



# ★ ★ ★ 25<sup>th</sup> Edition

As this newsletter completes one year, we thank all the readers for their support and encouragement. Though there are several newsletters in the field of GST, we wish to stand out through our lucid reporting, coupled with funny one liners, so that even a newsletter on a mundane subject can evoke some smile in you.

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## GST CASE LAWS

### 1 Chennai Metro Rail Limited (CMRL) 2020-VIL-289-AAR

Leasing of pathway to access the dwelling unit is not entitled for exemption available for renting of dwelling unit.



**Pay tax and access house.**

### 2 Rajesh Rame Verma 2020-VIL-62-AAAR

Professional services provided to foreign clients of an Indian company - Consideration paid by Indian Company, who is the service recipient. Will not qualify as export of Service.



**"End" does not always justify the means.**

### 3 ICU Medical India 2020-VIL-288-AAR

Foreign holding company arranges issue of Credit Card by a Bank to all employees of the group companies and amounts spent by the employees through the card are paid by the foreign company to the Bank and claimed as reimbursement from respective companies. The Indian subsidiary company, reimbursing the spends to the foreign holding company is liable to pay GST on such reimbursements.



**Such view would put the industry in ICU. The expenditure incurred have suffered appropriate GST individually. When a credit card user makes payment to the Bank, there cannot be a further GST on total spends.**





## GST CASE LAWS

### 4 Anjani Impex 2020 (10) TMI 760 - GUJARAT HIGH COURT

Provisional attachment - the formation of the opinion, though subjective, must be based on some credible material disclosing that is necessary to provisionally attach the goods or the Bank account for the purpose of protecting the interest of the Government revenue. The statutory requirement of reasonable belief is to safeguard the citizen from vexatious proceedings.



**Treatise on provisional attachment. Will those “concerned” read?**

### 5 Erode infrastructure Private Limited 2020-VIL-291-AAR

Recipient of Service cannot seek advance ruling.



**Recipient in this case did not receive the desired ruling.**

### 6 Karnataka State Electronics Development Corporation Limited 2020-VIL-62-AAAR

Operation and Maintenance of streetlights - AAR held it was a composite supply, where supply of goods is predominant and GST applicable at 12 %. Upon appeal, AAAR held it is a composite supply and supply of service is predominant and hence taxable @ 18 %.





## GST CASE LAWS

### 7 Abhishek Darak 2020-VIL-303-AAR

Is sale of Developed Plot a supply of Service? Issue referred to AAAR, as there is difference of opinion between members of AAR.



**A Good development!**

### 10 Jindal Pipes limited 2020-VIL-507-ALH

Service of order to the driver of the taxpayer is not proper service.



**Hope the law won't be amended making it obligatory that only owners should drive their vehicles.**

### 8 IIT Madras Alumni Association 2020-TIOL-281-AAR-GST

IIT Alumni Association is liable to pay GST on fee collected from its members.

### 9 MFAR Hotels and Resorts Private Limited 2020-VIL-296-AAR

Supply of food to the employees is a taxable supply, attracting GST. Supply of Cigarettes in restaurant is a mixed supply. Supply of alcohol is not liable to GST.

### 11 Vimos technocrats pvt ltd 2020-TIOL-269-AAR-GST

Consultancy services provided to local authorities in respect of items fallings under Article 243 W is entitled for exemption.





## NOTIFICATIONS & CIRCULARS

### CENTRAL TAX NOTIFICATIONS - 16.10.2020 to 31.10.2020

NO	DATE	GIST
80	28.10.2020	Due date for furnishing GSTR-9 and 9C for FY 2018-19 extended till 31.12.2020.

### CENTRAL TAX (RATE) NOTIFICATIONS - 16.10.2020 to 31.10.2020

NO	DATE	GIST
5	16.10.2020	Exemption on Satellite launch services supplied by ISRO, Antrix Corporation Limited or New Space India Limited.



## Highlights of the Proposal made during 39<sup>th</sup> GST Council Meeting

1. GST on Supplies by clubs to its member - TRU-II suggest insertion of new clause in Section 7 of CGST Act to overcome the Supreme Court's decision in the case of Calcutta Club.
2. Proposal to withdraw the requirement of GSTR-9C and make it applicable to taxpayers based on risk parameters, by the Commissioner u/s 66 of the CGST Act.
3. Amendments to the term "Zero rated supply" in Section 16 of IGST Act.
4. Proposal to amend the provisions dealing with Constitution of GST Appellate Tribunal in line with Madras HC decision – Section 109 and 110 of CGST Act

Rs 1,05,155 crore of gross GST revenue collected in the month of October 2020, of which CGST is ₹ 19,193 crore, SGST is ₹ 25,411 crore, IGST is ₹ 52,540 crore (including ₹ 23375 crore collected on import of goods) and Cess is ₹ 8,011 crore (including ₹ 932 crore collected on import of goods).





**RTI reveals as on 30 September 2020:**

**FY 18-19 only 23% GSTR-9 & 30% GSTR-9C were filed till 30 September 2020.**

**The number of taxpayers not filed GSTR-9&9C for the FY 17-18 are 3,55,284 & 4,14,945 respectively.**

**GSTN enables composition taxpayers to file NIL statement through SMS.**

**How to file Nil Form GST CMP-08 through SMS-**

**Send SMS NIL C8GSTINReturn Period to 14409. For example, for NIL Filing for Tax Period Apr-Jun 2020: NIL C8 33AXXXXXXXXXXXZ6 062020**

**Link:** <https://www.gst.gov.in/newsandupdates/read/409>

**The facility to file GSTR-3B and GSTR-1 with EVC in lieu of DSC (except NIL return) shall be withdrawn for the registered companies from November 2020.**

**Govt borrows & transfers Rs. 6,000 cr as first tranche to 16 States on account of GST compensation under Special Borrowing Window**





# CUSTOMS

## CASE LAWS

### 1 M/S. MARUVUR ARASI LOGISTICS PVT. LTD 2020 (10) TMI 971 - MADRAS HIGH COURT

The benefit extended under section 28(2) is available only in those situations where the assessee self-computes or seeks a computation from the proper officer of the duty and interest payable in terms of Section 28(1) , and remits the same voluntarily, even prior to the receipt of a SCN from the officer and not in any other situation contemplated under Section 28.

### 2 M/s LAHARI IMPEX PVT LTD 2020-TIOL-1745-HC-MAD-CUS

Goods re-imported for repair and re-exported after the prescribed period of one year will not attract the benefit of notification 158/95 Cus and plea of revenue neutrality on account of claim of drawback is premature.

### 3 M/s MANGALAM ALLOYS LTD 2020-TIOL-1532-CESTAT-MUM

Department cannot reclassify the goods unilaterally on the basis of the examination report of officers alone.

### 4 INTERNATIONAL AIRCON PVT LTD 2020-TIOL-1536-CESTAT-MUM

It is now settled law that though the importer may seek a classification it is the responsibility of the assessing officer to determine the appropriate heading; hence the application of rule 3 of General Rules of Interpretation are not intended for resolving difference of opinion between importer and assessing officer but for guiding the assessing authority in clarifying for itself when in doubt over two headings.







# CUSTOMS

## CASE LAWS

**M/s HEWLETT PACKARD ENTERPRISE INDIA PVT LTD**  
**2020-TIOL-1778-HC-MAD-CUS**

The lis in this matter revolves around the interpretation of the phrase 'in existence', as according to the revenue the phrase should be read as available with the Department. What is contemplated in proviso to Section 149 is an opportunity to be extended to an assessee to produce such documents that were 'in existence' at the stipulated time that would serve to establish the error, if any, in the B/E

**M/s CRYSTALLINE EXPORTS PVT LTD**  
**2020-TIOL-1524-CESTAT-MUM**

Revenue cannot brush aside the test report given by an expert committee furnished by the importer merely for the reason that sample was not drawn and referred by the Department.

**JAYMATAJEE ENTERPRISE SELLER AND ANOTHER**  
**2020-TIOL-1777-HC-ALL-CUS**

The 'reasons to believe' were based upon the opinion of the local dealers, prima facie examination of the goods by naked eye and inscriptions in foreign language on some bags and have failed the test of 'Wednesbury principles' as no reasonable person can reach to conclusion of the country of origin of 'Areca Nuts' by mere perusal from naked eye as well as the opinion of the traders, as the Institutes as well as the Ministry have firmly opined that the country of origin cannot be traced by any laboratory method also.





## IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

### CUSTOMS NOTIFICATIONS NON-TARIFF- 16.10.2020 to 31.10.2020

NO	DATE	GIST
101	16.10.2020	Land Customs station and routes for import and export of goods by land - Bhutan - Jaigaon - route added - Asian Highway 48 connecting Torsha tea garden in India and Ahllay in Bhutan
102	23.10.2020	CBIC appoints Customs Authority for Advance Rulings, at Delhi and Mumbai. The date of the appointment is yet to be notified.

### CUSTOMS NOTIFICATIONS TARIFF- 16.10.2020 to 31.10.2020

NO	DATE	GIST
37	20.10.2020	Amendment to the tariff of Polybutadiene Rubber under India-Korea CEPA
38	21.10.2020	Exemption of goods imported into India against a duty credit scrip issued by the Regional Authority under the Scheme for Rebate of State Levies on export of garments and made-ups.

### DGFT NOTIFICATIONS - 16.10.2020 to 31.10.2020

NO	DATE	GIST
42	22.10.2020	The export policy of Nitrile/NBR Gloves is revised from "Prohibited" to "Restricted" category.





## IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

### CUSTOMS CIRCULARS & INSTRUCTIONS- 01.06.2020 to 15.06.2020

NO	DATE	GIST
47	21.10.2020	The CBIC issues instructions to obtain OTP based validation as an alternative means of obtaining proof of delivery of international packages.
334/ 4/20 20- TRU	23.10.2020	Suggestions from the Industry and Trade Associations for Budget 2021-22 regarding changes in direct and indirect taxes

### ANTI-DUMPING NOTIFICATIONS - 01.06.2020 to 15.06.2020

NO	DATE	GIST
31	16.10.2020	The anti-dumping duty imposed on imports of Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles falling under tariff items 7326 1910, 7326 1990, 7326 9099, 8708 5000, 8708 9900 of the First Schedule is extended upto 30/11/2020
32	19.10.2020	Imposition of anti-dumping duty on All Fully Drawn or Fully Oriented Yarn/Spin Draw Yarn/Flat Yarn of Polyester, falling under chapter 54 of the First Schedule has been extended upto 30/11/2020.





## CENTRAL EXCISE AND SERVICE TAX CASE LAWS

### 1 THE STATE OF MADHYA PRADESH AND ORS Vs BHERULAL 2020-TIOL-160-SC-MISC

Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. Petition dismissed as time barred and costs imposed on State for wasting judicial time and the cost imposed is to be recovered from the officers responsible.

### 2 M/S. INSPIRED FOODS 2020 (10) TMI 816 - MADRAS HIGH COURT

If ITC has been wrongly claimed by a hotel, the only option available to the department would be to seek reversal of ITC and not demand of tax.



**If food is not hot, you can ask hot food again but not refuse to pay!**



### 3 GAMMON INDIA LTD 2020-TIOL-1526-CESTAT-MUM

“Mobilization advance’ is a separate financial transaction and hence not liable to Service Tax upon its receipt.





## CENTRAL EXCISE AND SERVICE TAX CASE LAWS

### **4** M/s UNITED NEWS OF INDIA Vs CCE, DELHI- II 2020-VIL-471- CESTAT-DEL-ST

A fiction created for discharging tax liability by the recipient deems the recipient as provider of service. Such deemed status also entitles the recipient to enjoy exemptions if any available to services supplied as provider of service.

### **5** M/s DLF ASSETS PVT LTD Vs THE COMMISSIONER, SERVICE TAX, DELHI-I 2020-VIL-470-CESTAT-DEL-ST

When there is outright exemption for services provided to SEZ under the SEZ ACT, the condition of claiming exemption by way of refund imposed under notification issued under FA 1994 would be inconsistent with provisions of SEZ 2005 Act.





## CONTACT



#18, Rams Flats, Ashoka Avenue  
Directors Colony , Kodambakkam  
Chennai - 600024.



044-24811147



[mail@swamyassociates.com](mailto:mail@swamyassociates.com)

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