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Case laws

Top picks



GSTN is directed to open the common portal for filing Tran-1 and Tran-2 forms for availing Transitional Credit for two months i.e. w.e.f. 01.09.2022 to 31.10.2022- **FILCO TRADE CENTRE PVT. LTD. & ANR. [2022-VIL-38-SC]**



Case laws

GST



1. In order to justify invocation of the power to impose penalty, it is necessary that such authority arrives at a definite finding that there was a deliberate and wilful attempt on the part of the assessee to evade tax or there is lack of bonafide - **HANUMAN GANGA HYDROPROJECTS PRIVATE LIMITED [2022 (7) TMI 603 - CALCUTTA HIGH COURT]**
2. An inspection report cannot be considered as a show cause notice, as it does not fulfil the ingredients of a SCN. Therefore, treating an inspection report as a SCN is in violation of principles of natural justice - **SHYAM HARDWARE STORE [2022 (7) TMI - 805 Jharkhand High Court]**
3. The toll charges are exempted only in the hands of toll operators. Such toll charges paid, being incidental expenses, shall be included in the total cost of services provided to the customers as per Section 15 (3) - **NTL INDIA PRIVATE LIMITED [2022 (7) TMI 405 - AUTHORITY FOR ADVANCE RULING, TAMILNADU]**

Case laws

Customs



1. Bombay High Court directs all Principal Chief Commissioners who are posted within the jurisdiction of Bombay High Court that whenever any matter pertaining to their Commissionerate is listed, either they shall personally remain present in the Court or ensure that a duly authorised advocate is instructed to appear in the matter due to absence of any representative the matter is adjourned, the Court would impose costs to be recovered from the Principal Chief Commissioner from his salary - **JASPAL SINGH CHANDOK VS UOI AND ORS. 2022-TIOL-977-HC-MUM-CUS**
2. In the absence of fresh material available on record, continuing to tag the petitioner as a **"Risky Exporter"** to the EDI System is not correct. High Court of Kolkata directs the respondent authorities to lift/remove the **"Risky Exporter"** tag affixed in the Indian Customs, EDI System concerning the petitioner within three weeks - **M/s NEXAGE INNOVATIONS VS THE DEPUTY COMMISSIONER OF CUSTOMS AND ORS 2022-TIOL-1011-HC-KOL-CUS**

Case laws

Customs



3. Bombay High Court holds that it is the cardinal principle of criminal jurisprudence that where there are allegations of vicarious liability, then there has to be sufficient evidence of the active role of each director. There has to be a specific act attributed to a director or the person allegedly in control of management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company. In the absence of such evidence, imposition of penalty on the director of the company is not sustainable - **MEENA ANAND SURYADUTT BHATT Vs UOI AND OTHER. 2022-TIOL-1021-HC-MUM-CUS**



Notifications

Circulars

GST

1.	Order No.01/2022-GST dt.21.07.2022	The Principal Director General/Director General of Directorate General of Analytics and Risk Management, CBIC New Delhi authorised to withhold the claim for refund under Rule 96(4)(c) of CGST Rules, 2017.
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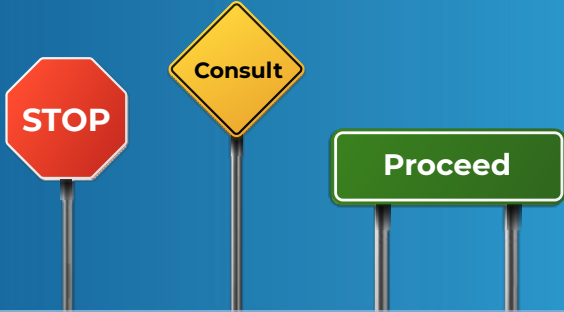


Notifications

Circulars

Customs

2	Instruction No. 16/2022- Customs dt.20.07.2022	Compendium of orders/circulars/ guidelines issued from WPC Wing, of DoT for import licensing requirement from WPC wing for import of wireless equipment.
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Notifications

Circulars

DGFT

3 **Policy Circular No.43/2015-2020 dt. 27.07.2022**

For the purpose of discharge of export obligation of EPCG 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.





cookies

Scientists flay GST hike on Lab Equipment by stating that it will further dampen procurement for Research Institutions as the grants/funds available are already insufficient. - *Unscientific*

In a bid to boost exports, Government extends RoSCTL scheme for Apparel/ Garment/Made Ups Exports till 31.03.2024.

Customs introduces Controlled Delivery Regulations to track suspicious consignments of gold, precious stones, drugs, etc. to check smuggling and also trace the real culprit/kingpin - *the kingpins should already be burning the midnight oil how to circumvent!*



TAX

cookies

CBIC releases paper suggesting changes in the monthly GST payment form for industry comments by September 15th.

New FTP likely to be implemented from October 1st without any new incentives for exporters - *Futile Trade Policy!*

Chinese smart phone maker Oppo under DRI scanner for evasion of Customs duty of ₹ 4389 Cr.
– *“Oppo’s tagline “It’s your turn” now has a new meaning!*



POINT OF VIEW

THE TRANSITION SAGA

Transitioning credit from the erstwhile Acts into the GST regime was supposed to be a simple affair, however, it has been anything but simple. Various Writ Petitions were filed across the country challenging constitutional validity of various sub-sections of Section 140 of the CGST Act, 2017 and also against the transitional system itself which was mired in technical difficulties. The fact of the matter remains that transitioning credit(s) from the erstwhile Acts is not simple, especially, when conducted as a mandatory nationwide exercise. This being the context, the Union of India preferred an appeal against the judgement of Hon'ble Gujarat High Court [Filco Vs. UOI 2018 (17) G.S.T.L. 3 (Guj.)] before the Hon'ble Supreme Court in the case of Union of India & Ors Vs. Filco Trade Centre Pvt. Ltd., & Ors. The Apex Court vide their order dated 22.07.2022 broadly provided the following relief:



- The Goods and Services Tax Network (GSTN) was directed to open the common portal for filing TRAN-01 and TRAN-02 for two months w.e.f. 01.09.2022 to 31.10.2022.
- Any aggrieved assessee can file their claim or revise their claim already filed for transitional credits in the said portal, notwithstanding whether they approached the High Court(s), the Department or the IT Grievance Cell.
- GSTN must ensure that there are no technical difficulties during the said time.
- Thereafter, 90 days time is given to the officers to verify the veracity of the transitional credit claimed and pass appropriate orders.
- Then eligible transitional credit shall be reflected in the electronic ledgers of the assessees.
- GST Council may issue guidelines to the field formations for scrutinising the claim, if necessary.

One of the questions before the Hon'ble Supreme Court was whether the Hon'ble Gujarat High Court was correct in striking down clause (iv) of sub-section (3) of Section 140. The Hon'ble Gujarat High Court had held that CENVAT credit is a vested right and cannot be taken away especially when the goods are tax paid and further had taken cognizance of the decision of the Hon'ble Bombay High Court in the case of **JCB India Limited Vs. Union of India [2018 (15) G.S.T.L. 145 (Bom.)]** and decided to dissent from the view adopted by the Hon'ble Bombay High Court.

The proverbial ball now lies entirely in the hands of the GST Council. There have been various issues in claiming transitional credit which had choked up tax benches across the country. Further, many scenarios which were not envisioned under Section 140 had also propped up post the implementation of the transition exercise. For example, in case of obtaining export obligation discharge certificates to regularize imports from the DGFT, assesseees were required to pay Customs Duty/ CVD/ SAD and interest for various reasons viz. not fulfilling the export obligation, non-availability of SION norms etc., for which they are eligible for CENVAT credit. However, due to the closure of TRAN-01, the assesseees had no option but to prefer refunds which were not allowed by the Revenue. However, various CESTAT Benches across the nation have provided relief by allowing cash refunds as CENVAT credit is not available in cases like **M/s Flexi Caps And Polymers Pvt Ltd Versus Commissioner, CGST & Central Excise-Indore [2021 (9) TMI 917 - CESTAT NEW DELHI] & M/s Mithila Drugs Pvt. Ltd. Versus Commissioner, Central Goods And Service Tax, Udaipur [2022 (3) TMI 58 - CESTAT NEW DELHI]**.

Another major issue relates to transition/refund of cesses as the same were not lapsed. Here again, various petitions lie before the High Courts and various refund claims before the jurisdictional authorities. In such cases also, various CESTAT Benches have allowed cash refund as they were not allowed to be transitioned in cases such as:



BHEL Vs. Commissioner of CGST, New Delhi [2019 (4) TMI 1896- CESTAT NEW DELHI] and also M/S. SCHLUMBERGER ASIA SERVICES LTD., Versus COMMISSIONER OF CE & ST, GURGAON-I reported in 2021 (5) TMI 954- CESTAT CHANDIGARH.

Transitional credit of service tax paid under RCM after the introduction of GST, mistake in selecting the table while filing the TRAN-01 form, Revision of ST-3, ER-1 returns as well for taking Cenvat credit which were omitted to be taken before the due date for filing the ER 1/ST3 returns, claiming 100% credit on capital goods under Section 140(2), the list of issues with transitioning credit is rather long.

However, as stated above, the ball is in the hands of the Council. The present orders should not be seen as burdensome, but rather a clean slate wherein transitional claims must be allowed judiciously and as per the procedure prescribed by the law. The Department also has the powers to verify and allow/disallow the claims, therefore, they can take it up without any fear of mischief and allow genuine claims. This is also an opportunity to rectify the issues that were not foreseen under Section 140 or caused by Section 140. However, if the instructions are in the form of negating the jurisprudence laid down by High Courts and CESTAT Benches, the entire exercise shall be in futility as the assessee will again approach the Court. How this will play out, only time will tell.

P Sai Makarandh

Advocate

Swamy Associates



Before parting...

-Jk

This year we have recruited a handful of candidates from SASTRA for Swamy Associates, and I requested Mr. Raghavendra Rao, my revered friend blessed with a razor-sharp brain and intelligence to take a session on “Supply” as a part of the Induction program and he sent me this..

Zero – rated supplies are not actually zero-rated. They can be of any tax rate from 5% to 28%.

Exempt supplies shall include non - GST supplies (Alcohol, Petrol etc.) but does not include non-supplies under GST (Sch III items).

Exempt supplies also become zero-rated supplies when exported.

Zero-rated supplies can also be made on payment of tax or without payment of tax.

Some “non- supplies” are “exempt supplies”, and some “exempt supplies” are “not exempt supplies” under Rule 42.

Thus, Zero-rated supplies can be taxable supplies, taxable supplies can be exempt supplies and exempt supplies include non-GST supplies and, in some cases, exempt supplies are not really exempt supplies.

Yes the syllabus is ready...

Welcome guys , let’s learn the Good and Simple Tax...



swamy associates[®]
— *best amongst* —

