



## Editor's desk...

Last fortnight there had been a flurry of very important decisions rendered by the Hon'ble Supreme Court and the other High Courts, which needs a deep and an analytical study. While the Hon'ble Supreme Court had ordered the 152-year-old sedition law under Section 124A of the Indian Penal Code to be kept under abeyance and had urged the Centre and State Governments not to take any penal / coercive actions under the same until the Centre reconsiders the law [S.G. Vombatkere], the Hon'ble High Court of Delhi had delivered its judgement on the issue of marital rape [RIT Foundation & Ors.]. It assumes further significance because of the split verdict. Another gem of a decision rendered in our own domain [Munjaal Manish Bhai Bhatt] has been dealt in the **CASE STUDY** section.

Enjoy reading...

# Case laws

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## Top pick



The mandatory prescription of 1/3rd deduction of land is *ultra vires* of the Act and in violation of the constitution of India. Para 2 of Notification no.11/2017-CT( Rate) dated 28.06.2017 is held to be arbitrary - MUNJAAL MANISHBHAI BHATT - 2022 (5) TMI 397 - GUJARAT HIGH COURT.



# Case laws

## GST



1. Since the technical glitches for filing the appeal was resolved by the GSTN authority on 17.09.2021, the period of limitation to file the appeal started running from that date only - BRIJ BIHARI SINGH - 2022 (5) TMI 348 - ALLAHABAD HIGH COURT - *COVID extensions by SC??*

2. When the applicant intends to sell his one division of his business along with assets and liabilities, the transaction involving the applicant's business unit transfer is treated as a supply of service and qualify for exemption as going concern - COSMIC FERRO ALLOYS LIMITED - 2022 (5) TMI 181 - AUTHORITY FOR ADVANCE RULING, WEST BENGAL. - *Good one on a growing concern!*

3. Cancellation of registration would defeat the very purpose of GST and therefore, the registration shall stand revived forthwith subject to filing of return and payment of tax for the past period - MAARUTHI FOUNDATIONS PVT LTD - 2022 (5) TMI 405 - MADRAS HIGH COURT.

4. There is no conflict between the power to levy GST under GST Act and power of Municipal Corporation to levy advertisement fee or tax under Section 134 of the Karnataka Municipal Corporations Act - HUBBALLI DHARWAD ADVERTISERS ASSOCIATION (R) - 2022 (5) TMI 401 - KARNATAKA HIGH COURT.

# Case laws

## CUSTOMS



1. High Court dismisses the writ petition filed by the petitioner and confirms the Order of the Tribunal for revocation of the CHA license granted to the appellant and forfeiture of the security deposit on the grounds that the appellant has indirectly paved way for misdeclaration and smuggling of Red Sanders - WELCOME AIR EXPRESS PVT LTD - 2022-TIOL-664-HC-KOL-CUS - *No pardon for Pushpa's accomplice!*
2. If the Settlement Commission is of the view that the applicant failed to make "full and true" disclosure of the duty liability, then the Settlement Commission can only reject the application but cannot adjudicate the case on merits - PRADEEP IMPEX - 2022-TIOL-671-HC-AHM-CUS.
3. Period of limitation provided under Section 27 of the Customs Act is not applicable for the SAD Refund claims as the right to claim refund of SAD arises only on subsequent sale made of the imported goods in the domestic market - FIBRE BOND INDUSTRIES - 2022-TIOL-293-CESTAT-DEL.



# Notifications

## Circulars

1.	Notification No. 39/2022- Customs (NT) dt.30.04.2022	Customs Tariff (Determination of Origin of Goods under the Comprehensive Economic Partnership Agreement between India and the UAE) Rules, 2022 w.e.f.01.05.2022.
2.	Notification No. 4/2015 – 2020 dt 11.05.2022	New RoDTEP schedule (Appendix 4R) has been notified for implementation w.e.f. 01.01.2022.
3.	Instruction No. 4/2022 – Customs dt. 27.04.2022	Exemption to import of parts of specified medical oxygen related equipment may not be denied provided that the goods so imported have been put to the intended use.
4.	Public Notice No.05/2015 - 20 dt.29.04.2022	Notifying list of authorised agencies allowed to issue Certificate of Origin (Preferential) for India-UAE CEPA.
5.	Public Notice No.06/2015-22 dt. 01.05.2022	Notifying the Tariff Rate Quota under India-UAE CEPA and procedure for allocation and imports.
6.	Trade Notice No.05/2022-23 dt.29.04.2022	Electronic filing and Issuance of Preferential Certificate of Origin (CoO) for India's Exports under India-UAE CEPA.



TAX

cookies

Customs officers throw a spanner in the works - 'Spanners' made of gold seized by Chennai Customs.



Record GST collection of 1.68 Lakh Crores in April 2022 – Attributable to revival of business activity and aggressive approach of businesses to meet their annual target – *Can the word “Business” be also read as “Officers”?*

GoM have arrived at consensus to tax all Online Games, Casinos and Horse Racing at a uniform rate of 28% - Online Games of Skill @18% now, may also get the axe.



# cookies

Tamil Nadu to press for GST online services in Tamil, says TN Chief Minister – *Even Tamilians may find it difficult to understand!*

CJI says that the Judiciary and the Government should be mindful of the Lakshman Rekha and that judiciary would never come in way of governance if it is in accordance with law.

E-Way Bill generation dips in April and will impact GST collections during May - High year-end sales of March moderated in April – *Wish e-way bill is a reliable indicator!!!*

# CASE STUDY

## *Munjaal Manish Bhai Bhatt Vs. UOI*

[2022 (5) TMI 397]



The petitioner, a practicing advocate of the Gujarat High Court had entered into an agreement with M/s. Navratna Organisers & Developers Pvt. Ltd., for the purchase of a plot admeasuring about 1021 sq.m. in which the developer was also to build a bungalow for the petitioner. It must be noted that the agreement entered into by the parties had **distinct and separate considerations** for the sale of land and the construction of bungalow on the land. An invoice was raised by the developer on the petitioner charging 18% GST for the supply of works contract services under Serial No. 3(if) of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. The valuation was based on Paragraph 2 of the Notification which provides for a standard deduction of 1/3rd as the value of land to calculate the value of the service provided. The crux of the entire dispute as succinctly summarized in Para 71 by the Hon'ble Court is as follows:

***"It is the validity of such mandatory deeming fiction sought to be imposed by way of delegated legislation which is being tested by this Court vis-à-vis the provisions of the CGST Act as well as the Constitution of India"***

Whether such a deeming fiction provided for by way of delegated legislation, in the form of Notification and not amendment to the Act or Rules provided thereunder is correct and whether such a blanket provision applicable for everyone is correct was the question that was answered by the Hon'ble Court. It had read into the legislative intention, the 14th GST Council Minutes and various arguments of the Counsels. The general conclusion arrived with respect to the legislative intention is to impose tax on the actual construction activity by a developer after consideration has been agreed with the buyer. The legislature never intended to tax the sale of land and thus excluded the same vide Schedule III of the CGST Act. [Para 87]. Further, with respect to the question as to whether a flat 1/3rd deduction can be provided for by way of delegated legislation, the Hon'ble Court had observed that as per Section 15(1) of the Act, the statutory provision requires valuation with the price actually paid / payable for the supply and **when value of such supply is available, then the tax must be imposed on the actual value and not by a deeming fiction.**

Therefore, the mandatory application of the deeming fiction, even in cases where the price is available, was held **ultra-vires** to the statutory provisions. [Para 96]. It was explained with examples wherein higher the land value, the higher tax will be paid since the valuation will be applied uniformly irrespective of the size of the plot or the construction cost. Therefore, even if the construction cost is the same, the tax payable will be higher if a standard deduction is applied in cases of larger parcels of land. Thus, the Hon'ble Court had held that the arbitrary deeming fiction has led to the measure of tax having no nexus with the actual charge of tax which is on the construction service.

Valuation is determined by Section 15 of the CGST Act. Section 15(4) provides for the Government may notify additional methods to determine value of supplies as need be in manner prescribed. Further, as per Section 2(87), prescribed means prescribed by rules made under the Act on the recommendation of the Council. Therefore, the Hon'ble Court further cemented its position that the deeming fiction provided for by way of delegated legislation is arbitrary and violative.

In conclusion, the Hon'ble Court had held that the impugned Paragraph 2 of the Notification which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is **ultra-vires** the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is **discriminatory, arbitrary and violative of Article 14 of the Constitution of India**. However, it must be noted that the paragraph 2 has not been stuck down but read down inasmuch as wherein value of land is clearly ascertainable, the cost of construction service can be arrived vide valuation rules and the standard 1/3rd deduction will also be permissible at the **option of the taxable person** in cases where the land value is unavailable. It is also interesting to note that even though the writ petitioner is the recipient of service and tax was collected from him by the developer and deposited with the Government, the Hon'ble Court has directed the GST authorities to calculate the GST payable on the actual construction value and refund the excess amount of tax directly to the respondent along with interest @6% from the date of excess payment, since the incidence of tax was borne by the petitioner. The Hon'ble Court placed their reliance on another landmark decision of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. v/s Union of India to allow the same.



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# before parting...

Advocates are often mimicked as schoolboys because we enjoy the summer and winter vacation as they do. This time I really feel so, not because of this summer vacation but because of the “home-work” given by our learned Teachers (Courts) to read and understand by the spate of important judgements rendered during recent times.

The talk of the town judgement of the Gujarat High Court is a MARVEL. It's a such a beautiful rosary on the genesis of works contract, that its a treat to read and a treatise to preserve. I am afraid that, this far-reaching landmark decision, is just a beginning and all the other deeming prescriptions under GST (e.g. deeming goods and services components as 70:30 for renewable energy devices under Notification 11/2017 – CT, as amended) could well be under serious threat and be held arbitrary in days to come.

By the way, to me, it remains to be a mystery as to how these deeming percentages / ratios are arrived at the first place? Likewise, another enigma is the Fitment Committee recommendations! I always ask myself, is there a RTI application against these Bermuda Triangles?



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