



## NITYA'S INSIGHT:

*Legal Precedents' Series*

**Issue 8 | Writs, NAA and AAR**

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## PART A: WRIT PETITIONS UNDER GST

### 1. Issues vis-à-vis transitional credit

Issue	Order	Reference
Denial of credit due to declaration of transitional credit amount in inapplicable column of TRAN-1	The Court relied upon the erstwhile jurisprudence on similar issue wherein the Courts allowed credit despite erroneous declarations in TRAN-1. The Court directed the GST Council to re-consider the issue.	<b><i>Field Motor Private Limited v. UOI, 2019-VIL-167-ORI</i></b>
Entitlement to transitional credit not claimed in TRAN-1 due to unavailability of TRAN-2 at the time of filing	The Court held that the taxpayer could not claim credit in requisite column of TRAN-1 due to unavailability of TRAN-2 at the time of filing. The Court directed the nodal officer to allow taxpayer to file TRAN-2 to enable it to claim credit.	<b><i>Arvind Lifestyle Brands Limited v. UOI, 2019-VIL-187-KAR</i></b>

### 2. Issues vis-à-vis detention and seizure

Grounds for detention	Order	Reference
Transporter carrying xerox copy of lorry receipt with certain details mentioned manually	As per the GST law, lorry receipt is not a prescribed document to be carried during the movement of goods. Therefore, the authorities are not empowered to detain goods / vehicles on account of deficiency in lorry receipt. Basis the above, the Court held the detention order to be illegal.	<b><i>F S Enterprise v. State of Gujarat, 2019-VIL-154-GUJ</i></b>
Legality of confiscation of goods (gold jewellery) belonging to taxpayer and entrusted with third-party (hall-marker) for entrustment	In the instant case, the taxpayer was owner of the goods (and not the hall-marker) which was evident from the delivery challan and issue voucher sent to hall-marker. Basis above, the Court observed that no intention to evade tax can be established against the taxpayer which is a pre-requisite for seizure under Section 130 of the Central Goods and Services Tax Act, 2017 ('CGST Act'). Since the taxpayer was not being made a party to the proceedings, the seizure order at the hall-marker's premises was held as bad in law.	<b><i>Josco Bullion Traders Private Limited v. Commissioner SGST, 2019-VIL-151-KER</i></b>

### 3. Miscellaneous

Issue	Decision of High Court	Reference
Validity of order of Single Bench directing the GST Council to adjudicate the representation filed by the taxpayer	The Division Bench of the High Court overruled the order passed by the Single Bench. It held that neither the Constitution of India nor any other Statute permits the GST Council to receive representations, conduct personal hearing and pass orders thereon with regards to matters on GST. The Court held that the adjudication of public grievance is not a function of the GST Council.	<b><i>Union of India v. Shiyad, 2019-VIL-161-KER</i></b>
Interest liability in case of non-filing of GSTR-3B	<p>The Court held that ITC is used for payment of tax on filing of return only when it is set-off with output liability. Thus, tax is payable on gross amount of tax without adjusting the amount of available ITC.</p> <p><i><b>NITYA Comments:</b> In this ruling, the petitioner did not contend that interest is not payable at the first instance as deposit of tax under GST law is linked to due date of GSTR-3 and not GSTR-3B (For detailed reasoning please refer to NITYA's Insight   Issue 25-Judgement Update dated May 3, 2019). Basis above, the taxpayers can argue that interest is not payable even on delayed payment of tax.</i></p>	<b><i>Megha Engineering and Infrastructures Limited v. Commissioner CGST, 2019-VIL-175-TEL</i></b>
Re-credit of amount of rejected refund claim to the electronic credit ledger in the absence of mechanism on GST portal	<p>The GST law provide for re-credit of ITC on rejection of refund claim. However, GST portal did not have functionality regarding the same.</p> <p>The Court held that the revenue cannot deny re-credit of the amount on account of lack of mechanism on GST portal. Accordingly, the taxpayer was given option to take credit of the said amount manually in its return in case such amount is not credited electronically.</p>	<b><i>Garden Silk Mills Limited v. UOI, 2019-VIL-165-GUJ</i></b>

## 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
<b><i>Saint Gobain India Private Limited, 2019-VIL-17-NAA</i></b>	<b>Nature of business:</b> Manufacturer  <b>Complaint:</b> With the advent of GST, there was reduction in tax incidence which was not passed on to the consumer.	<b>Profiteering:</b> No  <b>Reasoning:</b> 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
<b><i>Rosata Vitrified Private Limited, 2019-VIL-18-NAA</i></b>	<b>Nature of business:</b> Manufacturer  <b>Complaint:</b> 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.	<b>Profiteering:</b> No  <b>Reasoning:</b> The taxpayer did not resort to profiteering as the taxpayer maintained base price of the goods post rate reduction.
<b><i>Mak Plywood Industries Private Limited, 2019-VIL-20-NAA</i></b>	<b>Nature of business:</b> Manufacturer  <b>Complaint:</b> There was a reduction in rate of tax in November 2017. The taxpayer did not pass on the benefit of rate reduction to the consumer.	<b>Profiteering:</b> No  <b>Reasoning:</b> The taxpayer reduced the base price on implementation of GST and maintained base price subsequent to rate reduction in November 2017.

#### **NITYA Comments:**

*The NAA has consistently held that there is no profiteering where base price of goods has remained same after introduction of GST or rate changes in GST regime.*

3. **Anti-Profiteering provisions applicable where goods were incorrectly classified and subjected to higher rate of tax**

Reference	Facts	NAA's Order
<b>Dev Snacks, 2019-VIL-19-NAA</b>	<p><b>Nature of business:</b> Manufacturer and retailer</p> <p><b>Complaint:</b> Taxpayer classified goods under wrong category. Further, it increased base price of goods and charged higher rate of tax from consumers.</p>	<p><b>Profiteering:</b> Yes</p> <p><b>Reasoning:</b></p> <p>The base price of goods was increased post reduction in rate of tax. Hence, profiteering was upheld.</p> <p>The NAA further held that the taxpayer resorted to profiteering by incorrectly classifying goods and charging higher rate of tax from consumers when actual rate of tax on such goods was NIL.</p>

**NITYA Comments:**

*The NAA ruling is incorrect to the extent it holds that charging of incorrect rate of tax amounts to profiteering. The taxpayer deposited the excess tax collected by it in the Government's account.*

## PART C: ADVANCE RULINGS

### 1. Taxability and rate

Applicant	Relevant facts and observations of AAR
<b>Spaceage Syntex Private Limited, 2019-VIL-38-AAAR setting aside 2018-VIL-272-AAR (MAH)</b>	<p>The CBIC vide Circular No. 46/20/2018-GST dated June 6, 2018 clarified that duty-free scrips are classified under Heading 4907 and exempt under GST law. In this case, the Authority of Advance Ruling ('AAR') held that DFIA is different from duty credit scrips since DFIA is issued under Chapter 4 of the Foreign Trade Policy, 2015-20 ('FTP') while the latter is issued under Chapter 3 of the FTP. Accordingly, the AAR held that DFIA are not covered under exemption Notification.</p> <p>The Appellate Authority of Advance Ruling ('AAAR') considered the minutes of discussions in the GST Council Meeting held on October 6, 2017 as per which the Advance Authorizations are considered as duty free scrips and exempt. Basis the above, AAAR set aside the order of AAR and held that DFIA shall also be exempt from payment of GST being akin to Advance Authorization.</p> <p><b>NITYA Comments:</b></p> <p><i>An important point that the taxpayers selling duty free scrips (MEIS, SEIS, DFIA etc.) need to keep in mind is that since supply of scrips is exempt under GST, they shall be required to undertake reversal of ITC as per Rule 42 and 43 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules').</i></p>
<b>Triveni Turbines Limited, 2019-VIL-37-AAAR setting aside 2018-VIL-298-AAR (KAR)</b>	<p>The Appellant was engaged in the manufacture and supply of steam turbine solutions. The question before AAR was whether turbine generator set supplied to buyer for use in waste-to-energy project is covered under S. No. 234 of Schedule I of <b>Notification No. 1/2017 dated June 28, 2017</b> that covered 'Renewable energy devices and parts for the manufacture of waste to energy plants / devices'.</p> <p>The AAR held that turbine generator set is not a renewable energy device and thus, will not be covered under the said Notification.</p> <p>The AAAR set aside the AAR and observed that the turbine generator set will be used along with boilers, air cooled condensers and other parts to generate electricity. The AAAR held that 'waste to energy plant' should be given an expansive meaning and not restricted to goods / parts used to in the process of conversion of waste to steam. Hence, turbine generators used post steam generation, shall also be considered as part of 'waste to energy plant'.</p>
<b>E-Square Leisure Private Limited, 2019-VIL-114-AAR</b>	<p>The Applicant collected interest free returnable security deposit from the lessees while renting its immovable property. The question before the AAR was</p>

	<p>whether GST would be applicable on such security deposit along with notional interest thereon.</p> <p>The AAR observed that the lessor took security deposit as safety measure against damages to property and it does not qualify as additional consideration for the lessor. The AAR held that GST is not applicable on interest free security deposit. GST will only be applicable in case security deposit is retained by the lessor at the expiry of lease period. The AAR further held that there is no concept of GST on notional interest in the GST law.</p>
<b>Shri Navodit Agarwal, 2019-VIL-117-AAR</b>	<p>The applicant was providing transportation service to the recipient and received diesel. The question before the AAR was whether cost of diesel incurred by the recipient, will be included in the value of transportation service for charging GST or not.</p> <p>The AAR relied on Section 15(2)(b) of the CGST Act as per which an amount that the supplier is liable to pay but is incurred by the recipient in relation to supply, is includible in the value of said supply. The AAR held that cost of diesel will be included in the value of transportation service and thus liable to GST.</p> <p><i><b>NITYA Comments:</b> In our view, the AAR is incorrect since it did not consider that the diesel was provided as a condition to the contract. The same was discussed in detail in our special edition on the issue 'NITYA's Insight   Issue 26   AAR Update   Inclusion of cost of diesel provided by recipient in the value of transportation service' dated May 6, 2019.</i></p>
<b>NMDC Limited, 2019-VIL-121-AAR</b>	<p><b>Issue- 1</b></p> <p>The question before the AAR was whether royalty paid in respect of mining lease can be classified under 'Licensing for the right to use minerals including its exploration and evaluation' falling under Heading 9973 and GST rate applicable thereon.</p> <p>The AAR held that the service in question shall be classified under Heading 9973 and tax rate shall be same as applicable on supply of like goods involving transfer of title in goods. The AAR also held that the activity being service provided by Government, will be covered under reverse charge.</p> <p><i><b>NITYA Comments:</b> This ruling has been nullified due to amendment made vide Notification No. 27/2018-CT(R) dated December 31, 2018 which provides for rate of GST of 18% on royalty. GST will continue to apply on such service under reverse charge.</i></p> <p><b>Issue-2</b></p> <p>The Applicant was required to make statutory contributions to District Mineral Foundation (DMF) and National Mineral Exploration Trust (NMET). The issue</p>



	<p>under consideration was whether such amounts are for supply of service and will be covered under reverse charge or not.</p> <p>The AAR held that the instant activity was undertaken in course of applicant's business and hence is covered under the scope of 'supply'. The AAR further held that both DMF and NMET will be local authorities and contributions made to DMF and NMET are liable to GST under reverse charge.</p> <p><b>NITYA Comments:</b> <i>The fundamental principle of GST law is that tax is leviable only where supply is made in course of supplier's business. In our view, the AAR is incorrect in levying GST basis that the instant activity was in course of applicant's (recipient) business. DMF and NMET were collecting contributions for the purpose of development of local area and the same cannot be said to be an activity in course of their business.</i></p>
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## 2. Composite Supply

Applicant	Relevant facts and observations of AAR
<b>E-Square Leisure Private Limited, 2019-VIL-112-AAR</b>	<p>The Applicant intended to enter into an agreement of renting of immovable property. The Applicant proposed to collect utility charges on actual basis in addition to rental charges from the lessee.</p> <p>The issue before the AAR was whether GST is applicable on reimbursement of utility charges by the lessee to the Applicant.</p> <p>The AAR held that the instant activity merits to be considered as 'composite supply' where principal supply is renting of immovable property and reimbursement of utility charges is incidental thereto. Hence, GST will be applicable on total amount with GST rate on rental charges applicable thereon.</p>

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