



**NITYA**  
tax associates

## NITYA Weekly Roundup

September 2020 | Week 1

September 9, 2020



## PART A: WRITS

### 1. Refund of unutilized ITC distributed by ISD to SEZ unit

<b>Order</b>	<p>The revenue proposed to reject refund of unutilized Input Tax Credit ('ITC') filed by Petitioner, a Special Economic Zone ('SEZ') unit. As per the revenue, Rule 89 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') allows refund of ITC to supplier of goods or services for supplies made to SEZ unit. As the Petitioner is not a supplier of goods or services to SEZ unit but SEZ unit itself, it cannot claim refund of ITC under Section 54 of the Central Goods and Services Tax Act, 2017 ('CGST Act'). The revenue further contended that the Petitioner received ITC on services from Input Service Distributor ('ISD') which is not supplier of services.</p> <p>The High Court observed that outward supplies made by SEZ unit is zero-rated. Further, there is no statutory provision barring refund of accumulated ITC to SEZ unit relatable to zero-rated supplies. Accordingly, the Petitioner is entitled to claim refund.</p> <p><b><i>Britannia Industries v. UOI, 2020-VIL-427-GUJ</i></b></p>
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**NITYA Comments:** The ruling is correct. While denying refund, the revenue missed basic point that the Petitioner (SEZ unit) was making exports (zero rated supplies) and can claim refund as an exporter under Rule 89 of the CGST Rules. Refer decision of ***Vaachi International, 2020-VIL-15-GSTAA*** covered in our **NITYA's Insight | Legal Precedent's Series | Issue 19**.

### 2. Period of limitation for filing appeal when order not uploaded on GST Common Portal

<b>Order</b>	<p>The revenue did not serve copy of order electronically on GST Common Portal ('GST Portal') to Petitioner. It filed manual appeal against order of Adjudication Authority after expiry of limitation period. The Appellate Authority rejected appeal filed by Petitioner on the ground that it is beyond time limit prescribed under Section 107 of the CGST Act.</p> <p>The High Court held that Section 107 of the CGST Act and Rule 108 of the CGST Rules provides for filing appeal only in electronic mode. The Petitioner was handed over physical copy of order which prevented it from filing appeal electronically within stipulated time period as both these processes are intertwined. Further, GST law does not provide for manual filing of appeal. It resorted to manual filing after exhausting all other options. Basis this, the Court remanded back the matter to the Appellate Authority to decide the issue afresh.</p> <p><b><i>Gujarat State Petronet v. UOI, 2020-VIL-426-GUJ</i></b></p>
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**NITYA Comments:** The ruling is correct as there is no provision under GST law for filing appeal manually. All appeals need to be filed electronically only. Consequently, taxpayers need to be cognizant of receipt of order on GST portal. Notable that service of order by uploading on GST portal is valid service under Section 169 of the CGST Act. Refer decision of **Gold Wood Enterprises v. Assistant Commissioner, 2020-VIL-401-KER** covered in our **NITYA Weekly Roundup | August 2020 | Week 4**.

### 3. Challenge to reduction of benefit in Budgetary Support Scheme

<b>Order</b>	<p>Under Excise law, units located in specified areas were granted outright excise duty exemption under <b>Notification No. 50/2003-CE</b> dated <b>June 10, 2003</b>. Upon advent of GST, excise duty ceased to apply and excise duty exemption was withdrawn. All the units located in such areas became liable to pay GST on manufacture and supply of goods.</p> <p>The Department of Industrial Policy and Promotion ('DIPP') introduced Budgetary Support Scheme on October 5, 2017 ('Scheme') to compensate units which were earlier availing excise duty exemption. The Scheme provided for refund of 58 percent of CGST and 29 percent of IGST paid in cash for remaining period under the <i>erstwhile</i> Notification.</p> <p>The Petitioner filed writ petition on the premise that the Scheme has substantially curtailed benefits to such units. It contended that the denial of exemption is violative of the Doctrine of Promissory Estoppel as the units acted in promise given by Fiscal Incentive issued by Ministry of Commerce &amp; Industry in the Office Memorandum dated January 7, 2003. The Court admitted the matter which will be decided in due course.</p> <p><b>Ashok Leyland v. UOI, Writ Petition No. 736 of 2020</b></p>
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**NITYA Comments:** Identical issue was dealt by the Delhi High Court in the case of **Hero Motocorp Limited v. UOI, 2019-VIL-109-DEL** whereunder the High Court rejected the applicability of Doctrine of Promissory Estoppel. Refer our detailed update **NITYA's Insight | Issue 105 | Judgment update | Reduction in tax incentives under GST regime, issue of promissory estoppel** dated March 18, 2020.

## PART B: CESTAT

### 1. Refund of balance of credit of Cesses as on July 1, 2017

<b>Order</b>	<p>The Appellant supplied its final products in domestic market on payment of excise duty as well as to Mega Projects, SEZs etc. without payment of excise duty. It did not claim refund under Rule 5 of the Cenvat Credit Rules 2004 ('Credit Rules') expecting to utilize credit on domestic supplies. The Appellant had unutilized credit of Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess ('Cesses') as on June 30, 2017.</p> <p>The Appellant filed refund claim of such Cesses. The revenue rejected refund claim on the ground that there was no specific provision under Credit Rules or GST law for refund of such Cesses.</p> <p>The CESTAT held that Cenvat credit is a vested right and there is no provision for lapsing of such credit. Accordingly, the right cannot be extinguished merely because of change of law. In absence of any provision in GST law for its utilization, the Appellant is entitled for cash refund.</p> <p><b><i>Bharat Heavy Electricals v. CGST, 2020-VIL-402-CESTAT-DEL-CE</i></b></p>
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**NITYA Comments:** *The ruling is correct. Though it was rendered in context of accumulation of credit on account of exports, its rationale can be extended to refund of Cesses in general (even if not accumulated on account exports etc.) as lying on June 30, 2017. The judgment has application only for taxpayers who filed refund claim within limitation period. If a taxpayer intends to file refund claim now, such claim will be time barred.*

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