



## Editor's desk...

Today we launch **GiST**, the re-designed newsletter from the house of **Swamy Associates**. **GiST** would be a fortnightly edition inheriting all the attributes of our traditional flavors and spices of pun and satires, alongside distilled information.

**GiST** would cover primarily GST & Customs laws, to stay contemporary.

**GiST** will also run a new column "**Tax Cookies**" to cover snippets and tax-trivia.

Hoping to add value through **GiST**...



# Case laws

## Top picks



Madras HC applies “Doctrine of Necessity” and holds that the claim for refund of Service Tax paid under RCM (reverse charge), much after 01.07.2017, shall be considered as a claim under Section 142(3) - GANGES INTERNATIONAL PVT. LTD & ORS - 2002 (3) TMI 544 MADRAS HIGH COURT

Blocking of ITC under Rule 86A can be in respect of the Credit of input tax available in the electronic credit ledger alleged to be ineligible and the authority does not have the power to block the credit to be availed in future - SAMAY ALLOYS INDIA - 2022 (2) TMI 843 - GUJARAT HIGH COURT

# Case laws

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## GST



3. Limitation - The refund application of the petitioner could not have been rejected by the department merely on the ground of delay, ignoring the Hon'ble Supreme Court's order dated 10.01.2022 as per which the period between 15.03.2020 to 28.02.2022 has to be excluded for the purposes of limitation - **GAMMA GAANA - 2022 (3) TMI 578 - ALLAHABAD HIGH COURT**
  
4. Cancellation of registration. If the late fee remitted by the appellant falls short of any amount as per the Department's computation, then the appellant is entitled to know for which a show cause notice should have been issued. In the absence of notice, the order of cancellation of the registration made by the State and Central authorities are unsustainable - **LATIKA GHOSH 2022 (3) TMI 263 - CALCUTTA HIGH COURT.**
  
5. Summary order under DRC-07 could not be issued without issue of show cause notice under Section 73 or 74 - **NARSINGH ISPAT LIMITED - 2022 (3) TMI 1047 - JHARKHAND HIGH COURT**  
- **Summarily failed**

# Case laws

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## GST



6. Liability of interest under Section 50 of the Act could not be raised without initiating any adjudication proceeding either under Section 73 or 74 - **UNITY INFRAPROJECTS LTD - 2022 (3) TMI 794 - JHARKHAND HIGH COURT**
7. Violation of Principles of Natural Justice - Show cause notice does not indicate the contravention committed and issued in a format without striking off the irrelevant particulars and hence SCN quashed with liberty to initiate fresh proceedings in accordance with law - **BLA PROJECTS PVT. LTD - 2022 (3) TMI 446 - JHARKHAND HIGH COURT.**
8. Collection of tax during investigation - The only provision which permits deposit of an amount during pendency of an investigation is Section 74(5) of CGST Act, whereas the petitioner clearly mentioned that payment made by them during investigation should not be regarded as admission of liability. The amount collected from the Company is in violation of Article 265 and 300-A of the Constitution and hence the department is liable to refund the amount collected during the investigation - **BUNDL TECHNOLOGIES PRIVATE LIMITED - 2022 (3) TMI 625 - KARNATAKA HIGH COURT -**  
**Never count your chickens before the eggs hatch!**

# Case laws

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## Customs



Madurai Bench of the Madras HC allows a Writ petition against the demand of cost recovery charges without even posting of officers on cost recovery basis - **PEARL PORT WAREHOUSING PVT LTD - Order dt. 10.03.2022 - WP (MD) 7744/2021.**

Adjudication order is set aside on the grounds of violation of principles of natural justice for denial of cross examination of witnesses whose statement has been relied upon in the adjudication order and for not furnishing copies of documents to the petitioner which are relied upon in the order - **SUNIL KUMAR MITRA - 2022 (3) TMI 205 - CALCUTTA HIGH COURT.**



# Notifications

## Circulars

1.	Instruction No. 02/2022 - GST Dt. 22.03.2022	SOP for Scrutiny of returns for FY 2017-18 and 2018-19.
2.	Notification No. 02/2022 - Central Tax dt. 11.03.2022	Appointment of Common Adjudicating authority for adjudicating the show cause notices issued by DGCI .
3.	Notification No. 58/2015 - 2020 Dt.07.03.2022	Last date for submitting applications under MEIS (for exports made in the period - 01.04.2020 to 31.12.2020) has been extended upto 30.4.2022. The restriction of MEIS benefit based on allocation / outlay of Rs 5,000 Cr. stands omitted.
4.	Public Notice No. 50/2015 -2020 Dt.17.03.2022	Guidelines of ANF-4F of Handbook of Procedures, 2015 -2020 has been amended to allow submission of FIRC in case of exports made to OFAC listed countries under Advance Authorization.







# cookies

Small businesses may get exemption from compulsory GST registration for supply through E-Comm platforms.

CBIC issues Standard Operating Procedure (SOP) for the scrutiny of GST returns for the years 2017-18 & 2018-19. - *Hope its not named as "Operation G(ho)ST"*

CBIC has introduced a functionality facility to facilitate the restoration of cancelled Registrations.



# cookies

Madhya Pradesh dispenses E-way bills for intra-district movement of most of the goods - Notification No. FA3-08/2018/1/V/18 Dt. 23.03.2022

Payments received in the new-age crypto currencies to be under GST net - Investigations have started.

E-invoicing is a soar-away success says CBIC Member (GST) - *Is it a sore-away success too???*





# ITC



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The age-old dilemma whether Input Tax Credit ('ITC') is a concession or a vested right has been battled out and answered in various ways by many different courts under the previous taxation regimes (MODVAT/CENVAT) and in a few cases, even under the Goods and Services Tax ('GST') regime. In a few cases pertaining to TRAN-01, it was held that ITC is only a concession and not an indefeasible right, for example, *Nelco Limited Vs. Union of India* which challenged Rule 117 of the CGST Rules, however, in certain cases such as *Siddarth Enterprises Vs. Nodal Officer*, the Hon'ble High Court of Gujarat held that ITC is a vested right and Rule 117 cannot take away the same. While the jury is still out on the above issue, the Writ Petitioners approaching High Courts are getting their justice in the form of being able to refile their TRAN-01s provided they can prove that they actually suffered technical glitches.

Under the GST law, Section 16 and Section 17 provide for instances where ITC can or cannot be availed. While most business' follow the conditions prescribed, will Section 16 (2) (c) be finally the straw that broke the camel's back?

Section 16 prescribes eligibility of ITC wherein (2) (c) provides that tax charged in respect of a supply must actually be paid to the Government. On paper, the sub-clause is correct inasmuch as ITC cannot be allowed if the Government has not actually received the tax payable to them. However, in reality, it is considered as a harsh measure wherein genuine purchases can also be deprived of ITC merely because the person collecting said tax has collected it but not deposited it to the Government.



# ITC



## continues...

The Courts have also looked into this issue under the erstwhile law, especially under the VAT Act, the Hon'ble Supreme Court in ***Arise India Limited*** held that Section 9(2) (g) of the Delhi VAT Act was violative of Article 14 of the Constitution of India as it denied ITC to both bonafide and non-bonafide purchasers. Further in ***On Quest Merchandising India Pvt Ltd***, the Hon'ble Delhi High Court also held Section 9(2) (g) of the Delhi VAT Act is incorrect for denying ITC for *bonafide* purchasers and the remedy for the department would be to proceed against the defaulting seller to recover the tax amount and not deny the ITC to the purchaser. Even under GST, the Hon'ble Madras High Court in the case ***D.Y. Beathel Enterprises*** had also held that the seller must first be accounted for as to why the tax amount collected by them was not deposited to the Government.

This circles back to the original point, whether it is a large entity that files thousands of invoices in a day or a small entity, ITC is an invaluable resource for any business and tax planning is also done keeping in view of the ITC that will be availed. While we strictly believe that any money collected as tax should be paid to the Government and do not misinterpret the Revenue protecting its interests by Section 16 (2) (c), it should also be noted that genuine bonafide tax payers who purchased goods should not be punished so harshly merely because they made a mistake of purchasing from a party that did not remit the taxes to the Government or not filed their returns properly. A judicial middle ground approach must be sought for in respect of all the parties involved instead of a slew of notices from 2017-18 proposing to deny ITC and collect the same along with interest and penalties.



## before parting...

After two haunting years, this fiscal starts with a bright sunshine emitting rays of abundant hope. Apart from financial losses, the entire humankind was at unforeseen crossroads losing their near and dear. In this colossal catastrophe, Swamy Associates was able to compensate its ranks without any reductions and for the top tier, reductions are being reimbursed.

This was possible only because of the impeccable solidarity of our entire team and the extraordinary support of our esteemed clientele, showcased during this ghastly phase. I take this opportunity to salute one and all, who stood by us, during these testing times and promise to deliver the best of our services, as always.

### Miles to go...



chennai - coimbatore - madurai - pune  
bengaluru - hyderabad - ahmedabad - delhi