

Litigation Opportunities in GST: Exploring the Evolving Landscape

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The implementation of the Goods and Services Tax (GST) in India marked a transformative shift in the indirect tax system, aiming to streamline and unify the complex tax system and subsuming different indirect taxes under a single umbrella.

While the GST framework simplified various tax processes, it also brought interpretative and operational challenges, leading to a significant increase in litigation opportunities.

As the GST regime matures, legal disputes across different facets of taxation, including principles from previous regime, are shaping its jurisprudence. This article delves into the major litigation opportunities within the GST framework, providing a detailed analysis of key contentious areas.

1. Classification Disputes

Classification of goods and services is one of the significant areas of GST litigation. Given the multi-tiered tax rate structure, even minor classification errors can result in substantial financial implications.

- **Tariff Misclassification:** Disputes often arise when businesses incorrectly classify goods or services, leading to either an excessive tax burden or potential penalties. Further, Misapplication of Harmonized System of Nomenclature (HSN) or Service Accounting Codes (SAC) often triggers disputes with tax authorities questioning the accuracy of classifications.

For example, in the [Signature International Foods](#) case[1], the Maharashtra Authority for Advance Rulings ('AAR') was tasked with determining whether parathas should be classified as roti (subject to 5% GST) or as a separate category attracting a higher GST rate. The AAR ruled that despite being similar, parathas required additional preparation and could not be equated with roti. This classification dispute highlights how minor differences in product characteristics can lead to varying tax rates.

In [Commissioner of Central Excise, Salem vs. Madhan Agro Industries \(India\) \(P.\) Ltd.](#)[2], the classification of coconut oil as either an edible oil or a haircare product has been a longstanding issue in indirect tax regime, i.e. whether to classify it as edible grade coconut oil under HSN 1513, attracting a 5% GST rate or as hair oil under HSN 3305, which would attract a higher 18% GST rate. Recently, the Supreme Court of India has provided clarity on this matter, ruled that pure coconut oil should be classified as an edible oil under Heading 1513 of the Central Excise Tariff Act, 1985, and taxed at a 5% GST rate. This decision applies unless the coconut oil is specifically packaged and labelled for use as hair oil, in which case it would be classified as hair oil under Heading 3305 and taxed at 18% GST.

Another example, is where the [Tamil Nadu Appellate Authority for Advance Ruling](#) ('AAAR')[3] ruled that ready-to-cook dosa and idli mixes sold in powdered form are classifiable under HSN 2106 and liable to 18% GST, since they involve considerable processing and value addition, making them distinct from mere flour mixes. The AAAR relied on the fact that although these are

not ready-to-eat, they are not simple flour blends either. This contradicted an earlier [Gujarat AAR\[4\]](#) ruling where similar instant mixes like khaman and gota mix flour were held taxable at 5%, but later the [Gujarat AAAR\[5\]](#) also ruled that instant mix flours which require further cooking are 'ready to cook' and hence liable to 18% GST.

- **Composite vs. Mixed Supply:** Determining whether a supply qualifies as composite (taxed based on principal supply) or mixed (taxed based on higher rate) is a frequent source of contention. Disputes over classifying supplies as composite often stem from ambiguities in identifying the principal supply or interpreting whether the supplies are 'naturally bundled'.

For instance, Abbott Healthcare provided medical equipment free of cost to hospitals under agreements requiring them to purchase reagents from Abbott's distributors. The Kerala AAR[6] classified this as a composite supply, wherein principal supply is equipment, and taxed the supply at 18%. The Kerala High Court[7] remanded the matter back and noted that the supplies are made by two different taxable persons i.e. equipment from Abbott, reagents from distributors and both the supplies cannot be bundled together.

Another instance is Real estate developers and RWAs argues that electricity reimbursement should be exempt if they act as 'pure agents', recovering costs without markup. However, the certain AAR Rulings rules that such exemption applies only if all pure-agent conditions are met. Later, the issue was [clarified\[8\]](#) by the CBIC that where electricity is charged and reimbursed on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

2. Input Tax Credit (ITC) Disputes

The ITC mechanism, central to the GST framework, has been a persistent area of contention, characterized by disputes related to supplier non-compliance, blocked credits, fraudulent claims, and retrospective amendments. Such disputes frequently necessitate judicial intervention to resolve interpretative ambiguities.

- **Mismatch Between Returns:** Discrepancies between GSTR-2A/2B and GSTR-3B frequently trigger Input Tax Credit (ITC) disputes due to supplier non-compliance. For recipients to claim ITC, suppliers must file correct details in their Form GSTR-1 and pay the applicable taxes in Form GSTR-3B. However, if suppliers fail to comply or furnish any incorrect details, it leads to ITC denial, which can have significant financial implications for businesses.
- **Blocked Credits:** Section 17(5) of the CGST Act imposes restrictions on ITC claims for various expenses, resulting in several contentious issues. Key among these are the requirements for ITC reversal on time expired goods, goods that are lost, stolen, or disposed of or goods or services used for personal consumption. The eligibility of ITC on free samples provided for business promotions is another area of dispute. Furthermore, restrictions apply to construction services, an issue that has been extensively discussed in recent [Supreme Court Ruling\[9\]](#). These issues continue to be litigated under the law, highlighting ongoing complexities in tax compliance.
- **Reversal of ITC for Non-payment:** Businesses face disputes when ITC availed is reversed due to non-payment to suppliers within the prescribed time under second proviso to Section 16(2) of the CGST Act. This includes the disputes related to liability of interest payable on such ITC reversals.
- **Fraudulent ITC Claims:** Genuine taxpayers face significant hardships in disputes related to fraudulent Input Tax Credit (ITC) claims, often linked to fake invoicing. These issues arise when businesses are accused of using fake invoices to claim undue tax credits, leading to prolonged litigation and increased compliance burdens. Genuine taxpayers may experience delayed refunds and face penalties if mistakenly implicated in such frauds. Litigation opportunities arise as taxpayers can challenge the denial of ITC and seek relief from penalties, emphasizing the need for robust documentation to prove the genuineness of transactions and avoid being entangled in

fake invoicing scams.

3. Place of Supply Disputes

GST's destination-based taxation principle often leads to disputes over the correct determination of the place of supply.

- **Cross-border Transactions:** Disputes under GST for cross-border transactions often arise regarding the classification of services provided to overseas clients. Services provided to foreign clients may qualify as export of services under GST, which are categorized as zero-rated supplies under GST, allowing refunds on relevant taxes paid. However, this is subject to certain conditions, including the place of supply being outside India. In contrast, service providers in India acting as intermediaries between foreign entities are subject to GST in India, as the place of supply is deemed to be the location of the supplier of intermediary services. This inconsistency between destination-based tax principles and intermediary provisions leads to legal challenges and calls for clearer regulations.
- **E-commerce and Digital Transactions:** Under GST, determining the recipient's location for digital services such as SaaS platforms, OTT content, etc. remains contentious. These services fall under Online Information Database Access and Retrieval (OIDAR) services, taxed at 18%. Notably, the definition of OIDAR services has been amended with effect from 01-10-2023, to broaden its scope, leading to interpretational issues and ambiguities for services provided by foreign entities to Indian consumers over the internet, as the broadened scope raises questions about what constitutes an OIDAR service.
- **Determining Place of Supply on Specified Actionable Claim:** Determining the place of supply for online gaming, betting, and gambling services provided to consumers in India by foreign platforms. The complexity lies in identifying where the service is consumed versus where the game or service is provided, especially when it involves cross-border transactions.

4. Valuation Disputes

Valuation disputes in GST regime have emerged as a significant area of litigation due to ambiguities in provisions and evolving judicial interpretations. These disputes often revolve around the inclusion or exclusion of costs, discounts, and reimbursements in determining taxable value.

- **Related Party Transactions:** Related party transactions under GST are subject to Rule 28 of the CGST Rules, which prescribes valuation norms for such supplies. The rule provides that the invoice value is deemed to be the open market value if the recipient is eligible for full input tax credit. However, disagreements often arise regarding the adequacy of the declared value and the recipient's eligibility for full ITC. These uncertainties present significant scope for litigation, especially in cases involving subjective valuations or interpretational challenges.
- **Valuation of Corporate Guarantee:** The taxability of corporate guarantees has been a subject of litigation. Recent amendments in Rule 28 of the CGST Rules, introducing a 1% valuation on corporate guarantee amounts have added complexity, as disputes persist over whether such guarantees qualify as taxable supplies between related parties. Additionally, questions remain about the fairness of the valuation methodology, particularly in cases where no explicit consideration is involved.
- **Valuation of Supply by Pure Agents:** Reimbursement models for expenses can lead to disputes over whether these costs are part of the taxable value or merely cost recoveries. Disputes can arise in cases where a supplier acts as a pure agent and excludes reimbursements from the taxable value. Questions often pertain to whether the pure agent conditions under Rule 33 of the CGST Rules are fully satisfied.

- **Discounts and Incentives:** Post-supply discounts or sales incentives under GST often lead to disputes, especially when they are not pre-agreed or linked to the terms of the original invoice. Tax authorities may challenge the exclusion of such discounts from the taxable value, arguing non-compliance with Section 15 conditions.

5. Other issues

- **E-way bill and Detention of Goods:** The procedural requirements under the e-way bill system have become a focal point for litigation, stemming from issues such as documentation errors, technical non-compliance, and valuation disputes. The following areas illustrate common contentious issues:

Tax authorities frequently detain goods and vehicles for minor discrepancies in e-way bill details, such as mismatched invoices or incorrect HSN codes. Courts have been proactive in addressing such disputes. For instance, in *M/s Synergy Fertichem Pvt. Ltd. vs. State of Gujarat (2019)*^[10], the Gujarat High Court held that minor errors in the e-way bill should not result in harsh penalties.

- **Interest on Delayed Payment:** The issue of whether interest should be levied on gross or net tax liability under Section 50 of the CGST Act has been a major point of contention. To address this, the GST Council, during its 31st meeting, recommended that interest be due only on a net basis (i.e., on tax paid in cash through the electronic cash ledger). The issue resurfaced with a ruling from the Patna High Court in the case of *Sincon Infrastructure (P.) Ltd. v. Union of India*^[11], where it was determined that interest charges automatically apply to delayed return filings, regardless of whether payments are made through the Electronic Credit or Cash Ledger.
- **Retrospective Amendments:** We have observed under the GST law that many provisions have been amended with retrospective effect to correct the intent of the GST Council. To illustrate, recently Section 17(5)(d) has been amended to overrule the Supreme Court Ruling in the case of *Safari Retreat*. Similarly, in case of taxability of GST on clubs, Section 7(1)(aa) has been introduced in the CGST Act to reverse the ruling of *Calcutta Club Ltd. v. CCE.* Retrospective amendments, which change the tax liability for past transactions, can create uncertainty and financial hardship for businesses. The constitutional validity of such amendments is often questioned based on principles of fairness and predictability in taxation.

Conclusion

GST litigation reflects the evolving nature of the law and its interpretation. As businesses navigate these disputes, they contribute to shaping the GST landscape, ensuring greater clarity and consistency. For legal professionals, tax consultants, and businesses alike, staying abreast of judicial precedents and adopting a proactive approach to compliance is crucial. By strategically addressing disputes, stakeholders can not only safeguard their interests but also play a role in the broader development of GST jurisprudence.

[1] [Signature International Foods India \(P.\) Ltd.](#) [TS-758-AAR-2018-NT]

[2] [Commissioner of Central Excise, Salem vs. Madhan Agro Industries \(India\) \(P.\) Ltd.](#) [2024] TS-645-SC-2024-EXC

[3] [Krishna Bhavan Foods & Sweets](#) [TS-79-AAAR(TN)-2022-GST]

[\[4\] Dipakkumar Kantilal Chotai](#) [TS-1184-AAR-2020-NT]

[\[5\] Dipakkumar Kantilal Chotai](#) [TS-1184-AAR-2020-NT]

[\[6\] Abbott Health Care \(P.\) Ltd.](#)

[\[7\] Abbott Healthcare \(P.\) Ltd. vs. Commissioner of State Tax](#) [2020]

[\[8\] Circular No. 206/18/2023-GST](#), dated 31-10-2023

[\[9\] Chief Commissioner of Central Goods and Service Tax vs. Safari Retreats \(P.\) Ltd.](#) [2024]
[TS-622-SC-2024-GST]

[\[10\] Synergy Fertichem \(P.\) Ltd. vs. State of Gujarat](#) [2020]

[\[11\] Sincon Infrastructure \(P.\) Ltd. v. Union of India](#) [2024] [TS-216-HC(PAT)-2024-GST]