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Case laws

Top Picks



- Bombay HC holds that the Pre-deposit under GST can be paid through the Electronic Credit Ledger - **Oasis Realty vs UOI & Ors – WP (ST) No. 23507 of 2022.**
- Madras HC stays the Show cause Notices issued in 2001 and not yet adjudicated on the grounds of Limitation – **T. Stanes vs Commissioner of C. Ex – WP. Nos. 25742 to 25746 of 2022.**

Case laws

GST



- In the case of transport of goods after the expiry of e-way bill, the appellate authority should consider as to whether there is an intentional attempt by the appellant to evade payment of tax. - **KDG PROJECTS PRIVATE LIMITED & ANR. 2022 (9) TMI 1202 - CALCUTTA HIGH COURT.**
- The Appellate Authority shall not insist the Firm to make deposit through electronic cash ledger and shall proceed to decide the appeal on merits strictly in accordance with law as the petitioner has paid the pre-deposit by debiting from Electronic credit ledger. - **TULSI RAM AND COMPANY. 2022 (9) TMI 1265 All HC**
- Cancellation of GST registration without ascribing any valid reason is to be considered as without application of mind and harsh and hence the taxpayer should be given an opportunity to explain their defence. - **CHANDRA SAIN & ORS- 2022 (9) TMI 1047 – ALL HC.**

Customs

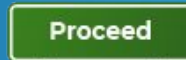


1. The Supreme Court holds that fraud vitiates everything, and holds the demand on forged/fake DEPB licenses/scrips - **M/S. MUNJAL SHOWA LTD. AND ANOTHER VS COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE (DELHI – IV) - 2022 (9) TMI 1076 - SUPREME COURT**
2. Bombay HC sets aside the impugned order and remands the matter to the original adjudicating authority for cross examination of witnesses on whom reliance has been placed by the authorities as it is the right of every person to cross examine the witnesses and it is a settled principle of law that any order passed without following the principles of natural justice is a nullity. - **SAMEER SHAH VS THE UNION OF INDIA & ANR. 2022 (6) TMI 534 - BOMBAY HIGH COURT**

GST

Circulars

Sl.No	Notification No. and Date	Gist of changes
1	Notification No. 18/2022-Central Tax dt.28.09.2022	The Govt has appointed 01.10.2022 as the date on which GST amendments made through Finance Act, 2022 (except Section 110 (c) and 111 of Finance Act, 2022) shall come into force.
2	Notification No. 19/2022-Central Tax dt.28.09.2022	Amendment to CGST Rules, 2017 (Second Amendment, 2022).



Customs

Circulars

Sl.No	Notification No. and Date	Gist of changes
1	Notification No. 75/2022-Customs(N.T) dt.14.09.2022	Amendment to Remission of Duties and Taxes on Exported Products (RoDTEP) Notification no. 76/2021-(N.T) dated 23.09.2021.
2	Notification No. 76/2022-Customs(N.T) dt.14.09.2022	Amendment to Rebate of State and Central Taxes and Levies (RoSCTL) notification no.77/2021- (N.T) dated 24.09.2021.
3	Notification No. 79/2022-Customs(N.T) dt.15.09.2022	Electronic Duty Credit Ledger (Amendment) Regulations, 2022.



Customs

Circulars

Sl.No	Notification No. and Date	Gist of changes
4	Notification No. 81/2022-Customs(N.T)dt.23.09.2022	Courier Imports and Exports (Electronic Declaration and Processing) , Second Amendment, Regulations, 2022 for facilitating E-commerce exports of jewellery.
5	Notification No. 82/2022-Customs(N.T) dt.23.09.2022	Amendments in the provisions of GSR keeping in view the Guidelines issued by Department of Science & Technology (DST) for acquiring and producing Geospatial Data and Geospatial Data Services including Maps.



Customs

Circulars

Sl.No	Circular No. and Date	Gist of changes
1	Circular No. 21/2022- Customs dt.26.09.2022	The effect of the amendment to Scheme for Remission of Duties and Taxes on Exported Products (RoDTEP) is the deletion of certain conditions related to transferee-holder of the scrip.
2	Circular No. 22/2022- Customs dt.26.09.2022	The effect of the amendment to Scheme for Rebate of State and Central Taxes and Levies (RoSCTL) Scheme is the deletion of certain conditions related to transferee-holder of the scrip.



TAX

cookies

Bengaluru based online gaming company Gameskart Technologies takes DGGI to court on being issued with SCN for demand of Rs. 21,000 Crores - ***Demand also looks like a lottery figure!!!***

Government working on norms to decriminalise GST Offences- Revenue Secretary.

Government is working on expanding the coverage of RoDTEP scheme to more sectors.



cookies

Gold being imported as Platinum Alloy- Bullion importers are making huge profits by taking advantage of the ambiguity in duty rate structure.

The wait for GST council meeting gets longer as the GoM on gaming is yet to submit their report.

DRI has seized e-cigarettes, the use and sale of which is banned in India, estimated to be worth Rs. 48 crore from the Mundra Port in Gujarat

Sai Makarandh. P

The Hon'ble Karnataka High Court had stayed the show cause notice issued by the DGGI in the matter of *M/s. Gameskraft Technologies Pvt. Ltd., Vs. Directorate General of Goods And Services Tax Intelligence (Headquarters)* wherein a show cause notice of Rs. 21,000 Crore was issued to the Company and it appears that GST was proposed at 28%. Further, it is also understood that a flurry of notices are proposed to be issued on similar lines to companies that are involved in online betting services.

Online gambling, fantasy games, e-sports have long remained a grey area since the Public Gambling Act, 1867 prohibits all forms of gambling is illegal in India. The only exception to the above appears to be horse racing. Online gambling thus, remains to be a grey area as the same is not covered by the Information Technology Act either. Gambling itself is covered under Notification No. 11/2017- Central Tax (Rate) under Sl. No. 34 (v) at 28%.

The main issue before the High Court, however, involves, whether the petitioner, whose online platform which mainly hosts rummy games, had mis-classified the same as a game of skill whereas the DGGI claims that it should be taxed as an actionable claim at 28%. Actionable claims are defined by Section 2(1) of the CGST Act, 2017 and defines it as to have the same meaning as per Section 3 of the Transfer of Property Act. As per the said Act, an actionable claim is defined as *a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent*. This being the ground, the Show Cause Notice contends that the noticee had an actionable claim in the online games taking place on their platform and therefore, the same should have been taxed at 28%. Further as per Rule 31A (3) of CGST Rules, the value of supply of actionable claim in the form of chance to win in *betting, gambling or horse racing in a race club* shall be 100% of the face value of the bet or the amount paid into the totalisator.

As can be seen from above, if the Department has to succeed in the above Show Cause Notice, it must prove that the games played on the noticee's website are not games of skill but involves betting and gambling. The demarcation between game of skill and game of luck has time and again held by Courts that games that involve considerable skill, judgement and discretion and success arises out of users' exercise, superior knowledge, judgment and attention are considered as games of skill. The Courts also held that 'the element of skill' had a predominant influence on the outcome of the game. A game of mere skill, is a game exempt from the provisions of the Public Gambling Act, 1867. Games of luck meanwhile, as the name suggests are outcomes that depend on luck and are considered gambling. Rummy has time and again been held as a game of skill by the Courts in cases such as *R.M.D. Chamarbaugwalla v. Union of India & State of A.P. v. K. Satyanarayana*, therefore, if provisions of Rule 31A are read into explicitly, it cannot be held as a mere bet. Further, whether there exists an actionable claim for facilitation of online rummy between two individuals on the internet seems a question for the Hon'ble Court to now decide.



Before Parting...

- Jk

Many have hit me, but only you could make my sweat sweet,

Many have kissed me, but only you could make me blush yellow,

Many have held me, but only you could make me feel on top of the world,

Millions have left me, but oh my love, only you could break my heart....

Forever yours,

