Katalyst Kaleidoscope

June 2026: Tax and Regulatory Insights

SUMMARY OF CONTENTS

A. Income Tax Highlights

1. ITAT Mumbai[1]: ESOP recharge cost allowed as revenue expenditure

The assessee, an Indian captive service provider of the Morgan Stanley group, rendered IT and IT-enabled services to overseas group entities. The assessee had granted stock units linked to shares of a Morgan Stanley group company listed on the New York Stock Exchange to its employees under an Employee Incentive Compensation Plan. The cost of such shares was recharged to the assessee on a cost-to-cost basis by the group entity.

The assessee claimed deduction of the actual payment made upon allotment of shares to employees under Section 37(1) of the Income-tax Act, 1961, while the book provision accrued over the vesting period was added back in the tax computation. The shares allotted were taxed as perquisite in the hands of employees with appropriate tax deducted at source. The Assessing Officer disallowed the deduction under Section 37(1).

On appeal, the Tribunal deleted the disallowance, following its earlier decision in the assessee's own case for an earlier assessment year, which in turn had relied on the Special Bench decision in Biocon Ltd. holding that ESOP cost is revenue expenditure allowable under Section 37(1).

2. ITAT Mumbai[2]: Singapore tax resident entitled to claim treaty exemption on capital gains and simultaneously carry forward capital losses under the Act on a transaction-by-transaction basis

The assessee, a Singapore tax resident, held investments in several Indian companies. During the relevant year, it sold shares in four Indian companies - two acquired before 1 April 2017 (PayTM and Snapdeal) and two acquired after 1 April 2017 (Xpressbees and Bigbasket). The assessee claimed exemption under Article 13(4A) of the India-Singapore Double Taxation Avoidance Agreement on the gain from sale of PayTM shares, while simultaneously claiming carry forward of the loss from sale of Snapdeal shares under the Income-tax Act, 1961 - both sets of shares having been acquired before 1 April 2017. The Assessing Officer and the Dispute Resolution Panel rejected this approach, holding that the assessee could not selectively apply the treaty and the Act to individual transactions and was required to make a uniform choice for all capital gains transactions for the year; accordingly, the Snapdeal loss was set off against the PayTM gain before applying the treaty, resulting in a significantly higher taxable income. Aggrieved, the assessee appealed to the Tribunal.

The Tribunal allowed the appeal, holding that each individual investment constitutes a separate "source of income" even though all transactions fall under the common "head of income" of capital gains. Relying on the Special Bench decision in Joint CIT vs. Montgomery Emerging Markets Fund

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[1] Morgan Stanley Advantage Services (P.) Ltd vs. NFAC (Delhi) [[2026] 185 taxmann.com 708 (Mumbai - Trib.)] order dated 15th April 2026

[2] Alibaba.com Singapore E commerce Pvt Ltd vs DCIT International Tax [ITA 2070/MUM/2025] order dated 11th May 2026

and a consistent line of coordinate bench decisions, the Tribunal held that Section 90(2) entitles an assessee to claim the more beneficial of the Act or the treaty in respect of each separate source of income. Capital gains exempt under the treaty do not enter the computation of total income at all and cannot be used to force a set-off of losses from other transactions, as that would amount to indirect taxation of treaty-exempt income contrary to Section 90(2).

Katalyst comment

The ruling reinforces the settled distinction between "source of income" and "head of income" in the context of treaty benefits - the beneficial option under Section 90(2) is available at the level of each individual transaction and not at the level of the head of income as a whole. Foreign investors holding pre-April 2017 investments in India under the India-Singapore or India-Mauritius treaties should take note, as ring-fencing treaty-exempt gains while preserving carry forward of losses under the Act can have a material impact on their overall tax position.

3. ITAT Chennai[3]: Section 47(iv) - transfer of shares to holding company not a "transfer", exemption upheld

The assessee, a French company, had been holding 60% shares in an Indian operating company, Valeo Service India Auto Parts Private Limited ("VSIAPL"), since 2012. In FY 2018-19, its joint venture with a co-shareholder failed. The assessee then acquired the remaining 40% stake, making VSIAPL its wholly owned subsidiary; it thereafter sold its entire 100% holding in VSIAPL to another wholly owned Indian subsidiary, Valeo India Private Limited ("VIPL"). VSIAPL was subsequently merged into VIPL under the fast-track merger process under Section 233 of the Companies Act, 2013. The assessee claimed that the sale to VIPL was not a "transfer" under Section 47(iv) of the Income-tax Act, 1961, being a transfer from a holding company to its wholly owned Indian subsidiary. It accordingly sought a refund of taxes withheld by VIPL at the time of payment.

The Assessing Officer rejected this position on four grounds. First, since the 40% stake was acquired in 2018 and sold in 2019, the shares were not capital assets but constituted an adventure in the nature of trade. Second, the merger could have been carried out directly without first routing the shares through VIPL, and no adequate commercial reason was provided for remitting consideration to the foreign parent. Third, the merger scheme itself referred to shares being "cancelled and extinguished," indicating the assessee never intended to hold them as an investment. Fourth, the assessee had adopted the Discounted Cash Flow method over the Net Asset Value method to inflate the consideration remitted abroad. The Dispute Resolution Panel confirmed the addition. The assessee appealed to the Income Tax Appellate Tribunal.

On appeal, the Tribunal allowed the assessee's appeal and held as follows:

- **Character of shares:** The Assessing Officer erred in examining only the last tranche of acquisition in isolation; the character of the entire holding must be determined holistically,

[3] Valeo Bayen vs DCIT, International Tax -[2026] 186 taxmann.com 471 (Chennai - Trib.) dated 29th April 2026

taking into account the long-term investment held since 2012, and not merely the subsequently acquired stake.

- **Section 47(iv) exemption:** Since both conditions of the provision were satisfied - the assessee held the entire share capital of both VSIAPL and VIPL, and both were Indian companies - there was no basis to deny the exemption.
- **Commercial justification:** Tax authorities cannot dictate how a business decision ought to have been taken; the choice to transfer shares first and then merge under the fast-track route was a legitimate business decision and the Revenue could not insist on an alternative restructuring path.
- **Accounting disclosure:** The words "cancelled and extinguished" in the merger scheme were standard accounting terminology reflecting the legal reality that a company cannot hold its own shares post-merger, and cannot be used to characterize a transaction as non-genuine.
- **Valuation:** The Assessing Officer cannot reject a Discounted Cash Flow valuation report merely by comparing it with the Net Asset Value method without identifying specific defects in the methodology, assumptions, or projections.
- **Tax advantage:** Mere existence of a tax benefit does not make a transaction impermissible; the transaction must be shown to be circular, self-cancelling, or devoid of real economic substance, and in the present case the reorganization involved no change in ultimate beneficial ownership with assets continuing to remain in India.

Katalyst comment:

The ruling affirms that a taxpayer is entitled to structure an intra-group reorganisation in a tax-efficient manner, provided the transaction has genuine commercial substance and is not circular or devoid of economic effect. Companies using the fast-track merger route under Section 233 of the Companies Act, 2013 should ensure that the commercial rationale for each preparatory step is documented at the time of transaction, as Revenue scrutiny of interposed transactions is likely to continue.

4. ITAT Hyderabad[4]: Registered sale deed not mandatory for Section 54 exemption

The assessee, an individual, earned LTCG from sale of three residential apartments and claimed exemption under Section 54 of the Income-tax Act, 1961 on the ground of having invested the same towards purchase of a new residential property, evidenced only by an unregistered "agreement to sell" entered into with a group entity. The AO disallowed the exemption on the ground that, in the absence of a registered sale deed, no ownership had passed to the assessee and the property could not be said to have been "purchased" within the meaning of Section 54.

[4] Prasanna Lakshmi Chakka [TS-738-ITAT-2026(HYD)] dated 22nd May 2026

The CIT(A) deleted the addition, relying on the SC decision in *Sanjeev Lal vs.* CIT[5] and other judicial precedents. The Revenue appealed to the ITAT.

On appeal, the ITAT held that what Section 54 requires is investment of sale consideration towards purchase or construction of a new residential house, and not necessarily acquisition of title through a registered sale deed; relying on *Sanjeev Lal* (SC), *CIT vs. R.L. Sood*[6] and *CIT vs. Kuldeep Singh*[7], the Tribunal rejected the Revenue's proposition that exemption can be denied solely for want of registration.

5. ITAT Delhi[8]: Broken Period Interest on NCD Sale Taxable as Interest, Not Capital Gains - Identity of Payer Irrelevant

Macquarie SBI Infrastructure Investments Pte Ltd., a Singapore-incorporated foreign venture capital investor, held NCDs issued by GMR Airports Ltd. (GAL). It sold 1,04,512 NCDs to JP Morgan Securities Asia Pte Ltd. (JPMSA) on 5 July 2019 on a cum-interest basis. GAL paid interest up to 30 June 2019 and deducted TDS - this was offered as interest income without dispute. The broken period interest of 5 days (1 to 5 July 2019), amounting to Rs. 6.35 crores, was however paid by JPMSA as part of the cum-interest sale price. The assessee claimed this amount as short-term capital gains exempt under Article 13(5) of the India-Singapore tax treaty, arguing that since it was received from the buyer and not the issuer, it could not be taxed as interest.

The Delhi ITAT rejected this argument and upheld the revenue's addition. The Tribunal held that the character of a receipt as interest does not change merely because it is received from the buyer of the debentures rather than the issuing company. The broken period interest of Rs. 6.35 crores was held taxable as interest under the head "Income from Other Sources," under Article 11 (interest) of the India-Singapore DTAA, and not under Article 13 (capital gains).

6. Income-tax (Amendment) Ordinance, 2026:[9] Interest and capital gains on Government securities exempted for Foreign Institutional Investors and Bank for International Settlements

The President promulgated the Income-tax (Amendment) Ordinance, 2026 on 5 June 2026 effective from 1 April 2026. The Ordinance amends Schedule IV of the Income-tax Act, 2025 to exempt two categories of taxpayers from tax on Government securities. First, Foreign Institutional Investors ("FIIs") are exempted from tax on interest earned on, and capital gains arising from the sale or transfer of, Government securities. Second, the Bank for International Settlements ("BIS"),

[5] *Sanjeev Lal vs.* CIT (2014) 365 ITR 389 (SC)
[6] *CIT vs. R.L. Sood*[6] (2000) 245 ITR 727 (Delhi HC)
[7] *CIT vs. Kuldeep Singh*[7] (2014) 270 CTR 561 (Delhi HC)
[8] *Macquarie SBI Infrastructure Investments Pte Ltd. v. ACIT, International Taxation, New Delhi* - ITA No. 2667/Del/2023, dated 15th June 2026
[9] Income-tax (Amendment) Ordinance, 2026 dated 5th June 2026

the international financial institution headquartered at Basel, Switzerland, receives the same exemption. Both exemptions are subject to furnishing information in the prescribed form and manner.

B. Corporate Law highlights

1. NCLT Mumbai[10]: admits State Bank of India's (SBI) insolvency petition against personal guarantor of RCOM and RITL loans

SBI had extended loans of Rs. 565 crores and Rs. 635 crores to Reliance Communication Limited ("RCOM") and Reliance Infratel Limited ("RITL") respectively in 2016, backed by a personal guarantee from Mr. Anil Ambani. Upon default, SBI invoked the guarantee and filed a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("IBC") against Mr. Ambani as personal guarantor. NCLT Mumbai admitted the petition, rejecting Mr. Ambani's defences on the following grounds:

- The Resolution Professional's ("RP") report under Section 99 of IBC is only recommendatory. Complex legal questions such as whether the guarantee stands discharged are for the Tribunal to decide under Section 100 of IBC, not the RP.

- The guarantee was executed in September 2016, before RCOM and RITL were formally classified as NPA in January 2017. The earlier default had been temporarily set aside due to restructuring, and a regulatory breach by the bank in any event does not void a guarantee under the Indian Contract Act, 1872.

- The resolution plans approved in respect of both RCOM and RITL are asset monetisation constructs with no cash received by SBI to date. Both plans expressly preserve lenders' rights to enforce personal guarantees, and approval of a resolution plan does not by itself discharge a personal guarantor.

2. MCA[11]: Permits CSR spend through Zero Coupon Zero Principal instruments on Social Stock Exchange

The Ministry of Corporate Affairs ("MCA") has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 and Schedule VII to the Companies Act, 2013, to allow companies to fulfil CSR obligations by subscribing to Zero Coupon Zero Principal ("ZCZP") instruments issued by Not-for-Profit Organizations ("NPOs") listed on the Social Stock Exchange ("SSE").

A new Rule 4A has been inserted permitting companies to carry out CSR activities through ZCZP instruments, subject to the following key conditions:

- expenditure on ZCZP instruments is capped at 10% of total annual CSR spend;

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[10] NCLT Mumbai Bench-I, [State Bank of India v. Anil Dhirajlal Ambani, C.P. (IB)/916(MB)/2020, order dated 11 June 2026].
[11] MCA Notification No. G.S.R. 415(E) and 416(E) both dated 27 May 2026

- the subscribing company is exempt from impact assessment obligations for SSE-funded projects;
- the issuing NPO must deploy funds within three succeeding financial years from issuance; and
- on de-listing, any unspent amount must be transferred to a Schedule VII fund with a compliance report to SEBI.

Katalyst comment:
The amendment meaningfully integrates the SSE framework with mainstream CSR. The impact assessment exemption and the three-year project window make the ZCZP route attractive for companies that find annual monitoring burdensome and for NPOs seeking longer planning horizons.

C. SEBI and other highlights

1. SEBI[12]: Issues interim ex-parte order against Rajesh Exports Limited and its promoter for financial misrepresentation

Rajesh Exports Limited ("REL"), a listed gold refiner with significant overseas subsidiaries including Valcambi SA, Switzerland, was the subject of a SEBI investigation following a shareholder complaint in March 2024. Based on a Forensic Audit Report by BDO India, SEBI passed an interim ex-parte order on 3rd June 2026 against REL and its Chairman and Managing Director, Mr. Rajesh Mehta.

Key prima facie findings:

- **Inflated revenues:** Approximately 97% to 99% of reported consolidated revenue was prima facie inflated through fictitious transactions routed via overseas subsidiaries.
- **Non-cooperation:** Access to ERP systems and books of accounts was denied. Data on foreign subsidiaries was withheld citing Swiss data protection laws.
- **Financial misrepresentation:** Standalone and consolidated statements contained fictitious transactions, incorrect consolidation, and improper netting of receivables against payables.
- **Fund misutilization:** Corporate funds were routed through personal accounts of the promoter and promoter-controlled entities.
- **Non-disclosure:** Financial statements of subsidiaries were never uploaded on REL's website as required under the Companies Act and LODR Regulations.

SEBI directed: (i) restraint on Mr. Rajesh Mehta from dealing in REL's securities; (ii) REL to make true and fair disclosures; (iii) appointment of a fresh forensic auditor; and (iv) referral to the National Financial Reporting Authority for action against REL's statutory auditors.

2. SEBI[13]: Issues Informal Guidance - Cousin of Promoter/Director Not a "Relative" for Independent Director Eligibility

Maithan Alloys Limited sought SEBI's informal guidance on whether a cousin of a promoter-group member/director qualifies as a person "related to promoters or directors" under Regulation 16(1)(b)(iii) of the LODR Regulations, 2015, which would disqualify the person from being appointed as an Independent Director.

[12] SEBI Interim Order in the matter of Rajesh Exports Limited dated 03rd June 2026
[13] SEBI Informal Guidance in the matter of Maithan Alloys Limited bearing Issue No. I/6076/2026, dated March 2, 2026

The proposed appointee was the daughter of the father's sister of Mr. Siddhartha Shankar Agarwalla (a Promoter Group member and director in two subsidiaries of the Company).

SEBI clarified as follows:

- The term "related" in Regulation 16(1)(b)(iii) is governed by the definition of "relative" under Regulation 2(1)(zd) of the LODR Regulations read with Section 2(77) of the Companies Act, 2013 and Rule 4 of the Companies (Specification of Definitions Details) Rules, 2014.
- A cousin does not fall within the statutory definition of "relative."
- Accordingly, the cousin of a promoter/director is not disqualified on the ground of being "related" and may be eligible for appointment as an Independent Director.
- SEBI also noted that the Explanation to Regulation 17(1)(b) - which separately expands the meaning of "related to any promoter" - is specific to that regulation and does not extend to Regulation 16(1)(b)(iii).
- All other eligibility conditions under Regulation 16(1)(b) and the Companies Act, 2013 must independently be satisfied.

3. RBI[14]: Amends Cross Border Merger Regulations to substitute "Competent Authority" for "NCLT"

The Reserve Bank of India has amended the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, with immediate effect.

The amendment makes two changes. First, clause (vii) of Regulation 2, which previously defined "NCLT," has been omitted. In its place, a new clause (iia) has been inserted defining "Competent Authority" as any authority empowered under the Companies Act, 2013 or any subordinate legislation made thereunder to approve a scheme of merger or amalgamation. Second, in Regulations 4, 5, 7 and 9 of the Principal Regulations, the word "NCLT" wherever it occurs has been replaced with the words "Competent Authority."

Katalyst comment:

The amendment aligns the FEMA cross border merger framework with the broader Companies Act position, which permits mergers to be approved by authorities other than the NCLT – i.e. the Regional Director under the fast-track merger route under Section 233. The earlier reference to "NCLT" in the Cross Border Merger Regulations had created uncertainty as to whether fast-track cross border mergers were permissible without NCLT approval. That uncertainty is now removed.

[14] RBI Notification No. FEMA 389(1)/2026-RB, dated 29 May 2026-Foreign Exchange Management (Cross Border Merger) Amendment Regulations, 2026.

4. FEMA[15]: Amends Non-debt Instruments Rules under FEMA; Broadens investment-framework to all person's resident outside India

The Ministry of Finance has amended the FEMA (Non-debt Instruments) Rules, 2019, expanding the Schedule III repatriation-basis portfolio investment route in listed Indian companies beyond NRIs and OCIs to all individuals' resident outside India, irrespective of nationality; key features of the revised regime:

- The individual holding limit remains less than 10% of paid-up equity capital on a fully diluted basis, with an aggregate ceiling of 24% for all such individuals together.
- A breach of the 10% individual limit must be cured by divestment within five trading days; failure to divest results in the entire investment being reclassified as FDI, with further portfolio investment in that company barred.
- Investment or transfer resulting in ownership or control of a listed Indian company passing to entities or citizens of a land-border country, or where the beneficial owner is such a citizen, requires prior Government approval.

Katalyst Comment:

Broadening the portfolio investment route to all non-residents is a constructive step, but the compliance burden – (PAN registration, annual return filing, and full KYC on demat accounts) - may discourage foreign individuals with no prior India nexus, for whom these requirements impose a cost that often outweighs a modest investment. Intent must be matched with frictionless onboarding; otherwise, the reform risks being a door that is technically open but practically hard to enter.

[15] FEMA (Non-debt Instruments) (Third Amendment) Rules, 2026 notified [S.O. 3030(E), dated 12 June 2026]

D. Goods and Service Tax Highlights

1. Supreme Court[16]: Online gaming involving stakes on uncertain outcomes taxable as actionable claims

In May 2023, the Karnataka High Court had quashed the SCNs issued by DGGI demanding ₹2.09 lakh crore (including interest and penalties) from Gameskraft, an online rummy platform for alleged GST evasion. The Revenue claimed Gameskraft had misclassified its supply as "services" rather than as "actionable claims" arising from betting and gambling. In this matter, the **issues involved** before the Supreme court are mentioned below:

1) Whether online games played for stakes (including games of skill like rummy and fantasy sports) constitute "betting and gambling" under the GST framework
2) Whether actionable claims arising from such activities validly included in "goods" and subject to GST.
3) Whether value of supply as per Rule 31A (valuing supply at 100% of face value of bet) is constitutionally valid.
4) Whether 2023 CGST amendments are clarificatory/retrospective or prospective.
5) What is the correct valuation base for casinos; whether valuation should be on GGR (gross gaming revenue) or GBV (gross bet value)?

Supreme court's observations and findings:

1) **Game of skill vs. Game of chance irrelevant:** The Court held that the essential element of betting and gambling is *staking money upon uncertain outcomes*, irrespective of whether the underlying game is one of skill or chance. The State enactments protecting games of skill apply to the *game itself*, not to the act of staking upon its outcome.

2) **Actionable Claims as Goods:** The inclusion of actionable claims within "goods" under Section 2(52) CGST Act was upheld. Once a participant stakes money, a contingent beneficial interest in the pooled stake fund arises immediately and the same constitutes an actionable claim. The Court relied on ***Skill Lotto Solutions***[17] and ***Sunrise Associates***[18] to hold that actionable claims are goods in the wider sense, and Parliament's power under Article 246A is broad enough to subject them to GST.

3) **Supply:** Organised gaming platforms *create* actionable-claim/ interests upon participation and this itself constitutes taxable supply. Online gaming operators are **suppliers**, not mere

[16] Directorate General of Goods and Services Tax Intelligence (HQS) and Ors. vs Gameskraft Technologies Private Limited and ors. [TS-391-SC-2026-GST] dated May 29, 2026
[17] 2020-TIOL-176-SC-GST-LB dated December 3, 2020
[18] 2006-TIOL-4O-SC-CT-LB dated April 28, 2006

facilitators. Further, no deduction of prize pools, winnings, or payouts is permissible in computing taxable value.

4) **Retrospective applicability of 2023 amendments:** The 2023 amendments [Rule 31B (value of supply for online gaming) and Rule 31C (value of supply of actionable games) are *clarificatory*, not substantive. They do not create a new levy but merely provide greater specificity to what was already taxable and hence; operate retrospectively.

5) **Rule 31A is upheld:** The Court held that gaming operators supply actionable claims, with the entire staked entry amount or face value of the bet constituting the "transaction value" under Section 15 of the CGST Act. Furthermore, it found that even prior to the 2023 Amendment Act, Rule 31A of the CGST Rules was already sufficiently broad to value these supplies at 100% of their face value by linking the taxable valuation directly to the amounts paid for participation.

6) **GGR basis rejected for Casinos:** The Supreme Court rejected the argument that GST should only be levied on Gross Gaming Revenue (net retained earnings), emphasizing that GST applies to the supply itself rather than profits. However, the Court clarified that casino valuations are governed retrospectively by Rule 31C (total amount paid for purchase of chips/tokens), meaning the taxable value is based on the total amount paid to purchase chips or tokens. Ultimately, any outstanding factual disputes regarding specific computations were left to be resolved by the adjudicating authority.

7) **Fantasy Sports:** Fantasy sports involve staking upon uncertain future sporting outcomes. The SC held that the Fantasy sports platforms are held to be suppliers of actionable claims arising from betting and gambling and valuation is governed by Rule 31B.

<u>Supreme Court's judgment</u>

1) The Karnataka HC judgment which had protected skill-based games from this classification of "betting and gambling" is quashed and Gameskraft show cause notices restored and all writ petitions and transferred cases dismissed.

2) The SC held that once money is staked on uncertain future outcomes, the transaction becomes "betting and gambling" for GST purposes; regardless of whether the game is one of skill or chance.

3) The taxable event is the supply of an actionable claim (the chance to win), not the underlying game. GST is therefore payable on the entire stake amount and not just the platform's commission.

4) The 2023 amendments including Rule 31B (value of supply for online gaming) and Rule 31C (value of supply of actionable games) are clarificatory and applicable retrospectively.

Katalyst comment:
Crucially, the Court treated Rules 31B (value of supply for online gaming) and 31C (value of supply for Casinos) as merely clarificatory and retrospective, despite their express prospective commencement dates. This interpretation fundamentally recalibrates the industry's tax base and sets a debated precedent regarding whether delegated legislation can retroactively explain pre-existing law.

2. Bombay HC[19]: No GST demand can survive against a non-existent entity/amalgamated entity. Section 87 is applicable for intervening period only

Facts of the case:

Capital First Limited (CFL) amalgamated into IDFC First Bank by an order of the NCLT, Chennai on **December 12, 2018** and CFL's GST registration was cancelled on **June 14, 2019**. Despite this, the Revenue issued a scrutiny notice (ASMT-10) in CFL's name on **January 4, 2022** and IDFC First Bank explicitly informed Revenue that CFL no longer existed. Regardless of the same, Revenue proceeded and issued a SCN on **December 30, 2023**, and then a demand order on **April 26, 2024** confirming GST demand, interest and penalty, all in CFL's name.

Decision of the Bombay HC:

The Bombay HC quashed and set aside the demand order dated April 26, 2024 and all consequent proceedings and key findings of the HC are as under:

1) **CFL has no legal status**: Upon NCLT approval, CFL ceased to exist as a legal entity from December 12, 2018 itself. The subsequent GST registration cancellation further reinforced this. A non-existent entity cannot be a "person" against whom assessment or demand proceedings can be initiated.

2) **Applicability of section 87 of the CSGST Act:** Revenue's reliance on Section 87 was squarely rejected. Following ***Vodafone Idea Limited (Bombay HC),***[20] the court held that Section 87 applies only to the intervening period between the effective date of amalgamation and the date of the NCLT order. It does not empower Revenue to issue SCNs or demand orders against a non-existent entity post-merger.

[19] IDFC First Bank Limited v. State of Maharashtra & Ors. [TS-337-HC(BOM)-2026-GST] dated May 7, 2026
[20] [TS-311-HC(BOM)-2026-GST] dated May 6, 2026

3) **On Revenue's conduct:** The court noted that Revenue was fully aware of the amalgamation and cancellation of registration throughout, yet persisted with proceedings on a misplaced reading of the law.

3. Rajasthan HC[21]: Road construction under the Build-Operate-Transfer (BOT) Toll model is a taxable Works Contract Service under GST

Facts of the case:

1) **Agreement:** The Petitioner, CG Tollway Ltd. (concessionaire), entered into a concession agreement with NHAI for the expansion of NH 79 in Rajasthan on BOT Tol Mode whereby the concessionaire was required to design, build, finance, operate and transfer the highway after a period of 45 years.
2) **Consideration:** In consideration, NHAI granted the exclusive right to collect toll from the users of the highway during the concession period of 45 years to the concessionaire.
3) **Concession fee:** The concessionaire was obligated to pay NHAI a concession fee during the concession period.
4) Construction work: The actual construction was outsourced to IRB Infrastructure Developers Ltd, which duly paid GST on its EPC works contract services.
5) **GST audit and subsequent litigation:** During the GST audit, the GST authorities observed that CG Tollway had paid no GST on the construction services provided to NHAI and issued an SCN levying tax of 16.32 crores (including interest and penalty @ 10%).

Issue involved:

Whether the toll collection rights granted by NHAI to the concessionaire constitutes "consideration”, in barter for the construction and maintenance services supplied by the concessionaire thereby making such transaction a taxable supply liable to GST.

Decision of the HC:

1) **Barter transaction liable to GST:** This reciprocal arrangement between NHAI and concessionaire satisfies the definition of a "barter" and constitutes a valid non-monetary consideration under Section 7 of the CGST Act.

2) **Toll exemption not applicable to construction:** The GST exemption under Entry 23 (Notification No. 12/2017) applies strictly to allowing commuters access to the road (the act

[21] CG Tollway Ltd. v. Union of India & Ors, TS-393-HC(RAJ)-2026 GST

of toll collection). It does not exempt the underlying construction and maintenance services provided by the concessionaire to NHAI, even if the payout is in the form of toll rights.

3) **No double taxation via sub-contracting:** The court noted there were two independent transactions; one between NHAI and the concessionaire, and another between the concessionaire and the EPC subcontractor (IRB Infrastructure). There is no privity of contract between NHAI and the subcontractor and hence, the GST paid by the subcontractor on actual construction does not wipe away the concessionaire's separate tax liability to NHAI.

4) **Construction service is taxable:** Based on the above, the HC held that road construction under the BOT Toll model is a taxable Works Contract Service under GST and the concessionaires are fully liable to pay GST on these services, as the transaction constitutes a taxable "barter."

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