

TAXWIZ

16th August 2021



The much awaited hearing in the Hon'ble Supreme Court in the matter of eligibility of input services credit for refund on account of inverted rate structure, was concluded recently.

On behalf of an intervenor, we have also put forth our arguments, which is based on a different approach, altogether.

The Hon'ble Supreme Court has reserved its judgement and let us wait for the judgement.

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GST CASE LAWS

1 DEEM DISTRIBUTORS PRIVATE LTD 2021-VIL-572-TEL

Taxpayer cannot be asked to make payment towards tax, interest penalty while investigation is pending. HC directed the respondents to refund the amount already collected from petitioner along with interest @7% from the date of receipt till the date of refund.

2 FINE EXIME PRIVATE LIMITED 2021-VIL-585-BOM

Attachment of bank account, in contemplation of proceedings under Section 73 lacks jurisdiction and void.

3 S S OFFSHORE PVT LTD 2021-TIOL-1641-HC-MUM-GST

The provisional attachment of bank account under Section 83, in the absence of conditions precedent is an error of jurisdictional fact.



4 R M DAIRY PRODUCTS LLP 2021-VIL-553-ALH

The amount of Credit that can be blocked under Rule 86 A is not the balance of credit on the date of passing order under the said rule, but to an extent of fraudulently availed credit. Rule 86 A is not a recovery provision. .

5 SREE RAJENDRA STEELS 2021-TIOL-1668-HC-MAD-GST

Non speaking order, disallowing credit on the ground of "fake invoices" is not proper. The documents and evidences adduced by the taxpayer have to be considered and a speaking order has to be passed.

6 VALLALAR BOREWELLS 2021-TIOL-24-AAAR-GST

Drilling of wells for agricultural purposes is not a support service for agriculture and hence not entitled for exemption.





GST CASE LAWS

7 NEW TIRUPUR AREA DEVELOPMENT CORPORATION LIMITED 2021-TIOL-26-AAAR-GST

Potable water obtained after treatment of raw water is not "purified water" and hence qualifies for exemption.

8 BHARAT DYNAMICS LIMITED 2021-VIL-302-AAR

Submarine Fired Decoy Systems (SFDS) an anti torpedo defence system for submarines is not classifiable as parts of ships but under Chapter 93 dealing with arms and ammunition

9 JUZI FRUITS PRIVATE LIMITED 2021-VIL-284-AAR

Sale of cut-fresh fruits/dry-fruits in sealed bowl without additives /preservatives, under a brand name attract GST @ 5% ..

10 SCV SKY VISION 2021-VIL-294-AAR

Without transfer of liabilities, transfer cannot be treated as transfer as going concern.

11 GOODWILL AUTO'S 2021-VIL-282-AAR

Leasing of Diesel Generator. Cost of diesel separately claimed also to be included in the value for GST purpose.

12 INDIAN INSTITUTE OF MANAGEMENT, TIRUCHIRAPALLI 2021-TIOL-180-AAR-GST

IIMT (INDIAN INSTITUTE OF MANAGEMENT, TIRUCHIRAPALLI) is a Government entity and required to comply with TDS provisions and also liable to pay GST under RCM upon receipt of legal services.





GST CASE LAWS

13 NATIONAL INSTITUTE OF TECHNOLOGY, TIRUCHIRAPPALLI 2021-TIOL-187-AAR-GST

NITT is a Government entity and required to comply with TDS provisions and also liable to pay GST under RCM upon receipt of legal services.

14 TAMIL NADU LABOUR WELFARE BOARD 2021-VIL-278-AAR

Tamil Nadu Labour Welfare Board established under Tamil Nadu Labour Welfare Fund Act 1972 is not a local authority and liable to pay GST on renting of immovable property under forward charge.

15 SEETHARAMANJANEYA DAL AND FRIED GRAM MILL 2021 (8) TMI 524 - AUTHORITY FOR ADVANCE RULING, ANDHRA PRADESH

Milling of red gram into red gram dhal is job work. Packing charges collected separately would constitute composite supply along with such job work.

16 DEERAJ GOYAL 2021 (8) TMI 525 - AUTHORITY FOR ADVANCE RULING, ANDHRA PRADESH

Applicant acts as an intermediary between truck owners and Goods Transport Agencies and charges commission for the said service from the truck owners. Service is in the nature of support service for transportation of goods subject to GST @ 18% under SAC 9967.



Who is GTA itself is a vexed question. And now there is an intermediary in the chain!





GSTN Portal Updates

- **Updating the Annual Aggregate Turnover (AATO) by taxpayers**

The Annual Aggregate Turnover (AATO) has been calculated based on the returns filed by the taxpayers. The detailed advisory on calculation methodology of AATO has been specified under the 'Advisory' hosted at Taxpayers' Dashboard. A functionality has been provided at the Common Portal to modify the AATO where taxpayers have reason to believe that the AATO has been calculated wrongly. In such cases, taxpayers may modify the Annual Aggregate Turnover (AATO). In case such modification is made beyond a certain limit (as specified in the 'Advisory'), the same shall be sent to the jurisdictional officer's Dashboard for appropriate action, if required.

However, it has been seen that many taxpayers have used the functionality to modify AATO just for confirming it, which is not required. In case, the AATO is correct in their opinion, they are not required to take any action.

LINK: <https://www.gst.gov.in/newsandupdates/read/494>

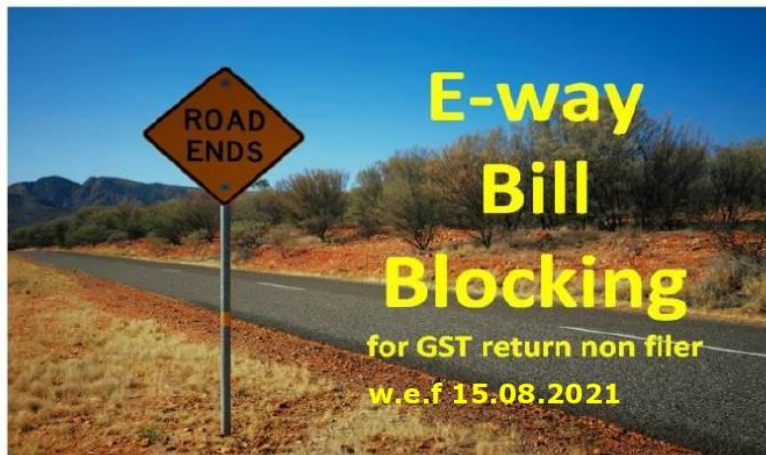




GSTN Portal Updates

- **Advisory for taxpayers regarding blocking of E-way Bill (EWB) Generation facility resume after 15th Aug, 2021**

Road Block for Double Fault



In terms of Rule 138 E (b) of the CGST Rules, 2017, the E Way Bill generation will be blocked for outward movement of goods, in case the registered person fails to file GSTR-3B for two or more consecutive months. This restriction was temporarily suspended due to pandemic and will resume from 15.08.2021. As per the advisory, the e-way bill would be blocked if

- Form GSTR-3B has not been filed for two or more consecutive months for the months up to June, 2021 or
- Two or more statements in Form GST CMP-08 has not been filed for the quarters up to April to June, 2021



Upon filing of the returns/statement or in cases where the default in return filing is reduced to less than two tax periods, the E-Way Bill facility would be automatically unblocked. Alternatively, you may also file online request in GSTN portal for unblocking of E-Way Bill generation facility, in Form GST EWB 05, to your jurisdictional tax official.



- Self-Certification of GST Returns allowed

LINK: http://gstcouncil.gov.in/sites/default/files/gst-articles/02-08-2021_GST>Returns.pdf

- GST collections Back on Track: Mop-up at ₹1.16 Lakh Cr in July

LINK: http://gstcouncil.gov.in/sites/default/files/gst-articles/02-08-2021_GST-Collections-July_2021.pdf

- CBIC launches Indian Customs Compliance Portal at cip.icegate.gov.in/CIP

LINK: https://twitter.com/cbic_india/status/1422869044496011276

- GST officers detect Rs.7,421 Cr tax evasion during April-June

LINK: http://gstcouncil.gov.in/sites/default/files/gst-articles/04-08-2021_tax-evasion.pdf

- CBIC has done away with renewal of Authorised Economic Operator certification after every 3 years for AEO-T1 entities.

LINK: https://twitter.com/cbic_india/status/1422169842438664196



- GST council focus on pruning exemptions, fixing anomalies

LINK: <https://www.livemint.com/economy/gst-council-to-look-at-pruning-exemption-list-fix-anomalies-revenue-secretary-11628670428056.html>

- GST Revenue collection for July 2021. ₹ 1,16,393 crore gross GST revenue collected in July.

LINK: <https://pib.gov.in/PressReleasePage.aspx?PRID=1741231>

- CGST Act came 4 years ago: Supreme Court Pulls up Centre Over Non-Creation of GST Appellate Tribunal

LINK: <https://www.livelaw.in/top-stories/gst-appellate-tribunal-supreme-court-pulls-up-central-govt-for-indefinitely-delay-of-gst-appellate-tribunal-constitution-179034>

- At 17% in July, GST e-way bill generation highest in four months

LINK: http://gstcouncil.gov.in/sites/default/files/gst-articles/04-08-2021_e-way-bill-highest.pdf

- Next GST council meeting likely to be convened in end-August. Compensation extension on agenda

LINK: <https://www.moneycontrol.com/news/business/economy/exclusive-next-gst-council-meeting-likely-to-convene-end-august-compensation-extension-on-agenda-7301201.html>





CUSTOMS

CASE LAWS

1 M/s RKKR STEEL 2021-TIOL-1599-HC-MAD-CUS

Writ Petition challenging the jurisdiction of DRI Officer in issuing SCN on the basis of the Larger Bench of Apex Court decision in the case of Canon India Pvt Ltd is dismissed on the ground that Commissioner of Customs conferred with the powers of adjudication under Section 4(1) and the cited decision is not relating to such conferment of powers under Section 4(1) and 5 of the Customs Act.

2 M/S GIVAUDAN INDIA PVT. LTD 2021-TIOL-1614-HC-KAR-CUS

Writ petition was allowed in the light of Larger Bench of Apex Court's decision in the case of Canon India Pvt. Ltd and the impugned Order in Original was set aside holding that the SCN issued by the DRI is not the one issued by the Proper Officer.

3 M/S. INDIAN POTASH LIMITED 2021 (8) TMI 253 - MADRAS HIGH COURT

The High court directed to refund a sum or ₹ 25,85,403/- paid by the petitioner on 05.08.2014 as demurrage charges for clearance of Ammonium Sulphate in bulk covered under the vessel M.V. Kenanga for the period of 26.07.2014 to 05.08.2014 since the petitioner was not at fault, and the detention made by the Customs Authorities was found to be wrong, which was subsequently clarified by the Ministry of Agriculture in proceedings No.17-1/2014-CFTI, dated 01.08.2014, to the Commissioner of Customs (Sea imports).





CUSTOMS

CASE LAWS

4. M/S. THE BELL MATCH COMPANY 2021 (8) TMI 133 - MADRAS HIGH COURT

The EOU Notification 52/2003 Cus dated 31.03.2003 amended by Notification No.34/2015 dated 25.05.2015 by way of substitution is held to be applicable retrospectively and accordingly writ appeal was allowed while quashing the Order in Original.

5. MINDA D-TEN PRIVATE LIMITED 2021 (8) TMI 120 - CESTAT NEW DELHI

The Bluetooth module is engaged in reception, transmission and conversion of voice and other form of data and accordingly it would fall under sub-heading 8517 6290 and not under 85299090.

6. M/S. N. RANGA RAO & SONS PRIVATE LIMITED 2021 (8) TMI 542 - CESTAT CHENNAI

Raw Agarbathies classified under CTH 33074100 became a restricted item for import into India vide DGFT Notification No. 15/2015-2020 dated 31.08.2019 but the import invoices raised by the foreign supplier are dated 27.08.2019 and 28.08.2019, which are well within the date of the above Notification, by which time the contract between the importer and the supplier had concluded. Therefore, in the absence of any malafides, the redemption fine and penalty imposed are deleted.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

ANTI DUMPING DUTY – 01.08.2021 to 15.08.2021

NO	DATE	GIST
42/2021	01.08.2021	Levy of anti-dumping duty on import of "Wire Rod of Alloy or Non-Alloy Steel" from China PR extended till 31.01.2022.
43/2021	09.08.2021	Anti-dumping duty imposed on import of "Phthalic Anhydride" from China PR, Indonesia, Korea RP and Thailand.
44/2021	12.08.2021	Levy of anti-dumping duty imposed on "Viscose Staple Fiber excluding Bamboo Fiber" vide Notification 43/2016 Cus (ADD) dated 08.08.2016 is revoked.

INSTRUCTION – 01.08.2021 to 15.08.2021

NO	DATE	GIST
17/2021	11.08.2021	Import of mobile signal repeater/booster and walkie-talkie sets falling under the category 'Transmission apparatus incorporating reception apparatus (ITC HS Code - 85256000)' are permitted only against a license to be issued by WPC Wing of Ministry of Communications and Information Technology.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

DGFT NOTIFICATION- 01.08.2021 to 15.08.2021

NO	DATE	GIST
15/2015-20	09.08.2021	The trial period of CHIMS is extended by further two months i.e. upto 30.09.2021 and the registration at CHIMS portal will be effective from 01.10.2021.
16/2015-20	09.08.2021	Period of modification of IEC is extended for the Year 21-22 till 31.08.2021 and without any fees.
17/2015-20	10.08.2021	Para 2.07 of the FTP regarding principles of prohibition and restrictions is amended to be in line with international agreements.

DGFT TRADE NOTICE – 01.08.2021 to 15.08.2021

NO	DATE	GIST
13/2021-22	04.08.2021	RoSCTL Scrip Holders in respect of Shipping bills filed upto 31.03.2020 are required to upload eBRCs latest by 15.09.2021.
14/2021-22	04.08.2021	Online procedure notified for filing and transfer of Advance Authorization(s) and EPCG Authorization(s) from the earlier entity to new entity in case of amalgamation/de-merger/acquisition/insolvency.
15/2021-22	09.08.2021	Quota for exporting "Diagnostic Kits (VTM/ RNA Extraction kits/ RT-PCR Kits) or their components /laboratory reagents" fixed and the procedure for submission of application online clarified.





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

1

CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LTD-2021-TIOL- 435-CESTAT-MAD

Cenvat credit cannot be denied at the recipient's end unless and until the assessment made by the supplier is revised.

3

NEYVELI Lignite Corporation Ltd-2021- TIOL-439-CESTAT-MAD

Liquidated damages are in the nature of penal charges and not for any service and hence service tax cannot be levied under the category of tolerating the Act.

2

ITC FREIGHT SERVICES PVT LTD -2021-TIOL-445-CESTAT- BANG

Providing freight forwarding service is not a part of a Custom House Agent's activity and therefore the profit earned on freight forwarding service cannot be charged to service tax under CHA Service during the pre negative list period.

4

TVS LOGISTICS SERVICES LTD-2021 (8) TMI 450 - CESTAT CHENNAI

Benefit of exemption under Notification No. 40/2012-ST dated 20.06.2012 cannot be denied for the services provided to SEZ unit solely on account failure to follow the procedural requirements..





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

5 HINDUSTAN AEGIS LPG LTD-2021 (8) TMI 339 - CESTAT MUMBAI

Denial of Refund of PLA balance on account of time bar is not justified.

6 SIVAMURUGAN CHIT FUND (P) LIMITED 2021 (8) TMI 298 - CESTAT CHENNAI

No tax can be retained by department, which is not required to be paid, by citing the time limit.

7 FORTUNE METALIKS LTD-2021 (8) TMI 299 - CESTAT NEW DELHI

Merely because the company issuing invoice was found non-existent, the appellant could not be denied the avilment of Cenvat Credit thereupon unless and until his involvement in terms of his knowledge about such non-existence and about the invoice to be bogus is not proved on record.





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

8 NSSL PVT. LTD- 2021 (8) TMI 239 - CESTAT MUMBAI

An assessee can file refund claim under Section 142(3) of CGST Act in respect of CENVAT credit of service tax paid after the appointed day.

9 COASTAL HOUSING (PROP KRISHNARAJA MAYYA) -2021 (8) TMI 83 - CESTAT BANGALORE

On the date of amendment to Section 73 of FA 1994, which was effective from 14/05/2016, the limitation period for April 2014 to September 2014 has already lapsed and the subsequent amendment cannot give life to the dead case.



Death and Taxes are certain. But Taxes are not more certain than death!





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