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Case laws

GST



- Transfer of closing Balance of CENVAT Credit lying in the books of ISD as on 30.06.2017 is permitted to be taken by the petitioner and distributed to their recipient units by filing revised Tran-1 by following the ratio of the recent SC decision in the case of Filco Trade Centre Pvt Ltd.- **APAR INDUSTRIES LIMITED- 2022 (8) TMI 1146 - BOMBAY HIGH COURT**
- If any assessee disputes the liability of interest under Section 50 of the GST Act then the revenue will have to follow the specific procedure as stipulated under Section 73 or 74 of the GST Act.- **BLUESTAR MALLEABLE PVT. LTD.- 2022 (8) TMI 978 - JHARKHAND HIGH COURT**

Case laws



Legacy Laws

1. Merely on the basis of transporter records and RTO check-post reports, it cannot be concluded that inputs were not received by appellant. In absence of any evidence to contrary, denial of Cenvat credit on basis of investigations conducted at third party end cannot be adopted as sole basis for denial of credit.- **VIPUL COPPER PVT LTD - 2022(8)TMI 829 CESTAT AHMEDABAD**

2. SVLDRS -Inquiry initiated by the department post 30.06.2019 would not act as a bar to the filing of declaration under "voluntary disclosure" category.- **SONJOLI CONSTRUCTION CO.- 2022 (8) TMI 1147 - RAJASTHAN HIGH COURT**



Customs



1. Orissa HC set aside the order of the Tribunal and holds that a corrigendum issued after a period of 6 years from the date of issuance of Show Cause Notice with alterations in the material facts and duty demand is in fact a fresh SCN and is barred by limitation. - **M/S. HOPE CARDAMOM ESTATE LIMITED, HOOGHLY VS C.CX AND CUSTOMS, BHUBANESWAR-1**
2022(8) TMI 726 ORISSA HC

2. CESTAT, Ahmedabad holds that in case of alleged violation of the provisions of Foreign Trade (Development & Regulation Act) and Rules made there under as well as that of Foreign Exchange Management Act, the Customs authorities did not have jurisdiction to invoke Section 113(d) and 113(i) of Customs Act for issuing the show cause notice for said violation. - **JANKI DASS RICE MILLS VS COMMISSIONER OF CUSTOMS, GUJARAT**
2022-TIOL-747-CESTAT-AHM

Notifications

GST

Circulars

Sl.No	Instruction No. and Date	Gist of changes
1	Instruction No. 02/2022-23 GST-Investigation dt.17.08.2022	Guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017.
2	Instruction No. 03/2022-23 GST-Investigation dt.17.08.2022	Guidelines on issuance of summons under sec 70 of the CGST Act, 2017.

STOP

Consult

Proceed

Notifications

Customs

Circulars

Sl.No	Notification No. and Date	Gist of changes
1	Notification No. 69/2022- Customs(N.T.)dt.22.08.2022	Amendment to the Customs (Compounding of Offences) Rules, 2005.



Notifications

Customs

Circulars

Sl.No	Circular No. and Date	Gist of changes
1	Circular No. 12/2022- Customs dt.16.08.2022	Guidelines for launching of Prosecution in relation to offences punishable under the Customs Act, 1962.
2	Circular No. 13/2022- Customs dt.16.08.2022	Revised Guidelines for Arrest and Bail in relation to offences punishable under Customs Act, 1962.
3	Circular No. 15/2022- Customs dt.23.08.2022	Simplification of procedure for compounding of offences under Customs Act, 1962.



TAX

cookies

GST Council to consider issue of Circular on RCM Liability for Ocean Freight in respect of CIF contracts for imports, which was quashed by SC.

SC rules that Customs Department cannot realise its dues by selling goods belonging to companies against whom proceedings under IBC have been initiated - *No salvage from a pauper!*

Finance Ministry has approached SC for extension of 30 days to open Tran 1 Window, which was ordered to be opened from September 1st by the Apex Court - *Thank God! There is neither review petition nor retro amendment !!*



cookies

CBIC Chairman admits that GST implication on cross charges needs to be clarified.

Rajasthan CM urges rollback of GST imposed recently on unbranded food items.

Data released by Customs show that 1600 Cases of gold smuggling have been detected in the last 10 years in Karnataka, which is on an average, 3 cases per week - **KGF - 3!**

SUMMONS AND ARRESTS

- Sai Makarandh. P

Standard Operating Procedures ('SOP') are the backbone of any organisation, especially, for a large organisation like CBIC, in sensitive matters such as summons and arrest. Although similar instructions were present, the instructions were given by the Board to sensitize the officers regarding the use of summons as issuing summons on a regular basis had become the order of the day. The CBIC issued instructions on arrests and summons vide Instruction No. 02/2022-23 [GST-Investigation] and Instruction No. 03/2022-23 [GST-Investigation] respectively on 17.08.2022.

Arrest:

An arrest impinges on the personal liberty of an individual, therefore, an arrest must not be made merely because the arrest can be made. The power to arrest is available to the Commissioner under Section 69 of the CGST Act for violation of Section 132 (1) (a)/(b)/(c)/(d) or Section 132 (2). However, as discussed earlier, an arrest must not be made merely because it can be made. The Board's instruction provides certain minimal conditions to be met such as whether there is a non-bailable offence/ whether the arrest is necessary to ensure proper investigation/ whether the investigation cannot be carried unless the person is arrested, etc. Once such baseline conditions are fulfilled, either partly or wholly, the Commissioner can issue orders for arrest if he/she believes that there is palpable mens rea on part of the offender.

The factors relating to the arrest are also based on whether the accused is co-operating with the investigation such as compliance of summons, not giving evasive replies etc., However, once a decision is taken to arrest an offender, an arrest memo must be issued in compliance with the instructions of the landmark decision of the Hon'ble Supreme Court in the case of D. K Basu Vs. State of West Bengal [1997 (1) SCC 416]. A nominated or authorised person must be informed of the arrest and further proceedings with respect to the instant case. Further, in case of bailable case i.e., cases outside of Section 132 (5), the Deputy/ Assistant Commissioner shall release the arrested person against a bail bond. The amount and conditions of the bail shall depend on the case, however, they should not be excessive and should be commensurate with the financial condition of the person.

If the bail conditions are not met or if the arrest relates to a non-cognizable/ non-bailable offence, the arrested person must be produced before a judicial magistrate or in case it is not possible, must be kept at the local police station for safe custody.

Summons:

Summons are deemed to be judicial proceedings in terms of Section 193 and Section 228 of the Indian Penal Code (45 of 1860). The main purpose for summoning a person is to secure evidence, oral statements and conduct inquiry into any alleged tax evasion/ misutilisation of ITC. However, it is seen that summons were also used as a tool and quite frequently, the Key Managerial Personnel of a company are summoned and documents that are already available over the portal, were again called for separately by issuing a summons under Section 70 of the CGST Act.

In view of the above reasons, the Board had clearly instructed that summons should not to be issued routinely and KMP/ senior management should not be summoned in the first instance and must be summoned only when there is clear indication that their involvement lead to the loss of revenue. This does not mean that the Revenue cannot summon officials such as CMD/MD/CEO etc., It is also instructed that procedures such as reasons for issuance of summons in writing, issuance of DIN must be followed. Further, issuance of summons for obtaining documents that are already available on the GST portal may be avoided.

It is also instructed that repeated summons without ensuring actual service of summons may be avoided. Reasonable opportunity for appearance must be given, and if the person summon does not appear even after three summons at reasonable intervals, a complaint should be filed against the person summoned before the judicial magistrate under Section 172 (absconding to avoid service of summons) and/ or Section 174 (non-attendance) in terms of the Indian Penal Code.



OUR TAKE:

The present instructions are a step in the correct direction though bit too little and too late. These instructions appear to be a reaction in view of the multiple news reports with reference to gross misuse of these powers that can limit the civil liberties of a citizen. However, as stated earlier, these instructions are a welcome move but there is a lot of scope to read between the lines in these instructions. For example, while describing the factors for arrest, co-operation with the investigation such as not giving evasive replies, voluntary payment of tax etc., were some of the factors cited to decide as to whether the person needs to be arrested or not. It is not understood as to why tax must be paid voluntarily during the time of the investigation itself or why that is a factor to decide if the person is cooperating with the investigation. Why is the co-operation of the person linked to such voluntary payment of tax? If there is concrete evidence or investigation proves evasion of tax, the tax amount has to be paid. Without completing the investigation, putting an arbitrary condition(s) leave the person in a vulnerable position. Further, even under the guidelines for summons, many of the instructions are discretionary with the use of words such as “may” or “generally”. For example, issuance of summons for statutory documents already available on the portal may be avoided. It must be remembered that powers for issue of summons and arrest curtail civil liberties and therefore must be used judiciously.



Before parting...

The star is born. The Madras Tax Bar, which started off as a small WhatsApp group has become a society and 27th August 2022 it was inaugurated at a dazzling function by the Hon'ble Mr. Justice Munishwar Nath Bhandari, Chief Justice of the Madras High Court at the Taj Wellington Mews, Tharamani, Chennai.

The function sparkled with the the glittering presence of almost all Judges of the Madras High Court, Members of the CESTAT and ITAT, many Senior Advocates and an array of leading and learned advocates. This audio- visual with my voice - over, was presented to the esteemed gathering at the function, which tries to capture the journey of MTB, thus far...

Miles to go...

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MTB Webinar Video](#)

