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## NITYA Weekly Roundup

September 2020 | Week 3

September 23, 2020



## PART A: WRIT PETITION

### 1. No writ when alternate remedy available

The Petitioner challenged order denying revocation of cancellation of registration under Section 29(2)(a) of the Central Goods and Services Tax Act, 2017 ('CGST Act'). The High Court observed that proper officer provided personal hearing and passed speaking order with reasons. Further, the Petitioner had an option of filing an appeal to Appellate Authority under Section 107 of the CGST Act. Basis this, the Court dismissed writ petition.

#### ***M.S. Retail v. UOI, 2020-VIL-439-KAR***

The Petitioner contended that Revenue failed to consider its reply in response to Show Cause Notice. The Petitioner further contended that determination of tax liability and imposition of penalty was *ultra vires* Section 129 of the CGST Act.

The High Court did not go into merits and dismissed writ petition on the ground of presence of alternative remedy under Section 107 of the CGST Act.

#### ***Skipper v. State of UP, 2020-VIL-449-ALH***

### 2. Refund application wrongly rejected without providing reasonable grounds

The Petitioner sought refund of Input Tax Credit ('ITC') on account of zero-rated supply under Section 54 of the CGST Act. The refund application was rejected by Revenue stating that goods or services are not directly used for making zero-rated supply. The Petitioner gave detailed reply against rejection notice which was not considered by Revenue.

The High Court observed that rejection order lacked proper reasoning and was 'non-speaking'. The Court remanded back the matter to Revenue for fresh consideration.

#### ***Jay Jay Mills v. State Tax Officer, 2020-VIL-445-MAD***

### 3. Discounted value to be considered for E-Way Bill purposes

A consignment of watches was supplied to the Petitioner at discounted price of Rs.8.99 (actual value of goods was Rs.4,49,550). The goods were supplied under valid tax invoice without E-Way Bill ('EWB'). The Proper Officer detained consignment due to non-issuance of EWB.

The High Court directed release of goods as consignment value is Rs.8.99 and EWB needs to be generated only if consignment value of goods exceeds Rs.50,000.

#### ***Best Sellers v. Assistant State Tax Officer, 2020-VIL-455-KER***

**NITYA Comments:** The decision is correct that no EWB is required where invoice value is less than Rs.50,000. If Revenue doubted valuation of goods, it should have challenged the same.

## PART B: ADVANCE RULINGS

### 1. Exemption on services for conducting examinations

The Applicant was awarded contract by Bihar School Educational Board ('BSEB') for conducting examinations viz. scanning OMR Slip, OMR Marks Foil, OMR attendance sheet, OMR absentee sheet and finalization of data.

The Applicant sought ruling whether services provided to BSEB are eligible for exemption under S.No.66 (b) of **Notification No. 12/2017-Central Tax (Rate)** dated **June 28, 2017** (i.e. *services provided to an educational institution by way of services relating to, or conduct of examination of such institution*).

The Authority for Advance Ruling ('AAR') observed that BSEB is an educational institution in terms of Explanation to the Notification 12/2017 (*supra*). Further, the process of conducting examination is not limited to activities at test center. This process will be incomplete without assessment and scanning of marksheets. Quantifying marks is an essential part to complete said process. Thus, services provided by the Applicant is eligible for exemption.

***Datacon Technologies, 2020-VIL-277-AAR (KAR)***

### 2. ITC on land fill pit, constructed below ground

The Applicant was engaged in business of solid waste management. It obtained land from Government and constructed land fill pit ('pit') for processing, treatment, storage and disposal of solid waste.

The Applicant sought ruling as to whether ITC is admissible on construction of pit, considering it as 'Plant and Machinery'.

The AAR held that pit is combination of earth work and other capital goods. Further, pit is constructed below ground. Therefore, it qualifies to be civil structure. ITC is inadmissible on civil structures being specifically excluded from definition of 'plant and machinery' under CGST Act.

***Mother Earth Environ Tech, 2020-VIL-274-AAR (KAR)***

***NITYA Comments:*** *The ruling is incorrect and contradictory to recent CESTAT decision in the case of Maharashtra Enviro Power v. CCE, 2020-VIL-411-CESTAT-MUM-ST on identical issue. In this case, Tribunal allowed CENVAT credit on the ground that pit has a limited life span and hence does not qualify as civil structure.*

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