



Editor's desk...

We launched a series of informative flyers this fortnight, namely, **SPARKS, KNOW YOUR GST, POINT OF VIEW, Dictionary & DID YOU KNOW** and all of them have garnered fantastic appreciation from the readers.

This issue covers a very important judgement as our “Top Pick”, which would be a milestone decision on the cancerous TRAN-1 issue.

We experience an unprecedented mercury levels this summer across our locations, which maybe either due to the global warming or due to the work-from-home culture we enjoyed last two years.

Stay safe and cool...

Case laws

Top pick



Transition of the input tax credit cannot be restricted or denied merely because there were technical difficulties to file the Tran-1 within the due date. In case, the respondents are unable to permit the petitioner to file TRAN-1 belatedly, they have to credit the corresponding amount in the electronic cash register of the petitioner or refund it in cash – **M/s VETRIVEL EXPLOSIVES PVT. LTD. 2022 (4) TMI 1025 - MADRAS HIGH COURT**

Case laws



GST

1. When the department denied refund of IGST in cash for the goods exported under Advance Licensing scheme, the petitioner is entitled for restoration of ITC already debited - **I-TECH PLAST INDIA PVT. LTD- 2022 (4) TMI 753 - GUJARAT HIGH COURT.**

2. While issuing an intimation under DRC-01A, the proper officer shall not threaten the noticee that the failure to pay the tax would lead to recovery of the entire amount with penalty and interest. The department needs to correct itself not only as regards their understanding of the entire procedure, but even the contents of the Forms are incorrect - **AGROMETAL VENDIBLES PRIVATE LIMITED 2022 (4) TMI 823 - GUJARAT HIGH COURT.**

3. If the rate indicated in the columns (4) and (6) of All Industry Drawback Schedule is one and the same, it shall mean that the same pertains to only Customs component and therefore para No.2.5 of Circular No.37/2018-Cus, dated 09.10.2018 cannot be pressed to deny the IGST refund - **NUMINOUS IMPEX (I) PVT. LTD - 2022 (4) TMI 760 - MADRAS HIGH COURT.**

4. The rejection of refund claim of Rs. 90,92,263/- paid under Sabka Vishwas Scheme is not sustainable as the Designated committee ought to have informed the petitioner that there was no tax dues as on the date of filing the SVLDRS declaration since the appeal filed by the department before the Supreme Court is technically withdrawn on monetary limits. A wrong doer ought not to be permitted to make a profit out of his own wrong - **Data Mini Technologies Ltd - 2022 (4) TMI 1209 Bombay HC.**

Customs



Madras High Court directs the customs authorities to pay interest at 7.5% p.a to the petitioner for the enormous delay of over 8 years in fixation of Brand rate of duty drawback and payment of the same where such application for fixation should be disposed of within a period of 60 days from the date of filing – **M/s Lovely Offset Printers Pvt. Ltd vs The Director (DBK) & Ors - 2022 (4) TMI 574 - MADRAS HIGH COURT**

Notifications

Circulars

1.	Notification No. 21/2022- Customs dt.13.04.2022	Basic Customs Duty and Agriculture Infrastructure and Development Cess wholly exempted on Raw Cotton imported into India during the period from 14.04.2022 to 30.09.2022.
2.	Instruction No. 3/2022- Customs dt.23.04.2022	Revised guidelines for National Risk Management Committee (NRMC) for Customs & GST.
3.	Public Notice No.03/2015- 2020 dt.13.04.2022	To enhance ease of doing business and reduce the compliance burden, certain provisions of Chapter 5 relating to the EPCG amended.
4.	Trade Notice No.02/2022-23 dt.22.04.2022	DGFT Helpdesk support now available on 24x7 basis.
5.	Trade Notice No.03/2022-23 dt.26.04.2022	Application for recognition as pre-shipment Inspection Agency (PSIA) and issuance and electronic verification of Pre-Shipment Inspection Certificate (PSIC) w.e.f.01.05.2022.
6.	Trade Notice No.04/2022-23 dt.27.04.2022	Extension of Date for Mandatory electronic filing of Non-Preferential Certificate of Origin (CoO) through the Common Digital Platform.





cookies

“Lawyer shall not bear the sins of the client” - Madras HC quashes criminal case lodged against Advocate for tampered Ration Cards.

PIL filed in Supreme Court questioning constitutional validity of levy of GST on Lease payments – *This issue is also on a 99 year lease!*

250 Kg of Heroin seized and 9 Pakistani Nationals arrested - Drug Smuggling through Gujarat Coast is on the rise.



cookies

Retrospective amendments made in Customs Act to protect DRI SCNs challenged in Delhi HC - Notice issued to UOI - **Re-shooting with Canon!**

Coconut Oil makers feel that any hike in GST rate will be detrimental to the industry.

Income Tax authorities keeping a close eye on GST fake invoice fraudsters - Exchange of info between CBDT & CBIC - **Double Jeopardy!!!**



GSTAT – THE E(XC)LUSIVE

It is nearly five years after the introduction of GST, and, there is no other way to put it, but, where are the Appellate Tribunals? The Customs Excise and Service Tax Appellate Tribunal ('CESTAT') is in place for the erstwhile laws, but under GST, there is no GST Appellate Tribunal ('GSTAT'). Section 109 (1) provides for a National Bench at New Delhi along with Regional Benches and a State Bench along with Area Benches.

The key differentiation between the regional benches and the area benches lie in the matters that get listed before the Benches. The regional benches will hear appeals where *one* of the issues is place of supply whereas the state/area benches will hear appeals against the orders passed by the adjudicating authorities. Further, it may be noted that as per the wording of Section 109 (5), the regional benches will hear regular matters as well, but place of supply should be one of the issues.

Tribunals are one of the earliest products of judicial reforms. They were established to adjudicate technical matters efficiently and judiciously, thus, saving and overcoming the delays/backlogs that hinder the administration of justice. Another important function of the tribunals is that they are the final fact finding authorities and the Hon'ble High Court and Apex Court only deal on question(s) of law. Therefore, they unburden the higher courts and keep the pendency of cases to a minimum wherein only cases involved with a question of law are taken up on appeal. This is, but, a mere glimpse of the wide gamut of functions that an appellate tribunal is involved and the lack of GSTAT is not only hurting assessee but also the Department as both parties suffer a shared fate until a matter is decided.

Further, in the case of the *Revenue Bar Association Vs. Union of India* [2019(9)TMI 983], the Hon'ble Madras High Court had struck down Section 109(3) and Section 109 (9), wherein the number of technical members are more than judicial members and also struck down Section 110(1) (b) (iii) which allows for a member of the Indian Legal Services to be a judicial member in GSTAT. However, the Hon'ble Court did not accept the argument that exclusion of lawyers from appointment as judicial members is unconstitutional, but, recommended the Parliament to reconsider appointment of lawyers as judicial members.

Since there are many issues even before the constitution of GSTAT, the Government must also consider other form(s) of alternative dispute resolution solutions in line with their National Litigation Policy. Mere increase in monetary limits for filing appeals can no longer cut the ice. Establishment of an appellate tribunal even now will start with backlog of the cases from last few years, therefore, a settlement commission under GST must be considered. Further, GST being such a nascent law, there will be parties that would want close any pending cases as it only increases their contingent liability and further, due to lack of GSTAT, many parties are approaching High Court(s), which again leads to increased litigation causing a catch 22 situation. GST, as a legislation plays a vital role, therefore, a decision must be taken to protect the larger interests of the all the stakeholders involved. Before parting, it would also be pertinent to mention that a large number of cases are presently in limbo due to no GSTAT, however, arrears are being recovered leading to assesseees approaching the High Court for interim relief. In this regard, the CBIC must issue instructions that such recoveries maybe put on hold until the case itself is finalised.



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before parting...

After the pandemic, every profession has undergone a paradigm shift and had adopted to a new-norm and our advocate profession is no exception. Despite plethora of hiccups and bottlenecks, the Bar adapted to the inevitable, supported by the compassionate patience and tolerance of the Bench. Though a school of thought is arguing that this virtual appearances has taken away the real sheen of physical appearances, the convenience it has brought to this profession is indeed a blessing in disguise. For advocates who have to appear in multiple courts, spread across distances, this new-norm is nothing but a boon. It saves a lot of time, money and energy, spent on travel and logistics and also avoid unnecessary spends due to last minute adjournments..

Few days back, I and my Senior Partner Karthik, had the opportunity to brief Senior Advocate Shri. Arvind P Datar, where he appeared for us in the Supreme Court on a high-octane case. We went to Senior's house around 930 am and briefed him for half an hour and sat next to him while he was appearing for the case. What we witnessed before us, was an extraordinary exhibition of advocacy, studded with extraordinary acumen coupled with a razor-sharp wit and intellect, humble conveyance coupled with determination and a never-say-die spirit coupled with patience and poise. From the moment the argument started till the end, literally the hearts of mine and Karthik were out to our throats but Senior remained Mr. Captain Cool throughout. OMG. What a spectacle!!!

Even though I had acquainted myself well with this new-norm over these two years, I always had a faint feeling of missing something. Some how I felt that these virtual hearings couldn't create the anxiety and the adrenaline rush (bees and butterflies in lower stomach), which are always the real josh in physical appearances, but after witnessing this spectacle, I would never ever feel so!!!



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