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Case laws

Top Picks



- Doctrine of Promissory Estoppel cannot be invoked in a case where a benefit granted under earlier statute is withdrawn by a subsequent notification based on a change in policy. - **HERO MOTOCORP LTD- 2022 (10) TMI 677 - SUPREME COURT**
- When the CENVAT Credit against CVD and SAD paid was not carried forward to the Appellant's account on the appointed date due to the procedural aberration occurred during transition to GST period such credit is eligible to get refund in cash along with interest under Section 142(6)(a) of the CGST Act. - **CLARIANT CHEMICALS INDIA LTD-2022 (10) TMI 796 - CESTAT MUMBAI**

Case laws GST



The provision of the service of canteen facility to its employees is as per the contractual agreement between the employee and the employer in relation to the employment cannot be considered as supply of goods or services and hence cannot be subjected to GST as per Circular No. 172/04/2022-GST dated 06-07-22. - **ZYDUS LIFESCIENCES LTD- 2022 (10) TMI 304 - AUTHORITY FOR ADVANCE RULING, GUJARAT**

Case laws Legacy



The oral statements of third party implicating the assessee for clandestine purchase of raw material, with the subsequent written denial, cannot be relied upon for establishing the charge of clandestine manufacture unless such person is either examined or cross examined.

-METAL GEMS and others- 2022 (10) TMI 318 - CESTAT AHMEDABAD

Customs



1. CESTAT sets aside the Order of the adjudicating authority and holds that when the appellant had already paid the duty along with interest and required penalty before issuance of show cause notice then, the benefit of deemed conclusion of the proceedings under Section 28 of the Customs Act must be granted to the appellant. - **BALKRISHNA INDUSTRIES LTD VERSUS C.C. – MUNDRA-2022 (10) TMI 749 - CESTAT CHENNAI.**
2. Delhi HC sets aside the Order of the Commissioner Appeals (Customs) as well as the Order of the Revisionary authority rejecting the appeal filed by the appellant for non-filing of application for condonation of delay and remits the matter to the First Appellate authority for deciding the case on merits with a direction to the appellant to pay Rs. 25,000/- as a fine for the negligence on their part. - **ASKER ALI CHENGALA MALLAM VS UOI AND ANR-2022(10)TMI 528 - DELHI HIGH COURT**

Customs

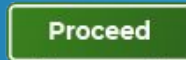


3. CESTAT holds that Tribunal being a creature under the Customs Act, even though the IBC have overriding effect over all the other acts in absence of any explicit provision under the Customs/Central Excise Act, the Tribunal cannot decide whether the adjudged amount can be recovered by the department or otherwise. Therefore, CESTAT directs the CBIC to consider issuing guidelines/procedures for dealing with the cases before the Tribunal, wherein, IBC proceedings has been initiated against the appellant's company .- **M/S. ULTRATECH NATHDWARA CEMENT LTD VS C.C. - JAMNAGAR (PREV)- 2022(10) TMI 936 - CESTAT AHMEDABAD.**
4. CESTAT sets aside the Order of the Commissioner Appeals denying the benefit of exemption on the ground of it being claimed belatedly and holds that when the benefit of exemption is available under two different headings and all the conditions have been fulfilled, the benefit of exemption which are available to the appellant on the date of import, cannot be denied on the ground that the said benefit was not claimed at the appropriate time. - **VIVO MOBILE INDIA PVT LTD VS COMMISSIONER OF CUSTOMS, AIR CARGO, EXPORT, NEW DELHI-2022 (10) TMI 331 - CESTAT NEW DELHI**

Central Excise

Circulars

Sl.No	Instruction No. and Date	Gist of changes
1	F.No.CBIC-240137/14/2022- Central Excise dt.28.10.2022	Payments made through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits under Section 35F of the Central Excise Act,1944, Section 83 of Finance Act,1994 read with Section 35 of CEA and also under GST in connection with filing of appeals under Section 107 of the CGST Act, 2017.



Notifications

08

Customs

Circulars

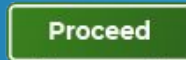
Sl.No	Notification No. and Date	Gist of changes
1	Notification No. 54/2022- Customs dt.03.10.2022	Project Regulation amended with effect from 20.10.2022. Import Regulation 1986 with effect



DGFT

Circulars

Sl.No	Public Notice No. and Date	Gist of changes
1	Public Notice No. 31/2015-20 dt.14.10.2022	Paragraph 2.79C (D) has been added in the Handbook of Procedures (HBP) of Foreign Trade Policy (FTP) 2015-20 to lay down the policy and procedure for General Authorisation for Export after Repair(GAER).
2	Public Notice No. 32/2015-20 dt.20.10.2022	Conditions for TRQ imports under tariff head 7108 under India-UAE CEPA are updated in line with Customs Notification No.74/2022-Cus(N.T.) dt.09.09.2022 read with Circular No. 18/2022-Cus 10.09.2022.





cookies

Postponement of GST Council Meeting due to indecision by GoM on gaming is indirectly delaying the process of constitution of GST Appellate Tribunal.

GST Council clarifies that Central and State authorities have concurrent jurisdiction for enforcement action.

Taxpayers with aggregate turnover upto Rs. 5 Crores will also be required to report 4-digit HSN Code in their GSTR1 with effect from 01.11.2022.

TAX

cookies

Sequential filing of GSTR1 and filing of GSTR1 before GSTR 3B, which are mandated as per amended provisions of Sections 37 and 39, have been enabled in GST Portal with effect from 01.11.2022

DESH Bill held up as Fin Min is yet to approve the proposals of Commerce Ministry to allow DTA sales of raw materials imported and for imposition of concessional Corporate Tax.

Illicit smuggling of exotic animals continues as Chennai Customs find five Dwarf and Common-spotted Cuscus in check-in baggage of pax from Bangkok.



GST ON CANTEEN SERVICES

- **P. Sai Makarandh**

With the GST Audits now in full swing, a common para pointed out, apart from the usual suspects like differences in 2A vs 3B, rate differences, etc. is demand of GST on canteen recovery from employees. Whilst in some major factories, a canteen is required as a legal obligation under Section 46 of the Factories Act, in other factories/establishments, food is offered to employees even though there is no mandatory requirement. In most cases, there is a part recovery, usually minimal, and the actual bill is footed by the employer. This being the case, many audit objections / spot memos are now issued demanding GST on the food offered to the employees as supply of food. The same logic is applied to other facilities provided by the company to its employees such as transport facility or internet etc.,

At the very outset, it must always be seen whether a transaction falls under the scope of supply as provided for in Section 7 of the CGST Act, 2017. To qualify as a supply under Section 7, the three main criteria that the transaction must fulfil are:

- (i) Supply of goods or services or both;
- (ii) It should be for a consideration;
- (iii) It should be in the course or furtherance of business.

From the above, if the definition of “supply” is applied to providing discounted lunch or free lunch, the very first and basic argument that emanates is that there is no quid pro-quo in the above aspects inasmuch as there is no reciprocal obligation of the employee.

There is no independent contract between the employees and the Company to set up a canteen but the same is done as part of a statutory obligation or a mere employee benefit. Canteen service is only a perk provided by the employer and any deduction made from the employee is not a consideration for such facilities. Further, it is not in course or for furtherance of business, i.e., it is not the primary or ancillary business of the company to provide canteen services. In this regard, multiple rulings of various Advance Ruling Authorities also support the present argument. In **M/s. Tata Motors [2020 (41) G.S.T.L. 35 (A.A.R. GST-Mah.)]**, it was held by the Authority that nominal charges collected from employees for transport services cannot be held as a consideration for supply of service and consequently no GST can be levied on the same. In **IN RE : Dakshina Kannada Co-Op. Milk Producers Union Ltd** reported in **2021 (55) G.S.T.L. 574 (A.A.R. - GST - Kar.)**, it was held that nominal recovery for provision of subsidized lunch and refreshments cannot be held as supply as deemed under Section 7 of the CGST Act, 2017. Recently the Gujarat Authority for Advance Ruling in the case of **M/s. Cadila Healthcare Limited, reported in 2022(4) TMI 1339 AAR Gujarat** also held that GST, at the hands of the Cadila, is not leviable on the amount representing the employees portion of canteen charges, which is collected by Cadila and paid to the Canteen service provider.

While various Circulars and press release are issued that can be connected to the present case, it is best if the CBIC come up with a clear Circular on the above and bury the issue as whether employee deductions are liable to GST and whether ITC can be allowed. However, if any audit para on the above issue does come up, it must be litigated as the same is not a supply for the reasons mentioned above.

Before parting...

- Jk

It was a scorching sunny day in Mid-March of 2001. Dressed up in pitch black robe, I entered the High Court of Madras campus, for my Bar Council enrolment. After the enrolment, which was done enmasse, I only got reminded of the mass-weddings for the downtrodden couples at my native. The moment I came out to take my Suzuki Samurai from the parking, I started hearing thunderous noise of firecrackers fired inside the campus as well as at the main road. The light and sound were growing so intense from all directions that I stood completely perplexed. What I saw next was something which I will never forget. The one who was standing next to me in that mass-wedding few minutes ago, was seated in a chariot, booted with glittering horses and there was a boisterous band before that chariot, playing some ear-bleeding apaswarams (absurd music). He was just sitting with his new-robe like Karna with his kavasa kundala (armour) and with such a proud-face like Alexander-the-great, after winning this whole world. Then I saw another procession from the other end, where a parade was distributing sweets and pamphlets printed with another newly-enrolled advocate and I was also fortunate enough to get one laddu and the tissue, sorry, pamphlet, where the advocate was sporting such a broad smile that his dentist may not need any X-ray for the next root-canal. I also saw many flex banners with punchy lines like “Long live the future of Indian Law”, “Hail our future Lordship”, “Avatar of Dr. Ambedkar etc”. All these hungama and euphoria only made me feel really insecure and I felt as a silly mortal who had just signed up for his disastrous destiny.

Before parting...

- Jk

Recently the Hon'ble High Court of Madras took cognizance of this profanity and coming down on these enrolment ceremonies turning into festivities had observed "losing the solemnity and dignity associates with the noble profession" and had also mandated that the Bar Council that "The Enrolment Ceremony is conducted with only the candidates, without the presence of the family members/relatives and friends, not only at the place where the enrolment takes place but nowhere near the premises of the Courts and its surroundings" – **Tamil Nadu PONDY Plastic Association vs Government of Tamilnadu & Ors.**

