



Editor's desk...

Suddenly there is a plethora of activity everywhere. The number of audit paras raised, investigations initiated, show cause notices issued, personal hearings conducted are aplenty, which is a definite indicator that the pandemic is over.

Further, most of the High Courts are back from their vacation that, in days to come, we can expect a flurry of judgements, which would keep all the stakeholders on their toes.

This edition carries a very detailed article on the controversial issue of **“the effect of substitution”**.

Enjoy reading...

Case laws

Top picks



The services rendered by Universities by way of affiliation and allied activities including the income they derived from rent paid by the third parties like Postal Department, Banks etc., are to be considered as allied services attached with the educational activities undertaken by the Universities and therefore they are also exempted from Service Tax- **THE TAMILNADU DR. MGR MEDICAL UNIVERSITY - 2022-TIOL-825-HC MAD-ST**

The transaction value for Custom duty and Excise duty (CVD), includes the ocean freight, and by again paying the service tax on the ocean freight, as demanded by the Revenue amounts double taxation, Therefore, the appellant is entitled for refund of the Service Tax paid on the Ocean Freight.-

**ASIATIC DRUGS & PHARMACEUTICALS PVT LTD
[2022 (6) TMI 305 - CESTAT NEW DELHI]**

Case laws

GST



1. If a drastic power of suspension of registration even during pendency of the proceedings has been conferred on the authority under the Statute, the proceedings itself are required to be brought to its logical conclusion one way or the other in a time bound manner and merely because the Statute does not provide any limitation for completion of proceedings, the authority cannot be allowed to sit over the matter and leave the person to suffer suspension of registration and all consequences to follow where the entire operations are brought to suspension- **MSN INSULATIONS [2022 (6) TMI 422 - RAJASTHAN HIGH COURT]**
2. If there is any illegal arrangement of input tax credit stringent action should be taken. However, till final orders are passed, if the credit which was not availed on the date when the blocking was done is also to be blocked, then it might cause prejudice to the dealer- **S.S. ENTERPRISE & ANR. [2022 (6) TMI 467 - CALCUTTA HIGH COURT]**

Case laws

AAR



1. As the PV DC cables just carry electricity to the inverter, it cannot be considered as parts of Solar Power Generating Systems and will not be covered under Sr.No. 234 of Notification No.01/2017- CT (Rate).- **LEONI CABLE SOLUTIONS (INDIA) PVT LTD [2022 (6) TMI 528 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA]**
2. The stipend paid by the Training institute to the Foundation to be further paid to the trainees in full does not attract GST and is not required to be added to the taxable value - **PATLE EDUSKILLS FOUNDATION [2022 (6) TMI 529 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA]**



Notifications

Circulars

GST

1.	Notification No. 08/2022-Central Tax dt.07.06.2022	Waiver of Interest for specific E-Commerce operators who failed to file the GSTR-8 for specified tax periods but had deposited the tax amount in electronic cash ledger.
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Notifications

Circulars

Customs

1.	Notification No. 31/2022- Customs dt.07.06.2022	Amendment to condition no.95 of Notification No.50/2017-Cus dt.30.06.2017 to extend the time period for furnishing the final Mega power project certificate from 120 months to 156 months and to extend the validity period of security to be given by importer from 126 months to 162 months.
2.	Notification No. 47/2022- Customs(NT) dt.31.05.2022	Notification to exempt the deposits pertaining to all classes of persons and all categories of goods, from the provision of Section 51A of the Customs Act with effect from 01.06.2022 upto 29.11.2022.
3.	Notification No. 48/2022- Customs(NT) dt.31.05.2022	Amendment to Notification No. 19/2022- Customs (N.T) dated 30.03.2022 regarding exemption of deposits from the provision of Section 51 A of Customs Act, 1962 to certain categories of goods and payments to be effective from 30.11.2022 instead of 01.06.2022.



Notifications

Circulars

DGFT

1.	Notification No. 12/2015-2020 dt.01.06.2022	A new RoDTEP schedule (Appendix 4R) is notified to align with the Customs Tariff which has been amended w.e.f.01.05.2022.
2.	Policy Circular No.39/2015-20 dt.07.06.2022	For the purpose of discharge of export obligation of Advance authorisation, the supplies made to SEZs prior to 01.04.2015 will be accepted on the basis of documents of corroborative evidence in lieu of Bill of exports.
3.	Public Notice No.11/2015-20 dt.07.06.2022	"Guidelines for Applicants" under ANF-4F of HBP 2015-2020 has been amended to simplify the procedure and reduce the compliance burden for applying EODC in case of deemed exports.



TAX

cookies

Kerala announces attractive amnesty scheme for all pending tax arrears of the pre-GST era except arrears under KGST from 2005 onwards. Opt before 31.08.2022 and pay before 31.12.2022

Hon'ble Patiala House Court cracks the whip on DGGI officers while disposing off the bail application. Court directs Pr. DG, DGGI to report back remedial actions initiated for fair investigation – *Newton's Third law!!!*

Fake Invoice Racquet- TN State GST pulls up its socks by appointing officer of the rank of AC to conduct verifications for issue of registrations. – *Hope it is not a case of shutting the stable door after the horses have bolted.*

TAX

cookies

GST rate on Lithium-ion batteries used in electric vehicles may be reduced to 5% to bring it on par with rate of GST on such vehicles.

CBIC has come out with a SOP to submit claims in a timely manner against corporates undergoing CIRP under Insolvency and Bankruptcy Code. – *Better Late than Never*

Six Colombo-bound transit passengers cry foul—allege false case of seizure of 7 Kgs of gold from them – *Is it a bit more than the nation's current gold reserve???*



POINT OF VIEW

What is substitution?

One day I was watching the Ashes and was horrified when Steve Smith was stuck brutally by a bouncer from Archer. He was carried out of the field with a suspected concussion. To my surprise, Marcus Labuschagne was substituted for the concussed Steve Smith and batted on the final day. That he became a full-time addition to the Australian squad from a small cameo is a tale for another day. However, I was told that the substitution in place of Steve was a Concussion Substitution which allows the substitute to take the role of the player who was injured. The ICC took nearly 120 years plus to create the above law by which a substitute takes over the original player.

In Taxation, the Hon'ble Supreme Court way back in the year 2005 held that substitution will take over the original in certain situations such as rectification of omission, Doctrine of fairness, etc . Hon'ble Supreme Court in the case of in the case of **Government of India Vs Indian Tobacco Association [2005 (187) E.L.T. 162 (S.C.)]**. The Apex Court while deciding the applicability of a Notification where substitution has been made has held as under:

15. The word “substitute” ordinarily would mean “to put (one) in place of another”; or “to replace”. In Black’s Law Dictionary, Fifth Edition, at page 1281, the word “substitute” has been defined to mean “To put in the place of another person or thing”, or “to exchange”. In Collins English Dictionary, the word “substitute” has been defined to mean “to serve or cause to serve in place of another person or thing”; “to replace (an atom or group in a molecule) with (another atom or group)”; or “a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague”.

Applying the above decision of the Apex Court several decisions by the Hon’ble High Courts were pronounced wherein it was categorically held that “substitution” made in a Notification is retrospective.

The Hon’ble High Court of Karnataka in the case of **Commissioner of C.Ex., & S.T., Bangalore Versus Fosroc Chemicals (India) Pvt. Ltd., [2015 (318) E.L.T. 240 (Kar.)]**

Hon’ble High Court of Punjab & Haryana in the case of **Commissioner of C.Ex., Versus Dee Development Engineers Pvt. Ltd., [2016 (339) E.L.T. 560 (P & H)]**

Hon’ble High Court of Karnataka in the case of **Commissioner of C.Ex., Bangalore-III Versus Elins Switch Boards Pvt Ltd [2017 (49) S.T.R. 398 (Kar.)]**

Hon'ble High Court of Judicature at Madras in the case of **Mehler Engineered Products India Pvt. Ltd., Versus Union of India [2018 (364) E.L.T. 27 (Mad.)]**

Hon'ble High Court of Judicature at Madras in the case of **Doosan Infracore India P.Ltd., Versus Asstt.Commr. of GST & C.Ex., Chennai [2020 (374) E.L.T. 374 (Mad)]**.

Now, I would like to come to the crux of this article and that is whether the amendments made to Notification No.11/2017-Central Tax (Rate), dated 28.06.2017 by way of **substitutions** are retrospective or otherwise? The authorities viz., DGGI, Anti-evasion Units are issuing Show Cause Notices demanding GST for the limited period from 01.07.2017 to 21.08.2017 demanding 6% differential GST on the Principal Contractors and from 01.07.2017 to 31.12.2018 on the sub-contractors.

Notification No.11/2017-Central Tax (Rate), dated 28.06.2017 has been amended by a series of Notifications and the most important of these amendments, Notification No.20/2017-Central Tax (Rate), dated 22.08.2017 in terms of which rate of tax on services when provided to Government, a Local Authority or a Governmental authority was reduced to 12% (6% CGST and 6% SGST).

Likewise, Notification No.01/2018-Central Tax (Rate), dated 25.01.2018 has once again amended the Principal Notification in terms of which a sub-contractor providing WCS to the main contractor for specified services (for construction, erection, commissioning, installation etc., pertaining to irrigation works in this case) to the Central Government , State Government, Union Territory, Local Authority or a Governmental Authority or a Governmental Entity attracts 12% rate of tax (6% CGST & 6% SGST).

In this regard, for the sake of clarity in both the amendment notifications viz. Notification No.20/2017-Central Tax (Rate), dated 22.08.2017 and Notification No.01/2018-Central Tax (Rate), dated 25.01.2018 the entry at sl.no.3 of the Principal Notification was **substituted**. The relevant portion of these two Notifications are given hereunder for appreciation.

Notification No. 20 / 2017-C.T. (Rate), dated 22-08-2017

Job Work and Works Contract — Reduction in CGST Rates for job work for textiles & textile products, Government Works Contract, printing service of books, newspapers, etc, GTA services, transport of passengers by motorcab and admission to planetarium — Amendment to Notification No. 11/2017-C.T. (Rate)

In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 690(E), dated the 28th June, 2017, namely :-

In the said notification, in the Table, -

(i) against serial number 3, for item (iii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following **shall be substituted (emphasis supplied)**, namely :-



(3)	(4)	(5)
<p>“(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -</p> <p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal</p>	6	-

Notification No.01/2018-Central Tax (Rate), dated 25.01.2018

(C) for item (ix) and the entries relating thereto in columns (3), (4) and (5), the following **shall be substituted (emphasis supplied)**, namely :-



(3)	(4)	(5)
<p>“(ix) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.</p>	<p>6</p>	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.</p>
<p>(x) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 provided by a sub-contractor to the main contractor providing services specified in item (vii) above to the Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity.</p>	<p>2.5</p>	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.</p>

The reasons for the above amendments as seen from the GST council minutes of meeting are to restore the benefits available to the contractors in the erstwhile law and rectify the anomaly in rate of tax applicable to sub contractor Therefore, as per the reproduced two Notifications, which amended the Principal Notification, the entry at sl.no.3 and the entry at (ix) **was substituted**. In other words, the amendments carried out only **substituted** the earlier entries.

Accordingly, this writer is of the opinion that both the Notifications amending the Principal Notification No.11/2017-Central Tax (Rate), dated 28.06.2017 will have retrospective effect and the demands for differential GST of 6% on the Principal Contractors and their Sub-contractors is legally incorrect and hence not sustainable and therefore avoidable by the Revenue in the interest of unwarranted litigation.



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Before parting...

-Jk

Recently when I had to appear before an adjudicating authority, he rejected the claim for cross examination as an “after-thought”. All my earnest endeavors to explain that, after issuance of show cause notice (SCN) the reply to the SCN could only be the first possibility for requesting a cross-examination went in vain. He summarily dismissed my request stating that, since I had not requested on my first correspondence, which happened to be a letter seeking for time extension to reply, it s only an “after-thought.”

This “after-thought” is such a completely misdirected missile, often fired to violate the cardinal principles of natural justice, to dismiss the retractions given against statements extracted under duress, reject genuine and legal claims, etc. To me, it’s a camouflage to coverup either the brute prejudice or the primitive preference of rule of power against the rule of law. Many times, they are also used as a shield for the empty spaces.

By the way, why the corrigendums, retrospective amendments, explanations and the clarificatory circulars are all not after-thoughts???



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