



Tax Digest

- Recent case laws

2, India Exchange Place,
2nd Floor, Room No 10,
Kolkata – 700001

Ph: 033-22306990/ 40032841
Email id: info@acbhuteria.com

NEWS FEED

- CBIC introduced Central Goods and Service Tax(Second Amendment)Rules 2022(Notification No.19-Central Tax Dated 28.09.2022)
- CBIC notifies 1st October 2022 as the date on which provisions of Section 110 to 114 [except clause(c) of Section 110 and Section 111] of Finance Act 2022 shall come into force(Notification No.18/2022 dated 28.09.2022)
- 48th GST Council meeting is unlikely to happen in September 2022 May be scheduled during October 2022.
- Finance Ministry plans to bring Crypto Assets under GST regime
- HSN Code of 6 digits is mandatory for businesses having Aggregate Annual Turnover of more than Rs 5 Crore. It has become available from 1st August 2022.
- Section 110 of Finance Act 2022 was notified. Hence, taxpayer can transfer CGST in cash from one GSTIN to another as CGST or IGST only as a distinct person in form PMT-09.(Notification No. 09/2022–Central Tax dated 5.07.2022)
- CBIC issued clarification on HSN Classification of Truck Cranes or All Terrain Cranes(CIRCULAR NO. 20/2022-CUSTOMS [F.NO.528/10/2021-STO(TU)], DATED 22-9-2022)

1. Supreme Court in the case of M/s Trimurthi Frangrances(P) Ltd (CIVIL APPEAL NO. 8486 OF 2011 dated September 19, 2022)

- i. The main question raised in this batch of appeals is, whether, 'Pan Masala', which contains tobacco and gutka, covered by an Entry in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act 1957, hereinafter referred to as the 'ADE Act', are taxable by the State under the Delhi Sales Tax Act 1975 and/or the Uttar Pradesh Trade Tax Act 1948 and/or the Tamil Nadu General Sales Tax Act, 1959.
- ii. The ADE Act has been enacted to provide for the levy and collection of additional duties of excise in respect of certain goods, over and above the duties of excise levied under the Central Excise Act 1944.
- iii. It is well settled that once goods are chargeable under the ADE Act, the State cannot levy sales tax on the same goods under a State enactment.
- iv. There is no conflict between the **Kothari Products** (*supra*) line of cases and the **Agra Belting** line of cases. The **Kothari Products** (*supra*) line of cases was on the question of whether "tobacco" or other goods specified in the First Schedule to the ADE Act and hence exempted from Sales Tax under State sales tax

enactments, can be made exigible to tax under the State enactments by amending the Schedule thereto. On the other hand, **Agra Belting Works** (*supra*) line of cases was on the question of interplay between general exemption of specified goods from sales tax under Section 4 of the U.P. Sales Tax Act and specification of rates of sales tax under Section 3A of the said Act.

- v. This Court held that goods exempted from sales tax under Section 4 would be exigible to tax by virtue of subsequent notification under Section 3A specifying the rate of sales tax for any specific item of the class of goods earlier exempted under Section 4. There being no conflict, the reference to Constitution Bench is incompetent. The cases may be placed for decision before the regular Bench.
- vi. In view of Article 145(5) of the Constitution of India concurrence of a majority of the judges at the hearing will be considered as a judgment or opinion of the Court.
- vii. It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority.

2. High Court of Calcutta in the case of Emami Agrotech Ltd vs State of West Bengal(W.P.A. NO. 4916 OF 2022 Dated September 16, 2022)

- i. The incentive, in similar clause, is for refund of a percentage of VAT paid by the industrial units.
- ii. The petitioner claims to fall under group-B and Scale-2 of Clause 10.1. The Scheme was notified on 22nd February, 2011 and under Clause 19 provides for application of the Scheme mutatis mutandis in the event the Scheme is replaced by any other Act.
- iii. The GST regime came into force on 1st July, 2017. The petitioner prays for making the Scheme compliant with the GST regime which subsequently came into effect.
- iv. Department of Industry, Commerce and Enterprises, states that in the absence of the definite policy regarding adjustment of the Scheme with the changed taxation regime, grant of RC-II is not feasible.
- v. The petitioner claims to fulfill the relevant criteria for grant of incentive under both the Schemes. The petitioner also prays for the required inspection to be undertaken by the State respondents before grant of RC-II.
- vi. Clause 19 of the 2008 Scheme, as stated above clearly contemplates

subsequent changes in the law and provides for the Scheme to apply irrespective of such changes. The similar Clause was also inserted in the later Scheme of 2014.

- vii. Upon considering the Scheme and the fact that the GST regime has come into place since 2017, the respondents should take expeditious steps to make the Scheme GST-compliant for the benefit of industrial units which fall under the Scheme.
- viii. The High Court held that there is a definite case of legitimate expectation in the present case and the petitioners are entitled to be provided with clarity in that regard.
- ix. Writ Petition is accordingly disposed of with the direction on the Department of Industry, Commerce and Enterprises and the Finance Department to take requisite steps to make the Scheme GST-compliant within a period of sixteen weeks.