



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

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## **GST, Customs and DGFT Updates**

**From 04.06.2021 to 18.06.2021**

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**GST & DEA**

Knowledge Portal on Goods & Services  
Tax

GST

# Rate of tax applicable on construction services provided to a Government Entity, in relation to rope construction

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- It was clarified vide circular that services provided to government entity by way of construction services such as “a ropeway on turnkey basis” are not eligible for concessional rate @12%.
- According to the notification, GST rate @12% is applicable on **composite supply of works contract** as defined under section 2(119) of CGST Act, which **does not apply to any works contract that is meant for the purpose of commerce, industry, business or profession**, even if such services provided to Central Government, State Government or any Government entity.
- It was clarified that civil constructions, such as rope way for tourism development shall not be covered by said entry 3(vi) not being a structure that is meant predominantly for purposes other than business.
- While road, bridge, terminal, or railways are covered by entry No. 3(iv) and 3(v) of said notification, **structures like ropeway are not covered by these entries too**. Therefore, **works contract service provided by way of construction such as of rope way shall fall under entry at sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%**.
- Therefore, it is clarified that works contract service provided by way of construction such as rope way shall attract GST at the rate of 18%.

# GST Applicable on construction of road where considerations are received in deferred payment

- IGST is exempt on service, falling under heading 9967, by way of access to a road or a bridge on payment of annuity entry 23A of Notification<sup>1</sup>. Heading covers “supporting services in transport” which covers “operation services of National Highways, State Highways, Expressways, Roads & streets; bridges and tunnel operation services”.
- Entry 23 of said notification exempts “service by way of access to a road or a bridge on payment of toll”. Together the entries 23 and 23A exempt access to road or bridge, whether the consideration are in the form of toll or annuity.
- Services by way of construction of road covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities). Said entry 23A does not apply to services falling under heading 9954. Therefore, plain reading of entry 23A makes it clear that it does not cover construction of road services, even if deferred payment is made by way of instalments (annuities).<sup>2</sup>
- Accordingly government clarified that there is no exemption on the annuity (deferred payment) paid for construction of road.

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1. Notification No. 12/2017-Central Tax

2. Circular No. 149/1/2021-GST dated 17.06.2021;

3. Notification No. 12/2017-central tax

- GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans**
- It was clarified that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt from GST.
- GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS**
- It was mentioned that supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption for the reason that value of goods supply in such a composite supply exceeds 25%.
- Then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service
- GST rate on laterals/parts of Sprinklers or Drip Irrigation System**
- The GST rate on Sprinklers or Drip Irrigation System was amended if they were provided separately.

Chapter Heading	Description of Goods	CGST Rate
8424	Sprinklers; drip irrigation systems including laterals; mechanical sprayer	6%

# Upcoming functionalities deployed on GST Portal for composition taxpayer



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**To provide a smooth and hassle free experience to the taxpayers and simplify the process following functionalities are recently deployed or are being deployed on the portal shortly:**

Module	Functionality	Function released/to be released
Ledger	Negative liability statement made available to composition taxpayers	Negative liability will be maintained in Negative liability statement. This negative balance will be automatically adjusted against the liabilities of subsequent tax period.
Returns	Download of Form GSTR-4A in excel and auto-population of its details in Form GSTR-4 of the composition taxpayer	<ul style="list-style-type: none"> <li>• A facility to download the details of Form GSTR-4A in an Excel file would be made available to the taxpayers, soon.</li> <li>• This Excel file would contain consolidated summary of the supplies at GSTIN level, which are required to be reported in Annual Return in Form GSTR-4.</li> <li>• This summary will also be auto-populated in Table 4A and 4B of their Form GSTR-4.</li> </ul>

## **CBIC provides the concessional rate on Covid-19 relief supplies and services up to inclusive of 30th September 2021:**

- Government on the recommendation of the council reduced the tax rate @ 5% on many covid related items which includes Medical grade oxygen, covid-19 testing kits, hand sanitizer, oxygen concentrators, ventilators etc.<sup>1</sup>
- Also reduced the tax rate @12% was applied on ambulances.
- Government also extended the exemption on covid related services till 30.09.2021.<sup>2</sup>

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1. Notification no. 05/2021 IGST dated 14.06.2021;  
2. Notification no. 04/2021 CGST dated 14.06.2021

## **Bail can be granted to the petitioner even if Hon'ble High Court has denied the same:-**

### **□ Facts-**

- Petitioner is engaged in availing fake Input Tax Credit more than Rs 10cr on account of which petitioner were arrested by the department.
- Petitioner filed an appeal before the High Court for bail but the same was denied. So petitioner filed a special leave appeal before the Supreme Court on the grounds that they were cooperating in the proceedings of the department and shall not leave the country until the case was closed.

### **□ Held:-**

- Supreme Court after viewing the facts and hearing the petitioner held that since the petitioner was complying in the all the process and helping the department while conducting the proceedings hence bail should be granted to them.
- However, it was stated that petitioner need to deposit the relevant amount within the required time failing which the bail shall be cancelled. Petitioner was required to submit his passport to the authority so that he cannot leave the country till the proceedings completed.
- The decision is good decision that the petitioner pay the amount as ordered by the Hon'ble Court and also fight to prove your innocence.
- On the above basis the bail was granted to the petitioner.



## Constitutional validity of Section 8 of IGST Act:-

### □ Facts-

- The present writ petition was filed on the grounds that Section 13(8)(b) and Section 8(2) of the Integrated Goods and Services Tax Act, 2017 are ultra vires articles 14, 19, 245, 246, 246A, 269A and 286 of the Constitution of India and also ultra vires the provisions of the Central Goods and Services Tax Act, 2017.

### □ Held:-

- It was held that Section 13(8)(b) seeks to impose a levy on Petitioner by stipulating that in respect of Intermediary Services, where the recipient is outside the country the place of supply shall be the location of the supplier. There is no restriction imposed on the intermediary services of a person like Petitioner. It is a legitimate power of the parliament to enact IGST Act including Section 13.
- It was mentioned that if the submission of Petitioner was to be considered, then any tax levied by the Central or State Government would be a restriction to carry on trade under Article 19(1)(g) of the Constitution of India. Therefore, Section 13(8)(b) of the IGST Act is not unconstitutional or ultra vires.
- Section 8 deals with nature of supply whereas Section 13 deals with place of supply and the attempt to artificially link Section 8(2) with Section 13(8)(b) is misplaced and unfounded as discussed earlier. Therefore it was considered that neither Section 13(8)(b) nor Section 8(2) of the IGST Act are unconstitutional or ultra vires the IGST Act. They are constitutionally valid and operative for all purposes.

## **Bank account of a director of the company can not be provisionally attached where proceeding u/s 67 of the act was initiated against the company:**

### **Facts:-**

- The Petitioner was acting as a director of a company and drew salary from the company. The Petitioner is also a shareholder in the company and holding approx. 14.33% equity shares of the company.
- Proceeding u/s 67 of the act was initiated against the company on the ground of availing ITC against bogus/fake invoices and an order was passed for the same by the department but the department attached the bank account of the director instead of the company.
- This writ petition is directed against the orders passed by the department, whereby several bank accounts of the petitioner have been provisionally attached which was incorrect and un-justified for the petitioner. As he is not the taxable person.

### **Held:-**

- From the fact of the case it is found that the petitioner is not a taxable person. This aspect is borne out upon perusal of the impugned orders, wherein it is clearly mentioned that company is the taxable person.
- It was held that before triggering the provisions of Section 83 of the Act, the application of mind was not done by the officer. Accordingly the provisional attachment orders dated are quashed.

## **Order cannot be issued in violation of principle of natural justice:-**

### **□ Facts:-**

- The petitioner is the proprietor, the place of business was inspected by the department and certain defects were noticed and therefore department asked petitioner to submit certain documents.
- The department issued notice pointing out certain discrepancies and the petitioners was directed to furnish objections within 15 days to the above proposals
- Further the department issued pre-assessment notice proposing defects, by reiterating the earlier notice, proposed levy of penalty under Sections 74 and 125 and the petitioner was directed to furnish objections within 7 days to the above proposals.
- The department issued personal hearing notice. The petitioner filed letter stating that documents pertaining to the said tax periods are voluminous and sought 30 days' time to file reply / objections with documents etc.
- The petitioner filed detailed objections to the pre assessment notice and given detailed objections to each and every defect pointed out by the department and requested personal hearing before passing any orders. But without considering the submitted documents the department issued an impugned order against which the present writ was filed.

## **order can not be issued in violation of principle of natural justice :-**

### **□ Held:-**

- Court heard the both side and considered the fact of the case after viewing the above facts court held that there is no doubt that there is total non-application of mind on the part of the department in passing the impugned order of assessment. In the considered opinion of this Court, the petitioner is entitled to be heard in person, before the order of assessment was made.
- In view of the forgoing reasons, this Writ Petition is allowed and the impugned order of assessment passed by the department are set aside and the matters are remanded back to the department to pass fresh orders, after affording an opportunity of personal hearing to the petitioner.

**Best judgement order can not be passed without stating by which method principal amount was arrived to the best of their knowledge and penalty can be levied without mentioning under which section penalty is being levied:-**

□ **Fact:-**

- The Petitioner did not file the GSTR-3B for the month of November, 2018. For which a notice u/s 46 of CGST Act was issued to the petitioner.
- Petitioner even after receiving the notice did not comply with the same and did not file its return.
- So that assessment order was passed by the Assistant Commissioner State Tax to the best of his knowledge by making a demand under the head of SGST, CGST and IGST.
- Penalty of 100% of tax amount was levied upon the petitioner but section under which penalty was levied was not mentioned in the order.
- As aggrieved by the above mentioned order, Petitioner has filed the writ petition before the Hon'ble High court.

**Whether best judgement order can be passed without stating by which method principal amount was arrived to the best of their knowledge and penalty can be levied without mentioning under which section penalty is being levied?**

□ **Held:-**

- In this view of the matter, since the impugned order appears to be prima facie arbitrary and contrary to the provisions of the Telangana GST Act, 2017, the impugned order is set aside; the matter is remitted back to the department for fresh consideration;
- The department shall issue notice to the petitioner indicating the method of assessment under the best judgment assessment provision contained in Section 62 of the said Act and grant a personal hearing to the petitioner; and then pass a reasoned order both with regard to levy of tax but also with regard to interest and penalty.
- In view of setting aside of the impugned order passed by department, consequential attachment orders/garnishee orders issued are also set aside and the Writ Petition is allowed.

**Sales Tax - Subordinate authority is not empowered to supersede the orders passed by appellate authority & administrative discipline requires that subordinate authorities should follow orders of appellate authority:**

□ **Fact:-**

- The present petition was filed by the assessee company to challenge validity of an assessment order passed by the Appellate Commissioner.
- In this regard, the assessee claimed that the issues which were already considered by the Appellate Deputy Commissioner in detail so the same cannot be taken by the commercial tax officer and therefore, the order passed by the Commercial Tax Officer who is a subordinate authority, was liable to be set aside.
- The assessee further claimed that the very same works contract were already adjudicated by the Appellate Deputy Commissioner and the value of the total contract was also considered by the Appellate Deputy Commissioner and the claim of the petitioner was allowed in respect of certain portions.

**Sales Tax - Subordinate authority is not empowered to supersede the orders passed by appellate authority & administrative discipline requires that subordinate authorities should follow orders of appellate authority:**

□ **Held:-**

- As far as the present writ petition is concerned it is clear that the issues considered by the Appellate Deputy Commissioner were considered by the Commercial Tax Officer and the order was passed, which runs counter to the order passed by the Appellate Deputy Commissioner.
- The subordinate authority is not empowered to supersede the orders passed by the appellate authority and an administrative discipline requires that the subordinate authorities should follow the orders of the appellate authority and even if any lapse, error or otherwise, the subordinate authority is bound to approach the appropriate higher authority for the purpose of setting aside the order passed by the appellate authority.
- In view of the above facts and circumstances, the impugned order passed by the CTO is quashed and the Revenue are at liberty to pursue their appeal already filed before the Tribunal in accordance with the procedures contemplated. Accordingly, the writ petition stands allowed.



## **Irregular availment of Cenvat credit - Corrective measures taken by assessee in subsequent FY does not make good irregular availment of CENVAT Credit during previous year::**

- **Facts:-**
- The assessee is engaged in the manufacture of aluminium alloy ingot and aluminium dross - In course of internal audit, and on scrutiny of the financial records for the year 2014-15 and 2015-16, it was observed that the assessee had purchased various capital goods during the year 2013-14 and 2014- 15 - Full invoice value including the Central Excise duty amount has been shown in the balance sheet for the year 2014-15.
- The assessee had claimed depreciation of entire invoice value of capital goods as were purchased during the year 2013 -14 - The assessee has also claimed 100% Cenvat Credit of capital goods .
- View SCN, the Department alleged that the assessee has taken the Cenvat credit on the capital goods which were capitalised in the balance sheet at full invoice value inclusive of Excise duty and have also claimed depreciation thereupon .
- Accordingly, the Cenvat credit was proposed to be disallowed and to be recovered along with interest and proportionate penalty.
- The said proposal was rejected vide Order-in-Original and appeal was preferred before the Commissioner (Appeals) by the Department which has been allowed vide the impugned order under challenge.

## **Irregular availment of Cenvat credit - Corrective measures taken by assessee in subsequent FY does not make good irregular availment of CENVAT Credit during previous year::**

- **Held:-**
- It is observed that when the assessee was subsequently asked about the said adjustment to have been made in the balance sheet for the year 2015-16 and 14-15, the appellant did not respond nor submitted any revised balance sheet for the aforesaid period.
- In fact CENVAT Credit Rules, 2004 do not permit CENVAT Credit in respect of part of value of capital which represents duty of amount on such capital goods or which the manufacturer or producer of output service claims as depreciation. Hence there is definite violation of said Rule by the assessee.
- The adjustment in the balance sheet of 2015-16 cannot be considered as reversion of the depreciation claimed in the balance sheet of the year 2013-14 and 2014-15 - Accordingly, there is no infirmity in the findings of the Commissioner (Appeals) where it has been held that the adjudicating authority has grossly erred in interpreting the provisions of CENVAT Credit Rules, 2004.
- Once the full depreciation was claimed, the assessee could not claim availment of cenvat credit on capital goods - Corrective measures taken by the assessee but in subsequent financial year definitely does not make good irregular availment of CENVAT Credit during the previous year - the appellant has failed to produce any evidence that double benefit which admittedly was claimed by him, as to actually been reversed for the relevant financial year. So, assessee's appeal dismissed.

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## **GST - No contract - Tax invoice itself shall be considered as 'a contract' and TDS shall be applied if value of supply exceeds the limit u/s 51:**

- **Facts:-**
- Applicant is a trust and is involved in executing civil works contract - They have sought advance ruling in respect of the following question viz.
- Interpretation of the term "a contract" for TDS applicability under section 51 of the GST Act. In the absence of any contract, or contract of continuous supply, whether TDS provisions under section 51 is applicable for every supply of goods and services? Or
- whether the single tax invoice shall be considered as "a contract" or aggregate value of purchase from a vendor for the whole year be considered as a contract?.
- **TDS Provision stated by Applicant:**
- Value of supply exceeds the limit, but there is no existence of "a contract". However, tax invoice itself shall be considered as "a contract" and TDS shall be applied.
- Value of total supply during the year exceeds the limit, but there is no existence of "a contract". Each tax invoice shall be considered as "a contract" and value of such supply under "a contract" not exceeds the limit. Annual value of supply from the supplier shall not be considered as supply under "a contract". No TDS provisions applicable

## **GST - No contract - Tax invoice itself shall be considered as 'a contract' and TDS shall be applied if value of supply exceeds the limit u/s 51:**

### **TDS Provision stated by Applicant:**

- Value of total supply under a contract: not exceeded the threshold limit, No TDS provisions applicable.
- Value of total supply under "a contract" exceeds the limit. TDS shall be applied when the aggregate value exceeds Rs.2.50.000/-.
- The applicant states that he is of the opinion that in the absence of "a contract" no TDS is required to be deducted when the value of an invoice is below Rs.2,50,000/-.

### **Held:-**

- Tax deduction at source is applicable to all supplies subject to condition that the value of supply under a contract under scenario no. 3 and 4 and purchase order under scenario no. 2 is more than Rs.2,50,000/- and invoice value is only applicable for scenario no. 1 as the basis for determining the "value of supply" under a contract.

# Customs & DGFT

## Anti-dumping Duty (ADD)

Tariff Head	Subject Goods/Country	Then	Now
2903 39 19 <sup>1</sup>	<b>'Polytetrafluoroethylen'</b> originating in or exported from Russia	Earlier ADD was levied till <b>6<sup>th</sup> June 2021</b> by Notification No. 23/2016-Customs (ADD), dated the 6th June, 2016.	Review in for levy of ADD started on 12.02.2021. Now ADD will be leviable on goods up to 31.10.2021 unless revoked earlier.

1. Notification No. 33/2021-Customs(ADD), dt. 03.06.2021

## Amendment for Export of Goods

### Export of Injection Remdesivir and Remdesivir Active Pharmaceuticals Ingredients (API)

- Amendment in export policy for Injection Remdesivir and Remdesivir Active Pharmaceuticals Ingredients (API).

Earlier DGFT has prohibited export of the Remdesivir by Notification No. 01/2015-20 dated 11.04.2021 now it has made change in its policy by changing export policy from **prohibited to restricted**.

Now exporters need not require any kind of permission or authorisation for export of Remdesivir against the Advance Authorisation under chapter 4 of FTP<sup>1</sup>.

### Export Promotion Council for Cashew

- Cashew Export Promotion Council of India's power to issue RCMC for product falling under their jurisdiction are suspended and Agriculture and Processed Food Products Export Development Authority (APEDA) has been authorized to issue RCMC for Cashew Kernels, Cashewnut Shell Liquid and Kardanol with immediate effect<sup>2</sup>.

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1. Notification No. 08/2015-2020 dated 14.06.2021  
2. Public Notice No. 06/2015-2020 dated 14.06.2021



## High Court Judgements

### **IGST Leviable on import of Oxygen Concentrator received as gift by Individual in India is legal or not?**

### **Ref – Article 21 - "No person shall be deprived of his life or personal liberty except according to procedure established by law."**

#### **□ Facts**

- In the present case oxygen concentrator was shipped in India by a relative of Individual as a gift from America in the current covid-19 crisis however Central Government is charging 12% of IGST on the imported oxygen concentrator by individual as a gift.
- As per petitioner charging of IGST on Oxygen Concentrator has invoked Article 21 of the Constitution of India as the Central Govt. had already issued an ad hoc exemption of IGST to the State Govt or any entity, can receive oxygen concentrator as gift without paying any IGST. Petitioner challenged notification no. 30/2021-cus dated 01.05.2021 which imposes 12% of IGST on oxygen concentrator for personal use.

#### **□ Held**

- The Hon'ble Delhi High Court has discussed the fact that the Central Govt. has given ad hoc exemption for payment of IGST to the State Govt or to any entity when they receive the same product as gift from abroad from any agency by notification no. 04/2021-cus dated 03.05.21. The Individuals are only not allowed the exemption because they are receiving the same goods directly as gift from their relatives without going to any agency. The discrimination here violates Article 14 of the Constitution of India for equality.

## High Court Judgements

- The Hon'ble Court has discussed that the notification were issued in public interest exempting certain supplies in the wake of pandemic however it makes little sense to exclude individuals who are receiving the same as gift by their relatives.
- It was told that *“The Courts and the State have to adopt a humanistic approach, which, in our view, is a facet of Article 21 of the Constitution. The failure to do so both, by the Court and by the State, would lead to an unbridgeable chasm between law and justice, resulting in, disruption of social order”*
- The Court further stated that *“In our view, a declaratory relief can be accorded, to the effect, that imposition of IGST on oxygen concentrators, imported as gifts, i.e., free of cost, for personal use, is violative of Article 14 of the Constitution on the ground that an artificial, unfair and unreasonable distinction has been drawn between persons, who are similarly circumstanced as the petitioner and those who import oxygen concentrators through a canalizing agency”*
- Finally the Court ordered that imposition of IGST on oxygen concentrators which are imported by individuals and are received by them as gifts [i.e. free of cost] for personal use, is unconstitutional and the Notification no. 30/2021-Cus dated 01.05.2021 is quashed.
- The Revenue had filed a Civil suit against the order and there will be stay on the operation of order for four weeks from 21<sup>st</sup> May 2021.
- **CBIC issued Notification No. 33/2021-Customs dated 14.06.2021 rescinding Notification no. 30/2021-Cus dated 01.05.2021.**

## High Court Judgements

### **SCN issued by DRI and DGCEI will not be valid as Section 28(11) is arbitrary and violative of Article 14 of the Constitution:HC**

#### **Facts**

- Various Writ filed before the Hon'ble High Court of Delhi requesting to quash the show cause notice issued by the DRI and DGCEI as they are not the proper officer to issue show cause notice under Section 28 of the Customs Act, 1962. However Customs contention was that as per Section 28(11) every officer has power to issue SCN on a retrospective basis from 8<sup>th</sup> April 2011 as per Customs (Amendment and Validation) Act, 2011.
- The core issue involved in all the cases whether section 28(11) provide power to every officer to issue demand under Section 28 for non-levy, short-levy or erroneous refund.

#### **Held**

- The Hon'ble Delhi High Court held that “Department cannot seek to rely upon Section 28(11) of the Act as authorising the officers of the Customs, DRI, the DGCEI etc. to exercise powers in relation to non-levy, short-levy or erroneous refund for a period prior to 8th April 2011 if, in fact, there was no proper assigning of the functions of reassessment or assessment in favour of such officers who issued such SCNs since they were not 'proper officers' for the purposes of Section 2(34) of the Act”.
- The Hon'ble Court also observed that the amendment would grant wide powers of assessment and enforcement to a wide range of officers, not limited to customs officers, without any limits as to territorial and subject matter jurisdiction and in such event the provision would be vulnerable to being declared **unconstitutional**.

## High Court Judgements

- The Hon'ble Delhi High Court held on the merit that the contention that Section 28(11) is overbroad in as much as it confers jurisdiction on a plurality of officers on the same subject matter which would result in chaos, harassment, contrary and conflicting decisions. Such untrammelled power would indeed be arbitrary and violative of Article 14 of the Constitution.
- The statute has to be read for what it actually states. It is only where there is some ambiguity which requires clarification that a reference can be made to the SOR as an external aid of construction. However, there cannot be a presumption of validity by reference to such SOR#.

### #SOR

The ***Statement of Objects and Reasons ('SOR')*** appended to the said Bill explained the rationale behind insertion of Section 28 (11), as under:"The Customs Act, 1962 consolidates and amends the law relating to customs. Clause (34) of section 2 of the said Act defines the expression "proper officer" in relation to the functions under the said Act to mean the officer of customs who is assigned those functions by the Central Board of Excise and Customs or the Commissioner of Customs. Recently, a question has arisen as to whether the Commissioner of Customs (Preventive) is competent to exercise and discharge the powers of a proper officer for issue of a notice for the demand of duty. The Hon.ble Supreme Court of India in Commissioner of Customs versus Sayed Ali and Anr. (Civil Appeal Nos. 4294-4295 of 2002) =2011-TIOL-20- SC-CUS held that only a customs officer who has been specifically assigned the duties of assessment and re- assessment in the jurisdiction area is competent to issue a notice for the demand of duty as a proper officer. As such the Commissioner of Customs (Preventive) who has not been assigned the function of a "proper officer" for the purposes of assessment or re-assessment of duty and issue of show cause Notice to demand Customs duty under Section 17 read with Section 28 of the Act in respect of goods entered for home consumption is not competent to function as a proper officer which has not been the legislative intent.

# High Court Judgements

## **Notification will come in effect from the date of publication in Official Gazette:HC**

### **Facts**

- In the present case the importer has imported certain items and the assessment and importation of the same was made on 17.09.2015 under 7.5% of import duty and accordingly paid the duty.
- CBIC issued Notification No. 46/2015-Cus dated 17.09.2015 wherein for the same item duty was given 12.5% however it was published in the Official Gazette on 21.09.2015 however dept. issued demand notice for the differential duty to the importer. Importer filed an appeal and the same was allowed. However Dept. filed writ against the appeal order before the Hon'ble High Court of Karnataka.

### **Held**

- The Hon'ble Karnataka High Court held that the A notification issued under that Section (25) would not become enforceable only if it is issued and sent for publication and not published at all. It would become enforceable only when such a notification is published and also offered for sale on the date of its issue. In other words, if a notification is published in the Official Gazette and not offered for sale on the date of its issue, such a Notification cannot be enforced on the date of its issue itself.
- The Hon'ble Court observed that Single Judge was justified in holding that notification dated 17.09.2015 could not have been made applicable to the imported goods in question and the demand for payment of differential amount of duty was rightly quashed.
- The Hon'ble High Court dismissed the writ filed on merits.

# High Court Judgements

## Conversion of Shipping Bills from Drawback to Advance Authorisation Scheme

### □ Facts

- Petitioner has filed its Shipping Bill under Drawback Scheme however the same was contended for the Advance Authorisation scheme. The petitioner has filed an application for conversion of shipping bill from drawback to Advance Authorisation scheme shipping bill.
- However after its application under time Customs authority has not taken any steps for conversion after expiry of 5 years from the date of application. Being aggrieved by the same the petitioner filed the writ before The Hon'ble Madras High Court.

### □ Held

- The Hon'ble Madras High Court held that the exporter had applied for conversion however after expiry of 5 years no actions has been taken however it is seen that the exporter has submitted the same issue before Centralized Public Grievance Redressal System however the same was rejected.
- The Hon'ble Court finally orders the Customs to re-open the matter afresh and take action against the application submitted within a period of six weeks and provide an opportunity to the applicant.

## High Court Judgements

### **Writ Petition would not be entertained if remedy available for appeal is there:HC**

#### **Facts**

- In the present case the petitioner issued a order from Joint Commissioner under the provisions of the Customs Act, confirming the demand of customs duty and also imposing penalty.
- The assessee has filed a writ against the order received.

#### **Held**

- The Hon'ble Madras High Court held that the “Right of appeal is a valuable right of a person” and held that The legislatures intended to prescribe an appellate remedy in order to ensure that the orders passed by the original authority or scrutinize and the justifiability and the legality of those are tested by the higher authorities of the department and decided that such right cannot be denied nor be dispensed with by the High Court by exercising powers under Article 226 of the Constitution of India.
- The Hon'ble Court observed that the appellate authority is empowered to adjudicate both the facts as well as the legal grounds raised by the respective parties and such a remedy must be exhausted before approaching High Court.
- The Hon'ble High Court dismissed the writ filed at no costs.

## High Court Judgements

### **Writ Petition would not be entertained if remedy for appeal is not exhausted:HC**

#### □ **Facts**

- Appellant was issued with a order-in-original demanding duties. The appellant being aggrieved by the order-in-original and challenged the order by way of a writ on the ground that the Natural Justice has been violated on issuing the order-in-original.

#### □ **Held**

- The Hon'ble Madras High Court held that the “Right of appeal is a valuable right conferred to a litigant” and such a right cannot be dispensed with in a routine manner, even by the High Court under Article 226 of the Constitution of India. The appellate remedy contemplated under the statute cannot be dispensed with in a routine manner in a writ proceedings and in all such cases, the appeal remedy is to be exhausted by the aggrieved person by following the procedures as contemplated.
- The Hon'ble Court observed that the appellate authority is empowered to adjudicate both the facts as well as the legal grounds raised by the respective parties and such a remedy must be exhausted before approaching High Court. It was also noted that appellate authorities are competent to grant even the interim orders and consider the appeal on merits by affording opportunity to all the parties.
- The Hon'ble High Court dismissed the writ filed at no costs.



## CESTAT Judgements

### **Refund granted by way of a order cannot be demanded by re-opening of the case unless the same is challenged as per law.**

#### □ **Facts**

- In the present case the appellant has applied for 4% SAD refund which was granted to him by the proper officer under a proper order. Thereafter department served a SCN demanding refund amount granted on the ground that the CA certificate provided was fake and thereafter an *ex parte* order was given demanding penalty and interest. Appeal was also rejected on the ground of fraud, despite appellant has submitted fresh CA Certificate.
- Being aggrieved by the order for demand the appellant filed an appeal before Hon'ble CESTAT Kolkata.

#### □ **Held**

- The Hon'ble CESTAT held that the refund granted to the assessee was not challenged and SCN was issued under Section 28 of the Customs Act, 1962 to recover the refunded amount with interest and penalty.
- Section 128 of the Customs Act, 1962 provides liberty to 'Any Person' aggrieved by the decision or order to prefer an appeal before the Commissioner (Appeals), which has not been done in the facts of the present case. It is settled by the Apex Court in **ITC Ltd vs. CCE, Kolkata** that the phrase any person has wide amplitude and Revenue also included in it.
- The Hon'ble CESTAT ordered neither the assessee can seek refund nor Revenue can proceed to recover the refund already sanctioned without challenging the earlier order by way of remedy provided in Section 128 of the Act and cannot re-open the issue. The duty demand with interest and penalty stands quashed.

## CESTAT Judgements

### **Acceptance of One's fraud cannot be taken as evidence against others: CESTAT**

#### **Facts**

- Customs in its search operation and Investigation found for one importer that it was misdeclaring assessable value to evade duty. In search operation and on investigation the owner has confirmed that they have evaded the taxes and accordingly paid differential duty at the time of investigation.
- Customs on the basis of the one importer issued SCN to the various importer having offices in the same premises for evasion of duties without doing investigation and collecting any evidences. Being aggrieved by the orders importers had filed an appeal before the Hon'ble CESTAT, Delhi.

#### **Held**

- The Hon'ble CESTAT Delhi has held that the issuance of SCN's and Orders were correct as per the evidences available and as per confirmation of the fraud importer. It was observed that the importers had already opted to pay the Customs duty and accepted that fake invoices were issued with the foreign suppliers.
- It was noted that all other firms were having no knowledge of the fraud of the importer and the acceptance given by the one importer cannot be read against the other importer or other companies. It was held that the acceptance of fraud is only against the importer itself and cannot be taken as evidence for other importer.
- Hon'ble CESTAT confirmed the order for one importer only and quashed the orders for other importers.



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