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NITYA Weekly Roundup

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PART A: WRITS

1. Transitional Credit

Issue	Denial of transitional credit under Section 140(3) of the Central Goods and Services Tax Act, 2017 ('CGST Act') for want of Credit Transfer Document ('CTD').
Order	The Petitioner was an authorized vehicle dealer who purchased vehicles and spare parts ('goods') directly from the manufacturers or other dealers. The Petitioner claimed transitional credit on its closing stock lying on June 30, 2017. The revenue denied transitional credit on goods purchased from other dealers since it did not possess CTD as prescribed under Rule 15(2) of the CENVAT Credit Rules, 2017 ('Credit Rules 2017'). The High Court held that Section 140(3) of the CGST Act nowhere mandates submission of CTD to claim transitional credit. The Court noted that the Petitioner produced documentation trail evidencing payment of excise duty on goods in question. Basis this, the Court allowed transitional credit to the Petitioner subject to verification of deposition of excise duty in the Government treasury. <i>Downtown Auto Private Limited v. UOI, 2020-VIL-24-GUJ</i>

PART B: APPELLATE AUTHORITY ORDERS

1. Transitional credit

Issue	Denial of transitional credit basis VAT invoices under Section 140(3) of the CGST Act.
Order	The taxpayer claimed transitional credit on stock lying as on June 30, 2017. It availed credit basis VAT invoices issued by depot of the manufacturer evidencing excise duty paid on such goods. The department sought to deny credit for contravention of Section 140(3) of the CGST Act read with Rule 117 of the Central Goods and Services Tax Rules, 2017. The Appellate Authority ('AA') held that Section 140(3)(iii) of the CGST Act mandates supplier to possess prescribed documents evidencing payment of excise duty under the Excise Law on such goods. VAT invoice is not a valid document under Excise Law to evidence payment of excise duty. Basis this, AA held that the taxpayer is not in possession of prescribed documents for availing transitional credit and credit cannot be allowed. <i>Bhagwandas Purshotamdas v. Superintendent, CGST, 2020-VIL-29-GSTAA (Raj.)</i>

NITYA Comments: The issue is squarely covered against the revenue vide the decision of *Downtown Auto (supra)* discussed above. The taxpayers can also argue that there are no provisions under GST law for recovery of transitional credit.

2. Penalty for transportation of goods under incorrect E-way Bill

Issue	Quantum of penalty to be levied for transporting goods under E-way Bill ('EWB') bearing incorrect vehicle number.
Order	The taxpayer commenced movement of goods and the authorities intercepted vehicle in between. The person-in-charge of vehicle was carrying EWB referring incorrect vehicle number. Upon noticing error, the taxpayer issued another EWB by mentioning correct vehicle number and produced it before the authorities. The authorities detained the goods and issued order demanding tax and equal penalty under Section 129 of the CGST Act. The taxpayer submitted that it generated EWB prior to commencement of movement of goods. Due to sudden change in vehicle plan by transporter, the goods were sent in another vehicle. The taxpayer rectified the same by generating fresh EWB with correct vehicle number. The AA held that since the taxpayer admitted its mistake and corrected vehicle number, there was no intention to evade the tax. This was merely a technical mistake. Basis this, AA imposed penalty of Rs. 10,000/- under Section 125 of the CGST Act. <i>LG Electronics India Private Limited v. Assistant Commissioner, CGST, 2020-VIL-31-GSTAA (Raj.)</i>

PART C: ADVANCE RULINGS

1. Classification and applicable rate of tax

Issue	Supply of high-performance computing solutions, their maintenance and preparation and maintenance of data center would qualify as works contract service or composite supply.
Order	The Applicant entered into an agreement for supply of high-performance computing solutions, their maintenance and preparation and maintenance of data center. Under this agreement, the Applicant was required to undertake designing of data center, supply of equipment, transportation etc. The Applicant was also required to undertake civil and mechanical works namely construction of a civil structure to house the equipment. The Applicant also required to supply and install other ancillary equipment namely UPS and batteries, fire alarm system, chillers, air conditioners, surveillance systems etc. The AAR observed that the agreement clearly bifurcates supply of goods and services involved thereunder. The applicant receives separate payment for these goods. Still such supplies are naturally bundled and in conjunction with each other wherein major part of contract is for supply of goods. Thus, the Applicant is making composite supply with principal supply of goods. It also held that there is no construction of immovable property involving transfer of property in goods. Accordingly, the AAR ruled that Applicant is not rendering any works contract service but a composite supply with principal supply of goods. <i>Prasa Infocom & Power Solutions Private Limited, 2020-VIL-227-AAR (Mah.)</i>

NITYA Comments: The ruling is incorrect since it ignored the fact that the Applicant is required to construct civil structure as part of contract. Hence, the contract should qualify as works contract irrespective of quantum of goods involved.

Issue	Food and beverages supplied to hospital attracts GST.
Order	The Applicant was supplying food and beverages to various customers in a hospital on outsourcing basis. The consideration for such supply was directly paid by the hospital basis number of coupons collected by the Applicant. The AAR observed that supply of food and beverages for a consideration is exigible to GST. GST applicable on such supply will be as under: • July 1, 2017 to July 26, 2018 – 18 percent • July 27, 2018 onwards – 5 percent with ITC not availed The AAR also observed that exemption under Notification No. 12/2017 – Central Tax (Rate) dated June 20, 2017 is available only when clinical establishment itself supplies food as part of health care services. This exemption is not available when such supply is made by a person other than clinical establishment based on contractual arrangement with such establishment. <i>Navneeth Kumar Talla, 2020-VIL-228-AAR (Tel.)</i>

2. ITC

Issue	Input Tax Credit ('ITC') on lease charges paid towards land taken on lease.
Order	The Applicant is providing R&D services. The Applicant took land on lease basis for construction of laboratory. The Applicant paid lease charges (one-time lease premium charges and annual lease rentals) to lessor. The AAR observed that lease charges paid by the Applicant towards lease of land is for construction of laboratory. Under Section 17(5)(d) of the CGST Act, ITC on services received for construction of an immovable property (other than plant and machinery) on its own account is barred. Basis above, the AAR denied ITC on lease charges paid by the Applicant for construction of laboratory. <i>Daicel Chiral Technologies (India) Private Limited, 2020-VIL-229-AAR (Tel.)</i>

NITYA Comments: This ruling is incorrect as lease charges are not paid for construction of laboratory. This service would be received by the Applicant on regular basis even after construction is complete. Please refer to ***NITYA's Insight I Legal Precedent's Series | Issue 5 I Advance Rulings dated March 11, 2019.***

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CALL US

+91 11 4109 1200
+91 11 4109 1201



MAIL US

updates@nityatax.com
info@nityatax.com
www.nityatax.com



REACH US

NITYA Tax Associates
B-3/58, Third Floor,
Safdarjung Enclave,
New Delhi-110029

