

INDIRECT TAX

An E-weekly update from
Annveshan Business solutions Pvt Ltd

CONTENTS

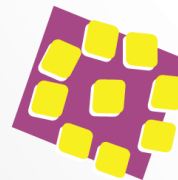
1. Circular / Instructions / Notifications

- Goods and Service Tax (GST)

2. Judicial Pronouncement

- Goods and Service Tax (GST)

- Service Tax / Central Excise / VAT



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Goods and Service Tax (GST)

1. Deposit of tax during the course of search, inspection or investigation.

CBIC in its instructions has made clear to its field officers that no recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where “recovery” of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, if tax payer wishes to make voluntary payment on ascertained liability the same can be made via DRC 03.

Instruction No 1/2022-23[GST Investigation] dated 25th May 2022

Annveshan comments

The above instruction is expected to provide some relief to tax payer also pause the undue recovery measures from over enthusiastic officers. Tax payer must be aware of the content of the said instruction and should know that any recovery of tax during the search ...etc is against to statutory provisions.

2. Waiver of late fee for non-filing of annual return by Composition dealer in Form GSTR 4:

CBIC has issued Notification to waive off the late fee payable on delay in furnishing of Annual Return in form GSTR 4 for the financial year 2021-22. Late fee stands waived for the period the First day of May 22 till 30th day of June 2022.

Notification No 7/2022 – Central Tax dated 26th May 2022

Annveshan comments

Unlike normal tax payer, Composition dealer don't enjoy the threshold limit for filing annual return. All the composition dealer is required to file the annual return. On top of that in the last budget, Act was amended to provide for imposition of late fee along with cancellation of registration in case of non-filing of return within 3 months of due date.

This was created hardship among the composition dealer as they cannot afford such huge late fee plus excessive consequences. Finally, CBIC in welcome gesture has waived the late fee and tax payer is expected use the benefit and file the return before 30th June 2022.

3.CBIC issues SOPs for recovering tax dues from insolvent Companies

The Central Board of Indirect Taxes and Customs (CBIC) has issued standard operating procedures (SOPs) to ensure the timely recovery of goods and services tax (GST) dues from companies undergoing liquidation under the Insolvency and Bankruptcy Code (IBC).

The CBIC said it has nominated a nodal officer to ensure filing of claims with the Insolvency and Bankruptcy Board of India (IBBI) within 90 days of the commencement of the process.

Instruction No 1083/04/2022-CX9 dated 23.05.2022

Judicial Pronouncement

Goods and Service Tax (GST)

1. Progressive Enterprises vs the State of Tripura and Others

– Tripura High Court

In the said case the consignor had sent the goods to the State of Tripura, however, due to various reasons cited in the petition including non-availability of land, etc. the consignor sought to take back the goods from Tripura to Guwahati and the necessary e-way bill for such transportation (return transportation) was also provided. Meanwhile, physical search was carried out and vehicle as well as goods was seized.

The court held that once the driver of the vehicle produces a valid e-way bill, the authorities concerned are responsible to honour the same and if any fault is found therein, action can obviously be taken up under the statute. Accordingly, no justification found in detention of goods and vehicle and ordered for release.

2022(5) TMI 1419 – Tripura High Court

2. National Ventures Private Limited vs Union of India and Others

– Orissa High Court

There is a restriction under section 54(3) of the GST Act to avail refund of ITC claimed in the case of exports of goods which attracts export duty under customs.

In the instant case, the iron ore fines which finds an entry in second schedule of the Export Tariff was subjected export. However, the rate of export duty was Nil. Accordingly, Company has filed the refund against exports and the department has rejected the claim since subjected goods falls in second schedule of Export Tariff.

The court placed reliance on B S Minerals and held that those goods which are actually subjected to exports duty only covers under the restriction section 54(3). Therefore, those goods which are exempt from export duty or nil rated are not come under the ambit of the Section 54(3) and accordingly entitled for refund.

2022(5) TMI 1021 - Orissa High Court

Service Tax / Central Excise / VAT

1. Union of India vs Mohit Minerals Pvt Ltd

The Hon'ble Supreme Court in the said case ruled that the GST on ocean freight paid in case of import of goods is unconstitutional.

The judgment also made observations on the GST Council and its powers. The bench held that the Central Government and State Government have simultaneous powers to legislate on the Goods and Service Tax (GST). The recommendations of the council are not binding on the Centre and States and the council as a body holds persuasive values.

2022(5) TMI 968 - Supreme Court

Annveshan comments

Detailed analysis can be found in our LinkedIn bit.ly/3zavtYI

2. Northern Operating Systems Private Limited vs UOI

The Apex Court in the said case held that service tax was liable on secondments to Indian entities from overseas groups under the earlier regime of service tax. This will certainly have huge implications under the current regime as the law is the same as under service tax.

2022(5) TMI 967 - Supreme Court

Annveshan comments

Detailed analysis can be found in our LinkedIn bit.ly/38RJksd

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