The officer issued a detention notice under [Section 129\(3\)](#) of the CGST Act and seized the goods, storing them in a private residence without proper acknowledgment. The petitioner made representations explaining the delay, but no response was received. Later, the petitioner paid the penalty under protest to get the goods released and the order passed against him.

ISSUE BEFORE THE COURT

The issue the Court was that whether mere expiry of the e-way bill without intention to evade tax is sufficient for detention and penalty under Section 129 of the CGST Act. The Petitioner submitted that, the delay in delivery was due to traffic blockages beyond the control of the Petitioner. The goods were not sold or diverted, and there was no evidence of tax evasion. Further, the order was passed by an improper officer and misrepresented the payment of penalty under protest as acceptance of liability.

CONCLUSION

Hon'ble Court held that mere expiry of the e-way bill does not constitute tax evasion. The explanations given by the petitioner were reasonable. It observed that there was no evidence of mens rea or intent to evade tax. Therefore, the court held that the detention of goods by the officer was misuse of power and

the levy of penalty were illegal. The court directed the refund of the penalty paid under protest along with 6% interest per annum and imposed costs of Rs. 10,000 on the department.

B. CAN IGST BE LEVIED ON DEEMED OCEAN FREIGHT COMPONENT IN CIF CONTRACTS?

In *Union of India v. Mohit Minerals Pvt. Ltd.* [2022-VIL-30-SC](#), the assessee was importing non-coking coal into India on a CIF contract basis, wherein the foreign exporter arranged for the shipment and paid freight charges to the foreign shipping line, and its cost was included in the valuation for the purpose of levy of custom duty. However, GST Notifications No. 8/2017 and 10/2017 imposed 5% IGST on deemed ocean freight component under the reverse charge mechanism, deeming the importer as service recipient in such cases. The taxpayer contended that the levy of IGST when the custom duty and IGST is already paid once on CIF value would amount to double taxation, as ocean freight is already taxed as part of the CIF value during customs clearance. The Gujarat High Court struck down these notifications, holding the notifications to be unconstitutional and ultra vires the IGST Act. The Union of India appealed this decision before the Supreme Court.

ISSUE BEFORE THE COURT

The issue to be decided by the Supreme Court was whether an Indian importer under a CIF contract, where no freight charge is directly paid to the foreign shipping line, could be deemed to be the recipient of ocean freight service for the purpose of levying IGST again on ocean freight. The government argued that, as the importer benefits from the transportation service, making them the actual recipient. It argued that [Section 5\(3\)](#) of the IGST Act authorises the government to specify categories of supply and impose tax on a reverse charge basis. The government further asserted that taxing ocean freight separately does not result in double taxation and supply of transportation service is a distinct taxable event. On the other hand, the taxpayer argued that under a CIF

contract, the importer neither contracts with the shipping line nor pays for freight. The importer had already paid IGST on the composite value of the imported goods, which includes the freight portion, at the time of customs clearance. Therefore, levying IGST again on ocean freight component separately under reverse charge would amount to double taxation and also violate the principle of composite supply recognised under [Section 8](#) of the CGST Act.

CONCLUSION

The Supreme Court upheld the decision pronounced by Hon'ble Gujarat High Court and struck down the impugned notifications. It held that in CIF contracts, the Indian importer is not the recipient of the service of ocean freight, as they do not pay consideration for it. The Court held that the import of goods under CIF terms constitutes a composite supply where the value of freight is already embedded and taxed. Imposing a separate tax on ocean freight component violates the principles of composite supply under Section 8 of the CGST Act. The Court also held that the government exceeded its powers under Section 5(3) by deeming the importer as the recipient.

After holding the above, the Court went further to lay down an even important principle that the recommendations of the GST Council are not binding on the legislature (Parliament and the respective State Legislature), but only persuasive in nature. However, it held that the same would be binding on the rule making authority being the delegated legislature.

This observation has far-reaching implications for India's federal tax structure. By clarifying that the recommendations of the GST Council are not binding on Parliament or the State Legislatures, the Court reaffirmed the constitutional principle of legislative supremacy under Articles 246A of the Constitution. In doing so, it preserved the delicate balance of fiscal federalism by ensuring that the Council remains a collaborative and recommendatory body rather than a supra-legislative authority. At the same time, by holding the recommendations

binding on delegated legislation the Court drew a clear distinction between the primary legislature and subordinate law-making. This distinction ensures both accountability and flexibility-while elected legislatures retain autonomy, the executive machinery is bound to adhere to the Council's collective decisions to maintain uniformity across the country.

C. WHETHER LOTTERY TICKETS CAN BE SAID TO BE "GOODS" FOR THE PURPOSE OF LEVYING GST?

In the present case, *Skill Lotto Solutions Pvt. Ltd. v. Union of India* [2020-VIL-37-SC](#), the Petitioner companies were engaged in the business of selling both paper and online lottery tickets for the State Governments and were operating under agreements with various state governments, these companies purchase lottery tickets from the state governments in bulk and distributed them to the public through a network of agents and stockists. These companies filed a writ petition under Article 32 of the Constitution challenging [Section 2\(52\)](#) of the CGST Act, 2017, which defined "goods" to include actionable claims such as lotteries. The Petitioner-Companies contended that lottery is not "goods" within the meaning of the Constitution, and taxing only certain actionable claims like lotteries, betting, and gambling was arbitrary and violative of Article 14, 19(1)(g), 301 and 304 of the Constitution of India. It also challenged the valuation mechanism, wherein the full pool value of the lottery was subject to tax instead of in the face value of tickets.

ISSUE BEFORE THE COURT

The issues before the Supreme Court was whether, Parliament had the legislative competence to include actionable claims like lotteries in the definition of goods under GST, and whether taxing only selected actionable claims violated the right to equality under Article 14. The Petitioner-Companies relied on the decisions of *State of Madras v. Gannon Dunkerley* and *Sunrise Associates*, where they argued that actionable claims were not "goods". It also argued that the pool value i.e., the money contributed by the players should be excluded from

the taxable value, as it does not form part of the actual income of the distributor.

The Union of India argued that Parliament had the legislative competence to classify lottery as goods under Article 246A, which begins with a non-obstante clause overriding other legislative provisions, to define goods broadly under GST Acts. It relied on *Sunrise Associates*, where a Constitution Bench had already held that lotteries are actionable claims. It further submitted that the classification of only three actionable claims for GST, which are lottery, betting, and gambling and was based on an intelligible differentia, as these activities had historically been taxed and were treated as "res extra commercium," meaning not part of trade or business protected under Article 19(1)(g). Regarding the aspect on value of supply, the Respondent argued that [Section 15](#) of the CGST Act read with [Rule 31A](#) of the CGST Rules prescribed the face value of the ticket as the taxable value, and prize money could not be excluded based on prior Jurisprudence.

CONCLUSION

The Supreme Court dismissed the writ petition, upholding the constitutional validity of Section 2(52) of the CGST Act and the levy of GST on lottery being actionable claim. It held that the inclusion of actionable claims like lotteries in the definition of goods is consistent with the established Jurisprudence. Hon'ble Court held that Article 366(12) provides an inclusive definition of "goods" and does not specifically exclude actionable claims. Therefore, the legislative intent to include them is valid. On the issue of the classification being violative of Article 14 and 19, the Court held that there was a rational basis for taxing only lottery, betting, and gambling, given their unique nature, history of regulation and public policy. Hon'ble court also rejected the claim that taxing the pool value was unconstitutional, it held that the valuation is a matter of legislative policy and is subject matter of legislative and not the judiciary.

D. TAMING THE DRACONIAN PROVISIONAL ATTACHMENT POWER UNDER SECTION 83

In *Radha Krishan Industries v. State of Himachal Pradesh & Ors.* [2021-VIL-50-SC](#), Hon'ble Supreme Court laid down guidelines to be followed by the revenue department during provisional attachment under Section 83 of the CGST Act. The assessee was subjected to a provisional attachment by the Joint Commissioner of State Taxes under Section 83 of the HPGST Act. The attachment was allegedly made for fraudulent availment of ITC, through a supplier, which was allegedly issuing fake invoices without actual supply of goods. Though there was no adjudication or initiation of proceedings directly against the Petitioner under Section 74 at the time of the attachment, the authorities moved to attach its receivables from clients, as a protective revenue measure. Aggrieved, the appellant filed a writ petition before the Himachal Pradesh High Court, challenging the attachment on grounds of lack of jurisdiction, breach of natural justice, and procedural lapses. The High Court dismissed the writ on the basis that an alternate statutory remedy of appeal was available under Section 107 of the Act.

In the present case, the appellant was, a dealer registered under GST in Himachal Pradesh, it challenged the provisional attachment of its receivables under Section 83 of the HPGST Act. The impugned attachment was ordered by the Joint Commissioner following a investigation relating to a fraud involving its supplier, who allegedly issued fake invoices to claim fraudulent input tax credit. Despite no adjudication against the appellant, its payments from customers were frozen. The appellant contended that the attachment was without jurisdiction, and violative if principle of natural justice. A writ petition was filed before the High Court was dismissed, citing an alternative statutory remedy under Section 107 of the HPGST Act.

ISSUE BEFORE THE SUPREME COURT

The issues before the Hon'ble Supreme Court was: (i) whether the writ petition was maintainable despite the existence of an alternate remedy, (ii) whether the provisional attachment under Section 83 was valid in law, and (iii) whether the order passed by the revenue was violative of principle of natural justice. The appellant contended that no proceedings were pending against them under Sections 62, 63, 64, 67, 73, or 74 as mandated by Section 83, making the provisional attachment illegal and without jurisdiction. It argued that the attachment was passed mechanically without application of mind and recording any reasons. Moreover, no opportunity was granted to file objections or to be heard, violating Rule 159(5) of the GST Rules and the principles of natural justice. The revenue argued that Section 83 provides wide powers for provisional attachment and that requirement for principles of natural justice were substantially complied with. Further, it argued that the appellant had alternative remedies under Section 107 of the GST and that the High Court rightly refused to interfere.

CONCLUSION

The Supreme Court, however, disagreed with the High Court and ruled in favour of the appellant. It held that the availability of an alternate remedy is not a bar to writ jurisdiction in cases involving a breach of fundamental rights, violation of natural justice, or when the action of an authority is wholly without jurisdiction. On merits, the Court held that the attachment was invalid because no proceedings were pending against the appellant when the attachment was issued. Hon'ble Supreme Court held that provisional attachment is a draconian power and should be exercised with great care and in strict compliance with the statute. Furthermore, it held that the formation of opinion under Section 83 must be based on tangible material on record and such decision should also be supported by valid reasons, both of which were absent in the present case. Therefore, Hon'ble Court held that the attachment was disproportionate and arbitrary, and thus liable to be set aside.

E. CONCLUDING-REMARKS

As GST turns eight, it becomes important to acknowledge the role of the Supreme Court has been nothing short of foundational. Through these judgements it can be observed that the Supreme Court has decided the cases with practical and balanced approach, while ensuring the interest of the revenue it had attempted to take the economic interest, procedural fairness and constitutional principles into consideration. Therefore, these decisions have carved out the boundaries to an extent under which GST must operate. As GST enters in its ninth year as a tax regime, these landmark decision would serve as guiding lights. It can be said the approach of the courts so far has been consistent and therefore, it can be said that its future is secured in the hands of our constitutional courts.

[Part-I of this Article](#)

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