



NITYA | Indirect Tax Bulletin

September 2022 | Week 3

September 30, 2022

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LEGAL PRECEDENTS

PART A: COURT RULINGS

Issue 1: Delegation of power by Joint Commissioner to subordinate officer for inspecting premises

Ruling: The High Court observed that Section 71(1) of the CGST Act empowers any officer authorised by Proper Officer (not below rank of Joint Commissioner) to access business premise. Further, Notification issued by State Government designated Joint Commissioner as Proper Officer for the aforesaid function. Accordingly, the Court held that authorisation by Joint Commissioner to Assistant Commissioner is valid.

Bommineni Ramanjaneyulu v. JCST, 2022-VIL-640-AP

Issue 2: Validity of claim of refund of ITC for electricity exported without shipping bill

Ruling: Rule 89 of the CGST Rules requires submission of shipping bill for claiming refund of unutilized ITC on exports without payment of tax. This Rule was recently amended to provide relaxation for export of electricity since no shipping bill is generated in such cases. The High Court held that this amendment is clarificatory in nature and will have retrospective effect since it was impossible to generate shipping bill for export of electricity even prior to amendment.

Sembcorp Energy India Limited v. SoAP, 2022-VIL-643-AP

ARTICLES

TAX INCLUSIVE OR EXCLUSIVE – THAT IS THE QUESTION?

Levy of indirect taxes in case of tender contracts entail multiple nuances depending on tax-inclusivity or tax-exclusivity. Recently, the Hon'ble Supreme Court in the case of ***UOI v. Bharat Forge Limited, 2022-VIL-52-SC*** has held that in case of tax-exclusive tenders, buyer is not obligated to determine and inform correct HSN classification & rate of tax and it is the bidder who is responsible for the same.

Through this article, our Partner, **Mr. Dharnendra Kumar Rana** and Associate, **Mr. Shivam Kamra** have analyzed the repercussions of this judgment in the light of the relevant legal provisions.

Please [click here](#) to read the Article.

GST ON CANCELLATION CHARGES – UNSETTLING THE SETTLED

Circular No. 178/10/2022-GST dated **August 3, 2022** recently provided clarification on applicability of GST on liquidated damages, compensation and penalty arising out of breach of contract and stated that no GST is applicable thereon. However, despite there being plethora of jurisprudence surrounding applicability of GST on cancellation charges, Circular has treated the same as supply and stated that GST shall be payable.

In this article, our Partner, **Mr. Deepak Suneja** and Senior Associate, **Mr. Ayush Agarwal** analyse jurisprudence surrounding divisibility of a contract and whether GST is applicable on cancellation charges.

Please [click here](#) to read the Article.

RECENT NEWS

1. **GST Intelligence issues biggest-ever SCN to Bengaluru-based online gaming company**

<https://www.moneycontrol.com/news/business/gst-intelligence-issues-biggest-ever-show-cause-notice-to-bengaluru-based-online-gaming-company-9228371.html>

2. **Threshold for criminal offences under GST law may be raised**

https://m.economictimes.com/news/economy/policy/threshold-for-criminal-offences-under-gst-law-may-be-raised/amp_articleshow/94439928.cms

3. **Foreign Trade Policy extended by six months amid global headwinds**

https://www.business-standard.com/article/economy-policy/amid-global-headwinds-govt-to-extend-foreign-trade-policy-for-six-months-122092601154_1.html

4. **GoM may lean towards levying GST at entry points for casinos**

<https://www.bqprime.com/business/gom-may-lean-towards-levying-gst-at-entry-points-for-casinos>

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