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TAXCONNECT & CONSULT EASE

MAY 2021 IDT END TO END UPDATES

By -

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[MUMBAI BANGALORE KOLKATA DELHI SURAT]

Will ITC be reversed on Mismatch between the supplier and recipient?

Critical Provisions for Denial of ITC Mismatch

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1. As per **Sec 16(2)(c)** of CGST Act, ITC shall be claimed only in case, the **tax charged in respect of such supply has been actually paid to the Government**, either in cash or through utilisation of input tax credit admissible in respect of the said supply

2. S 42 (2) The claim of ITC that match with the details of corresponding outward supply ….. **shall be finally accepted and such acceptance shall be communicated**, ….. to the recipient.

3. S 42 (3) Where the ITC claimed by a recipient is in **excess** of the tax declared by the supplier ……. the discrepancy shall be communicated to **both** such persons

4. S 42 (5) The amount in respect of which any discrepancy is communicated u/s 42(3) **and** which is not rectified by the supplier ….. shall be added to the output tax liability of the recipient….

Press Release Dated 04.05.2018 : GST Council approves principles for filing of new return design based on the recommendations of the Group of Ministers on IT simplification

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*iv. **No automatic reversal of credit**: There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address **exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.***

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Madras HC : D.Y. BEATHEL ENTERPRISES Vs THE STATE TAX OFFICER (DATA CELL), (INVESTIGATION WING) COMMERCIAL TAX BUILDINGS, TIRUNELVELI

- In the said press release, it has been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc. **Section 16(1) & (2) of Tamil Nadu Goods and Services Tax Act, 2017, also makes the position clear**

Madras HC : D.Y. BEATHEL ENTERPRISES Vs THE STATE TAX OFFICER (DATA CELL), (INVESTIGATION WING) COMMERCIAL TAX BUILDINGS, TIRUNELVELI

- if the tax had not reached the kitty of the Government, then the liability may have to be eventually **borne by one party, either the seller or the buyer**. In the case on hand, the respondent does not appear to have taken any recovery action against the seller

- Charles and his Wife ought to have been examined. **They should have been confronted.** I do not understand as to why the respondent did not ensure the presence of Charles and his wife Shanthi, in the enquiry.

- ***Therefore, the impugned orders are quashed and the matters are remitted back to the file of the respondent. Charles and his wife Shanthi will have to be examined as witnesses. Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi.***

1. Supreme Court in the case of ***Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others*** *laid 2 important Doctrines-*

    1. Treating both the 'guilty purchaser' and the 'innocent purchaser' at par is violative of Article 14 of the Constitution;
    2. A14 - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
    3. In the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the government the tax collected by him from those purchasing dealers and therefore avoid transaction with such selling dealers.

2. The Court observed that It is trite that a law that is not capable of honest compliance will fail in achieving its objective.

Further, The Hon'ble **Punjab And Haryana High Court** in The Case Of Gheru Lal Bal Chand Versus State Of Haryana And Anr. Has held that –

"Once the law defines the registered dealer and tax-paid goods, the assessee, i.e., purchasing dealer, produced the bill issued by the registered dealer then his burden is discharged and ***he cannot be held responsible or he cannot be forced to go around from pillar to post to collect the material in order to get the rebate****. To conclude, no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer is established."*

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MADRAS HC :DATED : 29.01.2013 W.P.Nos.2036 to 2038 of 2013
SRI VINAYAGA AGENCIES Vs THE ASSISTANT COMMISSIONER (CT)

…The pre-revision notices and the orders clearly stated that the petitioner-dealer had paid the tax to the selling dealer. If that be the case, the petitioner's case squarely fell under the proviso to section 19(1) of the Act. It was another matter that the selling dealer had not paid the collected tax. ***The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made.*** *The orders were liable to be set aside - Sub-section (16) of Section 19 states that the input tax credit availed is provisional.* ***It, however, does not empower the authority to revoke the input tax credit availed on a plea that the selling dealer has not paid the tax - Appeal allowed***

2021-VIL-333-KAR
THE STATE OF KARNATAKA Vs SIMPLEX INFRASTRUCTURES LTD

Karnataka VAT Act - Department appeal seeking to disallow of input tax credit claimed by assessee on purchases effected from dealers who had either been deregistered or had failed to discharge their tax liability paid on such sales –

HELD - the input tax credit cannot be denied in the hands of purchasing dealer, merely on the ground that the selling dealer has not discharged his liability to tax - the assessee had discharged the burden cast on him under Section 70 of the KVAT Act to prove the genuineness of the transactions in question - answered against the petitioner-Department and in favour of the assessee - the petition is dismissed

Will ITC be eligible on Items of Sales Promotion ?

2021-VIL-21-AAAR

M/s PAGE INDUSTRIES LTD

1. Sales promotion items are ‘non-taxable/ exempt supplies’ on which no ITC is available u/s 17(2) of The CGST Act

2. Since sales promotion items are supplied voluntarily they are ‘gifts’ and ITC is blocked u/s 17(5)(h)

3. They are business assets and hence they are supplies in terms of Schedule I entry 1 “Permanent transfer/disposal of business assets where ITC has been availed on those assets”

Critical Provisions for allowance of ITC/Non-Payment of Tax

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1. They are not business assets.
2. They are not outward supply at all as they are not transferred/disposed off but consumed in business.
3. They are not 'gifts' as there is a business purpose for the expenditure. The expenditure is incurred to promote/generate sales. They are not voluntary but incurred due to market requirement to generate demand.
4. They are business expenditure like any other expenditure like printing & stationery, disposables, etc which are for furtherance of business.

New Reconciliation as per Notice

Reco with GSTR 9

Additional Tax payable on account of GSTR-09			
Calculation of tax payable on account of filing GSTR 9			
S. No.	Item	Part	Row No
1	2	3	4
1	Taxable supplies	II	4N
2	Increase by Amendments	V	10
3	Deemed Supply	VI	16B
4	Unreturned Goods	VI	16C
5	Pending Demands	VI	15G
6	ITC to be recovered on account of excess claim over 2A (only if –ve)	III	8D
7	ITC to be recovered on account of excess claim of IGST on Import (only if –ve)	III	8I
8	ITC to be recovered on account of Excess claimed in GSTR 3B than GSTR 9 (only if –ve)	III (6O,6A), Total column of Tran 1 and Tran 2 returns	6O-[6A+ Tran1 +Tran2]
9	ITC to be recovered on account of Excess Reversals in GSTR-09 as compared to 3B (only if +ve)	III (7I,7E),Total of July 2017 to March 2018 4(b)(1) and 4(b)(2) of GSTR 3B	[7I-7E]-[Total of 4(B)(1) and 4(B)(2) in GSTR 3B]

Reco with GSTR 9

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S. No.	Item	Part	Row No
1	2	3	4
10a	Total excess ITC (sum of 6 to 9)	-	-
10b	ITC claimed in 6A + 6N of GSTR 9	-	-
10c	ITC to be recovered (10a or 10b, whichever is less)	-	-
11a	Gross liability (Sum of 1 to 5 + 10c)	-	-
11b	Tran1 – CCF in VAT 200 return for June,17	-	-
11c	Total liability (sum of 11a+11b)	-	-
12	Less: Decrease by Amendments	V	11
12a	Increase in liability because of diff. in liability on outward supplies between R1 & R9 = GSTR1 - (1+2-12) col. of the above (only if tax values are positive)	-	-
13	Net Liability = 11c+12a-12	-	-
14	Paid in Cash in Returns	IV	9
15	Paid through ITC	IV	9
16	Differential tax paid on Amendments	V	14
17	Total Payment (Sum of 14 to 16)	-	-
18	Payable on account of GSTR 9 (13-17) if +ve	-	-

May 2021 & Recent Developments

NOTIFICATION No. 07/2021–Central Tax

A registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of May, 2021, also be allowed to furnish the return under section 39 in FORM GSTR-3B and the details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility, verified through electronic verification code (EVC).”

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GURCHARAN SINGH Vs MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), GOVERNMENT OF INDIA

While it is permissible for the State to identify a class of persons, to whom tax exemption would be extended, it is not permissible for the State to exclude a set of persons who would ordinarily fall within the exempted class by creating an artificial, unreasonable, and substantially unsustainable distinction

The Notification No. 30/2021-Cus imposing IGST @12% on Oxygen Concentrators imported for personal use is quashed for being unconstitutional - imposition of IGST on oxygen concentrators which are imported by individuals and are received by them as gifts for personal use, is unconstitutional - the writ petition is allowed

M/s PERNOD RICARD INDIA PRIVATE LIMITED Vs STATE OF GOA-BOM

Merit is found in contention based on Doctrine of Bias, there is no necessity to go into issue of vires of provisions of the Act – for the Assessment Year 2008-09, Assessment Officer held against Petitioner by rejecting very contention which Petitioner raised in respect of assessment for year 2010-11 – First Appellate Authority correctly recused himself when it came to consideration of appeal against order concerning Assessment Year 2008-09, because such order was made by himself

Circular No. 10/2021-Customs Changes introduced through the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021

Job Work:

- The facility of carrying out job work under the ambit of IGCR has been introduced.
- 100% out-sourcing for manufacture of goods on job-work basis is also permitted for importers
- Sensitive sectors such as gold, articles of jewellery and other precious metals or stones excluded

Import and clearance of capital goods:

- import capital goods for a specified purpose at a concessional rate of duty and after having put such capital goods to use for the said purpose, clear the same after payment of the differential duty and interest, at a depreciated value, with permission from the jurisdictional Customs Officer

Bringing more end-use based exemptions under the ambit of IGCR Rules, 2017

Circular No. 10/2021-Customs Changes introduced through the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021

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Procedure to be followed by an importer:

- One time - Prior Intimation of intent to avail IGCR Benefit including one-time continuity bond & intimation to store goods temporarily at any premises not owned by the importer

Intimation before import: Regarding the estimated quantity and value of goods to be imported, the exemption notification and serial number, the estimated duty forgone and the port of import - consolidated basis for a period not exceeding one year

Clearance of goods from the port of import: sufficient to upload such intimation copy on e-Sanchit and link the same along with the other documents when filing the bill of entry

Receipt of goods at premises of importer/job worker: importer shall intimate by email such receipt of goods

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Circular No. 10/2021-Customs Changes introduced through the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2021

Goods sent for job work from importer's premises: intimation may be given periodically job worker wise, latest by 5th of each month

Receipt of goods from the job worker:

Re-Export or clearance for home consumption: An importer shall utilise the imported goods for the intended purpose or re-export the same, within a period of six months from the date of import

Quarterly return and maintenance of account

details are to be furnished in the quarterly return according to each bill of entry

- The job-worker shall also maintain an account giving details
- CBIC, is in the process of automating and facilitating online submission of compliances prescribed in the rules through the ICEGATE portal
- The list of officers overseeing IGCR rules, 2017 along with their e-mail has been made available on https://www.cbic.gov.in/htdocs-cbec/home_links/enquiry-points-home

Extension of the due date of filing Revocation application of Cancellation

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In view of Notification No. 14/2021 dt. 01.05.2021, the timeline for filing the ‘Application for Revocation of Cancellation’ has been extended for those applicants, for whom the due date to file the same falls between 15 April to 30th May, 2021. Now, they can file the said application till 31st May, 2021

Generation of GSTR-2B for April 2021

GSTR-2B for April 2021 will be generated after the Due dates, on 29th May 2021

Taxpayers willing to file FORM GSTR-3B for April 2021 before GSTR-2B generation may do so on self-assessment basis. Notification No. 13/2021-CT dated 01.05.2021 prescribes a cumulative limit under Rule-36(4) for ITC claimed in periods April & May 2021

Invoke Rule 97A : Manual Filing of refunds

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MEHAR TEX Vs THE COMMISSIONER OF CENTRAL GST AND CENTRAL EXCISE, MADURAI - MAD

GST - Zero-rated Supply – Refund - While filing the refund applications the petitioner claimed the entire refund under the head of SGST alone – the respondent restricted the refund claim to the extent under the head of SGST and rejected the refund in respect of the CGST and IGST heads - whether the petitioner's claim for refund on CGST and IGST can be denied on the ground that his claim got consolidated under one head of SGST – HELD – petitioner's case is that due to error and new system of software in GST, the entire refund liability of ITC got auto populated under the head of SGST instead of CGST, SGST and IGST - petitioner has categorically stated that they filed refund application indicating that the entire refund claim got auto-populated under a single head, namely, SGST - for the error on the part of any software in GSTN the petitioner cannot be expected to produce proof for the same. In any event, the petitioner had submitted the refund applications manually also. If the petitioner was otherwise eligible to refund, on the ground of technical glitches and error having occurred due to auto-population, the petitioner ought not to be denied relief - the impugned orders are set aside to the extent they reject the refund claim of the petitioner made under CGST and IGST – the writ petitions stand allowed by remand

Amendment in Rule 138E: Restriction on furnishing of information in PART A of FORM GST EWB-01

(vi) in rule 138E, for the words "in respect of a registered person, whether as a supplier or a recipient, who, -" the words "in respect of any outward movement of goods of a registered person, who, -" shall be substituted.

Tax Connect Analysis of amendments in Rule 138E –

This is an important amendment wherein now the waybill can be generated for inward supply to a registered person who has not furnished returns (GSTR 3B/GSTR 1/etc) for 2 consecutive periods. Hence, now waybills cannot be generated **ONLY** for outward supplies relating to these taxpayers. Previously, no E-Waybill, either for inward supplies or outward supplies relating to these persons could be generated.

Amendment to RULE 90: Acknowledgement for Refund

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in sub-rule (3), the following proviso shall be inserted, -

*"Provided that the time period, from the date of filing of the refund claim in **FORM GST RFD-01** till the date of communication of the deficiencies in **FORM GST RFD-03** by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.*

after sub-rule (4), the following sub-rules shall be inserted, namely: -

*"(5) The applicant may, at any time before issuance of provisional refund sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08,** in respect of any refund application filed in **FORM GST RFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W.***

*(6) On submission of application for withdrawal of refund in **FORM GST RFD-01W**, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORM GST RFD-01**, shall be credited back to the ledger from which such debit was made.*

Amendment to RULE 90: Acknowledgement for Refund

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Tax Connect Analysis of amendments in Rule 90 –

These are welcome amendments which provide the following for a claim for refund under GST –

1. The time period between and '**Filing of a refund claim**' and issuance of a '**deficiency memo**' which is around 3-4 weeks will not be included to calculate the time barring period of 2 years for filing of GST Refunds claim.

   It is a common practice to issue a deficiency memo before sanctioning GST Refunds. When the taxpayers apply at the last time, then due to the time lapse due to issuance of these deficiency memos used to pose a legal hitch before the officers for sanctioning the refunds.

2. Now the taxpayers at anytime after filing of refund claim and till the time of issuance of acknowledgement/deficiency memo, but before the issuance of any order/SCN withdraw the refund claim. Any of the following reasons should be given in the Form RFD-1W for withdrawal-

i. Filed the refund application by mistake

ii. Filed Refund Application under wrong category

iii. Wrong details mentioned in the refund application

iv. Others (Please Specify)

Amendment to RULE 23: Revocation of cancellation of registration

in rule 23, in sub-rule (1), *after the words "date of the service of the order of cancellation of registration", the words and figures "or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30," shall be inserted*

Tax Connect Analysis of amendments in Rule 23 –

Amendment in Rule 23(1) is to align it to Section 30(1) wherein the AC / JC / Commissioner may allow the Registered person 1-2 more months beyond 30 days to apply for revocation of cancellation. Corresponding changes have also been made in Form GST REG-21 in the Instructions.

These provisions provide some more time for taxpayers whose registration is cancelled to apply for revocation of cancellation. However, for large Companies, whose suppliers' RC may be cancelled and consequently their ITC may be sought to be disallowed by the Department, it creates a waiting time of 90 days before such suppliers may take action for revocation.

Date Extensions

Description	Form	Waiver Up Interest Rate & Late Fee	Notification No.	Concerned Reporting Period
Input Tax Credit **TC Comments: Since the relaxation is only for 1 month, it is advised to not go for this relaxation if possible.**	NA	Rule 36(4) shall not applicable for April 2021 Return	Notification No. 13/2021 CGST	April 2021
Taxpayers having aggregate turnover of More Than Rs. 5 Crores in the preceding FY **TC Comments: The relaxation would not be too beneficial. However incase of any mistake in reporting in 3B, the notification will come in handy**	GSTR-3B	9% Interest for the first 15 days from the due date and 18% thereafter No late fees shall be charged upto 15 days from the due date of furnishing return	Notification No. 08/2021 CGST for INTEREST WAIVER Notification No. 09/2021 CGST for LATE FEE WAIVER	March and April 2021

Date Extensions

Description	Form	Waiver Up Interest Rate & Late Fee	Notification No.	Concerned Reporting Period
Taxpayers having an aggregate turnover of upto Rs. 5 Crores in the preceding financial year who are liable to furnish the return	GSTR-3B	NIL for the first 15 days from the due date, 9% interest for the next 15 days and 18% thereafter No late fees shall be charged upto 30 days from the due date of furnishing return	Notification No. 08/2021 CGST for INTEREST WAIVER Notification No. 09/2021 CGST for LATE FEE WAIVER	March and April 2021
Taxpayers having an aggregate turnover of upto Rs. 5 Crores in the preceding financial year who are liable to furnish the return quarterly	GSTR-3B (Quarterly)	No late fees shall be charged upto 30 days from the due date of furnishing return	Notification No. 09/2021 CGST for LATE FEE WAIVER	Jan-Mar 2021

Date Extensions

Description	Form	Waiver Up Interest Rate & Late Fee	Notification No.	Concerned Reporting Period
Job Work Services **TC Comments: The relaxation is too less. It should have been more as there is no revenue impact.**	ITC-04	Due Date extended from 25th April 2021 to 31st May 2021	Notification No. 11/2021 CGST	Jan-Mar 2021
All Monthly Taxpayers **TC Comments: This is a welcome relaxation.**	GSTR-1	Due Date extended from 11th May 2021 to 26th May 2021	Notification No. 12/2021 CGST	April 2021
Taxpayers who opted for IFF **TC Comments: This is a welcome relaxation.**	GSTR1/IFF-1	Due Date has been extended from 13th May 2021 to 28th May 2021	Notification No. 13/2021 CGST	April 2021

Date Extensions

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Description	Form	Waiver Up Interest Rate & Late Fee	Notification No.	Concerned Reporting Period
Timelines for all other proceedings, asset order etc., where last date of completion or compliance under GST law falls between 15th April to 30th May 2021	NA	Due Date extended to 31st May 2021	Notification No. 14/2021- CGST	15th April to 30th May 2021
Taxpayers who are liable to furnish the return as GSTR-4	GSTR-4	No Interest shall be charged for the first 15 days from the due date, 9% interest for the next 15 days and 18% thereafter	Notification No. 08/2021 CGST for INTEREST WAIVER	F.Y. 2020-2021
Composition Taxpayers	GSTR-4	Due Date extended from 30th April 2021 to 31st May 2021	Notification No. 10/2021 CGST	F.Y.2020-21

Denial of ITC on Wrong Classification of Supplier

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2021-VIL-160-CESTAT-DEL-ST
M/s KAJARIA CERAMICS LIMITED Vs COMMISSIONER OF CENTRAL GOODS & SERVICE TAX, ALWAR

Wrong classification of services by service provider – denial of input tax credit to service recipient-appellant. Cenvat credit cannot be denied questioning the assessment of service classification of the service provider, at the end of the recipient of service

It has been held by the Hon'ble Supreme Court in the case of **Sarvesh Refractories (P) Ltd.- 2007 (218) ELT 488 - 2007- VIL-63-SC-CE** and similarly held by this Tribunal in Hindustan Coca Cola Beverages - 2010 (19) STR 280 (Tribunal-Delhi) - 2010-VIL-110-CESTAT-DEL-ST that cenvat credit cannot be denied questioning the assessment of service classification of the service provider, at the end of the recipient of service.

Detention : Goods can be offloaded as per convenience of the transporter

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2021-VIL-353-TEL
VIJAY METAL Vs THE DEPUTY COMMERCIAL TAX OFFICER

There is no prohibition for a consignor to load the consignments to two different destinations intended for two different parties in two different States on a single conveyance; and also there is no rule that consignments intended for a party at a shorter distance should be offloaded first

Customs : Benefit denial for Delay in procedure

2021-VIL-178-CESTAT-BLR-CU
BULK LIQUID SOLUTIONS PVT LTD Vs BANGALORE-CUS

Customs - Can the department demand duty for non fulfillment of export obligation, incase of delay by DGFT in issue of EXPORT OBLIGATION DISCHARGE CERTIFICATE

Held by Bangalore CESTAT : No

TC Comments: The CBIC has also issued a Circular accepting Court Orders that substantiave claims cannot be denied for procedural lapses. In the same way, we have also argued a case where demand was madr due delay in endorsement of MEIS Licenses.

Rental Agreement contains Clause for use of premises by group Companies

GST ITC : Incase rental agreement contains a clause of possible use of premises by subsidiaries/associate companies, can ITC be denied on the pretext that the company does not use the premises exclusively

Held By CESTAT Delhi : Until there is a cogent evidence produced by the Department to show that the premises have not been exclusively used by the appellant, the demand is based merely on presumption and shall be set aside.

TC Comments : While the decision is in Servive Tax Matter, it is applicable in GST also. However it is advised that if a premises are used by many taxpayers, rent & ITC should be split appropriately to avoid Disputes.

Date of Communication Vs Date of Service of Order : S 128 of Customs

2021-VIL-166-CESTAT-CHE-CU
HARI BABU Vs COMMISSIONER OF CUSTOMS, CHENNAI

Time-limit under Customs to be counted from date of communication of order

Section 128 of Customs Act speaks about date of communication . Mere dispatch cannot be communication. Further Section 153 speaks about “service of order” and not “dispatch of order”

S7 : Scope of supply

A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1'st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constitutes or *vice-versa*, for cash, deferred payment or other valuable consideration.

S 7(1A) amended retrospectively where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II

Hon'ble Supreme Court judgment in the case of **State of West Bengal & Ors. v Calcutta Club Limited [2019(29)** G.S.T.L 545 (S.C.)] for erstwhile Service tax regime - held that there cannot be sale of gods or provision of services between the unincorporated private club / associations and its members owing to the principle of mutuality which treats such clubs / associations and its members as the same person.

Schedule II to the CGST Act omitted

Consequent to the amendment in section 7 of the CGST Act paragraph 7 of Schedule II to the CGST Act is being omitted retrospectively, with effect from the 1st July, 2017.

7. Supply of Goods
The following shall be treated as supply of goods, namely:-
Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

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2021-VIL-222-AAR
M/s BOWRING INSTITUTE

Although the Hon'ble Supreme Court judgment in the case of *M/s. Calcutta Club Limited* is fully applicable on the applicant, the Finance Act, 2021 has overruled what the Courts have held till now. It has countered the Principle of Mutuality

However, until the amended Section 7 of CGST Act is notified, the applicant is not liable to pay GST on subscription fees and Infrastructure development fund collected from the members

Royalty Paid by Mine Owners – Taxable @18% or 5%

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2021-VIL-01-GSTAA
M/s ESSEL MINING & INDUSTRIES LTD

The appellant has claimed the applicable rate of GST of 5% vis-a-vis 18% on sum of royalty paid to Government on grant of mining lease –

Activity of the assessee does not fall under the ambit of SAC 997337 and not taxable at the same rate as supply of like goods involving transfer to title to goods

Our view for GST on Royalty on Mining of minerals –

1.7.2017 to 31.12.2018 - 5%
1.1.2019 onwards - 18%

2021-VIL-54-SC
IN RE COGNIZANCE FOR EXTENSION OF LIMITATION

Extension of Period of Limitation - the period of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders - this order passed in exercise of powers under Article 142 read with Article 141 of the Constitution of India shall be a binding order within the meaning of Article 141 on all Courts, Tribunals and Authorities

Final Activities exempt but intermediary activities not

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2021-VIL-29-AAAR
M/s TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LIMITED

Supply of operation and maintenance materials used in regular day to day functioning and transfer of capital assets are activities in relation to transmission and distribution of electricity forming the value chain and is beyond the purview of GST. 9969 exempts transmission or distribution of electricity by an electricity transmission or distribution utility. GST is applicable on Supply of Operation and maintenance materials used in the regular day to day functioning; and Transfer of capital Assets as the same are 'supply of goods' to TANTRANSCO and not a service involving distribution of electricity

TC Views : If there is a close nexus between the two, then it can be argued that the consolidated activities are exempt and hence the inter se activities should also be exempt

Proper Officer : Canon India – Customs distinguished

2021-VIL-320-MAD-CU
M/s SRI SATHYA JEWELLERY Vs THE PRINCIPAL COMMISSIONER OF CUSTOMS, CHENNAI

Petitioner case that Directorate of Revenue Intelligence is not the 'Proper Officer as contemplated under Section 28(4) of the Customs Act (Canon India Case)

The High Court, under Article 226 of the Constitution of India, is not expected to usurp the powers of the appellate authorities by adjudicating the merits of the matter on certain documents and evidences - As far as the judgment of the Hon'ble Supreme Court of India in the case of M/s. Canon India Private Limited is concerned, the matter went to the Hon'ble Apex Court by way of regular appeal and the Hon'ble Supreme Court of India, while adjudicating the final orders passed by the Appellate Tribunal, formed an opinion that the issuance of show cause notice itself was by an improper authority

Procedural Lapse : Declaration of Intent in SBs

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2021-VIL-316-GUJ-CU
ORIENTAL CARBON AND CHEMICALS LIMITED Vs UNION OF INDIA

Only lapse is with regard to inadvertent non-mention of declaration of intent in shipping bills as per Clause 3.14 of Handbook of Procedures during period between 1.4.2015 and 31.3.2015, i.e. during initial period of FTP, 2015-20

– As lapse being a technical or a procedural lapse, writ applicant should not be denied substantive benefits –

Is Group Mediclaim Insurance available for ITC under GST?

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2021-VIL-159-CESTAT-AHM-ST
SOLVAY SPECIALITIES INDIA PVT LTD Vs C.C.E. & S.T.-VADODARA-II

Por the period post amendment in Rule 2(l) of Cenvat Credit Rules, whereby certain services were excluded from the ambit of input services has been considered by the Hon'ble Madras High Court in the case of M/s Ganeshan Builders Ltd. wherein after interpreting the term 'Group Insurance' with the exclusion clause held that the group insurance service is admissible input service and credit was allowed

- Accordingly, following the said judgment, it is held that Group Insurance Service is admissible for Cenvat Credit - The impugned order is set aside and appeal is allowed

Refund of Customs duty due to mistake

2021-VIL-305-KAR-CU
M/s DHL EXPRESS INDIA PVT LTD Vs THE COMMISSIONER OF SERVICE TAX, SERVICE TAX-1, BANGALORE

Rectification of mistake under Section 154 of the Customs Act - HELD - for refund of the amount, the duty paid without authority of law, the refund provisions under Section 27 of the Customs Act, 1962 are not applicable and the limitation applicable is in terms of the Limitation Act

The excess customs duty was paid mistakenly on account of certain error and the said mistake can be rectified under Section 154 - when the customs duty is paid in excess, the department is liable to refund the same and the limitation provided under Section 27 will not be applicable -

6 Digit SAC Codes and 6 Digit HSN Codes : General Mistakes with examples

Process of Classification

1. Do the Common parlance test

2. Check the GST Schedule for specific item

3. Check Customs Schedule (or 6 Digit SAC Schedule) with explanatory Notes

4. Find out most suitable item from Customs schedule

5. Check GST Schedule for “Carve Outs”

6. Incase of any “Carve Out” use the specific item code

7. Incase specific item code is not available use entry 453 or Code 9997 (Residual Entry)

6 Digit SAC : Online Advertisement

338	**Group 99836**		**Advertising services and provision of advertising space or time**
339		998361	Advertising Services
340		998362	Purchase or sale of advertising space or time, on commission
341		998363	Sale of advertising space in print media (except on commission)
342		998364	Sale of television and radio advertising time
343		998365	Sale of internet advertising space
344		998366	Sale of other advertising space or time (except on commission)

6 Digit SAC : Online Advertisement

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21	**Heading 9983** (Other professional, technical and business services)	(i) Selling of space for advertisement in print media.	2.5	-
		58[(ia) Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both	6	-]
		(ii) Other professional, technical and business services other than **63**[(i) and (ia) above] **44**[and serial number 38 below].	9	-

Service tax SCNs on Comparison with ITR

Defenses

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1. Insufficient Time To File Reply

2. On Facts –

- Predominnantly Goods Supplying Activities:
- In Case Of Works Contract Service, There Is Deduction Towards Value Of Materials Is Available
- Pure Agent's Services
- Service Is Exempt
- Service Is Abated

3. Limitation -

A. The Kolkata Tribunal in the case of **Purna Plastics Industries vs. CCE, Calcutta (Supra):** The assesse has disclosed manufacturing activity by a letter. There can now be no allegation of surpression

B. Hon'ble Supreme Court in **Anand Nishikawa Company Ltd. vs. Commissioner of Central Excise' - 2005 (9) TMI 331** wherein held that where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.

Defenses

4. CESTAT, Delhi in **Deltax Enterprises vs. CCE, Delhi 2018 (10) GSTL 392 (Tri – Del)** had elaborated that no service tax liability can be fastened on an unidentified service.

5. Circular No. 1053/02/2017-CX (F.No. 96/1/2017-CX.I) Dated the 10th March, 2017: Master Circular on Show Cause Notice, Adjudication and Recovery –reg. :

The onus of establishing that these ingredients are present in a given case is on revenue. The active element of intent to evade duty by action or inaction needs to be present for invoking extended period.

The Apex Court"s in the case of M/s Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay [1995 (75) E.L.T. 721 (S.C.)], has laid the law on the subject very clearly.

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6. No Demand Of Service Tax Can Be Confirmed On The Basis Of Amounts Shown As Receivables In The Income Tax Returns Or As Per Balance Sheet:

- Hindalco Industries Ltd. Vs. Cce, Allahabad 2003 (161) Elt 346 (Tri-del)
- Kirloskar Oil Engines Ltd Vs. Cce, Nasik 2004 (178) Elt 998 (Tri-mum)
- J.I Jesudasan Vs. Cce 2015 (38) S.T.R 1099 (Tri.Chennai);
- Alpha Management Consultant P. Ltd Vs. Cst 2006 (6) Str 181 (Tri.Bang);
- Tempest Advertising (P) Ltd. V. Cce 2007 (5) Str 312 (Tri.-Bang.);

Hon'ble CESTAT in the case of **Pappu Crane Service v. Commissioner (Service Tax Appeal No.70707 of 2018-[DB])** wherein the Tribunal while allowing the appeal has rejected the invocation of the extended period when the revenue's case was solely based on the figures in Form 26AS.

THANK YOU

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