



NITYA'S INSIGHT:

Legal Precedents' Series

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PART A: WRITS

1. Constitutional validity

Issue	Order	Reference
Interest on delay filing of return	The High Court held that interest liability will arise automatically post passing of due date.	Assistant Commissioner v. Daejung Moparts Private Limited, 2020-VIL-67-MAD
	The High Court held that proviso to Section 50 of the Central Goods and Services Tax Act, 2017 ('CGST Act'), though not effective, is inserted to provide relief to the taxpayer. It should be read as clarificatory and retrospective. Basis this, interest should be computed on net tax liability and not on gross tax liability.	Refex Industries Limited v. Assistant Commissioner, 2020-VIL-71-MAD
NITYA Comments: Please refer to ' NITYA's take – Interest applicability on delayed payment of tax ' dated February 21, 2020 for our detailed comments on this issue.		

2. Returns

Issue	Order	Reference
Transitional credit	The High Court allowed credit of pre-GST taxes even where TRAN-1 was not filed. The Supreme Court did not admit SLP filed by the department against High Court's judgment.	Union of India v. Adfert Technologies Private Limited, 2020-VIL-10-SC
	Petitioner could not file TRAN-1 due to technical glitches on portal. The High Court directed department to either open the portal or permit manual filing of TRAN-1. The Supreme Court has admitted SLP against High Court judgment.	Lantech Pharmaceuticals Limited v. The Principal Commissioner of CGST, 2020 (2)-TMI-1206-SC
NITYA Comments: While in first case, Supreme Court did not admit SLP, it admitted SLP in second case. Therefore, TRAN-1 issue is still alive and yet to attain finality.		
Seeking direction to Nodal Officer to permit filing of TRAN-1	The High Court observed that relief under Circular No. 39/13/2018 dated April 3, 2018 is meant for genuine taxpayers who attempted to file TRAN-1 but could not do due to technical glitches. As the	Jagadamba Hardware Stores v. Union of India, 2020-VIL-51-CHG

	<p>petitioner failed to evidence attempt to file TRAN-1, the Court rejected the writ petition.</p> <p>NITYA Comments: <i>This is a stray High Court judgment where the Court refused to condone the procedural error of non-filing of TRAN-1. Else most of the High Courts have condoned such errors and allowed transitional credit on substantive grounds.</i></p>	
Technical bottlenecks limiting uploading GSTR-9 and GSTR-9C returns	<p>The High Court extended due date for filing of GSTR-9 and GSTR-9C returns in the State of Rajasthan as portal was not working properly.</p> <p>The Supreme Court stayed the High Court's order to the extent it extended due date of filing annual return and reconciliation statement. The department submitted that late fee of Rs. 200 per day will be imposed in case of delay in filing return and no other penal action will be taken. Considering miniscule penalty amount, the Supreme Court disposed the SLP.</p>	<p><i>Tax Bar Association v. Union of India, 2020-VIL-53-RAJ</i></p> <p><i>Union of India v. Tax Bar Association, 2020-VIL-06-SC</i></p>
Challenge to recovery proceedings where appeal provision available	<p>The High Court observed that in view of appeal provisions (providing for making of pre-deposit and stay of balance amount), the authorities cannot initiate recovery proceedings till time limit for filing of appeal.</p> <p>Basis this, the Court quashed the order of attachment of bank account and directed revenue to remit recovered in excess of pre-deposit amount.</p>	<p><i>H.M. Leisure v. State of West Bengal, 2020-VIL-54-CAL</i></p>

3. E-way bill

Issue	Order	Reference
Reckoning of tax paid under Section 129 for release of detained goods towards GST liability	<p>The Authority collected tax and penalty under Section 129 of the CGST Act as a pre-condition of release of goods where the goods were detained due to non-filing of Part B of E-Way Bill ('EWB') by the transporter. The Authority refused to reckon such payment towards GST liability on the ground that Section 17(5)(i) prohibits credit of tax paid under Section 129.</p> <p>The Petitioner contended that tax paid was not an input tax and was rather an output tax. Hence, the</p>	<p><i>Zero Discharge Technologies (P) Limited v. Commissioner, SGST, 2020-VIL-89-KER</i></p>

	restriction under Section 17(5) of the CGST Act will not apply. The High Court remanded the matter to the Authority for reconsideration of the matter.	
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4. Refund of IGST paid on export and import of goods

Issue	Order	Reference
Withholding of refund of IGST post amendment in shipping bill	<p>In this case, the taxpayer amended the shipping bill to add IGST paid on zero-rated supplies that were initially missed due to clerical error. The authorities did not process refund despite amendment of shipping bill.</p> <p>The High Court directed the authorities to consider the matter and take action within four weeks.</p>	<i>Heavy Metal and Tubes (India) Private Limited v. The Principal Commissioner of Customs, 2020-(2)-TMI-647-GUJ-HC</i>
Applicability of exemption notification issued under EPCG scheme post introduction of GST	<p>In this case, the Petitioner challenged that Notification No. 79/2017 dated October 13, 2017, granting exemption from IGST on capital goods imported under EPCG scheme, should be considered retrospective from the date of introduction of GST.</p> <p>The High Court observed that prior to introduction of GST, EPCG scheme granted full exemption from payment of additional duties of customs viz. CVD and SAD. Basis this, the High Court held that this Notification should be considered retrospective and directed authority to refund IGST along with interest.</p>	<i>Prince Spintex Private Limited v. Union of India, 2020-VIL-84-GUJ</i>

PART B: APPELLATE AUTHORITY ORDERS

1. E-way bill

Issue	Order	Reference
Typographical error in entering distance in EWB resulting in incorrect validity period	<p>In this case, the Petitioner inadvertently mentioned incorrect distance basis which EWB expired before vehicle reached the destination. The Adjudicating Authority upheld detention of vehicle and imposed penalty under Section 129 of the CGST Act.</p> <p>The Appellate Authority relied on Circular No. 64/38/2018 dated September 14, 2018, which provided for taking a lenient view in situations of minor mistakes. The Authority held that such mistake should be considered as a minor mistake and set aside the order. The Authority imposed general penalty of Rs. 500/- under Section 125 of the CGST Act.</p>	Godrej Consumer Products Limited, 2020-VIL-07-GSTAA (HP)
Lapse of EWB	<p>In this case, Petitioner's vehicle was intercepted within few hours of expiry of validity of EWB and the Adjudicating Authority passed an order for detention.</p> <p>Rule 138(10) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') allow extension of EWB within 8 hours of expiry. In this case, 8 hours had not lapsed at the time of detention. Basis this, the Authority observed that Petitioner was not given sufficient time for renewal of EWB and held that penalty under Section 129 of the CGST Act should not be imposed. The Authority imposed general penalty of Rs. 1,000/- under Section 125 of the CGST Act.</p>	Bhushan Power & Steel Limited, 2020-VIL-09-GSTAA (HP)
Capital goods sent for repair without EWB	<p>In this case, the Petitioner transported machinery (capital goods) for repair without generating EWB. The Petitioner admitted the requirement of generation of EWB but objected imposition of penalty as no GST was leviable on goods sent for repair.</p> <p>The Authority treated this to be a <i>bona-fide</i> case where the Petitioner did not intend to evade tax as no tax was leviable. Basis this, the Authority imposed general penalty of Rs. 10,000/- under Section 122 of the CGST Act.</p>	Neva Plantation Private Limited, 2020-VIL-08-GSTAA (HP)

Issue	Order	Reference
<p>NITYA Comments: It is encouraging that GSTAA is taking a liberal view of minor errors committed by taxpayers while undertaking EWB compliances. Basis these rulings, taxpayers can consider approaching the Appellate Authority where detention of goods is on account of mistake in EWB or where there was no tax evasion.</p>		

PART C: ADVANCE RULINGS

1. Taxability and rate of tax

Applicant	Relevant facts and observations of AAR
Hitachi Power Europe GMBH, 2020-VIL-44-AAR (UP)	<p>The Foreign Head Office ('HO') of the Applicant got contracts for supply of goods and supervisory services for projects in India. The Applicant was Project Office ('PO') that was opened to complete such projects and undertake applicable legal compliances. For this purpose, employees of HO ('Expat Employees') worked from PO.</p> <p>The issue raised before the Authority for Advance Ruling ('AAR') was whether PO is required to pay GST on salary paid to employees of HO who were working from PO.</p> <p>The AAR observed that PO and HO form a single business entity and PO is an extended arm of HO. Therefore, employees of HO shall be deemed to be employees of PO. Basis this, the instant services fall under Clause 1 of Schedule III of the CGST Act, and thus not exigible to GST.</p> <p><i>NITYA Comments: The ruling is correct and supports our view that the activity between HO and branch office does not qualify as supply. Similar ruling has been pronounced in case of Takko Holding GmbH, 2019-VIL48-AAR (TN) and Habufa Meubelen B.V. (Indian Liaison Office) 2018-VIL-98-AAR (RAJ). Notably, these ruling are contrary to the ruling of Columbia Asia Hospitals Private Limited, 2018-VIL-126-AAR, 2018-VIL-30-AAAR wherein services provided by HO to branch office was held as supply under GST law.</i></p>
Ion Trading India Private Limited, 2020-VIL-27-AAR (UP)	<p>The Applicant was engaged in business of development and export of software. It received services for insuring its employees and their parents and recovered premium relatable to parents from respective employees.</p> <p>The issue raised before the AAR was whether amount recovered for insurance of employee's parents qualifies as 'supply of service' and would attract GST or not.</p> <p>The AAR observed that insurance of employee's parents is not an activity incidental to software business nor is being done in the course or furtherance of business. Therefore, it does not qualify to be 'supply of service' and is not exigible to GST.</p> <p><i>NITYA Comments: In case of POSCO India Pune Processing Center Private Limited, 2019-VIL-25-AAR, the Maharashtra AAR pronounced a similar ruling and held that the activity of recovering insurance premium from employees does not qualifies as 'supply'.</i></p>

	<i>In our view, these rulings are not correct and recovery from employees for facilities like canteen or insurance qualifies as a supply under GST.</i>
Pattabi Enterprises, 2020-VIL-13-AAAR (KAR)	<p>The AAR was dealing with the issue of classification of 'access cards', printed and supplied as per details provided by its customers. The issue raised before the AAR was classification of activity of the applicant. The AAR relied on Circular No. 11/11/2017 dated October 20, 2017 and classified activity of printing and supply of access cards as supply of service as printing has a predominant element.</p> <p>The Appellate Authority for Advance Ruling ('AAAR') set aside the order of AAR and observed that access cards qualify as a new product emerging out of printing activity. Basis this, the AAAR held that supply of access cards is a supply of goods.</p>

2. Input Tax Credit (ITC)

Applicant	Relevant facts and observations of AAR
Las Palmas Co-operative Housing Society Limited, 2020-VIL-37-AAR (MAH)	<p>The Applicant was a co-operative housing society, providing various services to its residents. It proposed to replace existing lift along with supporting structures in the society building.</p> <p>The issue raised before the AAR was whether the applicant will be eligible to claim Input Tax Credit ('ITC') of GST paid on supply and installation of lift.</p> <p>The AAR observed that supply of lift is a works contract resulting in creation of an immovable property. The AAR relied on Explanation to Section 17(5) of the CGST Act which restricts ITC on works contract service related to immovable property and held that ITC is not admissible.</p> <p>NITYA Comments: <i>This ruling is incorrect as Section 17(5)(d) of the CGST Act restricts ITC of immovable property other than plant and machinery. Lift is clearly 'plant and machinery' as per Explanation to Section 17(5) of the CGST Act. Therefore, ITC should be admissible in this case.</i></p>

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