

Tax Digest

- Recent case laws



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NEWS

FEED

- **Payments Made Through Cenvat Account Is Liable To Be Re-Credited If Excise Duty Is Paid In Cash: CESTAT(FINAL ORDER NO.75012/2023 Dated 19.01.2023)**
- **Assessee cannot claim supplementary refund based on fresh calculation, after the original refund application has already been processed(W.P.(C) No. 24499 of 2020 and W.P.(C) No. 32166 of 2021 Dated 04.01.2023]**
- **Punjab Finance Minister inspects goods vehicles, detects GST evasion worth lakhs of Rupees.**
- **Apparel, drugs, and leather exporters under scanner for tax scheme misuse- Exporters are misusing the government's duty drawback scheme by claiming it along with refunds of integrated goods and services tax (GST), according to GST authorities, who are doing an investigation into this.**
- **No GST leviable on plantation of mangroves being not carried out by assessee for profit motive: Gujarat AAR**



- The Supreme Court asked the revenue department to provide details of the total number of show-cause notices issued for availing of the goods and services tax (GST) exemption in instances where exports have preceded imports, and where high courts (HCs) have granted interim orders.
- Data available from GSTN, the company that processes GST returns showed that monthly e-way bills generated have shot up to 8.41 crore in December, surpassing the 8.4 crore permits raised in September.
- The Hon'ble Allahabad High Court in M/s Shiv Scrap Sales v. State of U.P. & Anr. [Writ Tax No. 1519 of 2022 dated December 7, 2022] has directed the assessee to approach the competent authority by moving a proper application for giving the details of the ownership of the detained goods.
- **Payment Of Tax And Penalty To Release Detained Goods Can't Be Treated As "Admission" On The Part Of Assessee: Delhi High Court**

1. High Court of Delhi in the case of Arvind Goyal CA Vs Union of India & Ors (W.P.(C) 12499/2021 Dated 19.01.2023)

- i.** The court observed that the powers of search and seizure are draconian powers and must be exercised strictly in terms of the statute and only if the necessary conditions are satisfied.
- ii.** The petitioner/assessee has challenged the search operation as unlawful. The petitioner contended that the concerned officers could have no reason to believe that any goods liable for confiscation were lying on the petitioners' premises.
- iii.** The officers had no reason to believe that any records relevant to proceedings would be available to petitioners.
- iv.** The petitioner contended that the GST officers had no power to seize any cash in the exercise of their powers under Section 67(2) of the GST Act.
- v.** The power under Section 67(2) of the GST Act to seize goods could be exercised only if the goods were liable for confiscation. The documents, books, or things could be seized only if they are useful or relevant to any proceedings under the GST Act.
- vi.** The petitioner urged that currency is excluded from the definition of goods and thus cannot be seized as goods. The currency is also not useful or relevant for conducting any proceedings, and therefore, there is no question of seizing currency in the exercise of Section 67(2) of the GST Act.
- vii.** The department contended that the officers had merely "resumed" cash. Therefore, it cannot be considered a seizure.
- viii.** The court noted that the department was unable to point out any provision in the GST Act that entitles any officer of GST to merely "resume" assets.

- ix. As per the court the action of the officers in dispossessing the petitioners of their currency is concerning; it is clear that the said action of taking away currency was illegal and without any authority of law.
 - x. Since the amount of ₹18,87,000/- has already been returned to petitioner, the department has been directed to, forthwith return the balance amount along with the interest accrued thereon to the petitioners.
 - xi. The bank guarantee furnished by petitioner for release of currency is directed to be released forthwith.
- 2. [CESTAT in the case of Yusufkhan M Pathan vs C.C.E. & S.T.-Vadodara-iii\(Service Tax Appeal No.127 of 2012\) and Irfankhan Pathan vs C.C.E. & S.T.-Vadodara-ii\(Service Tax Appeal No.128 of 2012\) Dated 20.01.2023](#)**
- i. The appellants submitted that the agreement between the appellant and franchisee is an agreement of "employment." The agreement creates the relationship employer-employee." Since the appellant was employed by the franchisee and the appellant agreed upon the remuneration and benefits of the agreement, wearing the franchisee's colors and designs on cricket clothing, including marks and logos, is also part of the employment agreement and cannot be construed as promotional activities.
 - ii. The department contended that there does not exist an employer-employee relationship as there is no contract of employment as the appellants are cricketers by profession. No proof of salary or remuneration payment is produced in Form 26AS or its tax deduction under the salary heading.
 - iii. The CESTAT has held that the "Indian Premier League Playing Contract" clearly demonstrates that it is the appellant who is recognized as a player first. he franchisee is clearly stated in the agreement to be recruiting

- players to work as professional cricketers for it. It is abundantly clear that a person who has earned the reputation and recognition of being a player is employed by the franchisee and not the other way round.
- iv.** The tribunal has noted that there is no doubt that the appellant has been appointed or engaged by the respective franchisee under the agreement of "employment".
- v.** The agreement creates the "employer–employee" relationship.
- vi.** As per the Tribunal that the Appellants are not liable to service tax under the "Business Support Service".
- vii.** CESTAT took reference of **Hon'ble Calcutta High Court Judgement in the case of Shri Sourav Ganguly Vs Union of India and Others reported at 2016 (43) STR 482 (CAL) 2016-TIOL-1283-HC-KOL-ST**
- viii.** In view of the above discussion, CESTAT held that the demands of
- service tax are not sustainable against the appellants. Therefore, the demands confirmed by way of impugned order are set aside.
- ix.** In the result, the appeals filed by the appellants are allowed with consequential relief, if any, as per law.