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Case laws

Top Picks



- Renting of Residential dwelling for a proprietor of a registered proprietorship firm, for use as residence and not for use in furtherance of his business is exempt from GST under Notification No.04/2022-Central Tax (Rate) dated 13.07.2022. - **SEEMA GUPTA - 2022 (9) TMI 1387 - DELHI HIGH COURT**

Case laws

GST



- Grant of 7 days time for giving reply to SCN and passing order for cancellation of registration on 8th day is patently illegal. Further, HC marks a copy to the department directing to hold an orientation course and explain to them the meaning of “Principles of natural justice”. - **SHEETAL DILIP JAIN** - **2022-TIOL-1276-HC-MUM-GST**
- The amendment made to Rule 89(2) of CGST Rules, 2017 vide Notification No. 14/2022-CT dated 05.07.2022 enabling the power generating unit to get the benefit of export of electricity is clarificatory in nature and it is retrospective in operation. - **SEMBCORP ENERGY INDIA LIMITED - 2022 (9) TMI 1386 - ANDHRA PRADESH HIGH COURT**
- As a result of cancellation of registration, the petitioner would be deprived of their livelihood which amounts to violation of right to life and liberty as enshrined in Article 21 of the Constitution of India. Hence, an appeal against cancellation of GST registration is allowed by excluding the bar of limitation in preferring the appeal - **POONAMCHAND SARAN & OTHERS - 2022 (10) TMI 180 - RAJASTHAN HIGH COURT**

Customs



Bombay HC sets aside the order of the proper officer, wherein, amendment to Bills of Entry as per Section 149 of the Customs Act has been rejected for a reason that GST law does not permit such amendment post clearance from Customs and holds that if the system does not permit for amendment of Bills of Entry then till such time measures are taken to equip the system appropriately, amendment of documents must be considered manually.

- HINDUSTAN UNILEVER LIMITED vs. THE UOI AND ORS - 2022 (10) TMI 268 - BOMBAY HIGH COURT

Customs

Circulars

Sl.No	Instruction No. and Date	Gist of changes
1	Instruction No. 25/2022- Customs dt.03.10.2022	Clarification regarding implementation of the judgment of the Honourable Apex Court in the case of M/s Westinghouse Saxby Farmer Ltd. Vs. Commissioner of Central Excise, Kolkata.
2	Instruction No. 26/2022- Customs dt.06.10.2022	Modification of Board Instruction No.18/2022- Customs regarding requirement of Health Certificate to be accompanied with the import of certain food consignments.



Notifications

06

DGFT

Circulars

Sl.No	Notification No. and Date	Gist of changes
1	Notification No. 37/2015-20 dt.29.09.2022	The existing Foreign Trade Policy 2015-2020 which is valid upto 30th September, 2022 is extended upto 31st March, 2023.

Sl.No	Public Notice No. and Date	Gist of changes
1	Public Notice No. 26/2015-20 dt.29.09.2022	Validity of existing Handbook of Procedures 2015-2020 extended upto 31st March, 2023.



TAX

cookies

Honeymoon period of Bullion Importers ends as Government increases Customs duty on platinum to plug the loop hole in duty structure.

Diamond-studded white gold wristwatch worth Rs. 27 crore among seven high-end timepieces seized by customs at the Delhi airport.





cookies

Exporters fear liquidity shrink due to non-extension of exemption of GST on export freight.

IMF sounds an alarm - Says the worst is yet to come on the global economic front and also predicts a recession during the next year.

Monthly all India GST collection breaches Rs. 1.4 Lakh Crore for the seventh month in succession.

In a second such seizure in the past one month, the Indian Coast Guard and Gujarat ATS seized 50 kg heroin worth Rs 350 crore from a Pakistani Boat off the coast of Gujarat.

GST on EXPORT FREIGHT - A BLESSING IN DISGUISE?

Swamy Associates

Now that the exemption for GST on transportation of goods by vessel or aircraft from India to any other foreign country was not extended after 30.09.2022, there is a furore everywhere, both by a section of trade as well as the pundits.

First let us understand about the taxability of export freight. As we are dealing with a situation, where, the Indian exporter is engaging an Indian shipping liner/ transporter for export of goods, **Sec 12** of IGST Act, 2017, which determines the **“place of supply of services”** where both the supplier and recipient are located in India, is relevant. **Sec 12 (8)** of the IGST Act, 2017, deals with the place of supply of services for **transportation of goods**.

As per the proviso to **Sec. 12(8)** of the IGST Act, the place of supply where the transportation of goods is to a place outside India, the same shall be the place of destination of such goods. Hence, in the case of export freight, where the goods are transported to a place outside India, on application of the proviso to Sec 12 (8) of the IGST Act is **“outside India”**.

As per **Sec 7 (5) (a)** of the IGST Act, 2017, the supply of goods or services or both, when the supplier is located in India and the place of supply is outside India, then the same shall be treated as supply of goods or services or both in the course of **“inter-state trade or commerce”**. Thus, in the instant case, the services, namely transportation of goods, rendered by the Indian transporter to the Indian exporter for the export of goods becomes a taxable supply in the course of Inter state trade of commerce attracting payment of appropriate IGST.

All through the above levy was exempted and the sunset date for the said exemption expired on 30.09.2022 without any further extension, leaving the export freight chargeable to IGST with effect from 1.10.2022. Though this situation appears to cause an impediment to the trade, mainly exporters, let us delve a bit deep.

It is true that, though the payment of GST either at the rate of 5% w/o ITC or at the rate of 18% with ITC is going to increase the cash flow for the exporters at the first place, but the same would be neutralised by the availability of cash refund or ITC credit at the hands of the exporter. Of course, the time lag between the payment of tax and the receipt of refund would be a cause of concern impacting the cash flow. But on hindsight, we feel that, there could be a sizeable collateral benefit / advantage to the exporters by the removal of this exemption.

All through, because of the exemption available for the export freight, the shipping liners had not taken ITC on their inputs / input services but charged the same to expenditure. Even though there is a protection of ITC as per the proviso to Rule 43 of the CGST Rules, there was no point in taking an ITC, when there was no output tax liability (unless the shipping liner has any other liability to use the same). That too, with the exclusion of services from refund of unutilised input tax credit, it had only resulted as a cost, at the hands of the ultimate exporter.

GST on EXPORT FREIGHT - A BLESSING IN DISGUISE?



But, now by removal of this exemption, henceforth, the ITC on the eligible inputs and input services could well be passed on to the ultimate exporters, by using the same to discharge the GST. In other words, now the ultimate exporters can negotiate with the shipping liners, that the ITC has to be passed on to them. If so, the same would ultimately reduce the cost of export freight, **as the ITC passed on by the shipping liners as GST would be available a refund at the hands of the ultimate exporters, which was hitherto a cost at the hands of the ultimate exporters.**

To put it illustratively, the ITC on various input services, namely, renting of immovable property, various software, manpower supply, loading and unloading etc., and in most of the cases the back-to-back engagement of foreign liners by the Indian liners, which were hitherto a cost at the hands of the ultimate exporters, would be available as a refund after being passed on by the shipping liners, thus reducing the cost of provision of service and thereby making the Indian exporters the ultimate beneficiary.



Before parting...

- Jk

The Hon'ble High Court of Bombay had recently rendered one of the need-of-the hour judgement while dealing with a writ petition, where the question before the Hon'ble High Court was "Whether the pre-deposit of 10% of the amount of tax, which is required to be paid under Section 107(6) of the Maharashtra GST Act, could be paid debiting the ITC available in the Electronic Credit Ledger or it should be paid only in cash?"

After a detailed analysis, the Hon'ble High Court has concluded that the pre-deposit could be paid using the credit available in the Electronic Credit Ledger , which has to be hailed as one of the progressive decisions in this complex GST regime.

While deciding so, the Bombay High Court also distinguished the decision in the case of M/s Jyoti Construction by the Hon'ble High Court of Orissa, which held otherwise.

It's also a coincidence that this judgement justifies the name of the petitioner - Oasis Realty!!!

Indeed a true **oasis** in the parched desert...

