



HAPPY NEW YEAR

The dawn of the year was marked by the GST Council taking a step backwards, deferring the rate hike for the textile sector, to remove the problems arising out of inverted rate structure. The year also marks various changes in the GST law and procedures, kicking up from 1st January.



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GST CASE LAWS

1 UNION OF INDIA & ORS. VERSUS AAP AND COMPANY- 2021 (12) TMI 840 - SUPREME COURT

The Hon'ble SC has reversed the HC judgement based on its ruling in the case of Bharai Airtel Ltd. and has held that GSTR 3B is a return under Section 39 of CGST Act, 2017

2 VARDHMAN EXIM-2021-TIOL- 2352-HC-DEL-GST

Provisional attachment of bank account under Section 83 of CGST Act, 2017 is to be lifted on expiry of one year from the date of order passed under section 83 of CGST Act, 2017.

3 BHEL - 2021-TIOL-827- CESTAT, CHENNAI

CENVAT Credit not availed before 30.06.2017 is entitled to be refunded in cash. Substantial right cannot be taken away for procedural reasons.

4 CIRCAR FLOW TECHNOLOGIES PVT.LTD. - 2021-TIOL-828- CESTAT. CHENNAI

CENVAT Credit not availed before 30.06.2017 is entitled to be refunded in cash as per Section 142 (3) of the CGST Act.



On a hat trick!

5 MOTHER EARTH ENVIRON TECH PVT LTD-2021-TIOL-35-AAAR- GST

Land Filling pit used in solid waste management is a civil structure and not eligible for ITC in terms of Section 17(5)(d) of CGST Act.

6 NEW PANDIAN TRAVELS PRIVATE LIMITED-2021-VIL- 480-AAR

ITC is not available on GST paid on purchase of Motor Vehicle of seating capacity less than 13, which is further used for leasing/renting.





GST CASE LAWS

HINDUSTAN AGENCIES- 2021-VIL-467-AAR

The Activities of procuring rice as commission agent for millers and traders will attract GST @18%. Rice is not "agricultural produce".

INTEGRATED DECISIONS AND SYSTEMS INDIA PVT. LTD.-2021 (12) TMI 774-AAR

GST not payable on nominal amount recovered from the employees for providing transport facility.



NOTIFICATIONS & CIRCULARS

Notifications- Central Tax Rate (16.12.2021 -31.12.2021)

NO	DATE	GIST
18/2021	28-12-2021	Notifies changes in tax rate for goods w.e.f 01.01.2022
19/2021	28-12-2021	Amendment in list of exempt goods w.e.f 01.01.2022
20/2021	28-12-2021	Amendment in CGST rate on specified handicraft items w.e.f 01.01.2022
21/2021	31.12.2021	Seeks to supersede notification 14/2021- CT(R) dated 18.11.2021 and amend Notification No 1/2017- CT (Rate) dated 28.06.2017. GST rate for foot wear of sale value not exceeding Rs.1000 per pair is increased to 12%
22/2021	31.12.2021	Seeks to supersede notification 15/2021- CT(R) dated 18.11.2021 and amend Notification No 11/2017- CT (Rate) dated 28.06.2017. Benefit of Concessional rate of tax of 5%/12% for certain composite supply of work contract services supplied to "Governmental authority and Government entity" would not be available from 01.01.2022.





NOTIFICATIONS & CIRCULARS

Notifications – Central Tax (16.12.2021 -31.12.2021)

NO	DATE	GIST
38/2021- Central Tax	21.12.2021	AADHAR Authentication made mandatory for refund and revocation of registration w.e.f. 01.01.2022.
39/2021- Central Tax	21.12.2021	Seeks to notify 01.01.2022 as the date on which provisions of section 108, 109 and 113 to 122 of the Finance Act, 2021 shall come into force.
40/2021- Central Tax	29.12.2021	Availment of ITC is based on GSTR 2B. Due date for filing Annual Return (GSTR 9 & 9C) for the financial year 2020-21 extended from 31.12.2021 to 28.02.2022



NOTIFICATIONS & CIRCULARS

Notification – Compensation Rate (16.12.2021 - 31.12.2021)

NO	DATE	GIST
2/2021	28-12-2021	Seeks to amend Notification No 1/2017- Compensation Cess (Rate) dated 28.06.2017.

Circulars - CGST (16.12.2021 -31.12.2021)

NO	DATE	GIST
167/23/2 021-GST	17-12-2021	Clarification on GST on service supplied by restaurants through e-commerce operators
168/24/2 021-GST	30-12-2021	Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli.





Module wise new functionalities deployed on the GST portal for taxpayers

[LINK](#)

Mandatory Aadhaar authentication for registered person

The Central Government vide Notification No. 38/2021-CT dated 21.12.2021 has notified January 1, 2022 as the implementation date for Rule 10B of CGST Rules, 2017.

In the said rule, it is mandatory for the registered person to undergo Aadhaar authentication for the below purposes,

- Filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23 of CGST Rules, 2017
- Filing of refund application in FORM RFD-01 under Rule 89 of CGST Rules, 2017
- Refund of the IGST paid on goods exported out of India under Rule 96 of CGST Rules, 2017.

The taxable person, who have not yet authenticated their Aadhaar, may like to go through this authentication process before filing the above two applications and enabling GST system to validate and transmit the IGST refund data from GST system to ICEGATE system.





GSTN PORTAL UPDATES

If Aadhaar number has not been assigned to the concern person for Aadhaar authentication as specified above, such person may undergo e-KYC verification by furnishing the following:

- (a) She/he will feed Aadhaar Enrolment ID and upload the acknowledgement; and
- (b) She/he shall also upload any one of the following documents:
 - (i) Bank passbook with photograph; or
 - (ii) Voter identity card issued by the Election Commission of India; or
 - (iii) Passport; or
 - (iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that such person shall undergo the Aadhaar authentication within a period of thirty days from allotment of the Aadhaar number.

Aadhaar authentication or e-KYC verification before filing of refund may be completed by navigating to "Dashboard > My Profile > Aadhaar Authentication Status"





- Arrest under GST still remains a grey: [LINK](#)
- Govt cuts GST rate on ethanol meant for blending to 5%: [LINK](#)
- Food delivery apps should pay GST for supply from both registered, unregistered restaurants : [LINK](#)
- Dot backs refund of input tax credit for telecom sector: [LINK](#)
- Aadhaar mandatory for filing GST refund claim from January : [LINK](#)
- E-way bill signal pick up in economic activity in December : [LINK](#)
- Textiles ministry to approach GST Secretariat for restoration to 5% rate : [LINK](#)
- GST on online skill games: Onus on the GoM to provide a positive direction: [LINK](#)
- New provision from Jan 1: GST officials to make surprise recovery visits : [LINK](#)
- Basavaraj Bommai-led GoM on GST rate likely to submit report by February: [LINK](#)
- Government to tweak GST Act to let firms use GSTN data: [LINK](#)





- Clubs, assns, societies to levy GST on member-fee retrospectively from 2017 : [LINK](#)
- MSMEs fear harassment, misuse of power by officials under new GST regime : [LINK](#)
- FinMin notifies revised HSN for GST purpose: [LINK](#)
- Govt plugs big GST loophole, but small businesses may suffer: [LINK](#)
- New GST rules draconian, may lead to harassment :Experts: [LINK](#)
- Karnataka High court stays retro tax call on annuity to infra companies: [LINK](#)
- GST officers unearth Rs 150 crore cash at UP businessman house : [LINK](#)





Recovery of tax to be initiated only for unpaid self-assessed GST liability

Govt considering 'suitable' guidelines for implementation of such provisions

SHISHIR SINHA

New Delhi, December 30

Unpaid tax on self-declared supplies by a GST assessee will be considered as admitted liability, government sources said on Thursday. Accordingly, recovery can be initiated for that.

For such recovery, however, any apprehension of unauthorised visits of GST officials to premises is 'unfounded'. These explanations have come at a time when some changes in CGST (Central Goods & Services Tax) Act are coming into effect from January 1.

'Admitted liability'

One such change is amendment in Section 75 (12) of the CGST Act. An explanation has been added here which says: "the expression 'self-assessed

tax' shall include the tax payable in respect of details of outward supplies furnished under Section 37, but not included in the return furnished under Section 39."

Explaining this, a senior Finance Ministry official said that the tax on self-declared supplies by the registered person in GSTR-1, which has not been paid through GSTR-3B, will be considered as his self-assessed (and admitted) liability and can be recovered. "This explanation is also in line with the legal position taken by Courts in some cases," he said.

The law prescribes a registered person to declare his supply in return form, GSTR-1

and accordingly pay his tax liability with the filing of return form GSTR-3B. This helps the recipient to avail input tax credit (ITC) on supplies declared by his suppliers in their GSTR-1 and in respect of which tax has been paid.

Protecting recipients

However, if a supplier does not discharge his entire liability, then not only the recipient of supply gets affected as they will not avail ITC for supply where supplier has not paid tax, but the government too gets lower tax revenue.

"In many cases, the recipient may already have settled the payment for the supply too," the official said, while adding that this explanation has been added to explicitly clarify the legal intent so that recipients are not made to suffer

due to non-compliance on part of the suppliers.

He further mentioned that due opportunity would be provided to taxpayers to explain the difference in GSTR-1 and GSTR-3B in cases where bona-fide errors are committed in reporting details of outward supplies in GSTR-1. "Besides, the apprehension of unauthorised visits of the GST officials to the premises of the taxpayers for such recoveries is totally unfounded," he said.

Curbing fake invoices

Another change is related with 100 per cent invoice matching. This means an assessee will get ITC only to the extent of invoices matched. The measure aims to curb fake invoices as in a number of cases ITC has been availed in respect of supplies undeclared by their suppliers and on which tax has not been paid.





M.K. EXIM (INDIA) LIMITED 2021 (12) TMI 1121 - RAJASTHAN HIGH COURT

The benefits of MEIS scheme cannot be denied to the exporter on account of his past misdeeds in respect of other export promotion schemes, in the absence such a provision in the MEIS Scheme. The Government cannot resort to coercive recovery of the remaining amounts in an indirect manner by blocking the export incentives under unrelated schemes and future consignments.

RELIANCE INDUSTRIES LIMITED 2021 (12) TMI 859 - BOMBAY HIGH COURT

The proper officer, to whom power is conferred by Section 28 of the said Act and other related provisions would necessarily mean the proper officer, who in the first instance, assessed and cleared the goods, i.e., Appraising Officer of Air Cargo Complex. Therefore, the Additional Director General of DRI, cannot be the proper officer in the facts and circumstances of the case.





SHREE CREATIONS PVT. LTD 2021 (12) TMI 744 - CESTAT KOLKATA

Elaboration of description of goods declared in the Bill of Entry consequent to testing cannot be considered as mis-declaration to hold that goods were liable to confiscation under Section 111(m). Penalty not imposable under provisions which are not invoked in the show cause notice

BRIDGESTONE INDIA PVT. LTD 2021 (12) TMI 856 - CESTAT NEW DELHI

Any assessment including self-assessment needs to be appealed against and in the absence of such an appeal and consequential re-assessment, refund cannot be sanctioned.

JET AIRWAYS INDIA LTD 2021 (12) TMI 1113 - CESTAT MUMBAI

Exemption under Notification No.45/2017 Cus dated 30.06.2017 and 46/2017 Cus dated 30.06.2017 is applicable for parts/engines of aircraft, which were re-imported after repairs outside the country.

TARAJYOT POLYMERS LTD 2021 (12) TMI 1114 - CESTAT CHENNAI

While deciding the question of time-bar in respect of departmental appeals, despite being given several opportunities to produce evidence of the actual date of receipt of the order by the reviewing authority, the department has failed to produce the same. On such score, the Hon'ble Tribunal had no hesitation in holding that the appeals were time-barred.





HIMACHAL JOINT VENTURE 2021 (12) TMI 1023 - CESTAT NEW DELHI

The appellant got to know about the SCN and OIO issued against him in 2015 for demand of duty for non fulfillment of EO under EPCG scheme only when recovery proceedings were initiated against him much later. He has subsequently requested for a copy of the OIO and received it on 06.01.2017. The Hon'ble Tribunal has held that 06.01.2017 should be considered as relevant date for computing appeal period.





CUSTOMS TARIFF NOTIFICATIONS- 16.12.2021 to 31.12.2021

NO	DATE	GIST
53/2021 -Cus	20.12.2021	BCD on Refined palm oil reduced from 17.5% to 12.5% till 31.03.2022.
54/2021 -CUS	24.12.2021	Amends Notification No. 46/2011-Customs dated 01-06-2011 to give effect to 13th tranche of preferential tariff as per ASEAN India Trade in Goods Agreement (AITIGA).
55/2021 -CUS	29.12.2021	Amends notification no. 50/2017-Customs pertaining to customs duty and IGST for goods imported into India to align with HSN 2022 w.e.f. 01.01.2022.
56/2021 -CUS	29.12.2021	Amends notification no. 82/2017-Customs pertaining to rate of duty under chapters 50 to 63 on textile products, to align with HSN 2022 w.e.f. 01.01.2022.
57/2021 -CUS	29.12.2021	Amends various notifications giving exemption to electronic and defence equipment to align with HSN 2022 w.e.f. 01.01.2022.
58/2021 -CUS	29.12.2021	Amends notification no. 11/2018-Customs which pertains to exemption of specified goods from levy of Social Welfare Surcharge, to align with HSN 2022 w.e.f. 01.01.2022.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

CUSTOMS TARIFF NOTIFICATIONS- 16.12.2021 to 31.12.2021

NO	DATE	GIST
59/2021 -Cus	29.12.2021	Amends notification no. 53/2017-Customs pertaining to levy SAD on petroleum products, to align with HSN 2022 w.e.f. 01.01.2022.
60/2021 -CUS	30.12.2021	Seeks to amend FTA/PTA notification to align with HSN 2022 w.e.f. 01.01.2022.
61/2021 -CUS	31.12.2021	Customs duty exemption for Import of Covid-19 Vaccine extended upto 30.06.2022.

CUSTOMS NON_TARIFF NOTIFICATIONS- 16.12.2021 to 31.12.2021

NO	DATE	GIST
108/ 2021- CUS NT	31.12.2021	Amendments to schedule for drawback on export of goods w.e.f. 01.01.2022.
109/ 2021- CUS NT	31.12.2021	Transitional provisions under Sea Cargo Manifest and Transhipment Regulations extended up to 30 th June 2022.

CUSTOMS INSTRUCTION- 16.12.2021 to 31.12.2021

NO	DATE	GIST
29/ 2021- Customs	23.12.2021	Details of infrastructure available for testing of samples related to hazardous goods by Revenue Laboratories.





ANTI DUMPING DUTY NOTIFICATIONS- 16.12.2021 to 31.12.2021

NO	DATE	GIST
70/2021 -CUS (ADD)	17.12.2021	Amends Notification No. 47/2021-Customs (ADD) dated 26.08.2021 regarding levy of anti-dumping duty on "Natural Mica based Pearl Industrial Pigment.
71/2021 -Cus (ADD)	17.12.2021	Levy of anti-dumping duty on Imports of Sodium Hydrosulphite from China PR and Korea RP.
72/2021 -CUS (ADD)	17.12.2021	Imposition of anti-dumping duty on Imports of hydrogen peroxide from Bangladesh.
73/2021 -CUS (ADD)	17.12.2021	Levy of anti-dumping duty on Imports of calcined gypsum powder from Iran, Oman, Saudi Arabia and United Arab Emirates (UAE).
74/2021 -CUS (ADD)	21.12.2021	Levy of anti-dumping duty on imports of 'Silicone Sealant' originating in or exported from China PR for a period of five years i.e till 20.12.2026.
75/2021 -CUS (ADD)	21.12.2021	Imposition of anti-dumping duty on Imports of Hydrofluorocarbon (HFC) component R-32 from China PR.





ANTI DUMPING DUTY NOTIFICATIONS- 16.12.2021 to 31.12.2021

NO	DATE	GIST
76/2021 -CUS (ADD)	22.12.2021	Levy of anti-dumping duty on imports of 'Hydrofluorocarbon Blends (All blends other than 407 and 410 are excluded)' originating in or exported from China PR for a period of five years i.e till 21.12.2026.
77/2021 -Cus (ADD)	27.12.2021	Levy of ADD on "Decor Paper" originating in or exported from China PR for a period of 5 years i.e 26.12.2026.
78/2021 -CUS (ADD)	29.12.2021	Amends various anti-dumping duty notifications to align with HSN 2022 w.e.f. 1.1.2022.

DGFT NOTIFICATIONS- 16.12.2021 to 31.12.2021

NO	DATE	GIST
S.O. 5317 (E)	20.12.2021	Import policy for Moong shall be "Free" for consignments with Bill of Lading/Lorry Receipt dated on or before 31.03.2022.
S.O. 5318 (E)	20.12.2021	Import policy for Urad and Tur shall remain unchanged. The Import Policy is 'Free' for consignments with Bill of Lading/Lorry Receipt dated on or before 31.03.2022.





IMPORTANT CUSTOMS NOTIFICATIONS & CIRCULARS

DGFT NOTIFICATIONS- 16.12.2021 to 31.12.2021

NO	DATE	GIST
46/2015 -2020	20.12.2021	Free" import policy of Refined bleached deodorised palm oil, Refined bleached deodorised palmolein and other items falling under Chapter headings 15119010, 15119020 and 15119090 respectively.
47/2015 -2020	20.12.2021	Annual SCOMET Update - 2021 has been notified to amend the Appendix 3 (SCOMET Items) to Schedule-2 of ITC (HS) Classification of Export and Import Items, 2018.
48/2015 -2020	31.12.2021	Extension of Last Date for Submitting applications for Scrip based FTP Schemes.

DGFT PUBLIC NOTICE- 16.12.2021 to 31.12.2021

NO	DATE	GIST
43/2015 -20	16.12.2021	Certain additions/amendments have been made to Table 2 of Appendix 3B, the MEIS schedule to harmonize it with Notification No. 48 dated 22.12.2020 and changes as enacted by the Finance Act 2020.





1 BNP PARIBAS INDIA SOLUTION PVT LTD-2021 (12) TMI 676 - CESTAT MUMBAI

Eligibility of cenvat credit cannot be questioned in refund proceedings under Rule 5. Separate proceedings to be taken under Rule 14.

2 CIRCOR FLOW TECHNOLOGIES INDIA PRIVATE LTD.- 2021 (12) TMI 675 - CESTAT CHENNAI

Service Tax paid belatedly under reverse charge in 2019, which was eligible for CENVAT credit, is to be refunded in cash as per Section 142(3) of CGST Act, 2017.



Forward looking.

3 INDUSTRIAL HANDLING-2021 (12) TMI 526 - CALCUTTA HIGH COURT

Supply of material handling equipment on hire is classifiable under Supply of Tangible goods service with effect from 16th May, 2008 and the same cannot be taxed under “Support Services of Business or Commerce” .

4 SHREE ARIHANT TRADELINKS INDIA PRIVATE LIMITED AND MAHA SHAKTI COKE-2021 (12) TMI 581 - CESTAT AHMEDABAD

Cenvat Credit is eligible in respect of 2% concessional CVD paid for Coal as the said exemption is not covered by the specific bar provided under Rule 3(1)(i)(a) and (b) of CCR.





COROB INDIA P LTD-2021 (12) TMI 954 - CESTAT AHMEDABAD

As the amount paid during investigation is sufficient to cover the duty demand confirmed, interest and penalty, the benefit of reduced penalty of 25 % shall be extended.

PIRAMAL GLASS PVT. LTD.- 2021 (12) TMI 1009 - CESTAT AHMEDABAD

For export of traded goods, though the export was not made under bond, benefit of Rule 6(6)(v) of CCR cannot be denied and consequently, proportionate reversal of credit is not required.

TRISHUL METAL INDUSTRIES LTD. AND SHRI PRADEEP DALMIA-2021 (12) TMI 1148 - CESTAT NEW DELHI

Denial of CENVAT credit on the grounds of invoices being issued by non-existent dealer without delivering goods is not sustainable in the absence of any corroborative evidence to show that appellant has not received goods. Merely because the company issuing invoice was found non-existent, the recipient could not be denied Credit unless his knowledge about such non-existence is proved.





8 R. PANDI - 2021 TIOL-882-CESTAT-MAD

Contractor engaged in manufacturing activities in the premises of the principal would not amount to manpower supply service.

9 RELIANCE INDUSTRIES LIMITED-2021 (12) TMI 848 - CESTAT AHMEDABAD

Service Tax exemption to SEZ units. Time period of one year from date of payment of Service Tax is not applicable for credit distributed by Input Service Distributor.

10 SD MATERIAL HANDLERS PVT LTD-2021 (12) TMI 960 - CESTAT AHMEDABAD

Assessee shifted business from Mumbai to Surat. Obtained fresh registration. Balance 50 % Capital goods credit taken in Surat based on the invoice addressed to Mumbai address, denied by the department as the invoice is not in the name of Surat. CESTAT allows credit.



Only ease of doing business is promised and not ease of shifting business!

11 JOVEX INTERNATIONAL - 2021-TIOL-826-CESTAT-Del

12 % interest ordered to be paid for refund of pre-deposit.





FROM OUR KNOWLEDGE HOUSE

ARTICLE

GST Rate Changes for Government Works
By G. Natarajan, Advocate

[LINK](#)

GST Changes for E-Commerce Operators.

[LINK](#)





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