THE INDIRECT EDGE

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Fortnightly Newsletter

BANSI S. MEHTA & CO.

I. JUDICIAL PRONOUNCEMENTS

GOODS AND SERVICES TAX

Education cess/ SHE cess/ KK cess credits ineligible for transition or refund under GST regime

The Larger Bench of CESTAT New Delhi in **M/s. Kei Industries Ltd. v. Commissioner of Central Goods & Service Tax, Central Excise, Alwar**[1] has held that refund or transition of Education Cess, SHE Cess & KK Cess, which were abolished in 2015, into the GST regime is impermissible. The Tribunal held that any accumulated balances of these cesses are neither eligible for transition to GST under Section 140 of the CGST Act, 2017, nor refundable u/s. 142(3) of the CGST Act, 2017. It observed that Section 140 of the CGST Act read with Explanation (1) to (3) specifically excludes the said cesses from "eligible duties and taxes" for transition and provide no cash refund mechanism for such credits.

Further, the Tribunal referred to proviso to Section 140(1) of the CGST Act, which bars the transition of credits not admissible as ITC, confirming that since these cesses have no counterpart ITC under GST, they cannot be transitioned.

The Tribunal also relied on precedents like Cellular Operators Association and Banswara Syntex, which affirmed the non-refundable nature of these cesses after abolition in 2015. Additionally, the refund claim was held time-barred under Section 11B of the CEA, as it was filed long after the cesses were blocked.

Interpretation of the term "government entity" under GST

The question before the Karnataka HC in the case of **M/s. Bagalkot Nirmithi Kendra v. UOI**[2] was that whether the petitioner qualified as a "Government Entity" and consequently qualified for a particular exemption entry under GST. The Court held that the society was controlled by the State Government and also funded by the Statement Government and would thus qualify as a "Government Entity".

In holding so, the Court also placed reliance on a judgement of the coordinate bench of the same court which had examined whether "Nirmithi Kendra" would qualify as a public authority under Right to Information Act, 2005. The requirement to qualify as a public authority under the RTI Act was that the body should be owned, controlled or substantially financed by the Government which was in substance similar to the definition of "Government Entity" under GST. In the said judgement, the Court held that the general body of the Nirmiti Kendra consists of all the top officers of each district, and the day-to-day activities were run by the officers belonging to the State Government, thus making the Kendra completely under the control of the Government Servants. Further, the funding was by HUDCO and other Government organisations. Accordingly, the Court concluded that "Nirmithi Kendra" would qualify as a public authority.

[1] 2025 (11) TMI 1641 – CESTAT New Delhi (Larger Bench)

[2] 2025-VIL-1219-KAR

GST Tribunal rollout faces uncertainty post Supreme Court Order

The SC in case of **Madras Bar Association v. UOI & Anr.**[3] has passed a landmark ruling striking down the provisions of the Tribunal Reforms Act, 2021. The Court has held that the Act reintroduced previously invalidated provisions, failed to cure underlying defects identified by earlier judgments, and constituted an impermissible legislative override.

The ruling will have direct ramifications on the GSTAT which was set to be operational from 1.12.2025 since the Tribunal Reforms Act and GST tribunal provisions in Section 110 of the CGST Act share the same defects. The Court's emphatic articulation that Parliament cannot reenact struck-down provisions even in another statute may equally apply to the CGST Act.

Pursuant to the above judgement, no official communication has been issued by the Central Government on whether the operationalisation of the GSTAT will be deferred or continued.

CUSTOMS

Import liability flows to the person exercising effective control

In the landmark decision of **M/s. Xiaomi Technology India Pvt. Ltd v. Principal Commissioner of Customs, Chennai**[4]**,** the CESTAT Chennai held that Xiaomi India was the beneficial owner of imported goods and not the contract manufacturers who imported the goods as terms of agreement showed that substantial control was with Xiaomi India.

The Tribunal held that Xiaomi India had been controlling the pricing, supply chains and resale, so as per the definition of beneficial owner under the Customs Act Xiaomi India was held the beneficial owner of the imported goods.

Consequently, as Xiaomi India has been treated as the beneficial owner, the tribunal ruled that the royalties and licence fees paid by Xiaomi India in relation to further use of imported components in production were to be added to the transaction value of the imported goods as per Rule 10(1)(c) of the Customs Valuation Rules.

Further, Xiaomi India and contract manufacturers were made liable for penalties, whereas personal penalty on their CFO has been dropped due to lack of evidence of wilful involvement.

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[3] 2025 (11) TMI 1330 - Supreme Court

[4] 2025 (11) TMI 1120 - CESTAT Chennai

II. CIRCULARS

CUSTOMS

CBIC launches ICEGATE 2.0 for MOOWR/MOOWSR filing, manual filing scrapped

The CBIC vide **Circular No. 28/2025-Customs dt. 15.11.2025** has operationalised a dedicated online module on ICEGATE 2.0 for submission of applications under MOOWR 2019 and MOOSWR 2020.

The CBIC has also released a detailed user manual on the ICEGATE website to help user navigate the new module. This will eliminate the requirement of manual filing of applications, reduce processing delays and will further align the MOOWR 2019 scheme with India's broader digitisation vision.

Simplification of IEC application process

The DGFT has issued **Public Notice No. 32/2025-26 dt. 20.11.2025** simplifying the IEC application process by **merging ANF-1A into a revised ANF-2A** and reducing the number of forms to be filed.

It introduces **electronic verification** of applicant details through integration with government and banking databases, minimising the need for document uploads. The changes aim to make IEC issuance **faster, easier, and more transparent** through a fully digital, streamlined process.

III. NEWS UPDATES

Inverted duty correction on GST Council agenda

The GST Council's next meeting will focus on fixing inverted duty structures, where inputs are taxed higher than final products. The Council will focus across various industries such as select railway parts, metal ores and concentrates, textiles as well as products like water pumps.

GST Council tasked with review of GST on real estate sector

A group led by Goa Chief Minister Pramod Sawant is tasked with the review of the real estate sector. The committee is looking into taxation of transactions like transfer of development rights.

Delhi HC issues notice on issuance of notice by Customs for IGST recovery

The Delhi HC has issued a notice to both GST & Customs Department with respect to writ petition filed challenging a recovery notice issued by the customs authorities for recovery of IGST. The Court has both the departments to submit a **joint affidavit** clarifying which statutory authority qualifies as the "proper officer" for making IGST demands under the interplay of the Customs and GST Acts.

Abbreviations	Term
CBIC	Central Board of Indirect Taxes and Customs
CEA	Central Excise Act, 1944
CGST Act	Central Goods & Service Tax, 2017
CGST Rules	Central Goods & Service Rules, 2017
dt.	Dated
GST	Goods & Service Tax
GSTAT	Goods & Services Tax Appellate Tribunal
GSTIN	Goods & Services Tax Identification Number
HC	High Court
IEC	Import Export Code

Abbreviations	Term
IGST	Integrated Goods & Service Tax
ITC	Input Tax Credit
Krishi Kalyan Cess	KK Cess
MOOSWR 2020	Manufacture and Other Operations in Special Warehouse Regulations, 2020
MOOWR 2019	Manufacture and Other Operations in Warehouse Regulations, 2019
RTI Act	Right to Information Act
SC	Supreme Court
Secondary & Higher Education Cess	SHE Cess
u/s.	Under section
UoI	Union of India

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