

Omission Without a Saving Clause - The Fate of Pending Proceedings

“In the Context of Omission of Section 13(8)(b) of the IGST Act, 2017 proposed vide Finance Bill, 2026”

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❖ Introduction

The omission of Section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 (“IGST Act”) as recommended by the 56th GST Council Meeting and proposed through Section 141 of the Finance Bill, 2026 represents a significant policy intervention intended to provide long-awaited relief to the ‘intermediary service’ industry. The omission seeks to put an end to the prolonged litigation that had consistently denied intermediary service providers the benefit of export status.

Nevertheless, the said omission proposed through the Finance Bill, 2026 is silent on the commencement of the effective date of such omission, moreover the said omission without any specific saving clause raises critical issues concerning the fate of ongoing proceedings initiated under the said provision.

This subject matter is not merely academic. Section 13(8)(b) of the IGST Act, which treated the place of supply of intermediary services as the location of the supplier, has been the subject of intense litigation and constitutional challenge for more than a decade now. The proposed omission finally considers the continuous recommendations from the industry and law committee marking a significant decision in favor of Indian exporters of intermediary services to ensure that intermediary services earning convertible foreign exchange are treated as exports and accorded zero-rated status.

In this article, we would discuss the impact of omission of Section 13(8)(b) of the IGST Act, 2017 on the ongoing/pending proceedings initiated prior to such omission.

❖ Background of the Amendment

Under the erstwhile Service Tax regime, with effect from 01.10.2014, intermediary services provided in relation to international trade were also brought within the ambit of levy of service tax through Rule 9 of the Place of Provision of Services Rules 2012 by treating the place of provision of service to be the location of the service provider. The same position broadly continued under the GST regime, wherein intermediary services provided to foreign principals were treated as taxable supplies in India and subjected to GST.

Several representations were made by the industry and consultants contending that, in accordance with international practices, the taxability of services provided to foreign customers ought to be determined based on the location of the recipient.

The 139th Report of the Parliamentary Standing Committee on Commerce, submitted in December 2017 on the impact of GST on exports, strongly recommended that intermediary services be treated as exports. The Committee observed that such services, typically rendered to overseas clients for commission in convertible foreign exchange, should not be subjected to GST and ought to qualify as export of services. It also highlighted the risk of mischaracterization and

recommended amendment to section 13(8) of IGST Act to exclude intermediary services and make it subject to default section 13(2) so that the benefit of export of services would be available.

Further, in *Material Recycling Association of India v. Union of India*¹ the Gujarat High Court, while upholding the validity of Section 13(8)(b) of the IGST Act, directed that the representation made by the Petitioner be placed before and considered by the GST Council for appropriate redressal in accordance with law.

Subsequently, the GST Council, in its 56th meeting conducted from 3rd to 4th September 2025, recommended a major amendment to the place of supply provisions applicable to intermediary services under Section 13 of the IGST Act. The Council proposed the omission of clause (b) of Section 13(8), with the effect that the place of supply of intermediary services would thereafter be governed by the default rule under Section 13(2), namely, the location of the recipient of services.

It is evident that the said recommendation does not stem from a new proposition, rather the result of multiple representations submitted to the GST Council in this regard.

Once this amendment comes into force, intermediary services provided by Indian suppliers to foreign recipients would qualify as export of services (subject to receipt of convertible foreign exchange), thereby enabling to claim zero-rated supply benefits under GST law.

The proposed amendment has been incorporated in Section 141 of the Finance Bill, 2026 (which is yet to be assented by the President of India to get the status of Act). However, while Section 1(2) of the Finance Bill specifies the dates of commencement for all the provisions, no specific commencement date has been prescribed for Section 141, which provides for the omission of Section 13(8)(b). This legislative silence creates uncertainty and necessitates a legal examination as to whether the omission would have any impact on pending proceedings initiated under the said provision prior to its omission. Although the amendment is intended to be beneficial, the manner in which it has been framed has led to ambiguity regarding its effect on ongoing proceedings.

❖ **The Core Legal Question**

The central issue that arises is:

Whether the omission of Section 13(8)(b) of the IGST Act, 2017, without an express saving clause, results in abatement of pending proceedings initiated under the said provision, or whether such proceedings are saved by the operation of Sections 6 and 6A of the General Clauses Act, 1897?

To answer this, it is necessary to examine the judicial evolution of the law relating to the effect of omission vis-à-vis repeal.

❖ **Judicial Evolution: Repeal vs Omission**

➤ ***Rayala Corporation (P) Ltd. & Ors. v. Director of Enforcement, New Delhi***²

¹ 2020 (40) G.S.T.L. 289 (Guj.)

² (1969) 2 SCC 412

One of the earliest authorities to consider the effect of omission is the five-Judge Bench decision of the Supreme Court in *Rayala Corporation (P) Ltd. & Ors. v. Director of Enforcement, New Delhi*. The issue before the Court was whether prosecution could be initiated for contravention of Rule 132-A of the Defence of India Rules, 1952, after the said Rule had been omitted.

The Court invoked Section 6 of the General Clauses Act, 1897 (“GCA”) and held that Section 6 applies only to repeal and not to omission, and further, that it applies only to Central Acts or Regulations and not to Rules. Consequently, it was held that prosecution could not be sustained after the omission of the Rule.

Notably, the judgment did not engage in any detailed discussion on whether the expressions ‘repeal’ and ‘omission’ are conceptually distinct or interchangeable.

➤ *Kolhapur Canesugar Works Ltd. v. Union of India*³

The issue resurfaced before another five-Judge Bench of the Supreme Court in *Kolhapur Canesugar Works Ltd. v. Union of India*. The Court examined the scope of Section 6 of the GCA in the context of repeal or omission of Rules and reaffirmed the decision of Rayala Corporation supra, holding that Section 6 applies only to repeal of Central Acts and Regulations.

However, in paragraph 38, the Court made significant observations, stating that at common law, repeal, deletion, or omission ordinarily obliterates a provision as if it never existed, subject to savings under Section 6. The Court used the expressions repeal, omission, and deletion interchangeably, thereby creating doctrinal ambiguity. While the judgment upheld Rayala Corporation, it did not decisively clarify whether omission is fundamentally different from repeal.

➤ *Hikal Ltd. v. Union of India*⁴

In *Hikal Ltd. v. Union of India*, the Bombay High Court followed the decisions in Rayala Corporation and Kolhapur Canesugar, holding that where Rules are omitted, Sections 6 and 6A of the GCA do not save the pending proceedings. The Court reiterated that for the savings clause to apply, repeal must be effected by a Central Act or Regulation.

These decisions, however, were confined to the omission of **Rules**, not provisions of a **Central Act**.

❖ **Role of Section 6A of the General Clauses Act, 1897**

An important statutory provision that escaped consideration in the judgments of Rayala Corporation and Kolhapur Canesugar is Section 6A of the GCA, which reads as follows:

*“Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the **express omission**, insertion or*

³ (2000) 2 SCC 536

⁴ (2025) 34 Centax 249 (Bom.)

substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.”

➤ *M/S General Finance Co. & Anr v. Assistant Commissioner of Income Tax, Punjab*⁵

In *M/S General Finance Co. & Anr v. Assistant Commissioner of Income Tax*, it was argued that the use of the words 'repeals by express omission, insertion or substitution' will cover different aspects of repeal; that this is a further legislative indication that 'omission' also amounts to a 'repeal' of an enactment. However, the Supreme Court declined to reconsider *Rayala Corporation and Kolhapur Canesugar*, primarily on the grounds of judicial discipline.

➤ *M/s Gammon India Ltd. v. Special Chief Secretary & Ors.*⁶

In *M/s Gammon India Ltd. v. Special Chief Secretary & Ors.*, the Supreme Court adopted a purposive approach and held that once legislative intent to repeal is evident, the form or terminology used is immaterial, and the saving clause under Section 6 of GCA would apply.

➤ *M/s Fibre Boards (P) Ltd. Bangalore v. Commissioner of Income Tax*⁷

The legal position was comprehensively analysed in *M/s Fibre Boards (P) Ltd. Bangalore v. Commissioner of Income Tax*. The Supreme Court expressly held that the view in *Rayala Corporation* requires reconsideration and clarified that omission of a provision results in obliteration in the same manner as repeal. The Court concluded that repeal could take various forms including omission and so long as a provision is obliterated, Section 6 of the GCA would apply.

❖ **Application of the above Ratio to Omission of Section 13(8)(b) of the IGST Act, 2017**

The omission of Section 13(8)(b) pertains to a Central Act, namely the IGST Act, 2017, and not to subordinate legislation or Rules. Therefore, the restrictive ratio in *Rayala Corporation, Kolhapur Canesugar, and Hikal Ltd.* does not apply here directly.

The relevant inquiry is whether omission of a statutory provision in a Central Act has the same legal effect as repeal, thereby saving pending proceedings under Sections 6 and 6A of the GCA.

In this context, Section 6A assumes critical importance. The provision expressly contemplates repeal effected through “express omission” and provides that such repeal shall not affect continuance of the amendment **unless different intention appears**. Even independently of Section 6A of the General Clauses Act, the Supreme Court in *M/s Fibre Boards (P) Ltd., Bangalore*

⁵ (2002) 7 SCC 1

⁶ (2006) 3 SCC 354

⁷ (2015) 10 SCC 333

v. Commissioner of Income Tax categorically held that an omission would have the same effect as a repeal contemplated under Section 6 of the General Clauses Act.

❖ **The Significance of “unless a different intention appears”**

The only statutory caveat to the saving of pending proceedings is the existence of a “different intention” behind the omission. If the deliberations of the 56th GST Council Meeting demonstrate a clear intention to extinguish all past liabilities and proceedings under Section 13(8)(b), the protection under Sections 6 and 6A would not apply, resulting in abatement of all pending proceedings.

In the absence of any express indication of such intention in the GST Council recommendations, the presumption under the General Clauses Act would operate. It is a settled principle of interpretation that a statute must be read as it is, without adding to, deleting from, or modifying its text, unless such a reading defeats the object of the legislation. Where the language employed by the legislature is clear and unambiguous, and does not give rise to any conflict, there is no need to depart from the literal rule of interpretation.

As on date⁸, the sole material available to discern the legislative intent behind the omission of Section 13(8)(b) is the following recommendation of the GST Council:

*The Council recommended omission of clause (b) of section 13(8) of IGST Act 2017. Accordingly, after the said law amendment, the place of supply for “intermediary services” will be determined as per the default provision under section 13(2) of the IGST Act, 2017 i.e. the location of the recipient of such services. **This will help Indian exporters of such services to claim export benefits.***

No further clarification or contemporaneous record has been placed in the public domain till date⁹ to indicate whether the recommendation was guided by any additional considerations.

However, certainty regarding the intention of the Council in omitting the said clause could have been clearly ascertained from the minutes of the meeting. Unfortunately, even after the lapse of 150 days (five months) from the date of the meeting, the minutes have not been uploaded on the GST Council’s website. This delay runs contrary to the Government’s stated commitment to transparency and accountability.

The denial of such information amounts to an infringement of the fundamental right to Freedom of Speech and Expression guaranteed under Article 19 of the Constitution of India. In *Kulwal v. Jaipur Municipal Corporation*¹⁰, the Supreme Court held that Freedom of Speech and Expression is an important constituent of Article 19 of the Constitution.

Therefore, the non-availability of the minutes of the 56th GST Council Meeting, owing to their non-publication, effectively restricts the right to information and denying the taxpayers to take an informed decision.

⁸ Till the date of publishing this article i.e., 20.02.2026

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¹⁰ AIR 1988 Raj 2

❖ Conclusion

In light of the judicial developments and the statutory framework under Sections 6 and 6A of the General Clauses Act, 1897, it can be reasonably guided that the omission of Section 13(8)(b) of the IGST Act, 2017 operates as a repeal and the pending proceedings are saved by those provisions unless a clear and contrary legislative intention is discernible.

Fresh proceedings under the omitted provision cannot be initiated once the Finance Act, 2026 comes into effect. We also hope the said Act would throw clarity on the ambiguity raised in the bill with regard to the fate of the pending proceedings, as discussed above.

Despite indications that the GST Council intended to bring clarity to pending proceedings, possibly even contemplating retrospective relief, the absence of the minutes of the 56th GST Council Meeting leaves room for interpretational dispute for the time being. Although the omission appears prima facie beneficial, questions regarding its scope and applicability remains open to challenge.

In this backdrop, litigants must exercise due diligence and carefully articulate the grounds raised in any challenge pertaining to ongoing proceedings. As observed by the Supreme Court in *Mafatlal Industries Ltd. v. Union of India*¹¹, “*He who fights and runs away, cannot have another day.*” The Latin maxim *Vigilantibus non dormientibus jura subveniunt* which translates to “**The law assists those who are vigilant, not those who sleep upon their rights**” is particularly appropriate in this context.

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¹¹ AIR ONLINE 1996 SC 1268