



It has been four years, since our tryst with GST started. By all means, GST is a laudable achievement from a political perspective, where cooperative federalism, which is always a mirage in our country, has become a reality in the economic realm. Though critics may argue that the concept of "One Nation One Tax" remains only a slogan, with a rate band of 5, at least three different GSTs by name along with a compensation cess, with the sheer size and diversity of our country, any simpler GST can happen only over a period of time and not at the threshold.

While at macro level GST offers a multitude of benefits, at the micro level, in the matter of complexity of law and compliance, all will agree that there is still a long way to go. But, as the saying goes, where there is a will there is always a way.

One biggest black mark on GST is the inability to take ITC of the CGST paid in one state in another State, which defies the very essence of GST. While restriction on cross state utilization of SGST credit may be little too much for asking (though it is not impossible), the denial of CGST credit between States is the biggest blooper, even after 4 years and we expect the Government to remedy it at the earliest.

Wishing you all a better experience with GST day by day.



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GST CASE LAWS

1 COMSOL ENERGY PRIVATE LIMITED 2021-TIOL-1334-HC-AHM-GST

Time limit prescribed under Section 54 of the GST Act is not applicable to claim refund of tax paid which is declared by the competent Court to be invalid in law (GST on Ocean freight).

2 RAKESH GARG 2021-VIL-485-P&H

FIR filed by the respondent against the company and the Director with respect to bogus invoicing without prior sanction of the Commissioner is not beyond the jurisdiction, as mere lodging of FIR cannot be treated as launching of prosecution which requires permission of the Commissioner under Sec. 132 (6).

3 INNOVATIVE MOTORS 2021-TIOL-1373-HC-MAD-GST

Transitional credit - The mass of litigation generated around Rule 117 defeats the purpose. Respondents are directed to enable the petitioner to file Tran 1.

4 SATYAM SHIVAM PAPER PVT LTD. 2021-TIOL-1338-HC-TELANGANA-ST

Auto trolley carrying goods got stuck till evening in traffic due to a political rally. As consignee premises had been closed, driver took the vehicle to his home and drove it again next day. Promptly detained by GST officers, who stored the seized goods in their relative's house. HC deprecates the conduct of department, orders refund of amount realized as well as cost of Rs.10000 to the Petitioner.





GST CASE LAWS

5 YASHO INDUSTRIES LIMITED 2021-VIL-479-AP

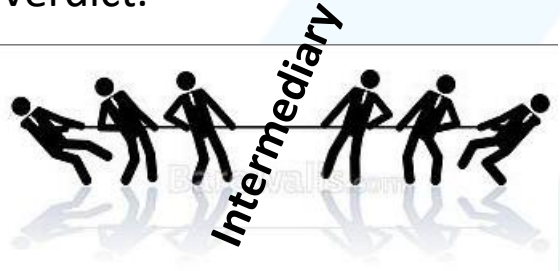
DGGSTI officers are authorized to issue summons under GST.



Canon doesn't help

7 DHARMENDRA M JANI 2021- TIOL-1326-HC-MUM-GST

Issue of Place of supply of "intermediary services" provided to foreign principals and whether it amounts to export of service or not - Bombay HC delivers split verdict.



6 ARS STEELS & ALLOY INTERNATIONAL PVT LTD 2021-VIL-484-MAD

No ITC reversal required for loss of inputs during the manufacturing process.





GST CASE LAWS

8 AASHINA HOUSING 2021-VIL-232-AAR

Construction of apartments under construction agreement, after sale of Undivided share of land - Plea to classify the service under "not elsewhere classified" and payment of GST @ 18 % - Not accepted by AAR.



9 DAEBU AUTOMOTIVE SEAT INDIA LIMITED 2021-VIL-237-AAR

"Track seat assembly" which helps movement of the seat in an automobile is not a part of seat, but an accessory of motor vehicle and hence attracts 28 % GST.





NOTIFICATIONS & CIRCULARS

CGST NOTIFICATIONS - 16.06.2021 to 30.06.2021

NO	DATE	GIST
28/2021 Central Tax	30.06.2021	Seeks to waive penalties for not observing QR Code for B2C invoices, upto 30.09.2021.





NOTIFICATIONS & CIRCULARS

CGST CIRCULARS - 16.06.2021 to 30.06.2021

NO	DATE	GIST
149/05/2021	17.06.2021	Clarification regarding applicability of GST on supply of food in Anganwadis and Schools.
150/05/2021	17.06.2021	Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity).
151/05/2021	17.06.2021	Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination).
152/05/2021	17.06.2021	Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis.
153/05/2021	17.06.2021	GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS.
154/05/2021	17.06.2021	GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them.
155/05/2021	17.06.2021	Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System.
156/05/2021	21.06.2021	Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020 - Reg.



Finance Minister Smt. Nirmala Sitharaman announces relief package of Rs 6,28,993 crores to support Indian economy in fight against COVID-19 pandemic

LINK:<https://pib.gov.in/PressReleasePage.aspx?PRID=1730963>

States want to levy cess to end fiscal woes.

LINK:<https://www.livemint.com/news/india/states-want-to-levy-cess-to-end-fiscal-woes-11623869560097.html>

The GST Council is expected to meet early next month to discuss the compensation issue and the borrowing plan for the current fiscal to meet the shortfall in the cess amount.

LINK:<https://www.teleggraphindia.com/business/hard-bargain-on-gst-payouts/cid/1819535>



Fintech, IT/ITeS companies with tripartite pacts, under GST scanner, the contention being that they do not actually provide export of service but are merely intermediaries or agents.

LINK: <https://economictimes.indiatimes.com/news/economy/policy/fintech-it/ites-companies-with-tripartite-pacts-under-gst-scanner/articleshow/83767172.cms>

GST Council sees little revenue impact on further easing tax compliance with reference to the quarterly filing facility, which has not found much favour in the industry.

LINK: <https://www.livemint.com/news/india/gst-council-sees-little-revenue-impact-in-further-easing-tax-compliance-11622801609117.html>

Better GST mop-up likely: In 20 days, June e-way bills rise 34% over month ago

LINK: <https://indianexpress.com/article/business/economy/better-gst-mop-up-likely-in-20-days-june-e-way-bills-rise-34-over-month-ago-7374719/>

PE industry players rue GST on fund management fees.

While management fees charged to a VC/PE fund located in an offshore jurisdiction are exempt from GST, the management fees charged to an onshore fund located in India attracts 18 per cent GST.

LINK: <https://www.thehindubusinessline.com/economy/policy/pe-industry-players-rue-gst-on-fund-management-fees/article34994899.ece>



- **NAA nudges GST officers to collect evidence against suppliers not cutting prices of covid essentials**

LINK:

<https://www.news18.com/news/india/naa-nudges-gst-officers-to-collect-evidence-against-suppliers-not-cutting-prices-of-covid-essentials-3888056.html>

- **Centre releases GST compensation cess of Rs.21,000 crores to states**

LINK:

<https://www.bloombergguint.com/business/centre-releases-compensation-cess-of-rs-21000-crore-to-states>

- **Sanitisers medicaments or disinfectants? Companies & GST department lock horns**

LINK:

<https://www.businesstoday.in/latest/corporate/story/sanitisers-medicaments-or-disinfectants-companies-gst-dept-lock-horns-299628-2021-06-25>

- **Pandemic-hit travel and tourism sector seeks GST rationalization .**

LINK:

<https://www.moneycontrol.com/news/business/pandemic-hit-travel-tourism-sector-seeks-gst-rationalisation-7054661.html>



GSTN Portal Updates

- **Webinars on recent functionalities related to Refunds deployed on GST Portal.**

LINK: <https://www.gst.gov.in/newsandupdates/read/483>

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

LINK: <https://www.gst.gov.in/newsandupdates/read/482>

- **Updated version of GePP & Bulk tools are released**

LINK: <https://einvoice1.gst.gov.in/Others/BulkGenerationTools>





CUSTOMS

CASE LAWS

1 RAI GROW IMPEX LLP AND ORS 2021 (6) TMI 778 - SUPREME COURT

Apex Court holds that if import of peas/pulses is restricted to a particular quantity, import beyond such specified quantity is impermissible and prohibited as it would have adverse impact on agricultural market economy and farmers. SC decision in Atul Automation does not have any application to this case. Accordingly, it was held that the imported goods are absolutely confiscable and at the most an option to re-export could be given and that too on payment of redemption fine.

2 KERNEOS INDIA ALUMINATE TECHNOLOGIES PRIVATE LIMITED 2021 (6) TMI 683 - ANDHRA PRADESH HIGH COURT

As per Rule 7(7)(b) of BIS Rules, establishment of standard is only voluntary to make it available to the public, but its conformity is not mandatory unless it is referred to in a legislation or so pronounced by a specific order of the Government. The respondents have not produced such a legislation or Gazette notification issued by the Central Govt. mandating that the standard established by BIS for IS:15895:2018 shall be compulsorily followed. Another contention of the respondents that the standard specification notification issued by BIS should be deemed to be part of Appendix III of Import Policy and thereby, the import of HARC shall be supported by BIS certification cannot be accepted.





CUSTOMS

CASE LAWS

3 M/S. AABIS INTERNATIONAL 2021 (6) TMI 643 - MADRAS HIGH COURT

The claim for preferential duty has been rejected unilaterally and without assigning any reasons whatsoever by the Deputy Commissioner of Customs, an authority not competent to have rejected the claim as per the proviso to Section 28-DA(4). Though the consignment has been imported in February 2021, there has been no initiation of enquiry by the proper officer under sub-section (3) for further enquiry into the COO or any other aspect of the matter that he deems relevant. The petitioner has satisfied the requirement of production of COO and hence, the impugned order is quashed.

4 M/S. SCHILLER HEALTHCARE INDIA PVT. LTD 2021 (6) TMI 876 - MADRAS HIGH COURT

The service by affixture is one of the modes prescribed, which is the method last preferred and must be taken recourse to, only if service by registered post or by other conventional modes, such as by tendering directly to the assessee, importer or exporter, are not successful.





CUSTOMS

CASE LAWS

K.J. ASSOCIATES 2021 (6) TMI 622 - CESTAT BANGALORE

The Central Insecticide Board and Registration Committee, Faridabad intimated that Potassium Humate is not included in the Schedule under the Insecticide Act and hence it does not require registration and the test report issued by the Customs Department also does not conclusively classify the impugned goods as insecticide. The test report of the Customs only says that “it may find use as a plant growth regulator” and on that basis also the Customs cannot change the classification to CTH 38089340.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

INSTRUCTION-16.06.2021 to 30.06.2021

NO	DATE	GIST
14/2021	21.06.2021	DG Systems has enabled a 'Central Revenues Control Laboratory (CRCL) module' in ICES with the objective of automating all paperwork related to sampling, forwarding of test memos to CRCL and other Revenue Laboratories, and electronic receipt of test reports, instantly by the Customs Officers to ease testing process.

DGFT NOTIFICATION - 16.06.2021 to 30.06.2021

NO	DATE	GIST
G.S.R. 424 (E).	16.06.2021	Amends the SEZ Rules, 2006 by inserting a provision pertaining to Setting up of Unit by Multilateral or Unilateral or International agencies notified under UN(P&I) Act in International Financial Services Centre.





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

1 MALABAR ERECTORS ORDER DATED 15.06.2021 IN W.P. No.9769 of 2020

The petitioner who had failed to make payment under SVLDRS as per FORM 3 before the due date i.e 30.06.2020 is allowed to make the payment with interest @ 15% from 01.07.2020. Final decision on extension of time will be taken after ascertaining the stand of CBIC.



When CBDT is doing it for Vivad Se Vishwas, why not CBIC?

2 NATIONAL REMOTE SENSING AGENCY 2021-TIOL-1343-HC-TELANGANA-ST

It is absurd to suggest that National Remote Sensing Agency, an autonomous body of Department of Space, has suppressed the facts with intention to evade payment of Tax. Attributing fraud, collusion, suppression or wilful mis-statement to the Scientists and Academicians, will have a demoralizing effect and would not be in public interest. On the contrary, it could contribute to Brain drain from the country. Rs. 10,000/- cost imposed on revenue.



Mindless allegations of fraud are the hallmark of revenue. There is hardly a case, without allegations of fraud, suppression, etc.





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

3 DECCAN TOBACCO PROCESSORS LIMITED 2021 (6) TMI 677 - TELANGANA HIGH COURT

When the departmental proceedings ended in favour of the accused and when the prosecution launched is on the same set of facts and allegations, the continuance of prosecution would be gross abuse of process of law.

4 AIRASIA INDIA LTD 2021-TIOL-341-CESTAT-BANG

Service tax payable by a service recipient on reverse charge basis would qualify as input service for availment of cenvat credit and hence the issue is revenue neutral.

5 V-V MINERALS 2021-TIOL-327-CESTAT-MAD

If there is a reason for the department to believe that there was an illegal export of goods, the same has to be dealt with by way of issuance of SCN by the proper officer of customs. It is not justifiable to reject the refund claim of service tax paid on input services used for such export of goods when the said goods were inspected and LEO was issued by Customs authorities before export of goods.

6 INTAS PHARMACEUTICALS 2021 (6) TMI 906 - CESTAT AHMEDABAD

Service Tax not payable on "Notice pay", i.e amount recovered by the employer from the employee for granting waiver of mandatory notice period for quitting the employment.





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

1 NILKAMAL LIMITED 2021 (6) TMI 860 - CESTAT CHENNAI

Service Tax paid under mistake of law has to be refunded as refusal thereof would be contrary to the mandate of Article 265 of the Constitution of India.

8 DEEP ENTERPRISES 2021 (6) TMI 735 - CESTAT CHANDIGARH

No Service Tax liability can be fastened on the legal heir of the deceased proprietor of the firm for the period till the lifetime of the proprietor.





FROM OUR KNOWLEDGE HOUSE

Link to important Webinars Participated by Swamy Associates

VIDEO LINK	
Recent important judgements on GST - By Sindhu Mangat and G. Natarajan, Advocates	https://www.youtube.com/channel/UCZ0KkOfYV02UA6qh2QRr5QQ
A short talk on recent TDS & TCS provisions under Income Tax – by G. Natarajan, Advocate	https://youtu.be/lBD8KXrPEuc





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