



NITYA'S INSIGHT:

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PART A: WRIT PETITIONS UNDER GST

1. Issues vis-à-vis revision of FORM GST TRAN-1

Issue	Order	Reference
Credits missed by taxpayer while filing FORM GST TRAN-1 due to inadvertence	The Court relied on Section 172 of the Central Goods and Services Tax Act, 2017 ('CGST Act') as per which a Nodal Officer is obligated to consider all genuine complaints to give effect to the transitional provisions under GST. The Court directed Nodal Officer to consider the complaint filed by taxpayer.	Kongovi Private Limited v. UOI, 2019-VIL-132-KAR
Revision of FORM GST TRAN-1 where ITC was wrongly transferred to branch under third proviso to Section 140(8) of the CGST Act.	The Court held that Rule 120A of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') allows taxpayer to revise or rectify FORM GST TRAN-1 once. In the instant case, the taxpayer applied for revision of FORM GST TRAN-1 prior to the last stipulated date. The authorities objected to the revision since the error was not on account of technical glitch. The Court held that FORM GST TRAN-1 can be revised once on account of any reason (technical glitch or otherwise) and permitted the taxpayer to revise the same.	Atria Convergence Technologies Limited v. UOI, 2019-VIL-127-KAR

2. Detention of goods / vehicle

Grounds for detention	Order	Reference
Incorrect declaration of lorry number	The Court held detention to be invalid on the ground that the authority left most of the fields of the detention order blank and did not mention the reason for detention. The Court held that detention is a serious act and the authority cannot detain a vehicle without mentioning the reason for the same.	G. Murugan v. GOI, 2019-VIL-95-MAD
Absence of e-way bill	In the instant case, the goods were detained under Section 129 (1) of the CGST Act, however, notice was issued under Section 130 of the CGST Act. As per the CGST Act, a notice under Section 129(3) of CGST Act needs to be issued first and only in case of any non-compliance of the same, notice under Section 130 of the CGST Act can be issued. In the instant case, the authorities failed to follow the prescribed procedure. Considering the aforesaid as	Synergy Fertichem Private Limited v. State of Gujarat, 2019-VIL-107-GUJ

	well as the fact that the goods involved were perishable in nature, the Court ordered for release of goods as an interim relief.	
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3. Miscellaneous Issue

Issue	Order	Reference
Cancellation of registration on account of failure to file applicable returns (GSTR-1 and GSTR-3B)	The Court ordered for revival of registration of taxpayer on the ground that a small taxpayer needs to acquaint itself with the new GST regime and also considered financial difficulties faced by it.	<i>Asean Aromatics Private Limited v. ACGST, 2019-VIL-96-MAD</i>

PART B: NATIONAL ANTI-PROFITEERING AUTHORITY ('NAA') ORDERS

1. Anti-Profiteering provisions not applicable in case of increase in effective rate of tax

Reference	Facts	NAA's Order
Kajaria Ceramics Limited, 2019-VIL-07-NAA Ramraj Handlooms, 2019-VIL-13-NAA	Nature of business: Manufacturer, Retailer Complaint: With the advent of GST, there was reduction in tax incidence which was not passed on to the consumer.	Profiteering: No Reasoning: The effective tax incidence increased post introduction of GST.

2. Base price of goods should not increase post change in rate of tax

Reference	Facts	NAA's Order
Velbon Vitrified Tiles Private Limited, 2019-VIL-08-NAA Somany Ceramics Limited, 2019-VIL-12-NAA	Nature of business: Manufacturer Complaint: There was a reduction in rate of tax in November 2017. The taxpayer neither reduced the price of the goods nor passed on the benefit of rate reduction to the consumer.	Profiteering: No Reasoning: The taxpayer did not resort to profiteering as the taxpayer did not increase base price of the goods post rate reduction.
Asian Paints Limited, 2019-VIL-11-NAA	Nature of business: Manufacturer Complaint: There was a reduction in rate of tax in November 2017. The taxpayer did not reduce MRP of the goods.	Profiteering: No Reasoning: Profiteering cannot be alleged only on the ground that MRP has remained same post rate reduction. The taxpayer did not increase the base price of the goods rather sold the goods below MRP. Thus, the taxpayer did not resort to profiteering.
Abbott Healthcare Private Limited, Sami labs Limited, Viswas Medico, 2019-VIL-09-NAA	Nature of business: Manufacturer, Retailer Complaint: There was a reduction in rate of tax with advent of GST and subsequently in November 2017. The taxpayer neither reduced	Profiteering: Yes Reasoning: The taxpayer deliberately increased the base price at the time when rate of tax was reduced. This was evident from the fact that another sticker was pasted on the product with

Reference	Facts	NAA's Order
	the base price of the goods nor passed on the benefit of rate reduction to the consumer.	enhanced MRP. Hence, there was profiteering in this case.
Cloudbail India Private Limited, 2019-VIL-10-NAA	Nature of business: Distributor / Retailer Complaint: There was a reduction in rate of tax in November 2017. The taxpayer increased the base price of the goods.	Profiteering: Yes Reasoning: The NAA rejected the taxpayer's contention that the complaint should have been made against HP (brand owner) and not the distributor / seller, on the ground that the distributor was issuing the sale invoice. Hence, the onus was on the distributor to pass on the benefit. NAA also rejected the taxpayer's contention that the complaint should be filed by the actual purchaser of goods. It held that the law allows any person to file complaint.
Win Win Appliances, 2019-VIL-14-NAA	Nature of business: Distributor / Retailer Complaint: There was a reduction in rate of tax in November 2017. The taxpayer increased the base price of the goods.	Profiteering: Yes Reasoning: The taxpayer contended the manufacturer increased the base price and such increased purchase price needs to be considered for need of commensurate price reduction. NAA rejected the contention and held that the end consumer was forced to pay higher price and hence, benefit of rate reduction was not passed. NAA also held that the fact that the taxpayer was incurring losses, cannot be a ground to avoid anti-profiteering provisions.

NITYA Comments: In several cases, the manufacturers increased prices of goods at the time of reduction in rate of GST due to which distributors / retailers were forced to increase their selling price. This is leading to penal actions against distributors / retailers. As the dealers are not privy to the reasons because of which the manufacturers raised the prices, NAA should have initiated investigations against the manufacturers instead of distributors / retailers.

3. Anti-Profiteering not applicable where base price was reduced by way of discount

Reference	Facts	NAA's Order
Peps Industries Private Limited, 2019-VIL-16-NAA	Nature of business: Retailer Complaint: There was a reduction in rate of tax in November 2017. The taxpayer did not reduce the base price of the goods nor passed on the benefit of rate reduction to the consumer.	Profiteering: No Reasoning: The taxpayer offered discount resulting in reduction in base price which was more than the corresponding reduction in rate of tax.

***NITYA Comments:** NAA has consistently held in its earlier rulings that a taxpayer gives discount from its pocket and discount is not relevant for computing profiteering. This ruling is contrary to earlier rulings to this extent.*

4. Benefit of additional ITC must be passed onto the consumers

Reference	Facts	NAA's Order
Gurukripa Developers and Infrastructures Private Limited, 2019-VIL-15-NAA	Nature of business: Real Estate Complaint: The benefit of ITC additionally becoming available to the taxpayer post introduction of GST, was not passed on to the consumer.	Profiteering: Yes Reasoning: Post implementation of GST, the taxpayer became entitled to claim additional ITC. Hence, it was liable to pass on the benefit of additional ITC to the consumers by way of price reduction.

***NITYA Comments:** The legal proposition that a taxpayer needs to pass on the benefit of additional ITC becoming available to the consumers is correct. However, the method of computation adopted by NAA in this case is incorrect. In this case, NAA considered the overall ITC becoming available to the builder whereas it ought to have considered only those taxes that were not creditable to the taxpayer before GST. The taxes for which ITC which was eligible prior to GST, were not relevant since the same did not form cost for the supplier.*

PART C: ADVANCE RULINGS

1. Taxability

Applicant	Relevant facts and observations of AAR
Shree Construction, 2018-VIL-150-AAR (MAH), upheld by 2019-VIL-33-AAAR	The question before the AAR was the GST rate applicable on provision of composite supply of works contract services by a sub-contractor to a main-contractor in respect of construction of railways. The AAR held that Serial No. 3(v) of the Notification No. 8/2017-Integrated Tax (Rate) dated June 28, 2017 <i>inter-alia</i> provides GST rate of 12% <u>on composite supply of works contract, supplied by way of construction, erection, commissioning, or installation of original works pertaining to railways, including monorail or metro</u>. The above rate is for composite supply of works contract pertaining to railways regardless of the fact that the supplier is main contractor or sub-contractor as long as the ultimate purpose is construction of railways. The AAR held that the concessional GST rate of 12% will be applicable in this case. The view has also been upheld by AAAR.
Cummins India Limited, 2019-VIL-62-AAR	The question before the AAR was on the requirement of charging GST on allocation of costs by Head Office to its units. Another question raised before the AAR was the necessity of obtaining ISD registration in a situation where the taxpayer pays GST on cross-charges. The AAR held that GST needs to be paid on allocation of costs by Head Office to its units. It further held that irrespective of cross charging, the taxpayer shall also be required to register itself as ISD to distribute credit on common services. <i>NITYA Comments: In our view, the AAR is incorrect due to several reasons as highlighted in our update – ‘NITYA’s Insight Issue 20 - AAR Update’ dated April 8, 2019.</i>

2. Input tax credit

Applicant	Relevant facts and observations of AAR
Orix Auto Infrastructure Services Limited, 2019-VIL-98-AAR	The question before the AAR was whether a taxpayer can claim ITC of Compensation Cess (‘CC’) on vehicles purchased for providing renting of motor vehicle service (on which CC is not payable) when the same are sold after an average time period of 4 years. The AAR discussed the provisions relating to CC and stated that as far as ITC of CC is concerned, renting of vehicle is an exempt supply (as CC is not leviable on the same) and sale of vehicle is a taxable supply (as CC is leviable on the same).

	The AAR held that since the taxpayer will initially use the vehicle for effecting exempt supply and later on for effecting taxable supply, it can claim ITC of CC on vehicle subject to Section 17(2) of the CGST Act read with Rules made thereunder. Therefore, the taxpayer can take ITC of CC paid on purchase of vehicles in full at first place and needs to undertake monthly reversal in terms of Rule 43 of the CGST Rules.
Polycab Wires Private Limited, 2019-VIL-100-AAR	The Applicant was a manufacturer of electrical goods. As a part of CSR activity, the Applicant provided electrical goods free of cost in the following two ways: • Direct distribution of goods to flood affected people • Distribution of goods to Kerala State Electricity Board ('KSEB') through distributors – The distributors raised invoice on KSEB showing sale value, GST and total amount with 100% discount. The distributors also raised invoice on the Applicant for reimbursement of value. The questions before the AAR were: • Availability of ITC on goods distributed free of cost as CSR activity • Correctness of GST liability discharged by distributors on goods distributed free of cost and availability of ITC to distributors The AAR disallowed the credit on free distribution of goods as CSR in terms of bar of ITC on 'gift' under Section 17(5)(h) of the CGST Act. The AAR held that as the distributors supplied goods to KSEB on the directions of the Applicant, GST was payable. Further, it held that the distributors can take ITC as they paid output GST. <i>NITYA Comments: In our view, the AAR is incorrect in restricting ITC where the goods are provided free of cost under CSR obligation. The AAR failed to consider the fact that CSR expenses are not incurred voluntarily but in lieu of obligation under Section 135 of the Companies Act, 2013. Thus, such an expenditure is incurred in the course of business. Therefore, the goods distributed free as part of CSR obligation cannot be treated as gifts (which are voluntary in nature) and thus outside the scope of restriction under Section 17(5)(h) of the CGST Act. This is duly supported by the jurisprudence under the Cenvat Credit Rules, 2004 (prior to introduction of GST) as well as the Income Tax law.</i>
Biostadt India Limited, 2019-VIL-60-AAR	The Applicant was engaged in the business of developing, manufacturing and distributing crop protection chemicals and hybrid seeds. It was providing gold coins to its dealers under a pre-agreed scheme on fulfilment in the following two scenarios: • On purchase of specified quantities; or • On payments according to specified payment schedules

	The question before the AAR was on availability of ITC on purchase of gold coins which were distributed under the aforementioned or any other similar scheme. The AAR rejected the plea of Applicant that the gold coins do not qualify as gifts as these are given under the contractual obligation created by the floated scheme. The AAR observed that the Applicant has only submitted brochure / writeup / invitation of the scheme and there is no written agreement with the dealers. Further, the AAR discussed the intent of Section 17(5) of the CGST Act which disallows ITC in situations where no GST is paid at output stage. Basis these, the AAR held that the gold coins distributed by the Applicant under a pre-agreed scheme are in the nature of gifts and hence, are ineligible for ITC. NITYA Comments: <i>The AAR has accorded a narrow meaning to 'contractual obligation'. In the instant case, the scheme was pre-agreed and floated to customers beforehand. The GST law does not mandate written agreement as a pre-requisite for treating an act as contractual obligation. As per the conduct of the dealers, scheme was considered to have been accepted by the dealers.</i> <i>The Applicant was bound to distribute gold coins to its dealers once the scheme is out and the dealers fulfill the conditions of the scheme. Had the Applicant opted not to give the gold coins, the dealers would have been in their full rights to sue the Applicant for recovery of gold coins. Therefore, the distribution of gold coins was not a voluntary or an unconditional act, which are the primary requirements for anything to qualify as gift. Hence, ITC was legally available in this case.</i>
MRF Limited, 2019-VIL-71-AAR	The AAR was dealing with the issue of availability of ITC to the extent of discounts passed on by the suppliers by way of accounting / financial credit notes. The AAR invoked Section 16(2)(d) of the CGST Act to hold that there is a failure to pay the consideration to the extent of such discounts. Therefore, the taxpayer needs to reverse the ITC in that proportion. NITYA Comments: <i>The AAR is incorrect and has failed to understand the meaning of phrase 'failure to pay' employed in Section 16(2)(d) of the CGST Act. The AAR also did not consider the settled legal position in this regard under service tax regime (wherein a similar provision was in vogue). Please also refer to our detailed insight on this under 'NITYA's Insight Issue 18 AAR Update' dated March 27, 2019.</i>

3. Others

Applicant	Relevant facts and observations of AAR
Alok Bhanuka, 2019-VIL-89-AAR	The Applicant was engaged in the repairing and servicing of transformers. In the course of provision of such service, the Applicant made certain repairs / replacements of damaged parts. The question before the AAR was whether this activity would qualify as job-work or not. Further, whether this activity is a composite or mixed supply. In case it is a composite supply, what is the principal supply. The AAR referred to the definition of job-work under the CGST Act and under the erstwhile Cenvat Credit Rules, 2004 and stated that the activity would not qualify as job-work. This is for the reason that it involves transfer of property in goods (by way of replaced parts) and is not limited to labor and skill work. Referring to earlier Rulings, the AAR went on to hold that the nature of activity in the instant case is same as that of AMC service which is a composite supply involving both goods and services. Further, the principal supply in the present case is that of repairing of transformer and not of supply of spare parts. Supply of spare parts is only ancillary to the repairing activity. Therefore, in terms of Entry No.3 of Schedule II, this will qualify to be supply of service. <i>NITYA Comments: Though the Ruling establishes the correct position in law, it fails to appreciate the wide definition of job-work under the GST law. The expression used in the definition of job-work i.e. 'Treatment or process on goods belonging to another person' is verbatim to expression used in Entry No.3 of Schedule II. Therefore, the instant activity qualifies to be a job work transaction which is a deemed supply of service in terms of Entry No.3 of Schedule II.</i>
Sri. Thomas Joseph Nellissery, 2019-VIL-102-AAR	The Applicant was engaged in providing consultancy services on data sent by overseas client. The Applicant did not engage any staff for providing such services. The question before the AAR was whether the services provided by the Applicant to the overseas client will qualify to be 'Intermediary Service' or not. The AAR observed that the Applicant was not arranging or facilitating the supply between two or more persons and hence, its services will fall under 'Management Consultancy Service' and not under 'Intermediary Service'.
Nash Industries (I) Pvt. Ltd., 2019-VIL-08-AAAR	The Applicant was engaged in the manufacture of automotive components for Original Equipment Manufacturer ('OEM'). As per the contractual arrangement between the Applicant and OEM, the tools required for the manufacture of components were provided by OEM to the Applicant on free of cost basis. The AAR held that the amortized cost of tools is to be added to arrive at the value of component for charging GST. The Applicant preferred an appeal against order of the AAR.

	The AAAR referred to the contractual arrangement between the Applicant and OEM and observed that it was OEM's obligation to provide the tools to component manufacturer. Further, it relied on <i>Circular No.47/21/2018-GST dated June 8, 2018</i> issued in relation to component manufacturers, which clarified that where OEM is under obligation to provide the tools, their value need not be added in the value of component. Basis aforesaid, the AAAR reversed the Ruling given by AAR and held that the value of tools is not required to be added in the value of components. <i>NITYA Comments:</i> <i>In our view, the AAAR is correct in setting aside the ruling given by AAR. We also examined the incorrectness of this AAR in 'NITYA's Insight Issue 1' dated November 27, 2018.</i>
<i>Ratan Projects & Engineering Co Private Limited, 2019-VIL-91-AAR</i>	The applicant (in the capacity of principal) was sending steel structures to the job worker for galvanization. The Applicant also sent the inputs such as furnace oil, zinc, nickel etc. (consumables). These consumables were fully consumed in the galvanization process. The Applicant approached the AAR to determine whether provision of such inputs would qualify as supply under Section 143(3) of the CGST Act (which deems inputs not returned back within 1 year as supply) since the job-worker will not separately return them. The AAR observed that the inputs need not necessarily return in the original form in which they were sent. The AAR held that the return of galvanized steel structures (in which inputs were consumed) would comply the requirement of receiving back inputs within 1 year. Therefore, it would not be treated as supply from principal to job-worker under Section 143(3) of the CGST Act.

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