



# Indirect Tax Weekly Updates

November 2022

Volume – III



# Executive summary

## Judgments

- Payment into the cash ledger is not a discharge of tax liability
- Applicability of Service Tax on Cost Sharing Agreements
- Bombay High Court grants refund of IGST for imports made under EPCG Scheme during 01 July 2017 to 12 October 2017
- Order for cancellation of GST Registration cannot be passed without valid reasons

## Notifications, Circulars and Releases

- Central Board of Indirect Taxes and Customs (CBIC) empowers Competition Commission of India to decide Anti-profiteering issues
- Director General of Trades Remedies terminates Anti-Dumping Investigation on import of solar cells from China PR, Thailand and Vietnam

## News Highlights

- Supreme Court issues notice to State of West Bengal on legality of blocking of electronic credit ledger (ECrL) negatively under Rule 86A of the CGST/WBGST Rules 2017
- Australian parliament approves free trade agreement with India
- India, GCC to resume FTA talks; aim on trade diversification & job creation
- Government plans to tax online gaming at par with 28% GST which will be at par with casinos and horse racing
- RBI brings GSTN under account aggregator framework
- Govt may remove penal offences covered under IPC from GST law

**01**

# **Key Judgements**

# Payment into the cash ledger is not a discharge of tax liability

Statute: GST

M/s RSB Transmissions India Limited vs Union of India & Others

Forum : Jharkhand High Court

2022-VIL-745-JHR

- The petitioner denies liability to pay interest on delay in filing of GSTR 3B for the relevant periods on the ground that the amount of tax has already been deposited before the filing of the GSTR.3B return in its Electronic Cash Ledger. It was the primary contention of the petitioner that interest cannot be levied upon delayed filing of return but only on delayed tax payment
- However, the department contended that the e-cash Ledger is an account of the taxpayer maintained by the GSTIN system reflecting the cash deposits in recognized banks and payments of taxes and other dues made by the taxpayer. It contains a summary of all the deposits and payments made by a taxpayer. Merely depositing an amount in e-cash ledger does not make it a tax deposit to Government account
- The High Court, based on provisions of Section 49(1) of CGST Act, observed that any deposit made in the modes prescribed under Section 49(1) are mere deposits towards tax, interest, penalty, fee or any other amount and the same does not mean the it is appropriated to the government account. It further held that payment into the cash ledger does not amount to payment of tax liability. It highlighted that in the GST scheme of things, liability gets discharged only on filing of return.

## Comments

- Under the GST regime, many taxpayers are found to have some balance remaining in their e-cash ledger at all times. However, such a balance does not represent any tax payment. Hence, if the GSTR-3B return is not filed within the prescribed due date, the same would also amount to delayed tax payment even when the amount is already deposited in the e-cash ledger. Such a fact is further clarified by High Court in the present judgement.

# Applicability of Service Tax on Cost Sharing Agreements

Statute: Service Tax

Hazira LNG Private Limited vs C.S.T.-Service Tax - Ahmedabad

Forum : CESTAT

2022-VIL-837-CESTAT-AHM-ST

- Appellants shared certain expenditures like a common office building, security services, insurance services, manpower costs etc., with their associated enterprise. Appellants used to raise cost-sharing invoices on HPPL
- The Tribunal held that –
  - ✓ Service tax is a levy on the rendition of taxable service; however, the arrangement between Appellants and HPPL was in nature of cost sharing
  - ✓ Object of the cost-sharing agreement was to identify the requirement for a joint or a common function that may be required by any of the associated enterprises and to procure and use said services jointly. Said agreement also required associated enterprises to contribute towards their allocated share in the cost of common function
  - ✓ Revenue has not identified any specific service that Appellant has provided to its associate companies. Activities in nature of sharing the cost between associate companies do not amount to provision of any service by one company in agreement with any other companies
  - ✓ Since activities undertaken under the cost-sharing agreement do not amount to the provision of Service, the demand of Service Tax on activities undertaken under cost sharing agreement cannot be sustained.

## Comments

- Many taxpayers face a similar issue wherein the tax authorities seek to levy service tax/ GST on cost-sharing or profit-sharing agreements even when there is no underlying activity/service between the two entities. The above judgement could help such taxpayers in such scenarios.

# Order for cancellation of GST Registration cannot be passed without valid reasons

Statute: GST

M/s S.B. Traders vs The Superintendent

Forum : Telangana High Court

2022-VIL-753-TEL

- The respondent issued a Show Cause Notice (SCN) mentioning that in case petitioners have obtained GST Registration by means of fraud, wilful misstatement or suppression of facts, then their GST registration is liable to be cancelled
- However, no particulars of fraud, wilful misstatement or suppression of facts have been mentioned in the issued SCN. Further, on the date of submission of reply by the petitioner, the respondent passed the order for suspension and cancellation of registration, giving reasons that the cancellation is as per the direction of Head Office
- The Court held that SCN and the impugned order had been issued with non-application of mind, and no valid reasons are provided for cancellation of registration. Therefore, it is liable to be set aside.

## Comments

- The above judgement could be beneficial in scenarios where authorities suspend/cancel the GST registration without giving valid reasons on records. The High Court by setting aside such order in favour of the petitioner has yet again ruled that irregular orders cannot sustain, and any order given against the taxpayer should be based on valid arguments and reasoning

# Order refund of IGST on imports under the EPCG scheme during the intervening period , i.e. 01 July 2017 to 12 October 2017

Statute: GST

M/s Sanathan Textile Pvt. Ltd. vs Union of India

Forum : Bombay High Court

2022-VIL-773-BOM-CU

- The issue under consideration was whether the exemption from the payment of IGST on imports made under EPCG to be granted w.e.f. 13 October 2017 by way of Notification No. 79/2017 (the notification) is clarificatory or curative
- The issue had arisen due to the non-availability of such exemption to the exporters during the intervening period 01 July 2017 to 12 October 2017 though the exporters were hitherto enjoying the exemption from CVD in respect of the imports under the EPCG scheme for decades
- Bombay High Court, while considering the reasons and background leading to grant of exemption rules that the notification was clarificatory in nature and denial of benefit during the intervening period is not in line with [FTP 2015-2020](#) as it envisages import under EPCG at zero customs duty.
- Therefore, the petitioner will be entitled to grant of IGST refund paid on the imports under EPCG Scheme

## Comments

- The above judgement could be useful for importers who have paid IGST for the imports made under EPCG during the intervening period

**02**

**Important  
Notifications,  
Circulars &  
Releases**



# GST & Customs

## GST<sup>1</sup>

- W.e.f. 01 December 2022<sup>1</sup> Competition Commission of India (CCI) has been empowered by CBIC to examine whether input tax credits availed by any registered person or the reduction in the tax rate have resulted in a commensurate reduction in the price of the goods or services or both supplied by him

## Customs<sup>2</sup>

- As per the withdrawal request from domestic industry, Directorate General of Trade Remedies (DGTR) terminates Anti-Dumping Investigation into imports of Solar Cells whether or not assembled into Modules or Panels originating in or exported from China PR, Thailand and Vietnam

**1. Notification 23/2022- Central Tax dated 23 November 2022**

**2. F.No. 6/56/2020-DGTR & Case No. (O.I.) 48/2020 –DGTR dated 09 November 2022**

**03**

# **News Highlights**

# News Highlights

- Supreme Court issues notice to State of West Bengal in a matter pertaining to legality of blocking electronic credit ledger (ECrL) of assessee negatively under Rule 86A of the CGST/WBGST Rules 2017. Lists the matter for hearing after 4 weeks<sup>1</sup>
- Australian parliament approves free trade agreement with India<sup>2</sup>
- India, GCC to resume FTA talks; aim on trade diversification & job creation<sup>3</sup>
- Government plans to tax online gaming at par with 28% GST which will be at par with casinos and horse racing<sup>4</sup>
- RBI brings GSTN under account aggregator framework<sup>5</sup>
- Government may remove penal offences covered under IPC from GST law<sup>6</sup>



1. *Legality of blocking electronic credit ledger negatively under CGST Rules challenged; SC issues Notice- Taxsutra-November 2022*
2. *Australian parliament approves free trade agreement with India- Press Release Id 1878154- November 2022*
3. *India, GCC to resume FTA talks; aim on trade diversification & job creation- TIOL News Services- November 2022*
4. *Online gaming likely to attract 28% GST on full value- Financial Express- November 2022*
5. *RBI brings GSTN under account aggregator framework- Financial Express- November 2022*
6. *Govt likely to remove penal offences covered under IPC from GST law- Business Standard- November 2022*

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