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Case laws

Top picks



- The artificial segregation of the transaction, into two parts is not tenable in law. It is, in substance, one transaction of sale of software and once it is accepted that the software put in the CD is “goods”, then there cannot be any separate service element in the transaction.
- **QUICK HEAL TECHNOLOGIES LIMITED [2022 (8) TMI 283 - SUPREME COURT]**
- The Union of India / GST Council are directed to issue advisory /instructions / recommendations to the respective States regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration, which is already being implemented by the States of Karnataka and Kerala.- **PRADEEP GOYAL [2022 (8) TMI 216- SUPREME COURT]**

Case laws

GST



1. Section 130 does not prohibit interim release of goods which are detained pending finalization of proceedings under Section 130. The State can insist on conditions being imposed to ensure that its revenue is protected. - **GOLDEN TRADERS [2022 (8) TMI 147 - KERALA HIGH COURT]**

2. Whether or not a payment is made under Section 129(1)(a) or security is provided under Section 129 (1) (c), the person who is the subject matter of proceedings under section 129 of the CGST Act has the right to challenge those proceedings and it is always open to the person who suffers proceedings under 129 of the CGST/SGST Acts to challenge those proceedings if he feels that the demand has been illegally raised on him.- **HINDUSTAN STEEL AND CEMENT [2022 (8) TMI 393 - KERALA HIGH COURT]**

3. Levy of tax and penalty on the ground of petitioner's transporter on being intercepted was found to carry GST paid goods to petitioner's office at Jabalpur whereas e-way bill generated showed destination at Indore. The appellate authority is directed to reconsider the appeal solely on the question of presence or absence of any malafide intention to evade tax on the part of the petitioner and pass appropriate orders within the outer limit of three months.- **AMARA RAJA BATTERIES LIMITED [2022 (8) TMI 96 - MADHYA PRADESH HIGH COURT]**

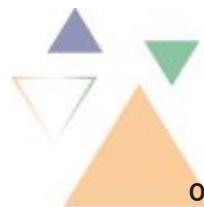
Case laws

GST



4. The notices under section 73(1) of the Act enclosed in the writ petition is in the standard format and neither any particulars have been struck off, nor specific contravention has been indicated to enable the petitioner to furnish a proper reply to defend itself. The show-cause notices can therefore, be termed as vague and hence the notices and the summary order are quashed.- **ROUSHAN KUMAR CHOUHAN [2022 (8) TMI 400 - JHARKHAND HIGH COURT]**

5. In absence of any allegation or material found of ill-intent on the part of the assessee to transport the goods for the purposes of sale, error in the e way bill cannot be a reason for imposition of tax and demand of penalty.
- **SHANU EVENTS [2022 (8) TMI 408 - ALLAHABAD HIGH COURT]**



Customs



1. Bombay High Court quashes the Show cause notice which has not been adjudicated for 25 years and directs the revenue authorities to refund Rs. 30 lakhs deposited by the petitioner before issuance of notice with accumulated interest @ 12 % p.a within eight weeks from the date of receipt of the order. - **M/S.RACHANA GARMENTS PVT LTD AND OTHER VS COMMISSIONER OF CUSTOMS (PREVENTIVE) MUMBAI AND 2 OTHERS**
2022 (8) TMI 345 Bombay HC

2. CESTAT holds the appellant is entitled for interest from the date of encashment of Bank Guarantee, under Section 129EE of the Customs Act @12% P.A. as the amount was lying in the nature of the pre-deposit with the department. - **M/s LEATHER SELLERS VS COMMISSIONER OF CUSTOMS & C.EX**
2022-TIOL-702 CESTAT- New Delhi

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Notifications

GST

Circulars

Sl.No	Notification No. and Date	Gist of changes
1	Notification No.17/2022-Central Tax dt.01.08.2022	Implementation of e-invoicing for the taxpayers having aggregate turnover more than Rs. 10 Cr in any FY 2017-18 onwards w.e.f. 01.10.2022.

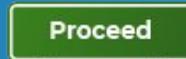


Notifications

GST

Circulars

Sl.No	Circular No. and Date	Gist of changes
1	Circular No. 177/09/2022- GST dt. 03.08.2022	Clarifications regarding applicable GST rates & exemptions on certain services.
2	Circular No. 178/10/2022- GST dt. 03.08.2022	Clarification regarding applicability of GST on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.
3	Circular No. 179/11/2022- GST dt. 03.08.2022	Clarification regarding GST rates & classification of goods based on the recommendations of the GST Council in its 47th meeting.



Notifications

Customs

Circulars

Sl.No	Notification No. and Date	Gist of changes
1	Notification No. 67/2022- Customs(N.T.)dt.08.08.2022	Passenger Name Record Information Regulations, 2022

Sl.No	Circular No. and Date	Gist of changes
1	Circular No. 11/2022- Customs dt.29.07.2022	Extension of Customs clearances beyond normal working hours in Inland Container Depot(s).



Notifications

DGFT

Circulars

Sl.No	Notification No. and Date	Gist of changes
1	Notification No. 26/2015-20 dt.10.08.2022	The requirement of advance registration of minimum 5 days from the expected date of arrival of import consignment under Non-ferrous Metal Import Monitoring System (NFMIMS) has been abolished/made zero.



Notifications

Public Notice

Circulars

Sl.No	Public Notice No. and Date	Gist of changes
1	Public Notice No. 19/2015-20 dt.27.07.2022	Standard Input Output Norms appearing under C-594, C-791 to C-796 and C-831 corresponding to export items under these sl.nos. viz Carbon/Alloy steels seamless tubes/Seamless stainless steel tubes of various grades as mentioned therein are suspended with immediate effect.
2	Public Notice No. 21/2015-20 dt.05.08.2022	Validity of Status Holder Certificates issued in the FY 2015-16 and 2016-17 under the provisions of FTP 2015-20 has been extended upto 30.09.22.



Notifications

Trade Notice

Circulars

Sl.No	Trade Notice No. and Date	Gist of changes
1	Trade Notice No. 15/2022-23 dt.01.08.2022	The transition period for mandatory filing of applications for Non-Preferential Certificate of Origin through the e-CoO Platform has been further extended till 31st March 2023.





cookies

Nil GSTR-1 return can now be filed with a single click by simply ticking the checkbox “File NIL GSTR-1” available at GSTR-1 dashboard.

CAG asks CBIC to complete verification of GST transitional credit claims as more than eight thousand of the top fifty thousand identified cases are yet to be verified.

Customs notifies Passenger Name Record Information Regulations, 2022- All airlines to provide detailed information of outgoing/incoming pax 24 hours before wheels off or face penalty – **“Kuruvi” wings to be clipped**



cookies

Customs faces the wrath of Bombay HC for using coercive measures during statutory appeal period- BG enforcement letter quashed and Commissioner directed to take necessary action against the errant officers for such lapses.

Fin Min to consider review of imposition of Export Duty on steel once formal proposal is received from Ministry for Steel – **Can the Man of Steel prevail upon the Iron lady?**

Manufacturers paid more GST than Service Providers during 2021-22- The tax paid by manufacturers was Rs.4,88,215 Crores and in respect of Service Providers it was Rs. 4,38,921 Crores.

LIQUIDATED DAMAGES

- P. Sai Makarandh

Schedule II of the CGST Act, 2017 prescribes activities or transactions which are treated as supply for the purpose of levying tax. Sl. No. 5 (e) provides taxing an agreement to do or to not do something i.e., agreeing to an obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. This is a very open ended entry which when liberally read could include any act of a person to be brought under the tax net. A similar provision was also provided for under Section 66E (e) under the erstwhile service tax law which also uses the exact wording. This being the scenario, there were several demands of Service Tax and now under GST for damages or compensation awarded to parties which were deemed taxable as they were agreeing to an obligation or tolerating an act, for example, an employee leaving an office before the end of his/ her contract. Further, several advance rulings were also issued in GST and held that liquidated damages are taxable.

While the Courts have held that mere receipt of money without a valid contract cannot be held as a service/ supply, a rather narrow view was taken up and many demands were confirmed for receipt of liquidated damages as the same was held to be tolerating the act of the other party breaching the contract.. In fact, the Hon'ble Madras High Court, in the case of ***M/s. GE T&D India Limited Vs. Deputy Commissioner of Central Excise, Chennai [2020 (35) G.S.T.L. 89 (Mad.)]***, held that an amount recovered from an employee from quitting the company without serving their notice period is not the employer tolerating the act of the employee but imposing cost upon such employee for the act. Such notice pay in lieu of sudden termination does not give rise to rendition of service either by the employer or employee and set aside the notice.

Under the GST regime as well, as discussed above, the said provision exists under Schedule II and it has been argued time and again that notice pay/ damages received cannot be treated as tolerating an act. Damages are awarded/ received when there is a breach of contract and is a provision in the contract itself wherein the parties to the contract agree to compensate if one of the parties to the contract breach the terms of the same. .



LIQUIDATED DAMAGES

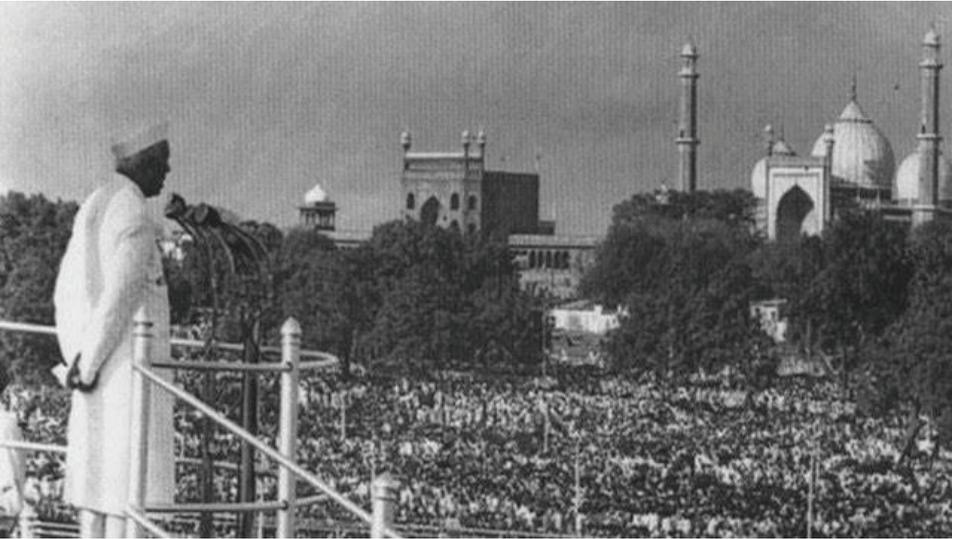
However, the essence of the contract was never to breach the contract but to perform the contract, and merely because one of the party is compensating the other for breach of contract, the party receiving damages was held to be tolerating the act of the other party breaching the contract . However, performance of contract is one of the cardinal principles of the contract. Liquidated damages are put in place to ensure that the parties to the contract do not breach the terms of the contract. The same reasoning is now provided for by the Department vide **Circular No. 178/10/2022- GST dated 03.08.2022.**

7.1.4 In this background a reasonable view that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable

While the above position was argued many times, it was not accepted by the Department. However, with the advent of the above Circular, the position is now finally clarified. Forfeiture of earnest money/ liquidated damages are stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty. Such payments being merely flow of money are not a consideration for any supply and are not taxable.



Before parting...



When Neil Armstrong said “It’s a small step for a man, a giant leap for mankind” to his colleagues on their moon-landing or when the revolutionary Martin Luther King Jr spoke “I have a dream” to a myriad gathering, they would have hardly known that these quotes would be etched in history. When we celebrate our 75th Independence day today, I honestly feel that, we should take few minutes sojourn from our cob-web routines, and read this historical speech by the then Prime Minister Mr. Jawaharlal Nehru on the eve of Indian Independence.

When read without any bias or mudslinging, to me, this speech is one of the greatest renditions of all-time, worth a read at least once in a lifetime, and that too for a citizen and his country, seeking redemption and direction on its Platinum Jubilee.



16

Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom.

A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

At the dawn of history India started on her unending quest, and trackless centuries which are filled with her striving and the grandeur of her success and her failures. Through good and ill fortune alike she has never lost sight of that quest or forgotten the ideals which gave her strength. We end today a period of ill fortune and India discovers herself again.

The achievement we celebrate today is but a step, an opening of opportunity, to the greater triumphs and achievements that await us. Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future?

Freedom and power bring responsibility. The responsibility rests upon this assembly, a sovereign body representing the sovereign people of India. Before the birth of freedom we have endured all the pains of labour and our hearts are heavy with the memory of this sorrow. Some of those pains continue even now. Nevertheless, the past is over and it is the future that beckons to us now.

That future is not one of ease or resting but of incessant striving so that we may fulfil the pledges we have so often taken and the one we shall take today. The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity.

The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.

And so we have to labour and to work, and work hard, to give reality to our dreams. Those dreams are for India, but they are also for the world, for all the nations and peoples are too closely knit together today for anyone of them to imagine that it can live apart.



Peace has been said to be indivisible; so is freedom, so is prosperity now, and so also is disaster in this one world that can no longer be split into isolated fragments.

To the people of India, whose representatives we are, we make an appeal to join us with faith and confidence in this great adventure. This is no time for petty and destructive criticism, no time for ill will or blaming others. We have to build the noble mansion of free India where all her children may dwell.

The appointed day has come – the day appointed by destiny – and India stands forth again, after long slumber and struggle, awake, vital, free and independent. The past clings on to us still in some measure and we have to do much before we redeem the pledges we have so often taken. Yet the turning point is past, and history begins anew for us, the history which we shall live and act and others will write about.

It is a fateful moment for us in India, for all Asia and for the world. A new star rises, the star of freedom in the east, a new hope comes into being, a vision long cherished materialises. May the star never set and that hope never be betrayed!

We rejoice in that freedom, even though clouds surround us, and many of our people are sorrow-stricken and difficult problems encompass us. But freedom brings responsibilities and burdens and we have to face them in the spirit of a free and disciplined people.

On this day our first thoughts go to the architect of this freedom, the father of our nation, who, embodying the old spirit of India, held aloft the torch of freedom and lighted up the darkness that surrounded us.

We have often been unworthy followers of his and have strayed from his message, but not only we but succeeding generations will remember this message and bear the imprint in their hearts of this great son of India, magnificent in his faith and strength and courage and humility. We shall never allow that torch of freedom to be blown out, however high the wind or stormy the tempest

Our next thoughts must be of the unknown volunteers and soldiers of freedom who, without praise or reward, have served India even unto death.

We think also of our brothers and sisters who have been cut off from us by political boundaries and who unhappily cannot share at present in the freedom that has come. They are of us and will remain of us whatever may happen, and we shall be sharers in their good and ill fortune alike.



The future beckons to us. Whither do we go and what shall be our endeavour? To bring freedom and opportunity to the common man, to the peasants and workers of India; to fight and end poverty and ignorance and disease; to build up a prosperous, democratic and progressive nation, and to create social, economic and political institutions which will ensure justice and fullness of life to every man and woman.

We have hard work ahead. There is no resting for any one of us till we redeem our pledge in full, till we make all the people of India what destiny intended them to be.

We are citizens of a great country, on the verge of bold advance, and we have to live up to that high standard. All of us, to whatever religion we may belong, are equally the children of India with equal rights, privileges and obligations. We cannot encourage communalism or narrow-mindedness, for no nation can be great whose people are narrow in thought or in action.

To the nations and peoples of the world we send greetings and pledge ourselves to cooperate with them in furthering peace, freedom and democracy.

And to India, our much-loved motherland, the ancient, the eternal and the ever-new, we pay our reverent homage and we bind ourselves afresh to her service.

- Jawaharlal Nehru

Jai Hind!

