

TAXWIZ

16th Sep, 2021



The GST council is going to meet today (17th Sep) with a huge agenda in its hands.

When there are talks about bringing petrol and diesel into GST with varied views on the same, why not there be simultaneous levies of GST as well as the legacy levies (as in the case of tobacco products) as a step towards complete integration. This will ensure that there is no compromise on revenue, at the same time these goods can also join the GST stream.

We are happy that the plea raised by us before the Hon'ble Supreme Court, in the matter of inverted rate refund for input services, pointing out the gross inequities in the formula has caught the attention of the Court, which has elaborately dealt with the same. Though stopping short of reading down the formula, GST Council has been urged to look into this anomaly. This may also be an agenda item in the GST Council meeting, though a solution to this problem may take time.

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GST CASE LAWS

1 UOI vs VKC FOOTSTEPS INDIA PVT. LTD. 2021-VIL-81-SC

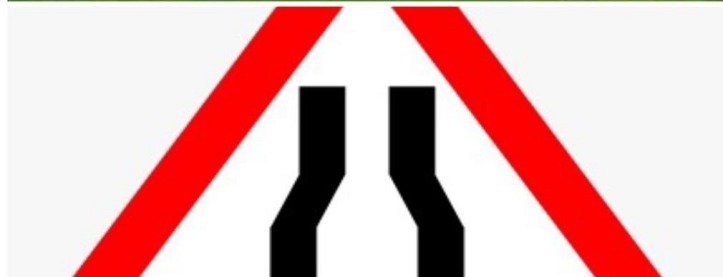
The Hon'ble Apex court upholds the validity of Rule 89 (5) which excludes ITC on input services from refund on account of inverted duty structure. However, it has acknowledged the fact that the formula suffers from the vice of treating unequals equally and has observed that though there's an anomaly, being a policy issue, it has to be considered by GST Council.



All is not lost and let us hope for the best.

2 THE ACST Vs COMMERCIAL STEEL LTD. 2021-TIOL-234-SC-GST-LB

Appellate remedy is the rule and writ remedy is the exception, which can be invoked only when there is a breach of fundamental rights, a violation of the principles of natural justice, an excess of jurisdiction or a challenge to the vires of the statute or delegated legislation, etc .





GST CASE LAWS

3 SM CIVIL LABOUR CONTRACTOR 2021-TIOL- 1784-HC-MAD-GST

The cancellation of registration order was based on a computer generated SCN, which offered the hearing on Gandhi Jayanthi - a public holiday. HC sets aside the matter by way of remand.



Teach some patriotism to the portal.

4 AS STEEL TRADERS VSP PVT LTD 2021-TIOL-1802-HC-AP- GST

Respondents directed to de-block the electronic credit ledger on account of lapse of one year from the date of blocking under Rule 86A.



Even for this, one has to knock the doors of HC.

5 NORTH END FOOD MARKETING PVT. LTD. 2021- TIOL-1769-HC-ALL-GST

HC propounds law on revision powers under GST.

6 OPC ASSETS SOLUTIONS PVT LTD 2021-VIL-625-TRI

HC comes down heavily on the Superintendent for passing a verbose order, based on half-baked, incomplete and internet acquired knowledge without deciding the vital issues.

SRI MADIVALAPPA KARVEERAPPA BELWADI 2021-TIOL-220-AAR-GST


Supply of Drivers and cleaners for solid waste management system to City Corporation /Municipalities /Zilla Parishads and manpower services like cleaning staff, cook, assistant cook, teachers, staff nurse and watchman to hostels and residential schools working under Social welfare department is exempted being in relation to Article 243G of the Indian Constitution. However, manpower services like drivers, data entry operator is taxable @ 18% for not being in relation to activities listed in the above provision.





8 KANAYALAL PAHILAJRAI BALWANI (SIDDHARTH FOODS) 2021-VIL-347-AAR

ITC availed on manufacturing of cakes and pastries has to be reversed at the time of disposal of expired goods.

 **You can't have the cake and eat it too.**

9 GHODAWAT EDUSERVE LLP 2021-VIL-343-AAR

Hostel facility provided by the coaching centers against consideration of an amount below Rs. 1,000 per day per student is exempt.

10 TIRUPATI CONSTRUCTION 2021 (9) TMI 568 - AUTHORITY FOR ADVANCE RULING, GUJARAT

Construction of fish market classifiable as composite supply of work contract services taxable @ 12 % as the service recipient is local authority and said supply is covered under Entry 22 (Markets and fairs) of Eleventh Schedule of Indian Constitution.

11 VADILAL INDUSTRIES LTD. 2021 (9) TMI 567 - AUTHORITY FOR ADVANCE RULING, GUJARAT

Paratha is classifiable under 2106 and it is different from "Khakhra, Plain Chapathi or roti". 5 % rate not entitled as it is not "ready to eat" but requires further heating.





12

THIRUNEELAKANTAN REALTORS 2021-VIL-348-AAR

Joint Development agreement between Landowner and Developer involves transfer of development right (TDR). Para 2 A of Notification 11/2017 would be applicable for valuation of flats constructed for Landowners in terms of Joint Development Agreement.





NOTIFICATIONS & CIRCULARS

Circular- 01.09.2021 to 15.09.2021

| NO | DATE | GIST |
|---------------------|------------|--|
| 158/14/2 021-GST | 06.09.2021 | The due date for filing of application for revocation of cancellation of registration falling between 01.03.2020-31.08.2021 has been extended to 30.09.2021 vide Notification No. 34/2021-CT dated 29.08.21. The benefit of Notification would be applicable in cases where the application for revocation of cancellation of registration is either pending with the proper officer/appellate authority or already rejected by the proper officer/appellate authority and also in those cases where no appeal has been filed. |



- **GST: Daily e-way bill generation till August 30 crosses July average**

LINK: http://gstcouncil.gov.in/sites/default/files/media-documents/01-09-2021_e-way-bill.pdf

- **Council to decide on GST aid for states beyond June 2022**

LINK: http://gstcouncil.gov.in/sites/default/files/media-documents/03-09-2021_Council-GST-aid.pdf

- **GST collection cross ₹1 lakh crore for second month in a row**

LINK: <https://www.livemint.com/economy/gst-revenue-collections-cross-rs-1-lakh-crore-for-second-month-in-row-11630483340921.html>

- **GST collection at Rs.1.12 lakh crore in Aug**

LINK: http://gstcouncil.gov.in/sites/default/files/media-documents/02-09-2021_GST-collection-Rs1.12-lakh-cr-Aug.pdf

- **Govt may not need special borrowing window for GST compensation to states**

LINK: <https://www.freepressjournal.in/business/govt-may-not-need-special-borrowing-window-for-gst-compensation-to-states>

- **Rs.1,819 crore fake GST invoice racket busted, two held in Odisha**

LINK: <https://www.newindianexpress.com/states/odisha/2021/sep/03/rs-1819-crore-fake-gst-invoice-racket-busted-two-held-in-odisha-2353665.html>

- **GST Council 45th meeting:**
Here are key issues that may be addressed

LINK:<https://www.cnbctv18.com/views/gst-council-45th-meeting-here-are-key-issues-that-may-be-addressed-10697141.htm>

- **GST council may allow intra-state pharma cess, discuss States' dues**

LINK:https://www.business-standard.com/article/economy-policy/gst-council-may-allow-intra-state-pharma-cess-discuss-states-dues-121091300040_1.html

- **Council to mull capacity-based GST on evasion prone sectors**

LINK:<https://www.thehindu.com/business/council-to-mull-output-based-gst-on-sectors-seeing-evasion/article36325389.ece>

- **GST anomaly on tetra packs caused revenue loss of ₹948 crore to govt, says Think tank**

LINK:<https://www.thehindubusinessline.com/economy/policy/gst-anomaly-on-tetra-packs-caused-revenue-loss-of-948-crore-to-govt-says-think-tank/article36431721.ece>

- **Gradual Aadhaar authentication for 8 million existing GST firms on the cards**

LINK:<https://www.hindustantimes.com/business/gradual-aadhaar-authentication-for-8-million-existing-gst-firms-on-the-cards-101631518347445.html>



- **Govt. must constitute GST tribunal: SC**

LINK:<https://www.thehindu.com/news/national/govt-must-constitute-gst-tribunal-sc/article36325360.ece>

- **Maharashtra: 'Other charges' collected by builder to attract 18% GST**

LINK:<https://timesofindia.indiatimes.com/city/mumbai/mumbai-other-charges-collected-by-bldr-to-attract-18->

BusinessLine
e-Paper

MADRAS HC RULINGS

Order on GST computation for RWA contributions stayed

Division Bench says the CBIC circular on the subject has 'wider ramifications'

SHISHIR SINHA

New Delhi, September 14

A Division Bench of Madras High Court has stayed the quashing of a Central Board of Indirect Taxes and Customs (CBIC) circular prescribing GST on the entire contribution to Resident Welfare Association (RWA), if the amount exceeds ₹7,500.

A division Bench of Justices TS Sivagnanam and Sathi Kumar Sukumara Kurup stayed the quashing of the CBIC order till further order as "the circular has wider ramifications."

On July 1, a single Judge Bench of Justice Anita Sumanth had ruled that the conclusion of the Tamil Nadu Authority for Advance Ruling (AAR) as well as the circular to the effect that any contribution above ₹7,500 would disentitle the RWA of 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," she had said.

Tax department appeals

The Tax Department had appealed against the ruling. Appearing for the department, Advocate R Hemalatha raised four propositions of the law. She said that as per the law, it is the transaction value that is subjected to GST and transaction value would be the entire amount contributed towards maintenance charges. The transaction value cannot be bifurcated. Since no exemption is granted when the amount exceeds ₹7,500, the entire transaction value would be subjected to tax.

"The word 'upto' can be interpreted in both ways. It could either mean exemption is granted only when the transaction value is less than ₹7,500 or exemption is granted only for ₹7,500 when the transaction value is more than ₹7,500," she argued while highlighting that exemption under GST is adop-



On July 1, a single Judge Bench had ruled that any contribution above ₹7,500 would disentitle RWA of exemption. **KARUNAKARAN M**

tion of service tax regime. She also said the exemption is intended for middle class and not for the owners of luxury apartments.

The legislative intention could be seen in the Budget speech 2012-13 where the exemption for the monthly charges payable by a member to housing society was raised from ₹3,000 to ₹5,000. While

discussing about Affordable Housing Scheme, it was said that the said proposal is to make the life of those who own an apartment a little easier. Therefore, "no exemption is applicable when the monthly contribution exceeds ₹7500," she emphasised.

After hearing the arguments, the bench opined that

the legal issue has to be decided in the matter and accordingly, it accepted the appeal.

It may be noted that Tamil Nadu AAR, in its order in June 21, 2019, had 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 Ministry 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 at 18 per cent shall be payable on the entire amount of ₹9,000 and not on (₹9,000 - ₹7,500) ₹1,500," it explained.



Inverted duty refund only for inputs, not input services: SC

Prefers Madras HC ruling; asks GST Council to relook the formula

SHISHIR SINHA

New Delhi, September 13

The Supreme Court on Monday held that inverted duty refund is admissible only with respect to inputs and not for input services, thus putting to rest the doubts after contradictory views by the High Courts of Madras and Gujarat. However, the apex court pointed to some anomalies in the computation formula for refund and urged the GST Council to look into them.

Impact on many sectors

The decision will have an impact on companies engaged in the manufacture of footwear and textiles as also those in the e-commerce business.

"We affirm the view of the Madras High Court and disapprove of the view of the Gujarat High Court," a Division Bench of Chief Justice Dhananjaya Y Chandrachud and Justice MR

Shah observed, while disposing of a bunch of 14 petitions.

The Gujarat High Court had held that refund of input services was admissible while the Madras High Court had ruled against it. The apex court upheld the amendments made to Rule 89 (5), restricting such refund only for inputs and said that it is not *ultra vires* of Section 54 of the GST Act. It also observed that the intention of the government is to grant such credit only for inputs and the Court cannot enter into the policy domain of the government and direct the sanction of refund for input services also.

According to experts, though there will be an impact, the ruling has not closed options for the players.

On behalf of intervenors, G Natarajan, an advocate from Chennai, made an alternative plea before the Supreme Court that the input services credit must first be allowed to be used to pay tax on the inverted rated supplies though the formula mandates the entire tax liability is paid only out of input credit, so as to keep the refund entitle-



The decision will impact firms that manufacture footwear, textiles and those in the e-commerce business

ment to the minimum. The Court observed that "In making such an assumption the formula tilts the balance in favour of the Revenue by reducing the refund granted. We are equally cognizant of the fact that the proposed solution, that is, prescribing an order of utilisation of the ITC accumulated on input services and inputs, may tilt the balance entirely in favour of the assesses."

Further, it strongly urged the GST Council to reconsider the formula and take a policy decision on it.

Tushar Aggarwal, Founder Partner, Tattvam Advisors, said: "The decision will impact footwear, solar power, textile, EPC

and various other industries that are under the inverted duty structure and have substantial ITC of input services."

Will end litigations

Aditya Singhanian, Founder, Singhanian's GST Consultancy & Co, said that the verdict puts an end to the litigation that were arising pan-India seeking refund on input services also. Yet, it's not a dead loss for taxpayers as the credit remains alive in their credit ledger.

Though the judgment gives the GST Council the room to relook the formula prescribed under Rule 89(5), to propose a mechanism by which the ITC on input services, otherwise not eligible for refund, is utilised first even while reducing the tax payable on the inverted rated supply of goods and services. "However, it appears that unless such a mechanism comes into place, the ruling will have some influence on the prices to the end-consumers as the GST on these input services seems to get off-loaded on the end-consumers," he said.

[Also read p3](#)



CUSTOMS

CASE LAWS

1 THRIVENI EARTHMOVERS PRIVATE LIMITED 2021 (9) TMI 86 - MADRAS HIGH COURT

The redemption certificates issued based on the information furnished by the petitioner, can never be construed as an order issued after adjudication for the purpose of exercise of power of review and therefore, the impugned show cause notice issued under Section 14 of FTDR Act, based on the report submitted by the Directorate of Revenue Intelligence, is a fresh cause of action and the jurisdictional point raised is not established.

2 GREAT EASTERN SHIPPING COMPANY LTD. 2021 (9) TMI 156 - ORISSA HIGH COURT

Exemption Notification No.21/2012-Cus dated 17th March, 2012 is only prospective in its application and that in respect of the import of the three vessels i.e. 'Jag Arnav', 'Jag Ratan' and 'Jag Rani' which were imported into India first on 30th April 2003, 13th November, 2007 and 26th August, 2011 respectively, Entry 462 read with Condition No.82 of the Notification dated 17th March, 2012 will not apply.

3 R.K. DIGITAL SOLUTIONS 2021 (9) TMI 91 - TELANGANA HIGH COURT

Gold pendants are classifiable as article of jewellery under CTH 711319 and not restricted. Seizure set aside and warehousing charges to be borne by the respondent department.





CUSTOMS

CASE LAWS

4 DS CHANDOK & SONS 2021 (9) TMI 417 - CESTAT MUMBAI

Though Central Excise Act, 1944 did empower re-valuation/re-determination of MRP with effect from 1st March 2008 in the specifically enumerated circumstances, there has been no corresponding empowerment under either Customs Act, 1962 or Customs Tariff Act, 1975 and therefore the exercise of such power in the proceedings leading to the impugned order is, thus, without authority of law.

5 INDIAN EXPLOSIVES PRIVATE LIMITED 2021 (9) TMI 359 - CESTAT HYDERABAD

Chartered Accountant Certificate to be considered as sufficient evidence to disprove unjust enrichment and since the refund claim amount is accounted as receivables, the decision of the Apex Court in the case of Solar Pesticides has been wrongly applied.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

CUSTOMS TARIFF NOTIFICATION– 01.09.2021 to 15.09.2021

| NO | DATE | GIST |
|---------|------------|---|
| 43/2021 | 10.09.2021 | Rescinds Notification No.34/2021 dated 29.06.2021 which provided for reduced Customs duty on Crude Palm Oil, palm oil, etc from 11.09.2021. |

CUSTOMS INSTRUCTIONS– 01.09.2021 to 15.09.2021

| NO | DATE | GIST |
|---------|------------|--|
| 20/2021 | 10.09.2021 | Instructions on easing availability of containers for exporters by expeditious disposal of unclaimed/uncleared/seized/confiscated goods. |





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

DGFT NOTIFICATIONS- 01.09.2021 to 15.09.2021

| NO | DATE | GIST |
|-----------------------------|------------|---|
| 22/2015-2020 | 02.09.2021 | Explanation incorporated in Notification no.36/2015-2020 dated 18.12.2019 to state that "Gold In any form" includes gold in any form above 22 carats under Chap 71 of Schedule I (Import Policy) of ITC(HS) and such imports can be made only by nominated agencies notified by RBI and DGFT. |
| 23/2015-2020 | 03.09.2021 | Mumbai/Tuticorin/Vishakapatnam Sea ports have been added for the import of crushed and de-oiled GM soya cake. |
| 24/2015-2020 | 09.09.2021 | Import policy of Mercury revised from 'Free' to 'Restricted' subject to obtaining Prior Informed Consent from MoEF&CC. |
| F.No.17/2/2021-EP (Agri.IV) | 09.09.2021 | Introduces Revised Transport and Marketing Assistance (TMA) for Specified Agriculture Products Scheme for the exports effected on or after 01.04.2021.Existing scheme would remain in operation for the exports made upto 31.03.21. |





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

DGFT PUBLIC NOTICE- 01.09.2021 to 15.09.2021

| NO | DATE | GIST |
|--------------|------------|--|
| 21/2015-2020 | 06.09.2021 | Implementation of MoU between Government of Republic of India and Government of Republic of Malawi for import of pigeon peas from Malawi - 50000 Mt of Tur (Pigeon peas) allowed to be imported during 21-22. |
| 22/2015-2020 | 06.09.2021 | Implementation of MoU between Government of Republic of India and the Government of the Republic of the Union of Myanmar for import of Urad and tur from Myanmar - 250000 Mt of Urad & 100000 Mt of Tur (Pigeon peas) allowed to be imported during 21-22. |
| 23/2015-2020 | 07.09.2021 | Para 2.107 of the Handbook of Procedure has been revised to incorporate items like pineapples, litchi, vanilla (crushed or ground), Tunas, Other prepared or preserved fish, beer made of malt, Fruit Wine, Rum, Articles of Apparel and Clothing Accessories under the Tariff Rate Quota (TRQ) under India-Mauritius CECPA. |





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

1. T.V.S. MOTOR COMPANY LIMITED 2021 (9) TMI 81 - CESTAT CHENNAI

TDS paid over and above the contract value and borne by the service receiver not to be included in taxable value for payment of Service tax on import of service.

2. ANIL POLYMERS PVT LTD 2021 (8) TMI 1169 - CESTAT MUMBAI

Inordinate delay in adjudication of show cause notice results in denial of principles of natural justice.

3. SOORAJMULL BAIJNATH INDUSTRIES PVT LTD-2021 (8) TMI 1131 - CESTAT CHANDIGARH

Interest is payable on refund of duty paid under protest, from the date of such payment.

4. MANBRO PHARMA PVT. LTD-2021 (8) TMI 1146 - CESTAT MUMBAI

The value of goods destroyed in flood need not be included in the aggregate value of clearance for determining SSI exemption.



Once drowned, cannot be hanged again.





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

5 DIRECT LOGISTICS INDIA PVT. LTD-2021 (9) TMI 500 - CESTAT BANGALORE

Profit earned on ocean freight charges cannot be charged to service tax under clearing and forwarding agency service.

6 MADURAI KAMARAJ UNIVERSITY W.M.P.(MD) NO.17152 OF 2019

No service tax is chargeable on affiliation fee collected by the university and other allied income such as renting of immovable property for post office, Bank, canteen , as all are allied services of education.

7 FASHION DEZIRE AND ANOTHER -2021-TIOL- 1754-HC-ALL-CX

SVLDRS – During the pendency of discharge certificate proceedings adjudication proceedings shall not be allowed to be continued.

8 KULITHALAI MUNICIPALITY- 2021-TIOL-531-CESTAT-MAD

Amount paid under SVLDRS after the due date of 30.06.2019 can be considered as PREDEPOSIT for entertaining the appeal.



Teachers' day bonanza





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

9 HINDUSTAN ZINC LTD-2021 (9) TMI 191 - CESTAT NEW DELHI

CENVAT credit of 1% or 2% CVD paid on imported coal under Customs Notification No. 12/2012-Cus dated March 17, 2012, cannot be denied.

10 SILVER CITY CONSTRUCTION LTD-2021-TIOL-530-CESTAT- CHD

Construction service undertaken by appellant prior to the sale of flats is self-service in terms of C.B.E. & C. Circular No. 108/2/2009-S.T. and hence not chargeable to service tax.

11 MARUTI SUZUKI INDIA LTD- 2021 (9) TMI 414 - CESTAT CHANDIGARH

Cenvat credit is eligible on event management services, Skill Competition between dealers and employees and other business events services like Vishwakaram Puja for inauguration of production line, etc.





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OTHER LOCATIONS

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- Hyderabad
- New Delhi
- Pune

