



Last fortnight marked some sensational judgements from the Madras High Court, where Tamil Cine Actor Vijay was pulled up for claiming exemption from payment of Entry Tax on imported Rolls Royce car (which is now under appeal before the Division Bench of the High Court); a State Tax officer being directed to be suspended for not being able to answer the queries of the bench; and the judgment bringing much relief to the Residential Welfare Associations, where it is held that the contribution made by the members “upto” Rs.7,500 per month would be exempted and only the excess amount would be subjected to GST levy and setting aside the AAR ruling and CBIC circular to the contrary.

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## GST CASE LAWS

### 1 UOI & ORS VS VISHNU AROMA POUCHING PVT LTD 2021-TIOL-192-SC-GST

SC criticizes Revenue for casually approaching the Court with an SLP after lapse of 18 months without any reasonable ground for condonation of delay and imposes Rs. 25,000 costs for "wastage of judicial time".



**Won't the Corona extension help the revenue?**

### 2 HITACHI PAYMENT SERVICES (P) LTD 2021-TIOL-1407-HC-MAD-GST

HC sets aside the impugned order rejecting the appeal on the ground of limitation in the light of the SC's "corona extension" and directs the Respondent to hear the appeal on merits.

### 3 VIMAL PETROTHIN PVT LTD 2021-TIOL-1412-HC-UKHAND-GST

Respondents directed to unblock the ITC in the electronic credit ledger under Section 86A as the statutory limit of 1 year is over.

### 4 MMD HEAVY MACHINERY INDIA PVT LTD 2021-TIOL-1423-HC-MAD-GST

HC denies transition of accumulated ITC with respect to the Tamil Nadu manufacturing unit closed much before the implementation of GST to the new GSTIN of Andhra Pradesh.

### 5 IRCTC VS DEEPAK AND COMPANY 2021-TIOL-1463-HC-DEL-GST

HC directs IRCTC to reimburse GST charges paid by catering service provider.





## 6 TVH LUMBINI SQUARE OWNERS ASSOCIATION 2021-TIOL-1505-HC-MADRAS

RWAs are exempted from GST for monthly contributions "upto" Rs.7,500/- per member and liable to pay GST only on the amount in excess. AAR ruling and CBIC circular to the contrary quashed.

## 7 WIPRO ENTERPRISES PVT LTD 2021-TIOL-19-AAAR-GST

Alcohol based sanitizers is classifiable as disinfectant under Heading 3808.94 attracting GST @ 18% and not as medicament.

## 8 AIRBUS GROUP INDIA PVT LTD 2021-TIOL-155-AAR-GST

Airbus India performing services related to procurement of raw materials from Indian vendors and facilitating supply abroad for its holding company i.e. Airbus, France, is an 'intermediary' .

## 9 CE PHARMACEUTICALS PVT LTD 2021-TIOL-20-AAAR-GST

Alcohol based sanitizers is classifiable as disinfectant under Heading 3808.94 attracting GST @ 18% and not as medicament. Observes that DGFT is not an authority for determining classification of goods under GST.

## 10 SACHDEVA COLLEGES LTD 2021-TIOL-150-AAR-GST

JEE and NEET training provided to selected students as per the orders of Directorate of welfare of schedule caste and backward class by the applicant is service provided to Government and exempt from GST. The applicant is not required to take registration since it is exclusively engaged in providing exempt services.



## GSTN PORTAL UPDATES

- Important changes related to QRMP Scheme implemented on the GST Portal for the taxpayers.

**LINK:** <https://www.gst.gov.in/newsandupdates/read/486>

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

**LINK:** <https://www.gst.gov.in/newsandupdates/read/487>

- Upcoming functionalities to be deployed on GST Portal for the Taxpayers in the month of July, 2021.

**LINK:** <https://www.gst.gov.in/newsandupdates/read/488>

- Webinars on recent functionalities related to Returns, Ledgers and Payments deployed on GST Portal.

**LINK:** <https://www.gst.gov.in/newsandupdates/read/489>



- GST officials book 8,000 cases involving fake ITC of over Rs 35k cr in FY21
- Special GST Council meet likely in August after monsoon session of Parliament

**LINK:**[https://www.business-standard.com/article/pti-stories/gst-officers-unearth-over-rs-35k-cr-fraud-in-fy-21-arrest-426-persons-121071301020\\_1.html](https://www.business-standard.com/article/pti-stories/gst-officers-unearth-over-rs-35k-cr-fraud-in-fy-21-arrest-426-persons-121071301020_1.html)

**LINK:**  
<https://www.financialexpress.com/economy/special-gst-council-meet-likely-in-august-after-monsoon-session-of-parliament/2290424/>

- MSMEs seek time to pay GST. Facing hardships to pay both GST and Income Tax before the due dates in July/ August.
- GST collections fall below Rs 1-trn mark after eight months in June

**LINK:**<https://www.thehindu.com/news/cities/Coimbatore/msmes-seek-time-to-pay-gst/article35312071.ece>

**LINK:**  
[https://www.business-standard.com/article/economy-policy/gst-collections-fall-below-rs-1-trn-mark-after-eight-months-in-june-121070600883\\_1.html](https://www.business-standard.com/article/economy-policy/gst-collections-fall-below-rs-1-trn-mark-after-eight-months-in-june-121070600883_1.html)



- Authorities tracking RFID data to detect GST evasion, fraud.

**LINK:**<https://www.indiatoday.in/business/story/authorities-tracking-rfid-data-to-detect-gst-evasion-fraud-1825612-2021-07-08>

- Over 50,000 GST taxpayers get appreciation certificates on GST 4<sup>th</sup> anniversary.

**LINK:**<https://www.livemint.com/news/india/over-50-000-gst-taxpayers-to-get-appreciation-certificates-on-gst-4th-anniversary-details-inside-11625060549591.html>

- Denied benefit of GST rate-cut on covid essentials? File a plaint with the NAA.

**LINK:**[http://gstcouncil.gov.in/sites/default/files/gst-articles/4-7-21\\_Covid-essentials.pdf](http://gstcouncil.gov.in/sites/default/files/gst-articles/4-7-21_Covid-essentials.pdf)

- Revenue Deficit Grant of Rs. 9,871 crore released to 17 States

**LINK:**<https://pib.gov.in/PressReleasframePage.aspx?PRID=1716497>



## MONTHLY CONTRIBUTION TO RESIDENT WELFARE ASSOCIATION

# GST to apply only on amounts above ₹7,500, says Madras HC

FinMin circular requiring entire monthly contribution to be taxed now quashed

**SHISHIR SINHA**

New Delhi, July 14

The Madras High Court has quashed a Finance Ministry circular prescribing Goods and Services Tax (GST) on the entire monthly contribution to Resident Welfare Association (RWA), if it is more than ₹7,500.

“The conclusion of the AAR (Authority for Advance Ruling) as well as the circular to the effect that any contribution above ₹7,500 would disentitle the RWA to exemption, is contrary to the express language of the entry in question and both stand quashed. To clarify, it is only contributions to RWA in excess of ₹7,500 that would be taxable under GST Act,” a single-judge bench of Justice Anita Sumanth said in a recent ruling.

The matter involved petitions filed by three RWAs in apartment complexes (Greenwood Owners Association, Oceanic Owners Association and TVH



Lumbini Square Owners Association) located in different parts of Chennai and one individual (Sanjay Gupta).

Two issues were challenged – an order of the AAR levying tax on the entirety of the contribution to RWA and a circular dated July 22, 2018, and issued by the Finance Ministry amending the methodology to levy GST on contribution to RWA.

### Grant of exemption

AAR, in its order in June 21, 2019, stated that grant of exemption was conditional upon the contribution being an amount of ₹7,500 or less. “If the contribution exceeded the sum of ₹7,500, the very entitlement of that RWA to exemption would stand defeated and the entirety of the amount collected would have to be brought to tax,” it said.

Following this, a Finance Min-

istry circular, dated July 22, 2019, explained that the exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed ₹7,500 per month per member. “In case the charges exceed ₹7,500 per month per member, the entire amount is taxable. For example, if the maintenance charges are ₹9,000 per month per member, GST @ 18 per cent shall be payable on the entire amount of ₹9,000 and not on (₹9,000 - ₹7,500) ₹1,500,” it said.

Representing TVH Lumbini Square Owners Association, G Natarajan, Advocate, argued that at the time of introduction of GST, the CBIC issued a flyer clarifying that GST is payable only on the amount in excess, but later they changed track and issued a circular to the contrary. Wherever the intention was to deny the exemption if the consideration exceeds a fixed sum, it was specifically provided like in the case of performing artists, where GST is exempted only if their charges for performance are less than ₹1.5 lakh, whereas in case of RWA, the exemption was up to ₹7,500, it was argued.





# CUSTOMS

## CASE LAWS

**1** **WARDHA (MAHARASHTRA) LIMITED 2021 (7) TMI 401 - MADRAS HIGH COURT**

Detention certificate issued by customs is only an eligibility certificate and it would not confer any right to claim refund without adjudication of disputed facts and circumstances and such adjudication cannot be done in a writ proceedings under Art 226.

**2** **M/S. MAHALAKSHMI TRADERS 2021 (7) TMI 388 - MADRAS HIGH COURT**

SCN issued in 2009 cannot be adjudicated now after twelve years in view of Section 28(9) of Customs Act and hence the SCN is quashed.

**3** **M/S. MINAL GEMS 2021 (7) TMI 425 - BOMBAY HIGH COURT**

Provisional release of goods can be considered as per law even if a SCN has already been issued under section 124 of the Customs Act and the same is pending adjudication.

**4** **M/S ARAVIND TRADERS 2021 (7) TMI 100 - CESTAT BANGALORE**

Cutting of imported Sappan Billets (*Caesalpineia sappan*) into small pieces for the purpose of marketing locally which does not change the identity of the goods and no new product has come into existence. Therefore, the refund claim of 4% additional duty (SAD) cannot be denied.





## IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

### CUSTOMS NOTIFICATION – TARIFF 01.07.2021 to 15.07.2021

NO	DATE	GIST
35/2021	12.07.2021	The Basic Customs duty is exempted for imports of specified API/ excipients for Amphotericin B and raw materials for manufacturing COVID test kits.

### CUSTOMS NOTIFICATION – NON TARIFF 01.07.2021 to 15.07.2021

NO	DATE	GIST
58/2021	01.07.2021	The provisions of section 151B made applicable to specified/listed Agreement or Arrangement on Cooperation and Mutual Administrative Assistance (CMAA) in Customs matters entered with other countries.

### CIRCULAR - 01.07.2021 to 15.07.2021

NO	DATE	GIST
13/2021	01.07.2021	Launch of a new version (V 2.0) of web application for on-boarding of AEO T2 and AEO T3 applicants by way of online filing, real-time monitoring, and digital certification.
14/2021	07.07.2021	Implementation of measures to improve the Customs Faceless Assessment and to expedite the clearance processes.





## IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

### DGFT NOTIFICATION - 01.07.2021 to 15.07.2021

NO	DATE	GIST
11/2015-2020	01.07.2021	Period for annual updation of IEC Details electronically is extended till 31.7.2021.
12/2015-2020	01.07.2021	Certificate of inspection by EIC/EIA is mandatory for export of Non Basmati/Basmati Rice to Iceland, Liechtenstein, Norway, Switzerland and it is mandatory for such exports to other EU Countries from 1/1/2022.
14/2015-2020	12.07.2021	Export of Eggs, Potatoes, Onions, Rice, Wheat Flour, Sugar, Dal, Stone Aggregates and River Sand has been permitted to the Republic of Maldives under bilateral trade agreement between Government of India and Government of Maldives during the period 2021-22, 2022-23 and 2023-24 as per the agreed quantities.





## IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

### DGFT PUBLIC NOTICE - 01.07.2021 to 15.07.2021

NO	DATE	GIST
12/2015-2020	12.07.2021	Para 2.96 (b) of Chapter-2 of Handbook of Procedures, 2015-2020 stands deleted, and revised format of ANF-2C is notified as a step towards reducing regulatory compliance burden.
13/2015-2020	12.07.2021	The format of ANF-2H (Application for Free Sale & Commerce Certificate) and ANF-2I (Application for Free Sale & Commerce Certificate for items other than Medical Devices/Instruments) of Handbook of Procedures, 2015-2020 is revised by deleting the requirement of furnishing RCMC details under s.no 4 and RCMC related declaration at s.no 8.





## CENTRAL EXCISE AND SERVICE TAX CASE LAWS

### 1 ORDER DATED 12.07.21 IN W.A.NO. 1652 OF 2021

Order of the single judge directing suspension of State Tax Officer for not giving the correct answer to the question posed by the single judge ,stayed by the Division Bench.

### 2 THE STATE OF UTTAR PRADESH AND OTHERS VS DR.MANOJ KUMAR SHARMA – SC IN CIVIL APPEAL NO.2320 of 2021

The line of separation of powers between Judiciary and Executive is sought to be crossed by summoning the officers and in a way pressurizing them to pass an order as per the whims and fancies of the Court.

### 3 C. JOSEPH VIJAY 2021(7)TMI 599 MADRAS HIGH COURT.

The plea of actor Vijay for exemption from entry tax for the imported Rolls Royce car is rejected by Madras HC. Cost of Rs.1,00,000/- is imposed on the actor .



**"Another fine for registering in Puducherry and driving in Tamil Nadu?"**





## CENTRAL EXCISE AND SERVICE TAX CASE LAWS

### 4 MAXCARE LABORATORIES LTD 2021-TIOL-1405-HC-ORISSA-CX

Keeping the matter in call book and reviving the same after 18 long years is contrary to the circulars issued by the Department and hence the court quashes the notice.

### 5 SRI RENUKA ELECTRONICS AND FURNITURES 2021-TIOL- 1443-HC-MAD-VAT

ITC cannot be denied solely because original invoices are not produced, more so where the event of the purchases having been made from a registered dealer is not disputed.

### 6 RAMESH KUMAR AGARWAL 2021 (7) TMI 360 – CESTAT NEW DELHI

In case of cancellation of flat and the consideration received has also been returned to the buyer, then the time limit for refund of service tax has to be computed from the date of return of the consideration to the customer instead of date of payment of service tax.

### CONVANCE CLINICAL DEVELOPMENT PVT LTD 2021- TIOL-377-CESTAT-BANG

Refund under Rule 5 of CCR, 2004. Refund claimed amount was debited from Cenvat account, but wrongly transitioned to GST regime also. But later the wrong credit was reversed too. No reason to deny the refund.





## CENTRAL EXCISE AND SERVICE TAX CASE LAWS

### 8 PUNJAB NATIONAL BANK 2021 (7) TMI 326 - CESTAT BANGALORE

The words “notwithstanding anything contrary contain in said law” means that the provisions of this Section 142(9)(b) of CGST Act, 2017 will prevail over provisions of existing law except provision of Section 11B(2) of CEA, 1944. If the appellant has fulfilled all the conditions mentioned in Section 142 (9)(b) of the CGST Act, then he is eligible for cash refund of the credit amount which is not carried forward in Tran -1 irrespective of the time limit provided under Section 11B of the CEA.

### 9 LEKH RAJ NARINDER KUMAR 2021-TIOL-370-CESTAT-CHD

When the order passed a tribunal has not been challenged by the department, then the only option left with the department is to sanction the refund claim suo-motto and they cannot proceed to issue show cause notices.

### 10 PRICOL UNIT – I 2021-TIOL-381- CESTAT-MAD

Merely because, the procedure prescribed under CBEC Excise Manual was not followed cannot be a ground to deny the refund of excess duty paid. No duty can be retained by department, which is not required to be paid under the provisions of law.





## CENTRAL EXCISE AND SERVICE TAX CASE LAWS

### ASHIQUE CHEMICALS AND COSMETICS 2021 (7) TMI 300 - CESTAT BANGALORE

CENVAT credit can be availed on household plastic buckets and plastic containers which were given to customers / dealers as a sales promotion.



**Bucket full of ITC.**







## FROM OUR KNOWLEDGE HOUSE

### VIDEO LINK

**Interview of G. Natarajan Advocate (In Tamil) on Madras HC decision on RWA GST exemption.**

<https://youtu.be/7uhFU8SOEng>





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