



## Editor's desk...

The sensational judgement of the Apex Court in the case of **Mohit Minerals Pvt. Ltd.**, rendered on ocean freight issue, should be hallmarked the most-debated (mostly for wrong reasons) decision in the recent times. This summer, most of the critics / journalist fraternity had worked over-time and had written plethora of columns / articles. Unfortunately, most of them are written wearing-coloured glasses framed with their own agendas.

The sandstorm created by this judgement had completely eclipsed another very important judgement of the Hon'ble Supreme Court in the case of **Northern Operating Systems Pvt Ltd.**, which has been dealt in a crisp case study in this leaf.

Enjoy reading...

# Case laws

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## Top picks



The levy of IGST on Indian Importers for ocean freight under CIF contract is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act - **MOHIT MINERALS PVT LTD 2022 (5) TMI 968 - SUPREME COURT**

The demand of service tax on manpower supply on secondment of employees from group companies under RCM is upheld - **NORTHERN OPERATING SYSTEMS PVT LTD. 2022 (5) TMI 967 - SUPREME COURT**

# Case laws

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## GST



1. If the ST 3 Return of an assessee was furnished in accordance with the existing law and in the prescribed manner, though belatedly, the Cenvat Credit on account of service tax reflected therein could be availed of in terms of Section 140(1) of the CGST, Act 2017- **AMRIT CEMENT LIMITED 2022 (5) TMI 974 - MEGHALAYA HIGH COURT.**
2. Any detention or seizure of goods covered by valid documents is an act of harassment, breach of their fundamental rights guaranteed under Article 14 of the Constitution of India and blatant abuse of power by the respondents - **GOBIND TOBACCO MANUFACTURING CO.,2022 (5) TMI 1022 - ALLAHABAD HIGH COURT.**
3. As per Serial No. 66 of the Notification No. 12/2017-CT (Rate) dated 28/06/2017, supplying goods without consideration as part of a composite supply that includes a principal supply in the form of educational services that is included in the education fees attracts a nil rate of tax - **RAHUL RAMCHANDRAN (INSPIRE ACADEMY) 2022 (5) TMI 1292 - AAR, MAHARASHTRA.**



# Customs



Madras High Court remits the matter to the concerned authority to ascertain the availment of Cenvat credit on the capital goods and redo the entire process by considering Paras 6 and 15 (i) and (ii) of the Notification No.68/2011-Cus. (N.T.) dated 22.09.2011 as well as Rule 2(a) and its proviso of Drawback rules and pass an order within four weeks – RAGHAV INDUSTRIES vs UOI & ORS - **MADRAS HIGH COURT ORDER DATED 07.04.2022 IN WRIT APPEAL NO. 429 OF 2016 AND WRIT APPEAL NOS. 2247 & 2248 OF 2021 .**

# Notifications

## Circulars

### GST

1.	<b>Notification No. 05/2022-Central Tax dt.17.05.2022</b>	Due date for filing FORM GSTR-3B for the month of April, 2022 extended upto 24.5.2022.
2.	<b>Notification No. 06/2022-Central Tax dt.17.05.2022</b>	Due date of payment of tax, in FORM GST PMT-06, for the month of April, 2022 by taxpayers who are under QRMP scheme extended upto 27.05.2022.
3.	<b>Notification No. 07/2022-Central Tax dt.26.05.2022</b>	Waive off late fee under section 47 for the period from 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22.
4.	<b>Instruction No. 01/2022-23 (GST-Investigation) dt.22.05.2022</b>	Instructions on deposit of tax/voluntary payment during the course of search, inspection or investigation.



# Notifications

## Circulars

### DGFT

1.	<b>Public Notice No.08/2015-2020 dt.19.05.2022</b>	Last date for submission of online applications for allocation of Tariff Rate Quota (TRQ) under India-UAE CEPA first two quarters of FY 2022-23(01 May 22 to 30 Sep 22) has been extended till 31.05.2022.
2.	<b>Trade Notice No. 08/2022-23 dt.17.05.2022</b>	Online submission module initiated to facilitate registration of Irrevocable Commercial Letter of Credit (ICLC), which have been opened on or before 13.05.2022 for export of wheat.
3.	<b>Trade Notice No.09/2022-23 dt.23.05.2022</b>	For registration of Letter of Credit with the RAs of DGFT, apart from the LC date, the message exchange date between the Indian and foreign bank/swift date should also be on or prior to 13.05.2022 for export of wheat.
4.	<b>Trade Notice No.10/2022-23 dt.24.05.2022</b>	RAs of DGFT shall issue manually signed and stamped physical copies of the Registration Certificate which will be presented to concerned customs authorities for facilitating export of wheat as mentioned in RC.





TAX

cookies

CBIC chief quotes Mahabharatha - “Justice , blighted, blights and justice preserved, preserves” for judicious adjudication and review process.

The special drive against “fake invoices” has resulted in 6700 cases involving Rs. 50,000 Crore. 650 persons arrested but recovery is only Rs.2400 Crore – **Karagar full but Khazana empty!**

Madras High Court upholds the validity of the TN VAT Act providing compounding scheme.



# CASE STUDY

2022 (5) TMI 967 - SC

On the very same day when the sensational judgement on ocean freight in the case of **UOI vs M/s Mohit Minerals Pvt. Ltd** was rendered, the Hon'ble Supreme Court also delivered another landmark judgement in the case of **C.C.,C.E. & S.T.-Bangalore (Adjudication) Etc. Vs. M/s. Northern Operating Systems Pvt Ltd.** In this case, the question before the Hon'ble Supreme Court was whether service tax is payable under "manpower recruitment or supply agency service" with regard to certain employees who were seconded by the foreign group companies to their Indian counterparts.

**Facts of the case:** The assessee was registered with the service tax department under various categories of service provided in the Finance Act, 1994. Upon audit, it was noticed that the company had seconded employees working in their office, but they were the employees of their group companies located in the USA, UK & Ireland. For context, a seconded employee is an employee belonging to the same group entity but transferred to a different company for a specific period based upon requirements of some specific skillsets as required by the company.





# CASE STUDY

2022 (5) TMI 967 - SC

Factually, in the present case, the assessee had employees from the foreign group companies working in their offices, however, they remained on the payroll of the foreign entity so as to continue the social security benefits of that country for the seconded employee. Therefore, the contention of the Revenue was that the assessee was a service recipient inasmuch as they were receiving manpower supply from the foreign group companies and therefore is liable to pay service tax under reverse charge on the same. In this regard, the Commissioner and C.E.S.T.A.T. Bangalore had given relief to the assessee and held that it was not an agreement for manpower supply.

**Decision:** The Hon'ble Supreme Court, in its analysis had opined that, in a contemporary global economy where cross-border transactions have become prevalent, employees are frequently seconded to group companies based on business necessities. In Para 47 of the judgement, it was opined that the cardinal principle of interpretation of documents, is that the nomenclature of any contract, or document, is not decisive of its nature.



# CASE STUDY

2022 (5) TMI 967 - SC

An overall reading of the document, and its effect, is to be seen by the courts. Therefore, the task before the Hon'ble Court was to discern the true nature of the relationship between the seconded employees and the assessee, upon overall reading of the materials presented by the parties. Based on the agreements provided between the group entities and also the seconded employees, it was observed that it nowhere states that the seconded employees are the employees of the assessee. Further, the salaries, benefits and perks such as housing allowance, hardship allowance seconded employees are paid by the overseas entities and once the assignment is finished, the seconded employees return to their home countries. Thus, the Hon'ble Court held that there was no employer-employee relationship between the seconded employees and the assessee and that they were indeed receiving manpower supply from a foreign entity and thus, confirmed the demand of the same on the assessee.





# CASE STUDY

2022 (5) TMI 967 - SC

With respect to the argument on revenue-neutrality, the Hon'ble Court did not agree with the contention of the assessee inasmuch as the only question before the Hon'ble Court was whether there is an incidence of service tax on secondment services and to decide the nature of the service before them. The case laws relied upon by the assessee were only mere affirmations of the decisions of the Tribunal and there is no independent reasoning by the Court itself, therefore, the precedential value of such cases is limited in nature.

**Author's view:** In respect of the arguments advanced in respect of revenue-neutrality, the Hon'ble Court had not neutered the concept of revenue neutrality but had only held that it was not the question before them in this case. I am also not able to comprehend the Court's conclusion on the issue of lack of consideration to consider the transaction as a "service" per se in para 58 of the decision.



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# Before parting...

**Summons.** To many, this nauseating word would instantly unleash a swarm of bees under their belly. This sword is often (mis) used by the department to “voluntarily” extract confessional statements as well as premature recovery of tax, during the course of investigation. In 1989, the Board came up with a Circular, which reads:

*“Complaints have been received from the trade that in some of the Collectorates summons under Section 14 of the Central Excises and Salt Act, 1944 are being issued to the Managing Directors and other high officers with a view to enforce recovery of dues which are under dispute. Action under this section is to be taken only as a last resort in cases where assesseees are not co-operating, or investigations are to be completed expeditiously. This section should not be used for harassing the top management for forcing them to pay up demands which are disputed by them. For recovery of demands normal procedure under the law should be followed. If any instance of issue of summons to Managing Directors and other Directors without justification is noticed, a serious view will be taken by the Board. Collectors will be held personally responsible for enforcing these instructions in their charges.”*

With the passage of time, the spirit of this mandate has evaporated that our patriotic tax-warriors have started swinging the sword of summons to their discretion.

Now in a recent judgement in the case of CENTURY PLYBOARDS, the Guwahati High Court, has put spokes to the department and instructed not to issue summons directly to the Managing Director, reiterating the provisions of the celebrated ‘89 Circular.

***“Summons is a call - Morale need not fall,  
Summons without issue - Is nothing but a tissue!”***



**Jk**

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— *best amongst* —

