



Some of Important judgements in 2019 in relation to GST at webcast by Consult Ease January 15, 2020

Compiled By:
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Mutuality in GST !

Calcutta Club Ltd.

On Sales Tax:

- (1) The doctrine of mutuality continues to be applicable to incorporated and unincorporated members' clubs after the 46th Amendment adding Article 366(29-A) to the Constitution of India.
- (2) *Young Men's Indian Association* (supra) and other judgments which applied this doctrine continue to hold the field even after the 46th Amendment.
- (3) Sub-clause (f) of Article 366(29-A) has no application to members' clubs.

On Service Tax:

“We are therefore of the view that the Jharkhand High Court and the Gujarat High Court are correct in their view of the law in following **Young Men's Indian Association** (supra). We are also of the view that from 2005 onwards, the Finance Act of 1994 does not purport to levy service tax on members' clubs in the incorporated form.”

Supply under GST

Sec. 7(1) For the purposes of this Act, the expression “supply” includes—

- (a) **all forms of supply** of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a **consideration** by a person in the course or furtherance of **business**;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

Sec. 2(17) “**Business**” includes—

- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

Transitional Credit

Transitional Credit

Sec. 140(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:-

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

Transitional Credit

Sec. 140(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following **conditions**, namely:—

- (i) such inputs or goods are used or intended to be used for making **taxable supplies** under this Act;
- (ii) the said registered person is **eligible for input tax credit** on such inputs under this Act;
- (iii) the said registered person is in **possession of invoice** or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices or other prescribed documents were issued not earlier than **twelve months** immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under this Act:

Input Tax Credit

- **Siddharth Enterprises** Vs. Nodal Officer [(2019) 29 GSTL 664 (Guj. HC)]
- **Adfert Technologies Pvt. Ltd.** Vs. UOI & Others [P&H HC - Dt. 04.11.2019 - CWP No. 30949 of 2018]
- **Hans Raj Sons** Vs. UOI & Others [P&H HC - Dt. 16.12.2019 - CWP No. 36393/2019]

Errors in Filing of Returns

Errors in filing of Return

- **Clix Capital Servcies** Pvt. Ltd. Vs. UOI & Others [Del. HC – CWP No. 1488/ 2018]
 - Interim Order Dt. 23.01.2019
 - Final Order Dt. 27.03.2019

- **P. P. Automotive** Pvt. Ltd. Vs. UOI & Others [P&H HC – CWP 24600/2019, Interim order Dt. 06.11.2019]

“ ... the inadvertent figures entered by their Accountant in the columns of output tax as well as input tax credit as also taxable supply filled up in GSTR-3B. It is claimed that keeping in view the provisions of Section 39 sub Section 9 of CGST Act 2017, the respondent-authorities are obligated to permit the correction ... ”

Non filing of Returns for want of Funds

Filing of Return (w/o payment of tax in cash)

- **Octagon Communications Pvt. Ltd. Vs. UOI & Others** [Guj HC – SCA No. 5873/2019]
 - Interim Order Dt. 18.04.2019

31st Meeting of GST Council – Dated 22.12.2018

Extracts from minutes:

*“3. A perusal of above provisions indicate that the **law permits furnishing of a return without payment of full tax as self-assessed as per the said return** but the said return would be regarded as an invalid return. The said return, however, would not be used for the purposes of matching of ITC and settlement of funds. **Thus, although the law permits part payment of tax but no such facility has been yet made available on the common portal.** This being the case, a registered person cannot even avail his eligible ITC as he cannot furnish his return unless he is in a position to deposit his entire tax liability as self-assessed by him. This inflexibility of the system increases the interest burden.*”

ITC Eligibility for GST paid for building intended to leased

Safari Retreats Pvt. Ltd. Vs. Chief Commissioner of CGST & others

... in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in (1999) 2 SCC 361 (supra), the very purpose of the credit is to give benefit to the assessee. In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under Section 17(5)(d) of the CGST Act.

New Inspection/ Verification/ Audit for old laws

New Inspection/ Investigation/ Audit for old laws !

173. ... Service Tax ... Omitted

174. Repeal & Savings

(1) ... Various Excise Laws – Repealed

(2) *The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—*

- a) revive anything not in force or existing at the time of such amendment or repeal; or*
- b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or*
- c) ...*
- d) ...*
- e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;***
- f)*

Fresh Inspection/ Investigation/ Audit for old laws !

Constitutional Vires – New Service Tax Proceedings: Sulabh International Social Service Organization – Jharkhand HC

Order Dt. 04.04.2019

Interim relief with following observations:

- *On the question as to whether the fresh proceeding is permissible or not upon omission of the said statute, the controlling part appears under the said sub-clause in the following phrase: “..... may be instituted, continued or enforced.”*
 - Of the three situations contemplated in that phrase, the expression which comes for interpretation is “may be instituted”...*
- *In our prima facie view, the expression “instituted” in sub-clause(e) would imply the proceeding which stood already instituted at the time of repeal or omission of the 1994 Act.*
- *In such circumstances, we choose to follow the course taken by the Hon’ble High Courts of Gujarat and Delhi and direct status quo to be maintained till the next date of hearing so far as the proceeding which form the subject matter of the present writ petition is concerned.*

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**Thank
You!!!**

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