

Celebrating the 5th anniversary of GST

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Case laws

Top picks



Refund of unutilised credit on account of zero rated supply- Finished goods supplied by the Assessee domestically which attract nil rate of Cess should be construed as exempt supplies and is therefore required to be excluded from adjusted total turnover for the purpose of computation of refund of ITC of Cess in terms of Rule 89 (4) of the CGST Rules- **ELECTROSTEEL CASTINGS LIMITED [2022 (6) TMI 553 - CALCUTTA HIGH COURT]**

Classification of goods has to be determined by commercial identity test and not by functional test. Therefore, U Bolt and Front Spring Bolt is classifiable under Heading No. 7318 and not under Chapter 87 as parts of automobile- **ULTRA TECH SUSPENSION PRIVATE LIMITED [2022 (6) TMI 696 - AUTHORITY FOR ADVANCE RULINGS, UTTARAKHAND]**

Case laws

GST



The provisions of Section 129 (3) require the proper officer, seizing the goods, to issue a notice specifying the penalty payable and thereafter pass an order within 7 days from the date of service of the notice. In the present case, admittedly, no such notice has been issued till date though the seizure has been effected as early as on 30.05.2022 and hence the act of the respondent in retaining the vehicle is in gross contravention of the statutory provisions- **LAF ENTERPRISES [2022 (6) TMI 605 - MADRAS HIGH COURT]**

Even if the petitioner did not file the objection to the notice within 15 days, it is still incumbent upon the respondent to have heard the petitioner in the absence of objections- **FLOWSERVE INDIA CONTROLS (P) LTD [ORDER DATED 09.06.2022 IN WP NOS.9718 & 9719/2019- MADRAS HC]**

The applicant is mandated to provide the canteen facility in the factory premises as per Factories Act and the recovery of nominal rate is not mentioned in the employee agreement, which shows that provision of food is not as per the employment contract and hence the supply of food by the employer is held as supply of service and the amount collected is a consideration on which GST is liable to be paid- **KOTHARI SUGARS & CHEMICALS - 2022-VIL-173-AAR**

Customs



Sl no.	Citation & Name of Party	Summary
1.	<p>2022-TIOL-895-HC-MP-CUS</p> <p>Name of the Party: GANESH MANKAR VS CUSTOMS CENTRAL EXCISE AND SERVICE TAX</p>	<p>Madhya Pradesh High Court dismisses the Writ Appeal filed by the appellant against the Order of the Tribunal and holds that Section 129E does not empower the Tribunal or the Commissioner (Appeals) to waive the pre-deposit or to reduce the pre-deposit. Hence, the Tribunal is justified in dismissing the Appeal where the mandatory requirement of pre-deposit as provided u/s 129 (e) has not been fulfilled.</p>



SI no.	Citation & Name of Party	Summary
2.	<p>2022-TIOL-525-CESTAT-MAD</p> <p>Name of the Party: MARUVUR ARASI LOGISTICS PVT LTD VS THE COMMISSIONER OF CUSTOMS, CHENNAI-I COMMISSIONERATE</p>	<p>CESTAT holds that both Section 111 and Section 112 are attracted only when the goods that are held to be liable for 'confiscation' and are 'improperly imported goods'. Once the Revenue collects duty along with interest, then there remains nothing 'improper' about 'import' and since there is no improper import, there remains nothing to confiscate. Consequently penalty levied under Section 112 cannot be sustained.</p>

Notifications

Circulars

GST

1.	Notification No. 01/2022-Compensation Cess dt.24.06.2022	Levy and collection of Compensation Cess has been extended up to 31.03.2026.
2.	Instruction No. 03/2022-GST dt.14.06.2022	For the purpose of ensuring uniformity in procedure and enabling effective monitoring of sanction of refund claims, the Board has issued instructions/guidelines for sanction, post-audit and review of refunds.



Notifications

Circulars

Customs

1.	Instruction 09/2022 - Customs dt.22.06.2022	No.	Restrictions on import of products made of plastic.
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TAX

cookies

Technical glitches galore in GST Portal- GSTR 2B had duplicate entries for some tax payers in June, while just a month back there was the problem of the same return being incomplete - Taxmen continue to issue notices for mis-match – ***The pot calls kettle black.***

47th GST Council Meeting creates tremor across India – Jigs many GST rates, withdraws exemptions.

Crypto dealers breathe a sigh of relief as GST council defers taxing of Virtual Digital Assets (cryptocurrencies).



cookies

CBIC likely to issue FAQ as a framework to curb fake invoice menace.

No clarity on GST compensation to States as of now.

GST Council asks GoM to submit a 'fine-tuned' report on on-line gaming, casinos and horse-racing by July 15th – **Anyone wants to “bet” on the outcome?**



REFUNDS

The Central Board of Indirect Taxes & Customs (“CBIC”) has recently issued guidelines vide Instruction No. 03/2022-GST dated 14.06.2022. The above instructions have been issued as different field formations are following different practices with reference to treatment of refunds w.r.t. to sanction, review and post-audit of the refund claims.

Refund is one of the main areas of interaction between a taxpayer and the Department, therefore, standardized procedures, are a welcome move. The most important procedure installed by way of the present instruction is that a refund must be sanctioned vide a speaking order. The instruction also speaks about various checks before sanctioning a refund claim. The taxpayers must also refer to these and make sure that they are in proper order as these are the first details to be verified before deciding the merits of the refund claim. Details such as period of refund, whether any other refund claims are made for the same period, application is filed within the period of limitation, unjust enrichment, pending dues would be verified prima facie before sanctioning the refund. Further, in case of inverted rate refunds, whether the calculation under Rule 89 (5) is done in a proper manner, whether ITC has been debited and in case of zero rated supplies to SEZ or exports, all the proper procedures were followed would be verified by the Department.

Further, a post-audit cell is to be established which will verify/ review refund orders and cases where the Department is of the opinion that the refund sanctioned is incorrect shall be appealed against as per sub-section (2) of Section 107, wherein the Commissioner is empowered to review any decision or any order, including an order of refund and appeal the same within a period of 6 months.

However, at this juncture, it must be pointed out that even without the present instruction, the fact that a refund order is a *quasi-judicial* order inasmuch as if the refund is rejected without any proper grounds, a taxpayer can always have the option to appeal against such order and the same right is available to the Revenue as well. Even under the provisions of the erstwhile indirect taxation laws, wherever the Department felt that the refund is incorrect, a taxpayer was always issued with a Show Cause Notice as to why the refund application preferred by them should be allowed. The position of the law or the legality of a quasi-judicial order has not changed with the introduction of GST, therefore, why there are different practices in field is a question to be pondered upon. Further, the taxpayers have ended up being a victim of these different field practices. In some cases, where a refund order is sanctioned, the Department not being satisfied with the same had preferred appeal before the GST Commissioner (Appeals), as per the procedure established by the law. However, there are also cases wherein refunds are sanctioned and then a year later or after the expiry of the appeal time limit, the taxpayer faces a show cause notice inasmuch as the refund was flagged by AG audit or some other Department. In such a case, a refund order can never be finalised. Further, the defence that a refund is sanctioned vide a quasi-judicial order and since the same was not appealed against, the refund order stands finalized is not even considered and parallel proceedings are started well after the time limit prescribed under sub-section (2) of Section 107.

The creation of a post-audit review cell is the Revenue protecting the Government's interest and their right of exercise of appeal. A fair taxation system will always have its checks and balances and the present instructions are in furtherance of the same. In view of the present instruction, refund orders granted after 14.06.2022 shall be scrutinized and subject to further litigation if the refund order is not found satisfactory or if there are any serious lapses in granting the refund order. However, the instruction is silent on the fact of such different field practices wherein finalised refunds are being re-opened much after the appealable period and therefore the CBIC can clarify this matter also.



Before parting...

-Jk

When The Hon'ble President pressed the button on the midnight of 30th June to unveil the revolutionary tax reform in India, the GST, it was seen as a Saffron revolution, another major one of the post-independence era, next to the Green and White.

Today, it's a stark and a brutal reality that this five-year-old kid is straying on the hair-splitting cross roads, desperately searching for navigation and directions.

Where it actually went wrong? To me, it was a flawed scheme from the word go. In a country like India, alloying and aligning the States and Centre interests, that too on the most important and fundamental oxygen supply – tax revenues, is one of the biggest blunders of the post-Independence era.

Will GST survive? At present, to me, it's a matter of time. Unless every other stake - holder shed their respective seventh - senses, namely, greed, ego, distrust, power, myopia and plunge to resolve with absolute resolute, this imminent disaster is just round-the-corner.

India adopted GST from the Canadian model of dual-GST, though there was another school of thought, who batted for the Australian model of Federal GST. On this fifth anniversary, I wish and fervently pray that, let better sense prevail, so that we do not land up ultimately in adopting the Malaysian model.

Happy GST day!!!

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