



NITYA'S INSIGHT:

Legal Precedents' Series

Issue 16 | Writs, Appeals and Advance Rulings

Period: December 2019

January 24, 2020

INDEX

PART A: WRITS.....	3
1. Recovery proceedings	3
2. Refund	5
3. TRAN-1 issues.....	5
4. Miscellaneous	5
PART B: APPELLATE AUTHORITY ORDERS	7
1. Mismatch of turnover declared in Form GSTR-1 and Form GSTR-3B	7
2. Penalty for issuance of improper e-way bill	7
3. Miscellaneous	8
PART C: APPELLATE AUTHORITY FOR ADVANCE RULINGS.....	9
PART D: ADVANCE RULINGS	10
1. Taxability and rate of tax.....	10
2. Miscellaneous	11

PART A: WRITS

1. Recovery proceedings

Issue	Order	Reference
Validity of recovery proceedings sans assessment	<p>In this case, the respondent initiated recovery proceedings under Section 79 of the Central Goods and Services Tax Act, 2017 ('CGST Act') basis admission of the petitioner which was subsequently retracted. The department initiated recovery proceedings against the petitioner.</p> <p>The High Court observed that the department needs to firstly determine tax liability of the petitioner before initiating recovery proceedings. Basis above, the Court held that proceedings initiated under Section 79 of the CGST Act against the petitioner were not sustainable.</p>	<i>V.N. Mehta & Co. v. The Assistant Commissioner, 2019-VIL-559-MAD</i>
Demand of liability basis Form GSTR-1 filed by the petitioner	<p>In this case, the petitioner made self-assessment of GST liability by filing Form GSTR-1. The department initiated recovery proceedings under Section 79 of the CGST Act without issuing any SCN.</p> <p>The High Court upheld the recovery proceedings in this case on the ground that Form GSTR-1 is declaration of tax liability. Hence, once the petitioner has determined its tax liability by filing Form GSTR-1, there is no requirement to initiate proceedings under Section 73 of the CGST Act.</p> <p><i>NITYA's Comments:</i></p> <p><i>In our view the aforesaid judgment is incorrect in as much as Form GSTR-1 is only a declaration of tax due on outward supplies. Form GSTR-3 is the return prescribed under law wherein determination of tax occurs after taking into account ITC attributable to inward supplies.</i></p> <p><i>Thus, in our view, turnover and tax reflected in Form GSTR-1 cannot be considered as self-admitted tax liability for issuing recovery proceedings.</i></p>	<i>Kabeer Reality P. Ltd. v. UOI, 2019- VIL-584-MP</i>

	<p><i>The view gets substantiated from several decisions of Appellate Authority (discussed subsequently in this Issue), wherein the Authority held that no demand can be raised only on the ground that there is a difference in the turnover declared in Form GSTR-1 and Form GSTR-3B.</i></p>	
<p>Validity of letter demanding interest on late payment of GST</p>	<p>In this case, the respondent issued a letter to the petitioner demanding interest for not timely depositing tax liability and did not issue any Show Cause Notice ('SCN') under Section 73 of the CGST Act.</p> <p>The respondent realized amount of interest from the petitioner by freezing bank account of the petitioner.</p> <p>The High Court held that issuance of SCN was mandatory and principles of natural justice needs to be necessarily followed irrespective of whether there is provision under the CGST Act or not.</p> <p>The High Court ordered that letter issued to the petitioner needs to be treated as SCN issued under Section 73(1) of the CGST Act. Accordingly, the Court ordered adjudicating authority to give hearing to the petitioner to determine whether the petitioner was liable to pay interest in this case or not.</p> <p><i>NITYA's Comments:</i></p> <p><i>In our view, the aforesaid judgment is correct that the petitioner should have been given opportunity of being heard. However, it is incorrect to the extent it directs that a mere letter issued by Department may be considered as SCN.</i></p> <p><i>Such SCN will not be legal and proper for want of requisite characteristics such as provision under which such SCN proposes to raise demand, specific allegations of the Department, etc.</i></p>	<p>Godavari Commodities Ltd v. UOI, 2019-VIL-596- JHR</p>

2. Refund

Issue	Order	Reference
Refund claim of accumulated ITC available belatedly	<p>In this case, the petitioner exported goods on payment of IGST. While the petitioner had sufficient transitional credit, it paid IGST in cash since the facility to file Form GST TRAN-1 was introduced on August 25, 2017. The petitioner contended that if transitional forms were available on July 1, 2017, it could have utilized the transitional credit to pay output IGST and need not have paid tax in cash.</p> <p>The High Court allowed refund of accumulated ITC equal to tax paid in cash to the petitioner since the respondent failed to provide a facility to file Form GST TRAN-1 at the time of introduction of GST.</p>	<i>Vision Distribution P. Ltd. v. Commissioner, SGST, 2019-VIL-626-DEL</i>

3. TRAN-1 issues

Issue	Order	Reference
Filing / amending Form GST TRAN-1 beyond due date in absence of any proof of technical glitches	<p>In these cases, the petitioners were unable to submit any proof of technical glitches while filing / revising Form GST TRAN-1.</p> <p>The High Courts observed that credit standing in favour of taxpayer is 'property' and the taxpayer could not be deprived of the said property in terms of Article 300 (A) of the Constitution of India. The Courts further observed that it is not fair to expect that all taxpayers to have some evidence of technical glitches nor they can be made to suffer in this background particularly when the systems of the respondent were not efficient. Basis above, the Courts allowed filing / revision of Form GST TRAN-1 in absence of proof of technical glitches as well.</p>	<i>Triveni Needles P. Ltd. v. UOI, 2019-VIL-618-DEL</i> and <i>L&T Ltd. v. UOI, 2019-VIL-627-KER</i>

4. Miscellaneous

Issue	Order	Reference
Interpretation of Section 129 and	In this case, petitioner's imported certain goods (perishable in nature) after paying customs duty and IGST. While the goods were being sent to its	<i>Synergy Fertichem Pvt. Ltd. v. State of</i>

Section 130 of the CGST Act	<p>warehouse, the respondent detained them for absence of e-way bill. Thereafter the respondent issued SCN demanding tax and 100% penalty under Section 129 and fine equivalent to value of goods in lieu of confiscation under Section 130 of the CGST Act.</p> <p>The High Court held that Section 129 and 130 are mutually exclusive and independent of each other. The Court observed that a mere suspicion is not sufficient to straightway invoke Section 130 of the CGST Act in cases where Section 129 of the CGST Act has already been invoked. For issuing a notice of confiscation under Section 130 of the CGST Act, the authority should <i>prima-facie</i> be convinced that the contravention was with a definite intent to evade payment of tax and need to duly record such reasons in writing</p> <p><i>(Please refer to our update NITYA's Insight Issue 93 Emerging litigation issues under erstwhile Indirect Tax laws and relevant in GST regime dated January 22, 2020 for detailed analysis on this issue.)</i></p>	<p>Gujarat, 2019-VIL-623-GUJ</p>
-----------------------------	---	---

PART B: APPELLATE AUTHORITY ORDERS

1. Mismatch of turnover declared in Form GSTR-1 and Form GSTR-3B

Issue	Order	Reference
Validity of tax levied on account of difference in Form GSTR-1 and Form GSTR-3B	<p>There was a mismatch in turnover declared in Form GSTR-1 vis-à-vis Form GSTR-3B on account of inadvertent and software related errors. Further, the appellant explained and corroborated the mismatch in the turnover with proofs.</p> <p>The Appellate Authority held that mismatch reports are only indicative and cannot be considered as sufficient evidence for alleging suppression of turnover. The Authority accepted the factual explanations provided by the appellant and annulled the demand of additional tax.</p>	<p>KVR-RMC v. Assistant Commissioner, 2019-VIL-02-GSTAA and Sri Kali Krishna Industries (Chinaveeranna Golkonda) v. Assistant Commissioner, 2019-VIL-04-GSTAA</p>

2. Penalty for issuance of improper e-way bill

Issue	Order	Reference
Imposition of penalty in case of minor mistake in mentioning vehicle number	<p>In this case, the Appellant mentioned incorrect vehicle number (mistake of 2-digits) in Part B of the e-way bill.</p> <p>The Authority held that imposition of full penalty under Section 129 of the CGST Act was unwarranted in light of Circular No. 64/38/2018 dated January 14, 2018. The Circular provided levy of nominal penalty of Rs. 1,000 in case of minor mistakes (like wrong mentioning of vehicle number upto 2-digits etc.). Basis above, the Authority ordered for imposition of nominal penalty on the appellant.</p>	K.B. Enterprises v. Assistant Commissioner, 2019-VIL-01-GSTAA
Non-mentioning of ship-to details on invoice and e-way bill	<p>In this case, the Appellant delivered the goods to its customers before receiving the goods. Further, the Appellant inadvertently issued invoices without mentioning 'ship-to' details on invoice and e-way bill.</p> <p>The Authority held that the Appellant's documents issued were in contravention of CBIC's Press</p>	Arunodaya Enterprises v. Deputy Assistant Commissioner, 2019-VIL-07-GSTAA

Issue	Order	Reference
	Release dated April 23, 2018 and upheld the imposition of tax and penalty.	

3. Miscellaneous

Issue	Order	Reference
Validity of refund claim filed under the CGST Act for re-credit of rebate amount	<p>In this case, the department rejected rebate claim of the Appellant filed under the CGST Act who sought refund of Cenvat credit. The refund claim was rejected on the ground that there is no provision under the CGST Act to claim refund of Cenvat credit pertaining to pre-GST laws.</p> <p>The Authority held that any refund of Cenvat credit has to be claimed through Form GST TRAN-1 only. The Authority further observed that in terms of Circular No. 37/11/2018-GST dated March 15, 2018, refund of credit pertaining to Excise law cannot be allowed under the CGST Act. Basis this, the Authority rejected the refund claim.</p> <p>NITYA's Comments:</p> <p><i>In our view, the ruling is incorrect since the taxpayers can avail refund of amount ordered to be re-credited under provisions of Section 142(2) of the CGST Act. Importantly, the Gujarat High Court in the case of Thermax Limited v. UOI, 2019 (31) GSTL 60 (Guj.) allowed refund in similar cases.</i></p>	Vasudha Pharma Chem Ltd. v. Assistant Commissioner, 2019-VIL-06-GSTAA

PART C: APPELLATE AUTHORITY FOR ADVANCE RULINGS ('AAAR')

Ruling	Decision of AAR	Decision of AAAR
Specsmakers Opticians Private Limited, 2019-VIL-87-AAAR	The Authority for Advance Ruling ('AAR') held that proviso to Rule 28 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') [dealing with valuation of supplies between related and distinct persons] need to be applied sequentially. The taxpayer does not have an option to choose the proviso favorable to it.	<p>The AAAR reversed the decision of the AAR. It held that the proviso to Rule 28 of the CGST Rules gives an option to the taxpayer. The provision nowhere mandates sequential application where a transaction falls under both the provisos.</p> <p><i>NITYA's Comments: The ruling is important and permits taxpayers making inter-state stock transfers and supplies to related persons to choose any value as long as the recipient unit is eligible for full ITC.</i></p>
Sanghvi Movers Limited, 2019-VIL-88-AAAR	The AAR held that book adjustment is not equivalent to payment and a branch not making the payment, would not be entitled to avail credit in terms of proviso to Section 16(2) of the CGST Act. It further held that the exception provided under proviso to Rule 37 of the CGST Rules would not apply.	<p>The AAAR held that since MOU provided for payment of consideration for supply made to distinct person, the AAR rightly held that proviso to Rule 37 of the CGST Rules does not apply.</p> <p>The AAAR reversed the decision of the AAR regarding non-payment by branches in case of book adjustment. It held that the consideration stands paid either through book adjustment or payment made by customer directly to HO. Hence, full credit is available.</p> <p><i>NITYA's Comments:</i></p> <p><i>The AAAR made two important observations basis definition of 'consideration':</i></p> <ul style="list-style-type: none"> - <i>Book adjustments shall be treated equivalent to payment; and</i> - <i>Payment will be considered to be made even if the same is directly paid by third parties like customers directly paying HO in this case.</i>

PART D: ADVANCE RULINGS

1. Taxability and rate of tax

Applicant	Relevant facts and observations of AAR
Shirdi Sai Electricals Limited, 2019-VIL-469-AAR	<p>The Applicant was engaged in the business of manufacture and supply of transformers. The Applicant entered into a contract with APSPDCL (engaged in electricity distribution system) for conversion of existing distribution system on turnkey basis under World Bank funding.</p> <p>The issue raised before the AAR was whether the Applicant is entitled to an exemption under the category 'Services supplied by Electricity Distribution Utilities'.</p> <p>The AAR held that the work undertaken by the Applicant will qualify as a 'works contract' and will be taxable at 18 percent. The AAR observed that funding provided by the World Bank, have no bearing on the rate of tax. The AAR further held that no exemption shall be available to the Applicant as it is providing services to an Electricity Distribution Utility and the exemption is available to services provided by an Electricity Distribution Utility.</p>
Kalyan Jewellers India Limited, 2019-VIL-480-AAR	<p>The Applicant was engaged in manufacture and trade of jewellery products. As part of its sales promotion activities, it issued two types of Pre-Paid Instruments ('PPI') viz. Gift Vouchers / Gift Cards through its retail outlets as well as engaging third party online portal. The instruments were as under:</p> <ul style="list-style-type: none"> - Closed PPI: The Applicant issues PPI to customer. The customer can make purchase only from the issuer. The customer can purchase jewellery from the issuer by redeeming PPI. - Semi-closed PPI: A third party issues PPI to customer who can redeem the same with the Applicant or any other outlets identified by the Applicant. The Applicant pays an upfront amount to third party, called discounted value (lower than face value) and third party sells jewellery to general customer at face value. <p>The AAR held as follows on taxability of both the models:</p> <ul style="list-style-type: none"> - Closed PPI: The AAR held that closed PPI issued by the Applicant is a 'voucher' under Section 2(118) of the CGST Act and shall be considered as supply of goods. <p>Further, time of supply of such voucher / gift card shall be the date of issuance of voucher if the voucher is specific to any particular goods specified against the voucher. If the voucher / gift card is redeemable against any goods bought, time of supply is the date of redemption. Paper vouchers will fall under HSN 4911 (as other printed matter) and are taxable</p>

	<p>at the rate of 12 percent. On the other hand, electronically loaded magnetic cards will fall under HSN 8523 and will be taxable at 18 percent.</p> <p>NITYA's Comments</p> <p><i>The AAR has ignored the fact that vouchers are only a mode for payment of consideration and a form of advance. The supply in such cases shall be of the underlying asset (like jewellery in this case) and not of vouchers in form of paper or magnetic cards.</i></p> <ul style="list-style-type: none"> - Semi-closed PPI: The AAR held that the instant transaction took place in Kerala and the Authority does not have jurisdiction to decide the issue and thus, the issues were not entertained.
<p>RB Shah Enterprises India Private Limited, 2019-VIL-483-AAR</p>	<p>The Applicant was a consultant rendering services related to Customs, JDGFT, CLA, etc. and was also selling duty credit scrips to customers while rendering consultancy services.</p> <p>The issue before the AAR was determination of rate of tax where the Applicant provides all its services (including sale of duty scrips) cumulatively at a single price.</p> <p>The AAR held that the instant transaction qualifies as a mixed supply, consisting of supply of duty credit scrips as well as services of data management, consultancy, legal services etc. Thus, the highest rate applicable to the various services supplied by the Applicant, shall apply.</p>

2. Miscellaneous

Applicant	Relevant facts and observations of AAR
<p>Sree Varalakshmi Mahaal LLP, 2019-VIL-481-AAR</p>	<p>The Applicant was engaged in leasing out a Marriage Hall with all amenities for a short duration.</p> <p>The issue before the AAR was whether the Applicant can claim ITC against purchases of materials used in construction of Marriage Hall.</p> <p>The AAR held that ITC on goods used for construction of a marriage hall to be given on rent is not available. The AAR held that the Applicant undertook construction on his 'own account' under Section 17(5)(d) of the CGST Act which is ineligible for credit.</p> <p>NITYA's Comments: <i>The High Court in the case of Safari Retreats Private Limited v. CCGST, 2019 (5) TMI 1278 ('Safari Retreats') read down Section 17(5)(d) of the CGST Act and allowed ITC on construction of immovable property used for renting purposes. However, the AAR held that Safari Retreats' case is inapplicable on the ground that High Court's decision was restricted to</i></p>

	<p><i>the facts of said case. Please refer to NITYA's Insight Issue 89 Availability of ITC on construction expenses – securing right to avail ITC beyond statutory time limit dated January 14, 2020 for our detailed update on this issue.</i></p>
<p>Tamil Nadu Co-operative Silk Products Federation Limited, 2019-VIL-470-AAR</p>	<p>The Applicant was engaged in supplying good quality silk to Silk Handloom Weavers Cooperative Societies, Khadi and Village Industries Board. Under Notification No. 33/2017-Central Tax dated September 15, 2017 (Notification 33/2017), the following persons or category of persons were made liable to deduct TDS under GST:</p> <ul style="list-style-type: none"> - An authority / board / body set up by an Act of Parliament / State Legislature with fifty-one percent or more participation by way of equity or control to carry out any function; - An authority / board / body established by any Government with fifty-one percent or more participation by way of equity or control to carry out any function; - Society under the Societies Registration Act, 1860 established by the Central / State Government or a Local Authority; and - Public sector Undertakings. <p>The issue before the AAR was whether TDS provisions under Notification 33/2017 are applicable on supplies to the Applicant (Co-operative Society) since it was registered under the Tamil Nadu Cooperative Society Act, 1975.</p> <p>The AAR held that equity ownership of the Applicant never went beyond 51 percent nor it was under the control of the Government (as the management does not have any voting rights). Thus, the Applicant did not fall under any of the categories notified under Notification 33/2017 nor was liable to deduct TDS.</p>

.....

Disclaimer:

This Insight has been prepared for clients and firm's personnel only. It is solely for the purpose of general information and does not represent any opinion of NITYA Tax Associates. We are not responsible for the loss arising to any person for acting or refraining from acting on the basis of material contained in this Insight. It is recommended that professional advice be sought based on specific facts and circumstances.

© NITYA Tax Associates. All Rights Reserved.



Contact Us



CALL US

+91 11 4109 1200
+91 11 4109 1201



MAIL US

updates@nityatax.com
info@nityatax.com
www.nityatax.com



REACH US

NITYA TAX ASSOCIATES,
B-3/58, 3rd Floor,
Safdarjung Enclave,
New Delhi, 110029

