

TAXWIZ

1st February 2021



The annual fiscal festival, the “Budget” is round the corner. As every GST council meeting is followed by budget like changes in GST law, the Budget has become almost irrelevant, in so far as GST is concerned. Thus the focus of the Budget may only be on Income Tax and Customs.

Wishing all a happy Budget!

Table Of Content

1	GST Case Laws
2	NEWS
3	Customs
4	The Legacy



GST CASE LAWS

1 CHECHANI TRADING COMPANY 2021-TIOL-148-GUJARAT HC

Mechanical attachment of Bank Accounts under Sec. 83 deprecated. HC directs Revenue Secretary and CBIC to issue guidelines.

2 MIDCON POLYMERS PVT LTD 2021-TIOL-001-AAAR- KARNATAKA

GST on rental income - Property tax paid cannot be deducted from value.

3 KALANI INFRASTRUCTURE PRIVATE LIMITED TS-1203- AAAR(RAJ)-2020-GST

Hostel accommodation along with supply of food, and other facilities, against a single consolidated price is a mixed supply as it is not naturally bundled and can be supplied independently.



Unnatural Reasoning



4 FAST TRACK DEAL COMM PVT LTD. 2021-TIOL-30-AAR- GUJARAT

Sale of immovable property - Advance forfeited on failure of buyer to buy. GST payable on forfeited amount.

5 AMNEAL PHARMACEUTICALS PVT LTD 2021-TIOL-28-AAR- GUJARAT

Amount collected from employees towards providing food in factory canteen is liable to GST.

6 DIPESH ANILKUMAR NAIK 2021-TIOL-39-AAR

Sale of developed plot liable to GST.

7 DHARMSHIL AGENCIES 2021- TIOL-33-AAR

Commission agent to foreign supplier is intermediary service and CGST and SGST is payable.





GST CASE LAWS

8 AMNEAL PHARMACEUTICALS PVT LTD 2021-TIOL-27-AAR-GUJARAT

Notice pay recovered from quitting employees is liable to GST.

9 BALKRISHNA INDUSTRIES 2021-TIOL-34-AAR

Not seeking exemption from payment of IGST and seeking exemption under Advance Authorization only for customs duties, would invite the vice of Rule 96 (10) and IGST paid on exports cannot be claimed as refund.

10 GUJARAT NARMADA VALLEY FERTILIZERS AND CHEMICALS LTD 2021-TIOL-56-AAR-GUJ

Electricity charges collected along with rent - Pure agent conditions satisfied and not liable to GST.



Pleasant Shock



11 VALLALAR BOREWELLS 2021-TIOL-54-AAR-TN

Drilling of borewell and letting out compressors are not support services for agriculture and hence not entitled for exemption.



Farmers let down, not by Farm Law but by GST law.



12 THIRUMALAI CHEMICALS LTD 2021-TIOL-53-AAR-TN

Clearance to distinct persons who is entitled to avail ITC. The value declared in invoice is open market value.





13 Khatwani Sales and Services LLP 2021-VIL-114-AAR

No ITC is available on demo vehicles. The authority rejects applicant's contention that demo cars are eligible for ITC as the same are used for imparting training and are used in further supply as they are sold after two years .

14 VDM Hospitality Private Limited 2021-VIL-109-AAR

Shamianas, Tents and Pandals erected by the owner of the wedding hall are "immovable" and hence not entitled for ITC.



Though the marriage held therein may not be permanent and break up, the Pandals and shamianas are permanent!





REVENUE AND STATISTICS

GST Revenue collection for January 2021 almost touches ₹1.20 lakh crore.

The gross GST revenue collected in the month of January 2021 till 6PM on 31.01.2021 is ₹ 1,19,847 crore of which CGST is ₹ 21,923 crore, SGST is ₹ 29,014 crore, IGST is ₹ 60,288 crore (including ₹ 27,424 crore collected on import of goods) and Cess is ₹ 8,622 crore (including ₹ 883 crore collected on import of goods). The total number of GSTR-3B Returns filed for the month of December up to 31st January 2021 is 90 lakhs.

The GST revenues during January 2021 are the highest since introduction of GST and has almost touched the ₹ 1.2 lakh crore mark, exceeding the last month's record collection of ₹1.15 lakh crore. GST revenues above ₹ 1 lakh crore for a stretch of last four months and a steep increasing trend over this period are clear indicators of rapid economic recovery post pandemic.

Tamil Nadu created Syed Mushtaq Ali Trophy history by winning every single match en-route to winning their second title as they defeated Baroda in the finale.





REVENUE AND STATISTICS

GST System Statistics

As on 24th January, 2021



1.25 Cr.

Registered Tax Payer



60.78 Cr.

Total Return Filed



165 Cr.

E-way Bill



1129 Cr.

Total Invoice Upload



30.42 Lakh Cr.

Payment Through the Portal
(Excluding IGST on Imports)



17.33 Cr.

Total No. of Payment
Transactions



23.86 Lakh

Highest Returns Transactions
in a day



9.55 Lakh

Highest Payment Transactions
in a day

E-Way Bill Statistics

As on 24th January, 2021





GSTN Portal Updates

Module wise new functionalities deployed on the GST Portal for taxpayers.

Various functionalities such as Registration, Returns, Advance Ruling, Payment, Refund and other miscellaneous topics implemented on the GST Portal are now posted on GSTNs dedicated YouTube channel for the benefit of the stakeholders.

LINK: https://tutorial.gst.gov.in/downloads/news/taxpayerfunctionalities_deployed_jan_2021.pdf



- Union Budget 2021-22 will be delivered in paperless form for the first time and the Budget documents will be available on the Mobile App after the Budget Speech by the Finance Minister on 1st February, 2021.

LINK:<https://twitter.com/FinMinIndia/status/1352936081788817408>

After clocking record collections in December, the Goods and Service Tax (GST) revenue is expected to cross Rs 1.20 lakh crore in January 2021, indicating that Government's ongoing efforts are bearing fruit.

LINK:<https://www.businesstoday.in/current/economy-politics/gst-collection-to-top-rs-120-lakh-crore-in-january-sbi-report/story/429413.html>

- States want cess/surcharges subsumed in basic tax rate

LINK:http://gstcouncil.gov.in/sites/default/files/gst-articles/19-01-2021_rate%20tax.pdf



CONCERNS OVER AGGREGATOR ALGORITHMS

Restaurants Bat for New GST Structure

Ratna.Bhushan
@timesgroup.com

New Delhi: A group representing restaurants in India has sought a multi-layered goods and services tax structure for the sector in the upcoming budget to improve tax collections and attract investments.

The National Restaurant Association of India has also asked for a minimum moratorium of six months on bank loans and a policy to regulate their partnerships with food delivery aggregators.

"Our primary concerns are around the lack of data sharing by aggregators and marketplace owners, which are following opaque algorithms, unilateral decision-making on listings and year-round platform-driven discounts," the NRAI, which represents half a million restaurants and bars in India, said in the letter to finance minister Nirmala Sitharaman.

The association said the current GST regime for restaurants has placed an additional burden on operating costs for the already stressed sector and has increased the capital outflow on new projects by almost 20%. It said a multi-layered GST structure would help to improve collections and bring in fresh investments.

The existing 5% GST rate without input tax credit is "structurally flawed" and doesn't distinguish between a kiosk and a five-star outlet, NRAI said.

"This needs to change. A logical, revenue-based variable GST rate structure, which will not burden the small players and at the same time help larger organised players and improve the GST collections" is needed, the association said.

NRAI said the current GST regime for restaurants has placed an extra burden on operating costs

NRAI president Anurag Katriar said with almost 30% of the restaurants shutting down after Covid-19 restrictions and the remainder operating at a much-reduced capacity, about 3 million jobs have already been lost. The association said food services was "one of the most adversely impacted" sectors.

"With an erstwhile annual turnover of approximately ₹4 lakh crore and providing direct employment to over 7 million Indians, the restaurant industry today is in a very precarious situation, fighting a grim battle for its survival," the letter stated.

LINK:http://gstcouncil.gov.in/sites/default/files/gst-articles/28.1.2021_GST%20Structure.pdf



- Fake GST invoice fraud: Now, ICAI also initiates disciplinary proceedings on arrested CAs.

LINK:<https://www.thehindubusinessline.com/news/fake-gst-invoice-fraud-now-icai-initiates-disciplinary-proceedings-on-8-arrested-cas/article33677377.ece>

- Realtors seek GST waiver for under-construction houses

LINK:http://gstcouncil.gov.in/sites/default/files/gst-articles/22-01-2021_Realtors.pdf

- Seal GST with A KISS- “Keep it Simple, Stupid” should be the watchword for GST reform

LINK:http://gstcouncil.gov.in/sites/default/files/gst-articles/15-01-2021_Seal%20GST.pdf

- 13th Instalment of Rs.6,000 crore released to the States to meet the GST compensation shortfall.

LINK:<https://pib.gov.in/PressReleaseFramePage.aspx?PRID=1692107>

- Monthly Gross Revenue GST collections Cross 1 Lakh Crore mark for 3 Months in a row. States allowed to borrow more, beyond their eligibility upto 2% Of GSDP.

LINK:<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1693197>

- Input tax credit sought on leased commercial realty

LINK:http://gstcouncil.gov.in/sites/default/files/gst-articles/18-01-2021_commercial%20realty.pdf





CUSTOMS

CASE LAWS

1 M/S TTK PRESTIGE LIMITED 2021 (1) TMI 1044 - KARNATAKA HIGH COURT

A person is not entitled to claim refund of duty without challenging an order of assessment and the importer is bound to pay the customs duty as assessed.

2 DIMENSION DATA INDIA PRIVATE LTD 2021 (1) TMI 1042 - BOMBAY HIGH COURT

Duty is also cast upon the proper officer to verify the self assessment made by the importer and if there is wrong classification leading to lesser levy of customs duty, he has to re-assess the duty leviable on such goods. Therefore, refusal of the customs authorities to correct the error in classification in the BE is not justified.

3 GOODMATIC EXPORT PVT LTD 2021 (1) TMI 871 - BOMBAY HIGH COURT

The provisional attachment of bank account of the petitioner under Section 110 (5) is unlawful as the attachment letter does not indicate that any order was passed by the Commissioner for attachment or extension. Furthermore, the legal provision was inserted w.e.f 01.08.2019 only whereas, the bank account was attached on 08.05.2019.

4 M/S. MOTOROLA INDIA LIMITED 2021 (1) TMI 627 - KARNATAKA HIGH COURT

Customs Duty cannot be demanded on the written off unused materials imported under DEEC scheme as export obligation was fulfilled and the value of written off goods is below 2% of permitted quantity as per SION.





CUSTOMS

CASE LAWS

5 M/s ADITYA BIRLA NUVO LTD 2021-VIL-47-KAR-CU

No violation of actual user condition under Advance Licence scheme where licence is granted for export of men's shirts whereas fabrics meant for trousers imported. None of the conditions of Notification No. 30/1997-Cus envisages physical incorporation of imported material in goods exported towards fulfillment of export obligation.

6 INTERGLOBE AVIATION LTD & SPICE JET LIMITED 2021 (1) TMI 726 - CESTAT NEW DELHI & 2021 (1) TMI 663 - CESTAT NEW DELHI

Re- import of goods after repairs abroad- BCD alone is payable on the value of cost of materials used in repair and all other duties including IGST is exempted as the phrase "Duty of customs mentioned under Notification No. 45/2017-Cus would refer to Basic Customs duty only.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

CUSTOMS NOTIFICATION- TARIFF 16.01.2021 to 31.01.2021

NO	DATE	GIST
01/2021	28.01.2021	Increasing the rate of customs duty on polybutadine Rubber goods originating from Korea RP

CUSTOMS NOTIFICATION- NON TARIFF 16.01.2021 to 31.01.2021

NO	DATE	GIST
08/2021	29.01.2021	Amendment to Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seed, Areca nut, Gold & Silver.

CUSTOMS CIRCULARS & INSTRUCTIONS- 16.01.2021 to 31.01.2021

NO	DATE	GIST
02/2021	19.01.2021	Revised guidelines for Posting of staff at Customs areas and collection of Cost Recovery Charges.

DGFT NOTIFICATIONS - 16.01.2021 to 31.01.2021

NO	DATE	GIST
56/2015-2020	28.01.2021	Amendment in import policy of Coal and incorporation of Policy Condition No. 7 in Chapter 27 of ITC (HS), 2017, Schedule - I (Import Policy).





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

1 AMP CAPITAL ADVISORS INDIA PVT LTD 2021-TIOL-51-CESTAT-CHANDIGARH

After losing its appeal on a refund issue, department forces assessee to file a fresh claim and rejects it on time bar. Tribunal stems the rot.



Refund Woes



2 PANOLI INTERMEDIATE INDIA PVT LTD 2021 (1) TMI 710 - CESTAT AHMEDABAD

Spent Sulphuric Acid emerging as by-product and removed on payment of duty or at Nil rate of duty. Provisions of Rule 6(3) of Cenvat Credit Rules, 2004 is not applicable.

3 M/s SPRAY ENGINEERING DEVICES LTD 2021-VIL-21-CESTAT-CHD-ST

When the Tribunal has passed the order, dropping the demand of service tax for extended period of limitation along with interest, the said order is Final. Refund claim filed consequent that order is admissible in the eyes of law and cannot be rejected on the ground that since the appellant have already paid the tax along with interest the issue stands closed.

4 M/S. VINAYAK AGRO INDUSTRIES 2021 (1) TMI 708 - CESTAT KOLKATA

The charge of clandestine removal/undervaluation cannot sustain on the basis of the Pen drive data alone more so when the printouts have not been obtained in compliance with the mandatory conditions of Section 36(2) & (4) of the Central Excise Act.





CONTACT



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



044-24811147



mail@swamyassociates.com

WE ARE ALSO FOUND IN

- Coimbatore
- Bengaluru
- Hyderabad
- New Delhi
- Pune

