

March 2022



THE INDIRECT TAX NEWSLETTER

argus
partners
SOLICITORS AND ADVOCATES

MUMBAI | DELHI | BENGALURU | KOLKATA | AHMEDABAD

Index

Recent Case Laws	2
Goods and Services Tax (GST)	2
1. <i>Provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects.....</i>	2
2. <i>Blanket prohibition on utilization of credit by blocking of the Electronic credit ledger is not permissible under Rule 86A of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”)</i>	3
3. <i>Renting of residential premises as hostels to working professionals and students is exempt from GST.</i>	3
4. <i>Relief granted to assessee who was coerced to deposit a huge sum of money during the course of search proceedings.</i>	4
5. <i>Vires of Section 70 of the GST Law relating to power to issue summons has been upheld.</i>	5
6. <i>A person cannot be held liable under Section 130 of the GST Law for contravention of law by any other person in the supply chain.</i>	5
7. <i>Input tax credit of invoice dated April 1, 2020 for services provided during April 2018 to March 2019 is inadmissible under Section 16(4) of the CGST Act.</i>	6
Service Tax.....	6
8. <i>Relevant date for computation of limitation in case of cancellation of flats shall be the date of refund of amount to customers against such cancellation.</i>	6
Customs	7
9. <i>When no time limit has been prescribed for filing an application for conversion of a shipping bill, Board Circular cannot be relied upon to frustrate provisions contained in Statute.</i>	7
Central Excise, Sales Tax, VAT	8
10. <i>Merely for want of registration as an ISD, assessee should not be denied substantial benefit of CENVAT Credit.</i>	8
Recent Notification and Circulars.....	8

Recent Case Laws

Goods and Services Tax (GST)

1. ***Provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects.***

Suguna Cutpiece Centre v. Appellate Deputy Commissioner (GST), Salem & Erode [W.P No(s). 25048/2021 (Hon'ble Madras High Court), decided on January 31, 2022].

Facts of the case:

- a. A batch of Writ Petitions was filed against certain adjudication / appellate Orders of cancellation of registration of the Petitioners owing to non-filing of their returns for a continuous period of six months.
- b. In some cases, the Petitioners filed an application under Section 30 of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) for revocation of cancellation of registration but authority rejected the same on the ground that the Petitioners have neither filed any reply to the notice nor appealed against the same. In other cases, appeals were filed by the Petitioners beyond the statutory time limit including the condonation period.

Judgment:

- a. The Hon'ble High Court observed that the Petitioners had disregarded the provisions of the GST Law and failed to exercise the option of amnesty scheme issued by the Government to file revocation applications. However, the Hon'ble High Court quashed the impugned Order for the following reasons:
 - The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments.
 - The right to carry on trade or profession also cannot be curtailed and only reasonable restriction can be imposed in as much as it is in violation of the Constitution of India.
 - The original as well as appellate authority have acted as per the limitations prescribed under provisions of the CGST Act and are not in non-compliance thereof. However, in line with the object of the GST Act of levying and collecting tax from every assessee who either supplies goods or service, legitimate trade and commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance.
- b. Pursuant to the above findings, the Hon'ble High Court allowed the Writ Petitions subject to certain conditions, including filing of returns for the previous period along with tax defaulted with interest, penalty, and fees in cash.

2. ***Blanket prohibition on utilization of credit by blocking of the Electronic credit ledger is not permissible under Rule 86A of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”).***

Dee Vee Projects Limited v. Government of Maharashtra [W.P. No. 2693/2021 (Hon’ble Bombay High Court), decided on February 11, 2022].

Facts of the case:

The Petitioner has challenged the action of the departmental authorities, who have blocked the entire balance of Electronic Credit Ledger (“**ECL**”) of the Petitioner under Rule 86A of the CGST Rules on the ground that it was not operating its business from any place mentioned in the registration certificate. The Petitioner contended that the blocking of the balance of the ECL is essentially a provisional attachment of property under Section 83 of the CGST Act, which cannot be done without initiation of any proceedings under Chapter XII, XIV and XV (relating to assessment, inspection, search, seizure, arrest and demand and recovery). The Petitioner further contended that no reasons to believe were recorded before passing the Order for blocking of the ECL by the Respondent.

Judgment:

- a. The Hon’ble High Court held that by blocking of Electronic Credit Ledger under Rule 86A of the CGST Rules, the custody of the property remains with the taxpayer but disability is created on his capacity to utilise it or receive the refund of unutilised credit whereas under Section 83 of the CGST Act, the power of provisional attachment of the property can be exercised only after initiation of any proceeding under Chapters XII, XIV and XV. The present case involves an exercise of power under Rule 86A, which is distinct from the power under Section 83 and, therefore, the Order for blocking of credit cannot be treated as the Order amounting to the provisional attachment of property under Section 83 of CGST Act.
- b. The Hon’ble High Court further held that Rule 86A of CGST Rules permits disallowance of debit of an amount to the ECL by blocking the balance therein only to the extent of fraudulent or wrong availment of credit made. Hence, a blanket prohibition upon utilization of credit available in the ECL is not permissible. It was further held that the power under Rule 86A cannot be exercised without any objective material or without any reasons to believe that the credit has been fraudulently or wrongly utilised and without recording such reasons in writing before the Order is passed. In the present case, the Hon’ble High Court observed that since aforesaid requirement of having reasons to believe was not complied with, the Order was unsustainable.
3. ***Renting of residential premises as hostels to working professionals and students is exempt from GST.***

Taghar Vasudeva Ambrish v. Appellate Authority for Advance Ruling, Karnataka [W.P.No. 14981 of 2020 (Hon’ble Karnataka High Court), decided on February 7, 2022].

Facts of the case:

The issue pertains to the question whether the activity of leasing of residential premises as hostel to students and working professionals, is covered under Entry 13 of the Exemption Notification No.9/2017-Integrated Tax (Rate) dated September 28, 2017 namely 'Services by way of renting of residential dwelling for use as residence' and is exempt from the payment of Integrated GST or not.

Judgment:

- a. In the absence of a definition of the term “residential dwelling” under the GST Act, recourse was taken to the clarification vide the Education Guide of the Central Board of Indirect Taxes (“**CBIC**”) under the erstwhile Service tax laws. It states that in normal trade parlance, residential dwelling means any residential accommodation and is different from hotel, motel, inn, guest house etc. which is meant for temporary stay. Reference was also made to the dictionary meanings of the term and it was observed that the said terms cannot be interpreted so as to exclude hostel which used for residential purposes by students or working women.
 - b. Therefore, in view of the facts where the residential dwelling was being rented as a hostel to the students and working women for the purposes of residence, the benefit of the Exemption Notification was allowed.
4. ***Relief granted to assessee who was coerced to deposit a huge sum of money during the course of search proceedings.***

Messers Dhariwal Products v. UOI [D.B. Civil Writ Petition No. 2189/2022 (Bombay High Court), decided on February 9, 2022].

Facts of the case:

The Petitioner filed a Writ Petition against the action of the Respondent who conducted search and seizure of their premises, coercing them to deposit a huge sum of ₹ 11.5 crores during the course of search operations without issuance of the Show Cause Notice. The Petitioner contended that the said action is in gross contravention of the mandatory requirement of Section 74 of the CGST Act, which provides for issuance of the Show Cause Notice for determination of tax short paid or not paid.

Judgment:

- a. The Hon’ble High Court held that prima facie the impugned action of coercion was resorted to by the authorities without complying with the provisions of Section 74 of the CGST Act. In the absence of adoption of the said procedure for issuance of a notice of demand, the Respondent authorities cannot recover allegedly short paid GST.
- b. Accordingly, notice was issued along with a direction that no coercive action shall be taken during the search/seizure operations and the assessee shall not be forced to make any deposit without adhering to the provisions of Section 74 of the CGST Act.

Argus Comments:

The aforesaid judgment could provide relief to the assesseees who are being coerced by the GST Authorities to deposit tax short paid / not paid during the course of search/seizure operations without complying with the provisions of the GST Law.

5. ***Vires of Section 70 of the GST Law relating to power to issue summons has been upheld.***

Messers S.K.Metal v. Assistant Commissioner, B II Enforcement Wing II, Department of Commercial Taxes, Jaipur [D.B. Civil Writ Petition No. 466/2022 (Hon'ble Rajasthan High Court), decided on January 25, 2022].

Facts of the case:

The Petitioner sought to challenge the vires of Section 70 of CGST Act along with the summons issued by the State Authority on the ground that scheme of Section 70 is in violation of principle of separation of powers in as much as the officer issuing summons is himself/herself interested in the case.

Judgment:

The Hon'ble High Court observed that the powers granted to the officers issuing summons under Section 70 of the CGST Act are not unguided or uncanalised. Such powers are to be exercised in the same manner as would be exercisable by a civil court under the Code of Civil Procedure. Accordingly, the powers vested under Section 70 are not in any manner beyond the competence of legislature or opposed to any of the fundamental rights or other provisions of the Constitution and therefore upheld.

6. ***A person cannot be held liable under Section 130 of the GST Law for contravention of law by any other person in the supply chain.***

Messers Shiv Enterprises v. State of Punjab [No.- CWP-18392-2021 (Hon'ble Punjab and Haryana High Court), decided on February 4, 2022].

Facts of the case:

The Respondents initiated proceedings under Section 130 of the CGST Act and detained the vehicle containing goods during transit on the ground of wrongful claim of input tax credit. The authorities alleged that the seller from whom the Petitioner had purchased the goods, had initially procured the goods from parties who were engaged in outward supplies without payment of tax. The Petitioner challenged the proceedings on the ground that the confiscation proceedings initiated against it for alleged contravention by any other person in the supply chain was grossly unsustainable.

Judgment:

The Hon'ble High Court observed that Section 130 of the CGST Act can be invoked after detention of goods under Section 129, only when there is a contravention of the provisions of the GST Law with an intent to evade payment of tax. A person can be attributed with such an intent only if the contravention of the provisions of the GST Law has some direct nexus with his action. Therefore, the Hon'ble High Court held that a person cannot be held liable under Section 130 for the action causing contravention of the provision of law by another person in the supply chain and accordingly directed the release of the conveyance and goods.

Argus Comments:

The Hon'ble High Court has rightly pointed out that a person cannot be held liable for contravention of the provisions of law by any other person in the supply chain, more so when the system does not permit verification of such aspects with respect to each supply. This ruling may also provide a sigh of relief to assessees on aspects of claim of input tax credit involving contravention of law by other persons in the supply chain.

7. *Input tax credit of invoice dated April 1, 2020 for services provided during April 2018 to March 2019 is inadmissible under Section 16(4) of the CGST Act.*

In Re: Vishnu Chemicals Limited [Order No. AAAR/AP/05(GST)/2022 (Appellate Authority for Advance Ruling, Andhra Pradesh), decided on January 24, 2022]

Facts of the case:

- a. The Applicant had received an invoice dated April 1, 2020 from its supplier of monthly rental services for the period April 2018 to March 2019. The Applicant sought an advance ruling from the Advance Ruling Authority (“**AAR**”) on the issue whether the credit of such invoice is available if claimed before filing GST Return of September 2021 or Annual Return for FY 2020-21 in terms of Section 16(4) of the CGST Act or not.
- b. The AAR held that the since the invoice referred pertains to the services rendered in the financial year 2018-2019, it is 'hit by the limitation for claiming input tax credit. Aggrieved against the said Order, the Applicant has approached the Appellate Authority for Advance Ruling (“**AAAR**”)

Judgment:

- (a) The AAAR observed that input tax credit can only be claimed on the 'documents' that are validated by the GST Act and the 'conditions' prescribed therein. In terms of the conditions laid down under Section 16(4), the AAAR held that since the invoice in the present case pertains to the rent for the Financial year 2018-19, the recipient is entitled to take input tax credit on the same before furnishing of Return under Section 39 for the month of September, 2019 following the end of financial year 2018-19 to which such invoice pertains or furnishing of the relevant annual return for the year 2018-19, whichever is earlier.
- (b) Accordingly, the AAAR held that the credit of the invoice dated April 1, 2020 for the services provided in Financial year 2018-19 was inadmissible in terms of Section 16(4) of the CGST Act.

Service Tax

8. *Relevant date for computation of limitation in case of cancellation of flats shall be the date of refund of amount to customers against such cancellation.*

Pramukh Realty v. Commissioner of Service Tax, Daman [Final Order No. A/10213/2022 (CESTAT, New Delhi), decided on February 22, 2022].

Facts of the case:

The Appellant had paid Service tax on sale of under-construction flats, which was subsequently cancelled and the amount pertaining to such sale was refunded to the customers along with Service tax. Thereafter, the Appellant filed a refund claim for the Service tax paid, which was rejected on the ground of being time barred. Being aggrieved with the order of the authorities, the Appellant filed an appeal before the Hon'ble Customs Excise and Service Tax Appellate Tribunal ("CESTAT").

Judgment:

- (a) The CESTAT observed that Section 11B(B)(eb) of the Central Excise Act, 1944 provides for a time limit of one year from the relevant date for filing a refund application. It further provides that where the Service tax payment needs to be adjusted later, the limitation period has to be computed from the date of such adjustment.
- (b) In the present case, the CESTAT observed that the refund of Service tax has arisen from cancellation of the sale of flats leading to refund of such amount to the customers. Therefore, the computation of the one year period for filing of the refund application will be done from the stage of adjustment of Service tax and not otherwise. Accordingly, the refund claim filed by the Appellant was allowed by the CESTAT.

Customs

9. ***When no time limit has been prescribed for filing an application for conversion of a shipping bill, Board Circular cannot be relied upon to frustrate provisions contained in Statute.***

Messers Carboline India Private Limited v. Commissioner of Customs, Chennai [Customs Appeal No. 40606 of 2021 (CESTAT, Chennai), decided on February 11, 2022].

Facts of the case:

The Appellant had exported certain goods vide shipping bills under Advance Authorisation. However, it had inadvertently disclosed an incorrect code pertaining to free shipping bill instead of advance authorisation shipping bill. On realising its mistake, the Appellant requested for conversion of free shipping bills to advance authorization shipping bills. The same was denied by the department on the ground that it was filed beyond a period of three months as stipulated by Circular 36/2010 dated September 23, 2010.

Judgment:

The Hon'ble CESTAT held that Section 149 of the Customs Act, 1962 which deals with conversion / amendment of the shipping bills does not stipulate any time limit for permitting the amendment of shipping bills. When the statute does not prescribe any time limit for filing an application for conversion of a shipping bill, the department cannot rely upon a circular to frustrate the provisions contained in the statute. It was further held that when there is a conflict, the statute will definitely prevail over the Board circular. In view of the aforesaid findings, the CESTAT set aside the Order denying conversion of free shipping bills to advance authorization shipping bills and allowed the appeal.

Central Excise, Sales Tax, VAT

10. Merely for want of registration as an ISD, assessee should not be denied substantial benefit of CENVAT Credit.

Commissioner, Central Excise, Kolkata – II v. Tide Water Oil Co. India Limited [Final Order No. 75113-75114/2022 (CESTAT Kolkata), decided on February 23, 2022].

Facts of the case:

The departmental authorities disallowed input service credit availed by manufacturing plant on strength of Input Service Distributor (“ISD”) invoices issued from Head Office, which was not registered as an 'ISD'. The issue pertains to the question whether Respondent should be denied CENVAT credit for want of registration as an 'ISD' during the relevant period or not.

Judgment:

The CESTAT held that there was nothing in the Rules which would disentitle an ISD from availing CENVAT credit unless and until such registration was applied and granted. It was further held that the non-registration of ISD was only a procedural irregularity and merely for want of registration as ISD, assessee should not be denied substantial benefit of CENVAT Credit. In view thereof, the CESTAT dismissed the appeal of the departmental authorities and set aside the demand.

Recent Notification and Circulars

No.	Reference	Particulars
1.	Notification No. 2/2022-CT dated March 11, 2022	Seeks to empower Additional/ Joint Commissioners of certain Commissionerates with the powers to adjudicate and pass orders in respect of show cause notices issued by the officers of Directorate General of Goods and Services Tax Intelligence (“DGGI”) under Sections 67, 73, 74, 76, 122, 125, 127, 129 and 130 of CGST Act.
2.	Circular No. 169/01/2022-GST dated March 12, 2022	Seeks to amend Circular No. 31/05/2018-GST, dated February 9, 2018 in line with the Notification referred to in Sl. 1 of this Table and clarifies <i>inter-alia</i> : <ul style="list-style-type: none"> - DGGI shall exercise the powers only to issue show cause notices, which shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the Noticee is registered when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only. - In respect of a show cause notice issued by the Central Tax officers of Audit Commissionerate, where the principal place of business of Noticees

		fall under the jurisdiction of multiple Central Tax Commissionerates, a proposal for appointment of common adjudicating authority may be sent to the Board.
3.	Circular No. F. 3(409)/GST/ Policy/2021/1054-1058 dated March 4, 2022	Seeks to provide guidelines for issuance of Show Cause Notices in a time bound manner and thereafter completion of the adjudication proceedings within the time limit prescribed.
4.	Circular F. No. CBIC-21/17/2022-INV-Customs-CBEC dated March 4, 2022	Seeks to provide toolkit for Anti-evasion / Preventive teams, which are required to search premises, vehicles; verify a stock of goods; draw up a panchnama or to arrest a person away from their office premises.

Contributed by the Indirect Tax team

You can reach out to our team for any queries



Ajay Sanwaria, Counsel
ajay.sanwaria@argus-p.com



Shreya Mundhra, Senior Associate
shreya.mundhra@argus-p.com

MUMBAI

11, Free Press House
215, Nariman Point
Mumbai 400021
T: +91 22 6736 2222

DELHI

Express Building
9-10, Bahadurshah Zafar Marg
New Delhi 110002
T: +91 11 2370 1284/5/7

BENGALURU

68 Nandidurga Road
Jayamahal Extension
Bengaluru 560046
T: +91 80 46462300

KOLKATA

Binoy Bhavan
3rd Floor, 27B Camac Street
Kolkata 700016
T: +91 33 40650155/56

AHMEDABAD

307, WestFace
Thaltej
Ahmedabad 380054
T: +91 79 29608450