



## NITYA'S INSIGHT:

*Legal Precedents' Series*

Issue 17 | Writs, Appeals and Advance Rulings

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## PART A: WRITS

### 1. Constitutional validity

Issue	Order	Reference
Levy of IGST on ocean freight charges (in case of CIF imports)	<p>Section 5 of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') empowers the Government to notify services on which the service recipient is liable to pay tax. Under <b>Notification No.10/2017-Integrated Tax (Rate)</b>, liability to pay tax on transportation services provided by overseas shipping line to overseas supplier is upon the <u>importer of goods</u>.</p> <p>The High Court <i>inter-alia</i> observed that an importer cannot be made liable to pay tax since it is not the recipient of service. Basis above, the Court declared <b>S.No.9(ii)</b> of <b>Notification No.8/2017-Integrated Tax (Rate)</b> and <b>S.No.10</b> of <b>Notification No.10/2017-Integrated Tax (Rate)</b> as unconstitutional and ultra-vires the GST law.</p> <p><i>NITYA's Comments: Please refer to NITYA's Insight I Issue 96 I Judgment Update I Levy of IGST on ocean freight in case of CIF imports held unconstitutional dated February 3, 2020 for our detailed update and comments on the decision.</i></p>	<b>Mohit Minerals Private Limited and Ors. v. UOI, 2020-VIL-36-GUJ</b>

### 2. TRAN-1 and TRAN-2 issues

Issue	Order	Reference
Inability to file Form GST TRAN-2 due to erroneous interpretation of inter-linkage between Form GST TRAN-1 and Form GST TRAN-2	<p>In this case, the Petitioner inadvertently did not fill the requisite column in Form GST TRAN-1 for claiming credit on inputs whose duty paying documents were not available. Consequently, the Petitioner was unable to file Form GST TRAN-2 due to its inability to revise Form GST TRAN-1 within due date.</p> <p>The High Court observed that the Petitioner was misled by the language of the contents in Form Form GST TRAN-1 and Form GST TRAN-2. Further, the Court held that credit standing in favour of taxpayer is its 'property' and the taxpayer could not be deprived of the said property in terms</p>	<b>Gillette India Limited v. Union of India, 2020-VIL-01-DEL</b>

	of Article 300 (A) of the Constitution of India. Basis above, the Court allowed filing / revision of Form GST TRAN-1 and Form GST TRAN-2.	
Filing of Form GST TRAN-1 post due date in absence of proof of technical glitch	<p>In this case, the management personnel of the Petitioner were unavailable at the time of filing of Form GST TRAN-1. Further, there were technical glitches on GST Portal due to which filing could not be completed within due date. However, the Petitioner did not have any corroborative evidence for the same.</p> <p>The Court observed that the Petitioner's case cannot be strictly categorized as a case of 'technical glitch.' However, in light of similar experiences faced by other taxpayers, the Court granted relief to the Petitioner. The Court also observed that it was unfair to expect a documentary proof for every technical glitch. The substantive benefit cannot be denied to the taxpayer when the requisite systems were incapable of performance.</p>	<b><i>A. B. Pal Electricals Private Limited v. Union of India, 2020-VIL-06-DEL</i></b>
	<p>In this case, the Petitioner tried filling Form GST TRAN-1 but could not do the same because of technical glitches. The Petitioner did not have screen shot to evidence that it attempted to fill Form GST TRAN-1.</p> <p>The High Court held that in the absence of any evidence to corroborate that Form GST TRAN-1 could not be filed due to technical glitch, no benefit can be granted to the Petitioner.</p> <p><b><i>NITYA's Comments:</i></b> <i>The above is an adverse judgment on this issue and contrary to various High Court judgments which have allowed filing of Form GST TRAN-1 even in absence of evidence of technical glitches.</i></p>	<b><i>Jagdamba Hardware Stores v. Union of India, 2020-VIL-51-CHG</i></b>



### 3. E-way bill issues

Issue	Order	Reference
Penalty in case of lapse of e-way bill for bona fide reasons	<p>In this case, e-way bill expired due to breakdown of vehicle and there was delay in repair of vehicle due to festivities. The issue before the Court was quantification of tax and penalty upon payment of which goods can be released.</p> <p>The High Court held that Section 129 is a complete code for addressing all violations committed in transit and brings all contraventions within its sweep irrespective of their gravity.</p> <p>Accordingly, the Petitioner was liable to pay amount stipulated in Section 129. It shall not be sufficient for the consignor to merely make an offer or undertake to remit the tax. Further, the Court allowed reduction in penalty as per Circular issued by State GST authorities.</p>	<b><i>Ideal Movers Private Limited v. Union of India, 2020-VIL-42-MAD</i></b>
Detention of goods as tax element on invoice was wrongly shown as CGST / SGST as against IGST but e-way bill correctly declared tax element as IGST	The High Court observed that that clerical error on invoice will not prejudice the Revenue in any manner and returns will automatically set right such trifling errors in documentation. Further, there being no adverse record of tax evasion on the behest of the Petitioner, the Court ordered release of goods and vehicle based on simple bond instead of demanding bank guarantee for tax and penalty.	<b><i>Umiya Enterprise v. Assistant State Tax Officer, 2020-VIL-50-KER</i></b>

### 4. Miscellaneous

Issue	Order	Reference
Denial of adjustment of tax paid in one head against other	<p>In this case, the Petitioner inadvertently deposited tax in cash ledger of CGST instead of IGST.</p> <p>The High Court held that Section 77(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act') read with Section 19(2) of the IGST Act clearly lay down that a registered person who has paid CGST treating transaction to be an intra-State supply but which turns out to be an inter-State supply, can claim refund of tax so paid. Accordingly, in bona fide cases like the present one, the Petitioner is entitled to benefit of such</p>	<b><i>Shree Nanak Ferroy Alloys Private Limited v. Union of India, 2020-VIL-30-JHR</i></b>

	refund or adjustment against future liabilities provided tax is deposited in correct head.	
Power of attachment of property under Section 83 of the CGST Act	<p>In this case, the respondent initiated proceedings under Section 83 of the CGST Act for non-traceable tax invoices and provisionally attached Bank Account of the Petitioner.</p> <p>The High Court observed that the power under Section 83 of the CGST Act should be exercised only to protect interest of revenue and not to ruin business of a taxpayer. Accordingly, attachment of Bank Account cannot be done during investigation stage.</p>	<b><i>Bindal Smelting Private Limited v. Additional Director General, 2020-VIL-17-P&amp;H</i></b>
Jurisdiction of the Authority of Advance Ruling on issues raised before it	<p>The Petitioner entered into an agreement with hospitals, laboratories etc. for provision of medical instruments (without consideration) on returnable basis and reagents, calibrators, disposals etc. (with consideration) throughout the tenure of agreement. The agreement provided for supply of FOC equipment on condition of purchase of minimum quantity / value of reagents.</p> <p>The issue under consideration before the AAR and the AAAR was whether such supplies can be said to composite supplies or not. However, the lower authorities went ahead and held that the supply of FOC equipment against an agreement containing minimum purchase clause, is a 'composite supply'.</p> <p>The High Court observed that while the Petitioner supplied equipment to hospitals, its dealers supplied reagents. Hence, such supplies were made by two separate persons. The Court held that while two independent supplies can be clubbed for the purposes of valuation, there is no scope of clubbing of two independent supplies for determining 'composite supply'. Accordingly, the Court quashed rulings of lower authorities and remanded the matter back to Original Authority for fresh adjudication.</p>	<b><i>Abbott Health Care Private Limited v. Commissioner of State Tax, 2020-VIL-08-KER</i></b>

## 5. Stay Orders

Issue	Order	Reference
Transition of various cesses to GST regime	<p>In case of <b><i>Sutherland Global Services Private Limited v. AC CGST and Central Excise, 2019-VIL-536-MAD</i></b>, Single Judge Bench of the Madras High Court allowed transition of various cesses (like Education Cess, Krishi Kalyan Cess) to GST regime.</p> <p>The Revenue filed an appeal before the Division Bench. The Division Bench of High Court vide its interim order dated January 24, 2020, has stayed the operation of the Single Judge's order.</p> <p><i>NITYA's Comments: Please refer to NITYA's Insight   Issue 98   Judgment Update   Division Bench of Madras High Court stays decision of Single Judge in Sutherland Global Services dated February 7, 2020 for our detailed update and comments on the decision.</i></p>	<b><i>ACCGST v. Sutherland Global Services Private Limited, 2020-VIL-44-MAD</i></b>
Filing of refund for tax periods spread across two financial years	<p>In this case, the Petitioner challenged the validity of <b><i>Circular No.37/11/2018-GST dated March 15, 2018</i></b> and <b><i>Circular No. 125/44/19-GST dated November 11, 2019</i></b> to the extent it restricts refund of unutilized Input Tax Credit ('ITC') accrued on zero rated supply spread across different financial years.</p> <p>The High Court held that the Respondents cannot artificially contrive ways to deny the benefit conferred to the taxpayer vide substantive provisions of law. The Court observed that the Petitioner cannot be denied refund which is <i>prima-facie</i> available under the GST law. Accordingly, the Court granted an interim stay on the operation of Paragraph 8 of <b><i>Circular No. 125/44/19-GST dated November 11, 2019</i></b> and allowed filing of refund claim.</p>	<b><i>Pitambra Books Private Limited v. Union of India, 2020-VIL-45-DEL</i></b>
Validity of order passed by National Anti-Profitteering Authority ('NAPA') in the absence of	In this case, the Petitioner challenged the order of NAPA. The Petitioner relied upon Rule 126 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') which requires the Authority to standardize and lay down methodology and procedure to determine profiteering.	<b><i>Shree Mahalakshmi Enterprises v. The Secretary, Director General of Anti-Profitteering, 2020-VIL-48-MAD</i></b>

prescription of any methodology	At present, no methodology and procedures have been formulated and the manner of determination of profiteering by NAPA varies from case to case. In the absence of prescription of such methodology, the High Court granted an interim stay in the matter.	
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## PART B: APPELLATE AUTHORITY ORDERS

### 1. Maintainability

Issue	Order	Reference
Maintainability of appeal before Appellate Authority (GSTAT) under Section 107 of the CGST Act	<p>In this case, Petitioner's vehicle was intercepted, and an order was passed by the State Officer. The Petitioner filed the appeal before the Appellate Authority of CGST.</p> <p>The Appellate Authority held that Section 6(3) of the CGST Act mandates that proceedings for rectification, appeal and revision of an order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST or UTGST Act and vice versa. Thus, in this case, appeal lied before the jurisdictional authority of SGST. Accordingly, the appeal was dismissed on the ground of jurisdiction.</p>	<b><i>Gravita India Limited v. State Tax Officer, 2020-VIL-03-GSTAA</i></b>

### 2. E-way bill

Issue	Order	Reference
Generation of multiple e-way bills for same consignment and invoice	<p>In this case, the seller inadvertently generated five e-way bills for the same supply. However, it uploaded sales in GSTR-1 / GSTR-3B once.</p> <p>The Authority held mere e-way bill generation shall not be the basis to treat reflected turnover as supply. Based on evidence provided, the Authority annulled tax demand.</p>	<b><i>Sri Bhagwati Chemicals v. Assistant Commissioner, 2020-VIL-01-GSTAA</i></b>

### 3. Miscellaneous

Issue	Order	Reference
Re-credit of rejected claim of refund of ITC	<p>In this case, the Appellant's refund claims were rejected. The Appellant debited entire ITC of inputs in its electronic ledger. The adjudicating authority did not allow re-credit on the ground that the Appellant did not provide documents to substantiate ITC.</p>	<b><i>Gravita India Limited, 2020-VIL-06-GSTAA</i></b>

Issue	Order	Reference
	<p>The Authority held that Rule 93 of the CGST Rules and <b><i>Circular No. 17/17/2017-GST dated November 15, 2017</i></b> do not stipulate submission of invoices for re-availing ITC in such cases. Accordingly, the order of rejection of re-credit was set aside.</p>	

## PART C: ADVANCE RULINGS

### 1. Taxability

Applicant	Relevant facts and observations of AAR
<b>Goa Industrial Development Corporation, 2020-VIL-02-AAR</b>	<p>The Applicant was a Government of Goa Undertaking who allotted land to various parties for setting up SEZ. However, SEZ could not be set up and the Applicant had to refund deposit to various parties along with compensation.</p> <p>The issue raised before the AAR was whether there is an obligation to refrain from an act or to tolerate an act in this case which will be treated as supply of service.</p> <p>The AAR held that compensation paid by the Applicant would qualify as 'supply' under Clause 5(e) of Schedule II of the CGST Act and would attract tax liability.</p> <p><i><b>NITYA's Comments:</b> Please refer to <b>NITYA's Insight   Issue 77   Compensation not to be considered as 'Toleration of an Act' for levy of Service Tax dated December 18, 2019</b> for our detailed update and comments on the decision.</i></p> <p><i>In this case, the Applicant was paying compensation. Even if it is considered to be a service, the Applicant was a 'Recipient' and not 'Supplier'. There is a plethora of Advance Rulings which have held that the Recipient does not have jurisdiction to seek an Advance Ruling. Hence, the AAR should not have entertained application at first place.</i></p>

### 2. Input Tax Credit

Applicant	Relevant facts and observations of AAR
<b>Chowgule Industries Private Limited, 2020-VIL-06-AAR</b>	<p>The Applicant was an authorized dealer, for supply of motor vehicles, spares and servicing thereof. The Applicant purchased motor vehicles for using them as demo vehicles for providing trial run to customers.</p> <p>The issue before the AAR was whether the Applicant can avail ITC on motor vehicles used for demonstration purpose.</p> <p>The AAR held that demo vehicles fulfill the definition of 'capital goods' and are used or intended to be used in the course or furtherance of business. Since the Applicant will make further supplies of demo vehicles and no time limit is prescribed in the CGST Act for making such further supplies, the Applicant can avail ITC on such goods. The Applicant does not fall under any of the restrictions specified under the law.</p> <p><i><b>NITYA's Comments:</b> The view adopted by the AAR is similar to the view adopted in the ruling of <b>A. M. Motors, 2018-VIL-197-AAR</b>. Please refer to</i></p>

	<i><b>NITYA's Outlook   Issue 1   Admissibility of credit on cars including demo cars dated November 22, 2018 for detailed discussion on the issue.</b></i>
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