



Last fortnight saw clearance of various proposals for appointment and transfer of High Court Judges by the Supreme Court's collegium being cleared by the Government, paving the way for filling up vacancies in various High Courts. This will go a long way in ensuring speedier access to justice.

It is not out of place to note that the delay in formation of GST Appellate Tribunal is causing serious problems to the taxpayers. With more and more orders being passed, any delay in formation of the Tribunal would only be akin to giving birth to an obese baby.

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GST CASE LAWS

1 MUTHARAMMAN AND COMPANY 2021-TIOL-1984-HC-MAD-GST

Attachment of Bank Accounts under Sec. 83 of CGST Act. Mere allegation of fraudulent availment of ITC is not sufficient. As it is an extreme coercive and intrusive nature, even prior to determination of liability, formation of the opinion is very vital.

2 HEC INDIA LLP 2021-VIL-687-MAD

Rule 86-A of CGST Rules mandates to record reasons in writing for blocking of credit and the same to be communicated.

3 BRIGHT STAR PLASTIC INDUSTRIES 2021-TIOL-1965-HC-ORISSA-GST

Cancellation of registration on the ground that ITC has been availed on invoices issued by non-existent supplier is not a valid reason. The court observed that the respondents failed to establish that petitioner was hand in glove with the supplier in defrauding the revenue.



4 V P THANGAM TRADERS 2021-TIOL-1985-HC-MAD-GST

Since the disputed credit is recovered, electronic credit ledger has to be unblocked.

5 JYOTI CONSTRUCTION 2021-VIL-715-ORI

The Orissa HC has held that pre-deposit is payable only in cash and ITC cannot be used for that purpose, as ITC can be used only to pay "self assessed tax".

6 BRAJESH FICERS ENTERPRISES 2021-VIL-709-PAT

Exparte cancellation of registration order set aside. The court observes that delay in filing GST returns during pandemic is condonable.

7 SAVISTA GLOBAL SOLUTIONS PRIVATE LIMITED 2021-VIL-713-ALH

Once the application for refund has been processed and order was passed, the Department cannot escape the liability of interest that arises on passing of order beyond the prescribed time limit.





GST CASE LAWS

8 EXSERVICEMEN RESETTLEMENT SOCIETY 2021-TIOL-229-AAR-GST

As per Section 15 of CGST Act, 2017, GST is payable on total value of supply including employer portion of EPF and ESI.

9 GENSOL VENTURES PVT LTD 2021-TIOL-227-AAR-GST

Registration compulsory for an e-commerce operator intending to own, develop an electronic/digital platform for booking of cabs as per Section 9(5).

10 KANAHIYA REALTY PRIVATE LIMITED TS-515-AARWB-2021

Supply of incentives like gold coins, refrigerators, etc. at nominal price, if specified quantity of hosiery goods are purchased. Such supplies are neither composite supply nor mixed supply, but independent supplies. ITC of GST paid on purchase of these incentive goods is entitled.

11 KAKKIRALA RAMESH 2021- TIOL-236-AAR-GST

Warehousing service rendered for ginned and baled cotton is not entitled for exemption, as the raw cotton is subjected to processes of ginning and balling and hence cannot satisfy the definition of agricultural produce.





12

JAYSHREEBEN

RAMESHCHANDRA KOTHARI

2021 (10) TMI 52 - APPELLATE
AUTHORITY FOR ADVANCE
RULING, GUJARAT

Supply of video graphic equipments on hire to Government to record various Govt. programs cannot be considered as an activity in relation to Article 243G or Article 243W of the Constitution. Exemption not entitled.





NOTIFICATIONS & CIRCULARS

Circular – 01.10.2021 to 15.10.2021

NO	DATE	GIST
163/19/20 21- GST	06.10.2021	Clarification with respect to applicable GST rates and classification of certain goods.
164/20/20 21- GST	06.10.2021	Clarifications regarding applicable GST rates & exemptions on certain services.





Resumption of Blocking of E-way Bill (EWB) generation facility.

1. The blocking of E way bill generation facility had been temporarily suspended by Government on account of Covid pandemic. In terms of Rule 138 E (a) and (b) of the CGST Rules, 2017, the E Way Bill generation facility of a person is liable to be restricted, in case the person fails to file their return in Form GSTR-3B / statement in CMP-08, for consecutive two tax periods or more, whether Monthly or Quarterly.
2. The blocking of EWB generation facility has now resumed on the EWB portal for all the taxpayers. Going forward, from the tax period August, 2021 onwards, the System will periodically check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08 as per the regular procedure followed before pandemic, and block the generation of EWBs as per rule.
3. To avail EWB generation facility on EWB Portal on continuous basis, you are, therefore, advised to file your pending GSTR 3B returns/ CMP-08 Statement on regular basis.
4. For details of blocking and unblocking EWB, Click on below link:

• https://tutorial.gst.gov.in/userguide/returns/index.htm#t=FAQs_unblockingewaybill.htm

Note: Please ignore this update if you are not registered on the EWB portal.



- **Three-tier GST rate structure likely by next fiscal**

LINK: <https://www.freepressjournal.in/business/three-tier-gst-rate-structure-likely-by-next-fiscal>

- **'Defaulters on GST filing cannot raise e-way bills'**

LINK: <https://www.livemint.com/news/india/gst-return-filing-defaulters-cannot-raise-e-way-bills-gstn-11633427710452.html>

- **Time extended for availing GST Amnesty scheme**

LINK: <https://www.outlookindia.com/outlookmoney/tax/benefits-of-extension-date-for-availing-gst-amnesty-scheme-8671>

- **Court slams GST officials for blame game in tax case**

LINK: <https://timesofindia.indiatimes.com/city/delhi/court-slams-gst-officials-for-blame-game-in-tax-case/articleshow/86738664.cms>



- Ice cream parlours to attract 18% and cloud kitchens 5% GST: CBIC

LINK: <https://www.moneycontrol.com/news/business/economy/ice-cream-parlours-to-attract-18-and-cloud-kitchens-5-gst-cbic-7552781.html>

- Refund interest paid on ineligible input tax credit, says industry

LINK: https://www.business-standard.com/article/economy-policy/refund-interest-paid-on-ineligible-input-tax-credit-says-industry-121100600081_1.html

- Govt releases ₹40k crores to States, UTs as GST shortfall

LINK: <https://www.livemint.com/news/india/centre-releases-rs-40-000-crore-to-states-as-gst-compensation-under-back-to-back-loan-facility-11633600622220.html>

- GST department muddies coconut market again with half-definition of copra

LINK: <https://www.newindianexpress.com/states/kerala/2021/oct/08/gst-department-muddies-coconut-market-again-with-half-definition-of-copra-2369371.html>



- **Nirmala Sitharaman urged to defer move to raise GST on railway products**

LINK:<https://timesofindia.indiatimes.com/business/india-business/nirmala-sitharaman-urged-to-defer-decision-to-raise-gst-on-railway-products/articleshow/86894166.cms>

- **GST network could face action for providing 'incorrect' info under RTI**

LINK:<https://thefederal.com/business/gstn-rti-reply/>

- **Govt May consider higher GST, fewer rates to simplify structure: Report**

LINK:
https://www.business-standard.com/article/economy-policy/govt-may-consider-higher-gst-fewer-rates-to-simplify-structure-report-121101200126_1.html



CUSTOMS

CASE LAWS

1 **AXIS BANK LTD 2021 (10) TMI 247 - CALCUTTA HIGH COURT**

The HC has stayed the SCN issued by the DRI officials in the light of the Cannon decision.

2 **NAVEEN KASERA 2021 (10) TMI 136 - DELHI HIGH COURT**

A gap of more than 02 years between the last alleged prejudicial activity undertaken by the petitioner cannot be the basis for a justifiable apprehension that the petitioner would indulge again in a similar prejudicial activity, for which he should be preventively detained.

3 **KARGAWAL CORPORATION 2021 (10) TMI 129 - BOMBAY HIGH COURT**

It is settled law that the quantum of redemption fine which could be imposed is always dependent on the determination of the market price of the goods confiscated 2011 (270) E.L.T. 631 (S.C.). The Apex Court in the case of Commissioner of Customs, Mumbai Vs. Mansi IMPEX has held “this is one of the pre-requisites prescribed in the statute itself”. In the case at hand, the COC (I) has not even conducted a sample market survey for determining the market price of goods, without doing that, it could not have been possible for the COC (I) to arrive at a legally justified and correct quantum of redemption fine to be imposed.





CUSTOMS

CASE LAWS

4 SHRI VIKRAM JAIN 2021 (10) TMI 200 - MADRAS HIGH COURT

In our considered view, the effect of the Circular dated 10.03.2017 need not be gone into in the instant case, as the respondent has complied with the Pre-Deposit condition for preferring the appeal before the CESTAT and the appeal has been directed to be listed for final hearing before the Division Bench during November, 2021. Therefore, the steps taken by the appellant/Department for auctioning the goods have to necessarily be deferred and await the decision of the Tribunal in the appeal filed by the respondent.

5 KTV HEALTH FOOD PVT LTD 2021-TIOL-1941-HC-MAD-CUS

The benefit of Circular No. 02/2020 dated 10.01.2020 cannot be denied to the petitioner on the alleged reason that, the education cess or the higher and secondary education cess being a different component cannot be treated as customs duty or additional customs duty. Impugned order denying such benefit is not sustainable and it is quashed with a direction to allow the benefit of the above circular.





CUSTOMS

CASE LAWS

6 ITC LIMITED 2021 (10) TMI 94 - CESTAT CHENNAI

Zero duty EPCG License and SHIS Scrip does not go together and accordingly, the appellant has returned the SHIS scrip unused to the JDGFT Hyderabad and which has been cancelled. As such there is no violation under EPCG Scheme. Impugned order requiring the assessee to approach PRC for relaxing the provisions requiring prior return of SHIS scrip by relying on the public notice is beyond the provisions of FTP and the impugned order is not sustainable and accordingly the demand is also set aside with consequential relief.

7 ENDEKA CERAMICS INDIA PRIVATE LIMITED 2021 (10) TMI 251 - CESTAT CHENNAI

Zirconium Sand Bulk is ore and not concentrate. As per the HSN Explanatory notes to Chapter 26, the term “concentrate” applies to ores which have had part or all of the foreign matter removed by special treatment. Board vide its letter dated 17.2.2012 had clarified that when ores are only subjected to processes like crushing, sizing, screening and washing, the resultant product cannot be considered as ‘concentrate’. In the present case, there is no evidence to show that Zircon Sand Bulk (Zirconium Ore) have undergone any special treatment. Accordingly, demand of duty denying the benefit of exemption is set aside with consequential relief.





CUSTOMS

CASE LAWS

RELIANCE JIO INFOCOMM LTD 2021 (10) TMI 392 - CESTAT MUMBAI

The assessment done by the importer under Section 17(1) of the Customs Act is not conclusive but is subject to verification by the proper Officer under Section 17(2) of the Central Act. If the proper Officer finds that self-assessment is incorrect, the proper officer has to re-assess the goods under Section 17(4) of the Customs Act. There is nothing on the record which may indicate that the proper officer did not accept the self-assessment and carried out the re-assessment. Also the benefit of the extended period of limitation could not have been invoked.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

CUSTOMS TARIFF NOTIFICATION– 01.10.2021 to 15.10.2021

NO	DATE	GIST
48/2021	13.10.2021	Notifies reduction of BCD on Crude & edible soya, sunflower and palm oils till 31.03.2022.
49/2021	13.10.2021	Notifies reduction in Agriculture Infrastructure and Development Cess leviable in crude soya, sunflower and palm oils till 31.03.2022.

ANTI DUMPING DUTY NOTIFICATION– 01.10.2021 to 15.10.2021

NO	DATE	GIST
58/2021	01.10.2021	Continuation in levy of anti-dumping duty on imports of “Jute products” namely, Jute Yarn/Twine , Hessian fabric, and Jute sacking bags imported from Bangladesh and Nepal till 31.05.2022.
59/2021	04.10.2021	Extending the levy of anti-dumping duty on imports Ceramic Tableware and Kitchenware, excluding knives and toilet items hitherto imported from China PR, also to imports from Malasiya to prevent the circumvention of anti dumping duty levied on subject goods originating in or exported from China PR.
60/2021	14.10.2021	Levy of ADD on imports of Aceto Acetyl Derivatives of aromatic or hetrocyclic compounds also known as Arylides from China PR introduced.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

CUSTOMS INSTRUCTION- 01.10.2021 to 15.10.2021

NO	DATE	GIST
21/2021	05.10.2021	Chief Commissioners of Customs / DGRI instructed to submit the Intimation of Arrest Report & Incident Report- to the Member(Investigation).

DGFT NOTIFICATION- 01.10.2021 to 15.10.2021

NO	DATE	GIST
34/2015-2020	04.10.2021	The export of Syringes with or without Needles has been put under 'Restricted' category.

DGFT INSTRUCTION- 01.10.2021 to 15.10.2021

NO	DATE	GIST
108	11.10.2021	Clarifications issued for transfer of space by the exiting SEZ Unit under the extant provisions of Rule 74 of SEZ Rules, 2006.

DGFT PUBLIC NOTICE- 01.10.2021 to 15.10.2021

NO	DATE	GIST
27/2015-2020	04.10.2021	Allocation of the quantity of 5841 MT sugar (raw and/or white sugar) to be exported to EU under TRQ scheme from 01.10.2021 to 30.09.2022 has been notified.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

DGFT TRADE NOTICE- 01.10.2021 to 15.10.2021

NO	DATE	GIST
19/2021-2022	01.10.2021	Last date for Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform is extended till 31st October 2021.
20/2021-2022	05.10.2021	Procedure and Criteria for submission and approval of applications online for obtaining license for export of Syringes (with or without Needles).





THE LEGACY

1 KUSUM HEALTHCARE PVT 2021 (10) TMI 229 - CESTAT NEW DELHI

Transfer of funds from branches of the company outside India to head office in India, as reimbursement of cost of maintenance of branches cannot be treated as a consideration for taxable service.

2 BASE EDUCATIONAL SERVICES 2021 (10) TMI 335 - CESTAT BANGALORE

When service tax is paid by mistake, a claim for refund cannot be barred by limitation under Section 11B.

3 CROSS TAB MARKETING SERVICES PVT LTD 2021-TIOL-637-CESTAT-MU- CROSS TAB MARKETING SERVICES PVT LTD

The amount of Refund claimed under Rule 5 of CCR, 2004, cannot be varied by holding that certain services do not qualify as input services. To determine whether the input service on which credit was taken was eligible or not, proceedings had to be initiated under Rule 14 of CCR, 2004.

4 INDIAN ADDITIVES LTD 2021-TIOL-641-CESTAT-MAD

For payment of Service Tax on Royalty paid to foreign company amount of TDS (withhold tax) is not includible in the value of taxable service.





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

5 WAY2WEALTH BROKERS PVT LTD

2021-TIOL-1969-HC-KAR-ST -

The Proviso of Section 11B of the Central Excise Act, 1944 will not be applicable to the amount paid as service tax under mistaken notion. Therefore, time limit mentioned in section 11B of the said Act is not applicable.

6 INTERDRILL REPAIRS AND SERVICES PVT. LTD.

2021 (9) TMI 1282 - BOMBAY HIGH COURT

SABKA VISHWAS- An opportunity can be granted to the applicant to rectify the bonafied mistake while filing the declaration under “Arrears” category instead of “litigation”.

7 NUVOCO

CORPORATION LTD.

2021 (10) TMI 184 - CESTAT NEW DELHI

The demand of duty by alleging clandestine removal cannot be made merely on the basis of shortage of raw materials. The production / manufacture should be proved by the revenue.

VISTAS





CENTRAL EXCISE AND SERVICE TAX CASE LAWS

SPORTY SOLUTIONZ PVT

**2021 (10) TMI 97 - CESTAT
ALLAHABAD .**

Sporting events held in Zimbabwe.
Broadcast in Bangladesh.
Appellant, who procured the
broadcast rights in India. No
Service Tax leviable, as event is
held outside India.





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