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TAXWEEKLY

The Weekly Magazine on recent updates and developments in Tax regime.

INCOME TAX

GST

REGULATION

CASE LAW

CA AMEY SHARMA

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THE TAXWEEKLY MAGAZINE

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In this issue:

Statutory Updates

- Functionality to utilize CGST or SGST ITC for payment of IGST liability, in any order of payment after complete exhaustion of IGST Credit, shall be available from February 2026 period.

Compendium of important GST Case Laws - February 2026

- Was the Summons issued u/s 70 an Illegal Detention?
- Can ITC Be Denied for Supplier's GST Default?
- Can One GST Notice Cover Multiple Financial Years?
- Can Writ Petition continue when GSTAT remedy exists?
- Can ITC on expenses incurred for transfer of leasehold rights be treated as blocked credit under Section 17(5)(d)?

Was the Summons issued u/s 70 an Illegal Detention?

Kanhaiya Nilambar Jha v. Union of India & Ors.

CRIMINAL WRIT PETITION No. 885 OF 2025 - Order dated : 05 February 2026
Bombay HC (Aurangabad Bench)

The petitioner claimed that his custody by CGST officers without proper arrest procedure was illegal and sought Rs 10,00,000 as compensation for alleged unlawful detention from 17th to 20th June 2025. The High Court analysed whether the petitioner was under illegal detention for attending summons under Section 70 of CGST Act and dismissed the petition, because there was no illegality warranting compensation.

Main Issue in the Case:

The question before the Court was:

Whether the petitioner's presence with GST officers pursuant to summons under Section 70 of the CGST Act amounted to illegal detention warranting constitutional compensation.?

Facts of the case :

- GST officers visited the office of CA Bhavik Mehta on 17th June 2025 in Mumbai, where petitioner was telephonically called.
- Petitioner was taken to Chhatrapati Sambhajnagar by GST officers without a formal arrest memo or prior summons, according to him.
- Petitioner was kept at CGST & Central Excise Office until 20th June 2025, without formal production before a Magistrate.
- On 21st June 2025, an arrest under Section 69 of CGST Act was shown, and the petitioner was remanded by the Magistrate.

- Petitioner filed bail applications; after interim procedures and he obtained bail.
- He then filed a writ petition alleging illegal detention and claiming compensation for violation of constitutional and statutory safeguards

Grounds of the case :

The petitioner contended that in the absence of any express provision in Section 70 requiring immediate appearance, the summonses were invalid because no seven days' advance notice (as in Order XVI of the CPC) was given.

He argued that his custody period from 17 to 20th June constituted a illegal detention attracting constitutional protections under Articles 21 & 22 of the Constitution.

On the other hand, the respondents submitted that the petitioner was summoned appropriately u/s 70 for inquiry into alleged tax fraud involving misuse of Input Tax Credit, and that no requirement of seven days prior notice existed under the statute.

They maintained that the petitioner voluntarily complied with the summons from 17 to 20th June, acknowledged receipt of the summons, and did not object or protest until much later.

The Department further contended that valid procedure was followed and that the eventual arrest on 21st June was lawful once sufficient material was obtained. Reliance was placed on precedents supporting the powers of tax authorities to summon and arrest in appropriate cases, and it was argued that grant of compensation for such proceedings was not warranted.

Observations of Court :

It held that Section 70 expressly adopts summons in the same manner as a civil court, but the mandatory timelines in CPC's Order XVI relate to trial proceedings, not pre-arrest inquiries under the GST enactment.

The Court observed that the petitioner had acknowledged the summons and attended voluntarily on various dates without objection, and that he had access to his mobile phones to contact family members, indicating that the period in question could not be characterized as detention.

The Court further noted that compliance with the procedure of issuing summons for inquiry did not amount to custodial detention, as the petitioner remained free to proceed and did not raise complaints at the relevant time

Judgement:

the High Court found that there was no illegal detention by respondents from 17 to 20 June and that the summons issued u/s 70 were valid and in conformity with the statutory framework. The Court held that the petitioner's claim for compensation was not sustainable in law and dismissed the writ petition.

The Dispute: Allegations of Illegal Custody

Alleged Unlawful Detention
Petitioner claimed custody from June 17-20, 2025, without a formal arrest memo was illegal.

Validity of Section 70 Summons
Petitioner argued summons were invalid due to lack of 7-day advance notice under CPC.

₹10,00,000 Compensation Claim
Claimed for alleged violations of Articles 21 and 22 of the Constitution of India.

The Verdict: Validity of GST Procedures

Voluntary Presence vs. Detention
Access to mobile phones and lack of initial objection indicated voluntary compliance, not detention.

CPC Timelines Inapplicable
Mandatory CPC notice timelines do not apply to pre-arrest inquiries under the GST enactment.

Petition Dismissed
The court found no illegality; summons were valid and compensation was not sustainable.

Can ITC Be Denied for Supplier's GST Default?

M/S Malaya Rub-Tech Industries vs Union of India & Others

WRIT PETITION (Civil) No. 849 of 2022 - Order dated : 10 February 2026

Tripura HC

The Tripura High Court held that a bona fide purchaser cannot be denied Input Tax Credit (ITC) under the GST regime merely because the supplier failed to deposit the collected tax with the Government, in the absence of fraud, collusion, or sham transactions. The High Court set aside the recovery order against the petitioner and directed the authorities to allow the ITC claim of Rs. 22,09,964/- to Malaya RubTech Industries.

Main Issue in the Case:

The question before the Court was:

Whether Input Tax Credit can be denied to a bona fide purchaser under Section 16(2) (c) of the CGST Act solely because the supplier failed to deposit the collected GST with the Government?

Facts of the case :

The petitioner M/S Malaya Rub-Tech Industries, a partnership firm engaged in rubber manufacturing, was registered under the CGST Act, 2017.

Between 08th March 2018 and 30th November 2018, the petitioner purchased input materials from a supplier (Respondent No.7), paying GST and using the inputs in manufacturing finished goods.

It claimed Input Tax Credit (ITC) on the taxes paid, believing that the supplier had deposited the collected GST with the Government.

The Assistant Commissioner issued a show cause notice under Section 73 of the CGST Act alleging wrongful availment of ITC because the supplier failed to deposit the tax, and later passed an order dated 17th February 2022 directing recovery of Rs 22,09,964.04.

Aggrieved, the petitioner filed a writ petition challenging the legality of the denial of ITC and the recovery order.

Grounds of the case :

The petitioner challenged the denial of Input Tax Credit (ITC) on the ground that it had entered into genuine and bona fide transactions supported by valid tax invoices, actual receipt of goods, payment through banking channels, and proper accounting in its books.

The petitioner had satisfied all substantive conditions prescribed under Section 16(1) and Section 16(2)(a) and (b) of the CGST Act, 2017.

There was no allegation of fake invoices, non-movement of goods, circular trading, or collusion with the supplier. The only basis for denial was the supplier's failure to deposit the tax collected with the Government. The petitioner contended that it had no statutory control or mechanism to verify whether the supplier had actually remitted the tax, and therefore it could not be penalized for an act completely beyond its domain.

It was further argued that mechanical invocation of Section 16(2)(c) of the CGST Act would impose an impossible burden on a purchasing dealer and defeat the very objective of GST as a seamless value-added tax regime. The recovery proceedings initiated under Section 73 were arbitrary, violative of principles of natural justice, and contrary to Article 14 of the Constitution, as they effectively shifted the burden of tax recovery from the defaulting supplier to a compliant buyer. The petitioner asserted that once tax is paid on inward supplies and goods are duly received and utilized, ITC becomes a substantive statutory right, which cannot be denied due to supplier default in the absence of fraud or connivance.

Observations of Court :

The Tripura High Court accepted the petitioner's submission that Sec. 16(2)(c) must be interpreted in a manner consistent with the statutory objective and principle of fairness. Relying on its earlier ruling in *M/s Sahil Enterprises v. UoI & Others*, the Court held that the provision should be read down so as not to penalize a bona fide purchaser in genuine transactions.

The Court clarified that ITC can only be denied where there is material to show that the transaction was not bona fide, or where there is collusion or fraudulent intent to defraud the revenue; in the absence of such findings, the statutory condition cannot be mechanically applied to defeat legitimate claims

Judgement:

Observing that it is unreasonable to expect a purchasing dealer to ensure deposit of tax by the supplier, the High Court set aside the recovery order dated 17th February 2022 and directed the authorities to allow the petitioner's claim for ITC of Rs 22,09,964. The writ petition was allowed, thereby protecting the rights of honest taxpayers under the GST regime.

THE DISPUTE: DENIAL OF ITC

- ₹22.1 LAKH RECOVERY DEMAND**: Authorities sought recovery of Input Tax Credit due to the supplier's tax deposit default.
- EVIDENCE OF BONA FIDE TRANSACTIONS**: The buyer provided valid invoices, bank payment records, and proof of goods receipt.
- IMPOSSIBLE BURDEN OF VERIFICATION**: Buyers have no statutory mechanism to verify if a supplier remitted collected taxes.

THE JUDGMENT: PROTECTING THE BUYER

- SECTION 16(2)(c) MUST BE FAIR**: The Court ruled this provision shouldn't penalize genuine purchasers without evidence of fraud.
- "UNREASONABLE TO EXPECT BUYER TO ENSURE DEPOSIT"**: The High Court set aside the recovery order, protecting the rights of honest taxpayers.
- ITC AS A SUBSTANTIVE RIGHT**: Once tax is paid and goods utilized, ITC becomes a protected statutory right.

CASE SUMMARY

CASE NAME: M/S Malaya Rub-Tech Industries vs Union of India	COURT / ORDER DATE: Tripura High Court / February 10, 2026	TOTAL ITC AMOUNT: ₹22,09,964
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Can One GST Notice Cover Multiple Financial Years?

M/s. Marfani Steel Impex v. The Principal Commissioner, Central Goods and Services Tax & Central Excise, Nagpur & Ors.

WRIT PETITION No. 180 of 2026 - Order dated : 17th Jan 2026

Bombay HC (Nagpur Bench)

The Bombay High Court considered the legality of a show cause notice issued u/s 74 of CGST Act covering multiple financial years within a single consolidated notice. The petitioner challenged the notice as being contrary to the statutory framework of GST which contemplates tax determination period-wise. Court held that clubbing multiple financial years in one notice violates the statutory scheme and is without jurisdiction. Accordingly, the impugned show cause notice was quashed with liberty to the department to issue fresh notices in accordance with law.

Facts the Case

The petitioner, M/s Marfani Steel Impex, a registered GST dealer, approached the Bombay High Court challenging a show cause notice dated 30 May 2025 issued by the CGST authorities under Section 74 of the CGST Act, 2017. The notice alleged suppression of taxable value and short payment of GST by the petitioner and proposed recovery along with interest and penalty. However, the impugned notice covered a composite period from April 2018 to March 2024, thereby aggregating several financial years into a single proceeding.

The petitioner contended that such consolidation of different tax periods into one notice was impermissible under the GST statutory scheme, which contemplates year-wise determination of tax liability and limitation. The petitioner therefore invoked the writ jurisdiction of the High Court seeking quashing of the notice.

Grounds and Observations of Court :

The Court relied upon earlier binding precedents of the Bombay High Court including M/s Milroc Good Earth Developers v. Union of India and Rite Water Solutions (India) Ltd. v. Joint Commissioner, CGST, wherein it had been categorically held that a show cause notice cannot be issued for multiple financial years by clubbing distinct tax periods into a single proceeding.

The respondents sought to justify the notice by relying upon certain decisions of other High Courts where consolidated proceedings were permitted in cases involving allegations of fraud spanning multiple years. It was further argued that the dismissal of a Special Leave Petition by the Supreme Court in one such case indicated acceptance of the legality of consolidated notices.

Judgment:

The Bombay High Court allowed the writ petition and quashed the impugned show cause notice. The Court held that the statutory scheme of GST clearly contemplates determination of tax liability for specific tax periods, and each financial year constitutes a distinct unit for assessment and adjudication. Consequently, a show cause notice that aggregates multiple financial years into a single proceeding violates the statutory structure and results in jurisdictional error.

The Court further clarified that dismissal of a Special Leave Petition in limine does not result in merger of judgments nor does it override the binding precedents of the jurisdictional High Court. Since the Bombay High Court had already laid down the law that such consolidated notices are impermissible, the authorities within its jurisdiction were bound to follow the same.

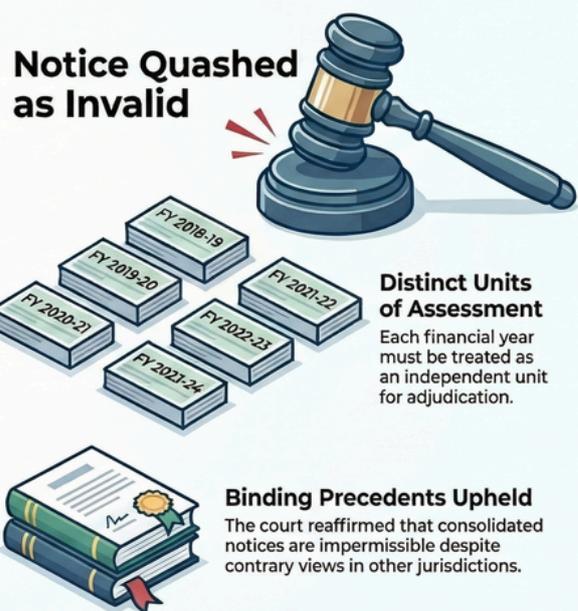
Accordingly, the impugned show cause notice dated 30 May 2025 was quashed and set aside. The Court, however, granted liberty to the department to issue fresh show cause notices in accordance with Section 74 of the CGST Act on a financial-year basis, subject to limitation and other statutory requirements.

GST Law: The Invalidity of Consolidated Show Cause Notices

The Legal Challenge: Consolidated SCNs



The Ruling: Jurisdiction & Precedent



Can Writ Petition continue when GSTAT remedy exists?

Shiva Prasad Pattnaik v. Commissioner, Commercial Tax & GST, Odisha & Others

WRIT PETITION (Civil) No. 17390 of 2023 - Order dated : 2nd Feb 2026

IN THE HIGH COURT OF ORISSA AT CUTTACK

The Orissa High Court examined whether a writ petition challenging a GST demand order can be entertained when a statutory appellate remedy under Section 112 of the GST Act is available before the GST Appellate Tribunal. The Court observed that once the Tribunal becomes functional and timelines for filing appeals are notified, the taxpayer must pursue the statutory remedy. Consequently, the writ petition was disposed of with liberty to the petitioner to approach the GST Appellate Tribunal in accordance with law.

Facts the Case

The petitioner, Shiva Prasad Pattnaik, challenged an order dated 25th July 2022 passed by the CT & GST Officer, Bhubaneswar-II Circle for the tax period April 2019 to March 2020 under Section 73 of the act. The adjudicating authority had raised tax demand against the petitioner, which was subsequently affirmed by the appellate authority by order dated 27 March 2023.

Aggrieved by the appellate order, the petitioner invoked the writ jurisdiction of the Orissa High Court under Article 226 of the Constitution, primarily challenging the legality of the assessment and appellate orders. However, during the pendency of the writ petition, developments occurred regarding the operationalization of the GST Appellate Tribunal (GSTAT) and the availability of the statutory appellate remedy under Section 112 of the GST Act.

Grounds and Observations of Court :

The petitioner challenged the impugned orders primarily on the ground that the assessment and appellate orders were illegal and unsustainable. It was argued that the orders suffered from procedural irregularities and improper determination of tax liability.

Judgement:

The GST law provides a complete appellate hierarchy culminating in an appeal before the GST Appellate Tribunal. The Court noted that once the Tribunal becomes functional and timelines for filing appeals are provided, taxpayer is expected to avail the statutory remedy instead of invoking the writ jurisdiction of HC.

The writ petition was accordingly disposed of with liberty to the petitioner to approach the GST Appellate Tribunal under Section 112 of the CGST Act within the prescribed time and subject to compliance with statutory requirements, including the mandatory pre-deposit.

Can ITC on expenses incurred for transfer of leasehold rights be treated as blocked credit under Section 17(5)(d)?

**Niket Bipinbhai Patel (Through Power of Attorney Holder) v. Assistant Commissioner (A.E.),
CGST & Central Excise, Vadodara-II Commissionerate**

R/Special Civil Application No. 18068 of 2025 - Order dated : 10th Feb 2026
High Court of Gujarat at Ahmedabad

The Gujarat HC examined the legality of a show cause notice issued u/s 74 of the CGST Act alleging wrongful availment of Input Tax Credit on charges paid to GIDC. The Court held that Section 17(5)(d), which blocks ITC relating to construction of immovable property, was wrongly invoked as the petitioner was not engaged in construction activity. Finding that the statutory provisions were misinterpreted and that there was no allegation of fraud or suppression, the Court quashed the SCN and directed unblocking of the petitioner's ITC.

Facts the Case

The petitioner, an NRI residing in the United States, had acquired leasehold rights over an industrial plot situated in the Gujarat Industrial Development Corporation (GIDC), Ankleshwar. The petitioner carried on the business of subdividing the plot and transferring leasehold rights of the resulting sub-plots to purchasers. For this purpose, the petitioner obtained GST registration to discharge tax liability on transfer of such leasehold rights.

In the course of this activity, the petitioner paid various statutory and administrative charges to GIDC such as subdivision charges, transfer fees, penalties and other administrative dues. GST was levied on these charges and he availed corresponding ITC on the premise that such expenses were directly connected with the business of transferring leasehold rights. During the FY 2022-23, the petitioner transferred two sub-plots to M/s SML Limited and discharged the applicable GST liability.

Subsequently, the GST authorities initiated inquiry alleging that the petitioner had wrongly availed ITC which constituted blocked credit under Section 17(5)(d) of the CGST Act. After conducting a spot visit, issuing summons, and recording statements, the authorities issued an intimation in Form DRC-01A and thereafter a show cause notice dated 28 October 2025 under Section 74(1) of the Act proposing recovery of ₹98,11,678 along with interest and penalty. The department also blocked the corresponding ITC in the petitioner's electronic credit ledger. Aggrieved by the notice and blocking of ITC, the petitioner approached the High Court under Article 226 of the Constitution.

Grounds and Observations of Court :

The petitioner contended that the impugned notice was without jurisdiction as the activities undertaken by him involved merely acquisition and transfer of leasehold rights and did not involve any construction of immovable property.

Consequently, Section 17(5)(d) relating to blocked credit for construction activities was wholly inapplicable. It was further submitted that the GST liability on the transfer of plots had been discharged entirely in cash and that even the small amount of ITC inadvertently utilised earlier had been voluntarily reversed through Form DRC-03.

The petitioner also argued that invocation of Section 74 was legally untenable since the provision applies only in cases involving fraud, wilful misstatement or suppression of facts. According to the petitioner, none of these elements were present in the case.

The respondents, on the other hand, defended the issuance of the notice by asserting that the petitioner had violated the provisions of Section 17(5)(d) and that the correctness of the allegations could only be determined during adjudication proceedings rather than in writ jurisdiction.

Judgement:

The Gujarat High Court allowed the writ petition and quashed the impugned show cause notice.

The Court held that a plain reading of Section 17(5)(d) reveals that the restriction on Input Tax Credit applies only to goods or services used for construction of immovable property. In the present case, the petitioner had merely acquired leasehold rights over GIDC plots and transferred such rights after sub-plotting, and there was no material to show that any construction activity had been undertaken. Consequently, the provision relating to blocked credit had been wrongly invoked.

The Court further observed that the respondents had failed to demonstrate any fraud, wilful misstatement or suppression of facts by the petitioner, which are essential prerequisites for invoking Section 74 of the CGST Act. In view of this absence of jurisdictional facts, the issuance of the show cause notice was held to be legally unsustainable.

Accordingly, the High Court set aside the notice dated 28 October 2025 issued under Section 74(1) of the CGST Act and directed the respondents to unblock the ITC amounting to ₹98,11,678 lying in the petitioner's electronic credit ledger within three weeks. The writ petition was thus allowed and rule made absolute.



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