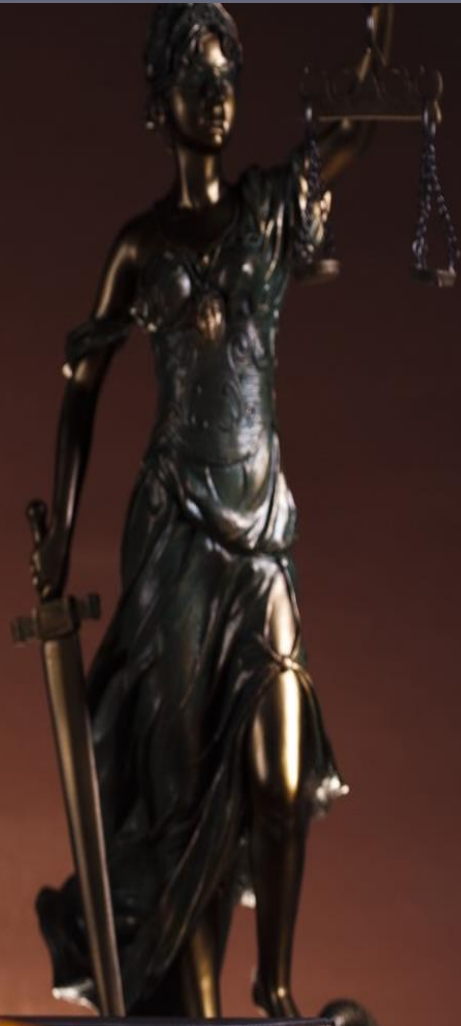




NITYA'S INSIGHT:

Legal Precedents' Series

Issue 4 (Writs) / February 27, 2019

Period: November 1, 2018 to January 31, 2019

WRIT PETITIONS UNDER GST

A. DETENTION OF GOODS

1. On account of e-way bill issues

Grounds for seizure of goods	Order	Reference
No e-way bill accompanied with car during its transportation to buyer. Car was transported by dealer on buyer's direction (direction given by buyer post purchase)	When a person residing in one State goes to another State and purchases goods, the supply transaction terminates on the person taking possession of the goods in the other State. The activity of movement of car by the dealer was not part of original 'supply' transaction and it is a 'personal effect' of the buyer. <i>NITYA Comments: The High Court also observed that such ex-works sale transaction attracts CGST and SGST whereas the industry currently charges IGST on ex-works sales where the buyer is located in other State.</i>	<i>Kun Motor Company Private Limited v. Assistant State Tax Officer, 2018-VIL-554-KER</i> overruling <i>Kun Motor Company Private Limited v. Assistant State Tax Officer, 2018-VIL-504-KER</i>
Typographical error on e-way bill wherein the distance was declared as 280 km instead of 2800 km	Distance between two destinations is a matter of record and verifiable. Missing of a single digit is a minor typographical error and can be condoned in light of <i>Circular No. 64/38/2018-GST dated September 14, 2018.</i>	<i>Sabitha Riyaz v. Union of India, 2018-VIL-KER-519</i>
E-way bill generated but not carried along with consignment	Mere online generation of e-way bill would not suffice. As per the law, e-way bill needs to be in physical or electronic form. The Court agreed that though there is no evasion of tax it cannot chip away from the statutory scheme where the scheme has an economic efficacy.	<i>Carpenters Classics India Private Limited v. Assistant State Tax Officer, 2018-VIL-531-KER</i>
Consignment detained as e-way bill had expired	The objection is not justified as the authorities allowed e-way bill to expire after the detention of the goods by incorrectly	<i>Timexo Fasteners India Private Limited v. State of</i>

	recording the time of interception.	<i>Uttar Pradesh, 2018-VIL-532-ALH</i>
	The goods reached the destination but could not enter the city due to no-entry. The goods were seized one hour post expiry. The goods were ordered to be released on furnishing of bank guarantee.	<i>Sarvottam Rolling Mills Private Limited v. State of Uttar Pradesh, 2018-VIL-562-ALH</i>
Discrepancy in single digit of value of goods declared on e-way bill	A human error cannot be capitalised for penalty. The goods cannot be detained if the assessee paid IGST in accordance with the value shown on the tax invoice.	<i>Rai Prexim India Private Limited v. State of Kerala, 2018-VIL-553-KER</i>

2. Other grounds for detention

Grounds for seizure of goods	Order	Reference
Detention on grounds of misclassification of goods and incorrect rate of tax on invoice	The process of detention of the goods cannot be resorted to when there is a bona fide dispute, the records truly reflect the transaction and the taxpayer's explanation accords with its past conduct.	<i>N.V.K. Mohammed Sultan Rawther v. Union of India, 2018-VIL-502-KER</i> <i>Jeyyam Global Foods v. Union of India, 2019-VIL-47-MAD</i>
Tax and penalty paid under wrong heads	The amount remitted under one head can be adjusted under another head under the law. Accordingly, the Court directed officials to transfer the amount from the head 'SGST' to 'IGST' even though the process may take time. The officials were further directed to release the goods.	<i>Saji S. v. Commissioner, State GST Department, 2018-VIL-508-KER</i>
Tax and penalty not paid through cash or demand draft as other means may result in delay in apportionment	Insistence to pay liability through cash or demand draft is against the spirit of GST. The taxpayer cannot be made to suffer on the ground that there may be delay and difficulty in apportionment.	<i>Pioneer Polyleathers Limited v. Assistant State Tax Officer, 2018-VIL-516-KER</i>
The vehicle neither stopped nor offloaded the goods at its destination but travelled ahead due to passing of wrong instructions to driver	The issue is not a case of tax evasion but misunderstanding of instructions. The detention order and impugned order suffer from vice of gross unreasonableness and disproportionality. The authorities should exercise their power in reasonable manner.	<i>R.K. Motors v. State Tax Officer, 2019-VIL-44-MAD</i>

B. MISCELLANEOUS ISSUES

1. Transitional credit

During the transition phase, several taxpayers could not transition their pre-GST credits due to glitches in IT system of GSTN. To address these situations, the Government came up with a procedure for addressing such cases.

Apart from technical glitches, there were also cases where credit could not be transitioned due to errors on part of the taxpayers. These errors were on account of improper or incomplete filing of Form GST TRAN-1.

We have already shared our update dated February 22, 2019 (NITYA's Insight | Issue 7) to apprise you of the cases where High Courts have entertained cases where taxpayers committed errors in filling Form GST TRAN-1 under writ jurisdiction.

2. Challenge to validity / constitutionality of legal instruments

Issue	Order	Reference
Power of State to levy tax / cess payable under the Rajasthan Agricultural Produce Marketing Act, 1961 after the introduction of GST	Marketing fee levied under the Rajasthan Agricultural Produce Marketing Act, 1961 is in the nature of 'fee'. This is neither excluded nor subsumed similar to other indirect taxes post implementation of GST. The State has power under Constitution to levy such fee.	<i>Imarti Lakdi Vyapari Sansthan Jodhpur v. State of Rajasthan, 2018-VIL-492-RAJ</i>
Validity of Circular No. 7/7/2017-GST dated September 1, 2017 (Return in FORM GSTR-3B)	The power of Commissioner under Rule 61(5) of the CGST Rules to prescribe return in GSTR-3B amounts to excessive delegation and beyond legislative mandate of Section 39 of the CGST Act. Such power of the Commissioner has been challenged. The petition has been admitted and is pending final disposal.	<i>Anil Goel and Associates v. Union of India, 2018-VIL-547-DEL</i>
Validity of Press Release dated October 18, 2018 specifying October 20, 2018 as the last date for availing input tax credit pertaining to Financial Year 2017-18	It has been challenged that the relevant return under Section 39 of the CGST Act (mentioned in Section 16(4) of the CGST Act) is GSTR-3 and not GSTR-3B. Once filing of GSTR-3 has been deferred, such part of Section 16(4) of the CGST Act has become defective. The petition has been admitted and is pending final disposal.	<i>AAP and Co. v. Union of India, 2018-VIL-557-GUJ</i>
Vires of Notification No. 4/2018 - Central Tax (Rate) dated	It has been challenged that the Notification seeks to tax an activity which neither amounts to service nor supply of service. Hence, it is ultra vires the CGST Act.	<i>Nirman Estate Developers Private Limited v. Union of</i>

January 25, 2018 providing special procedure for payment of tax by registered person supplying service by way of construction against transfer of development right and vice versa	The petition has been admitted and is pending final disposal.	India, 2018-VIL-584-BOM
Validity of Circular No. 34/8/2018-GST dated March 1, 2018 regarding taxability of activities carried out by DISCOMS against recovery of charges from consumers under State Electricity Act	Para 4(1) of the impugned Circular was struck down as ultra vires the CGST Act on the ground that the meaning of 'transmission and distribution of electricity' as well as its exemption has not changed either in the negative list regime or the GST regime. The charges such as application fee, meter rent, testing fee etc. collected are part of composite supply of which principal supply is supply of electricity. Therefore, entire composite supply is exempt from GST.	Torrent Power Limited v. Union of India, 2019-VIL-18-GUJ
Validity of show cause notice proposing recovery of Service Tax under Section 73 of the Finance Act, 1994	It was contended that provisions of the Finance Act, 1994 have been repealed and thus, the show-cause notice was without jurisdiction. The Court stayed the proceedings initiated in the show-cause notice and posted the matter for final disposal.	North Western Carrying Corporation v. Union of India, 2019-VIL-36-GUJ
Validity of proposed service tax audit post omission of relevant provisions of the Finance Act, 1994	The Court held that the authorities are entitled to undertake an audit for the period when the provisions of service tax were applicable notwithstanding the coming into effect of GST.	Gitanjali Vacationville Private Limited v. Union of India, 2019-VIL-17-CAL

3. GST implications vis-à-vis supplies at airports

3.1. Sale of products to international passengers from retail shop

In the case of ***A1 Cuisines Private Limited v. Union of India, 2018-VIL-575-BOM***, the taxpayer sold the goods from the Domestic Security Hold Area at International Airport. The Court held that such supply cannot be said to have taken place in an area beyond the customs frontiers of India or outside India. Further, it is practically difficult for the authorities to verify whether a passenger is travelling to foreign jurisdiction or not.

3.2. Supply made to duty-free shops

In the case of ***Vasu Clothing Private Limited v. Union of India, 2018-VIL-577-MP***, it was held that supply made to a duty-free shop does not qualify as export of goods and is not exempted from GST. 'Export of goods' under GST takes place when the goods are taken outside the territory of India.

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