



Indirect Tax Weekly Updates

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Volume – I



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News Highlights

- INR 1,51,718 Crore gross GST revenue collected for October 2022
- Central Government working toward merging the CCI with NAA
- GST law panel working on definitions of games of skill and games of chance

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Key Judgements

The doctrine of promissory estoppel could operate against a statute or not?

Statute: GST

Hero Motocorp Ltd Vs Union Of India & Ors.

Forum : Supreme Court

2022 (10) TMI 677 - Supreme Court

- Petitioner had filed a civil appeal before the Supreme Court challenging the decision of the Central Government to refund only 58% of CGST w.e.f. July 1, 2017 (i.e. with the launch of GST Law) instead of 100% exemption from excise duty as provided vide GOI O.M. of 2003 for new industrial units and existing industrial units on their substantial expansion in the state of Uttarakhand and Himachal Pradesh.
- The Supreme Court held that:
 - ✓ If the contention as raised by the appellants is to be accepted, it will make the provisions under the proviso to Section 174(2)(c) of the Central Goods and Services Tax Act 2017 ('the CGST Act, 2017') redundant and otiose. The legislature, in its wisdom, has expressly incorporated the proviso to Section 174(2)(c), providing that any tax exemption granted as an incentive against investment through a notification shall not continue as a privilege if the said notification is rescinded.
 - ✓ It is further to be noted that this Court has also consistently held that when an earlier exemption is withdrawn by a subsequent notification based on a policy change, even in such cases, the doctrine of promissory estoppel could not be invoked.
 - ✓ Even on the ground of a change of policy, which is in the public interest or because of the difference in the statutory regime itself on account of the GST Act being introduced as in the instant case, it will not be correct to hold the Union bound by the representation made by it, i.e. by the said O.M. of 2003
 - ✓ The appellants are permitted to make representations to the respective State Governments and the GST Council.

Comments

- The decision of the Supreme Court, though adverse for the petitioner, has provided much-needed clarity. This judgement would benefit the revenue and the assessee, saving a lot of time and manpower on both sides.

Admissibility of CENVAT Credit on hotel accommodation services

Statute: Central Excise/
Service Tax

Bharat Heavy Electricals Limited Vs Commissioner, Central Excise and CGST - Dehradun

Forum : CESTAT, New Delhi

2022 (10) TMI 286 - CESTAT New Delhi

- The applicant is both a manufacturer of bus ducts and a provider of output service involving the erection, commissioning and installation of bus ducts.
- To render the above service, the applicant has to send its employees to the site and arrange for appropriate hotel accommodations nearby the area.
- The petitioner was availing the CENVAT credit on the said hotel accommodation services. However, the respondent had challenged the said credit on the ground of the non-availability of an apparent relationship between accommodation service and bus duct manufacturing.
- Being aggrieved with the above, the petitioner preferred an appeal before the CESTAT.
- CESTAT held that hotel accommodation services are an eligible input service under Rule 2(I) of CENVAT Credit Rules as there exists a clear relationship between accommodation services and the taxable output service of the petitioner.

Comments

- With the judgement mentioned above, more clarity can be sought concerning the admissibility of CENVAT credit on 'Hotel Accommodation Services' provided to the employees, as the said services are not in the nature of personal use but are directly related to the business activities and are used in the course or furtherance of business.

Validity of Provisional Attachment on denial of principle of natural justice

Statute: GST

M.R. Metals Vs The Deputy Commissioner (ST), The Joint Commissioner (ST), The Chief Commissioner (ST)

Forum : Andhra Pradesh High Court

2022 (10) TMI 1064 - Andhra Pradesh High Court

- Respondent inspected the applicant's business premises and issued notice ascertaining the demand.
- The applicant filed detailed objections with the respondent against demand. However, the respondent ignored the complaints and issued a revised notice with increased demand.
- The applicant preferred the time extension of 15 days to file the objections against the revised notice. The respondent acknowledged the same, but the appellant received no reply regarding the rejection or restriction on the extension of time sought by the applicant.
- Afterwards, the respondent proceeded to attach the applicant's bank accounts provisionally. Aggrieved by this, the petitioner filed the writ before the High Court.
- The High Court held that the notice/ revised notice issued by the respondent does not provide details as to the material relied upon by the respondent to pass such a notice. Thus, non-furnishing the said information violates the principle of natural justice.
- Therefore, the High Court set aside the order for provisional attachment of the bank account and remanded the matter back to the assessing authority.

Comments

- It has been observed in multiple cases that authorities intend to bypass the procedural aspects and carry out adverse actions against the registered persons at will. Such judgements encourage the taxpayers that the judiciary is watchful of such irregularities and will not let the authorities take undue advantage of their powers.

Date of filing an application on common portal 'relevant' for construing limitation

Statute: GST

Chromotolab and Biotech Solutions Vs Union of India

Forum : Gujarat High Court

2022 (10) TMI 1000 - Gujarat High Court

- The assessee applied for a refund of GST under section 54 of the CGST Act, 2017, on the common portal on 28 December 2018
- However, the assessee submitted the physical application along with documents on 17 October 2019.
- The refund application was rejected on the ground that the application was filed after the expiry of the limitation period of two years, considering the date of physical submission to be the date of filing the application.
- The assessee filed a writ petition against the refund rejection order. The High Court apprised that the assessee had filed the application on the common portal on 28 December 2018, and ARN was generated, whereas until the application with documents was physically submitted, Revenue did not do anything on the application, which was filed following the prescribed mechanism.
- The High Court recognized that the Circular dated 15 November 2017 provides a procedure for filing applications, and filing a physical application with documents "cannot have an overriding operation to the detriment of the assessee" who had filed the application on the common portal within time. Thus, the date of filing the application for a refund would be considered as 28 December 2018 instead of 17 October 2019.

Comments

- The said judgement relieves taxpayers who have filed their refund application online but are stuck with the department. Now, they can rely on this judgement if the department challenges their refund applications as done by the department in the instant case.
- Consequential benefits would also be available to the taxpayers who have filed their refund applications on the edge of the expiry of the limitation period.

ISDs allowed transitioning unutilized CENVAT credit

Statute: GST

Hero Motocorp Ltd Vs UOI & ors

Forum : Delhi High Court

2022 (10) TMI 785 - Delhi High Court

- The Director General, Audit, Indirect Tax & Customs had issued an instruction dated 5 July 2018 for recovery of transitioned accumulated unutilized CENVAT credit availed by the Input Service Distributor (ISD) under section 140 of the CGST Act, 2017
- The said instruction was issued on the ground that the ISDs were not eligible to carry forward the balance of the unutilized credit to the Electronic Credit Ledger ('ECrL'), and the amount lying with the ISDs is not covered by TRAN-1.
- The assessee approached the writ court with a request to allow credit of unutilized CENVAT credit to the ISDs relying on the Bombay High Court judgment in Unichem Laboratories Ltd and Colgate Palmolive (I) Ltd and Gujarat High Court judgment in Bodal Chemicals Ltd.
- In response to the aforesaid submission by the assessee, Revenue submitted that the writ petition could be allowed.
- Therefore, the High Court passed the following orders:
 - No recovery of the accumulated credit transitioned by the assessee is to be made from the assessee
 - The instruction dated 05.07.2018 was quashed

Comments

- Many companies face the issue involved in the case mentioned above. This judgement could help them deal with such recovery orders issued by the department.

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**Important
Notifications,
Circulars &
Releases**

Amendment in Kerala Flood Cess Rules¹

- The State Government of Kerala had, vide its notification dated 27 October 2022, with effect from 1st August 2019, extended the power to assess and issue orders concerning Kerala flood cess to Central Tax officers as well.

Advisory on Sequential filing of GSTR 1

- GSTN had issued an advisory dated 21 October 2022, whereby it is provided that w.e.f. 1st November 2022, the GST portal shall not allow the following:
 - Filing of current period GSTR 1 before filing GSTR 1 of the previous period
 - Filing of GSTR 3B before filing of GSTR 1.

Phase 2 of HSN code reporting is live on GST portal

- GSTN vide its notification dated 22nd October 2022, had updated that w.e.f. 1st November 2022, registered persons with Annual aggregate turnover (AATO) of up to INR 5 crores would be required to report a 4-digit HSN code mandatorily while filing GSTR 1.

¹Notification No. 140/2022/TAXES dated 27 October 2022, Government of Kerala

Customs & DGFT

Anonymized Escalation Mechanism & extension of Standard Examination Orders¹

- CBIC had earlier set up an Anonymized Escalation Mechanism ('AEM') for the importers to lodge their grievances for the delay in the clearance of their bills of entry under faceless assessments. Now, the Board has emphasized that the Principal Chief/ Chief Commissioners would need to monitor the grievances lodged in the AEM for their speedy disposal.
- Further, regarding the phased implementation of Standard Examination Orders through Risk Management Systems (RMS), another Assessment Group (Group 5 | Chapter 84) shall also be covered under the new examination format with effect from 15 November 2022.

Amendment in Project Import Regulations²

- CBIC, vide its notification dated 19 October 2022, with effect from 20 October 2022, has shut the project import route used by solar project developers to circumvent the basic customs duty on solar modules and cells and pay lower duties.
- Further, CBIC has extended the benefits for Project Imports to Bhopal Metro Rail Project and Indore Metro Rail Project.

Grievances of exporters availing RoDTEP Scheme³

- The exporters availing the benefit of the RoDTEP scheme can now use the 'ICEGATE Helpdesk' to get their grievances related to scroll out of shipping bills, generation of e-scrips and transfer of e-scrips under the RoDTEP scheme resolved.
- This support would be available round the clock (24x7).

¹ Circular No.23 / 2022-dated 3 November, 2022, CBIC

² Notification No. 54/2022-Customs dated 19 October 2022, CBIC

³ Trade Notice No. 20/2022-23 dated 31 October 2022, DGFT

Central Excise and Service Tax

Amended exemption limits for petroleum crude and aviation turbine fuel¹

- Exemption from the Special Additional Excise Duty has been reduced for petroleum crude by INR 1,500 per tonne and increased for aviation turbine fuel by INR 1.50 per litre with effect from 2nd November 2022, making the revised exemption from the said duty to be INR 9,500 per tonne and INR 5 per litre respectively.

Amended exemption limits for high speed diesel oil²

- Exemption from the Special Additional Excise Duty has been increased for 'High-speed diesel oil' by INR 1 per litre with effect from 2nd November 2022, making the revised exemption from the said duty to be INR 11.50 per litre.

Mechanism for implementation of basic excise duty on sale of unblended motor spirit³

- CBIC has introduced a procedure to levy additional basic excise duty @ INR 2 per litre on the sale of unblended motor spirit to encourage blending of motor spirit, which inter alia includes furnishing of a running bond, submission of reconciliation statements certified by statutory auditor and payment of differential duty (wherever applicable).

Is DRC 03 valid mode for Central Excise and Service Tax Appeal Pre deposits⁴

- CBIC, vide its instruction dated 28 October 2022, has provided the following:
 - Pre-Deposit is a mandate for filing appeals under the Central Excise and Service Tax Act.
 - Payment of Pre- Deposit using GST DRC 03 is not a prescribed mode under GST Law.
 - There exists a dedicated CBIC-GST Integrated portal, <https://cbicgst.gov.in> (Board's Circular No. 1070/3/2019-CX dated 24 June 2019 refers in this regard), which should only be utilized for making such pre-deposits.

¹Notification no. 36/2022-Central Excise dated 1 November 2022, CBIC

²Notification no. 37/2022-Central Excise dated 1 November 2022, CBIC

³Circular No. 1085/06/2022-CX dated 31 October 2022, CBIC

⁴Instruction No. CBIC-240137/14/2022-SERVICE TAX SECTION-CBEC dated 28 October 2022, CBIC

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News Highlights

News Highlights

- INR 1,51,718 Crore gross GST revenue collected for October 2022 with monthly GST revenues of more than INR 1.4 Lakh Crore for eight consecutive months now.
- The Union government is working on enhancing legal powers for the Competition Commission of India (CCI) by amending some key provisions of anti-profiteering regulations on goods and services tax (GST), thus preparing the soil for two regulators to merge.
- GST law panel working on definitions of games of skill and games of chance



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