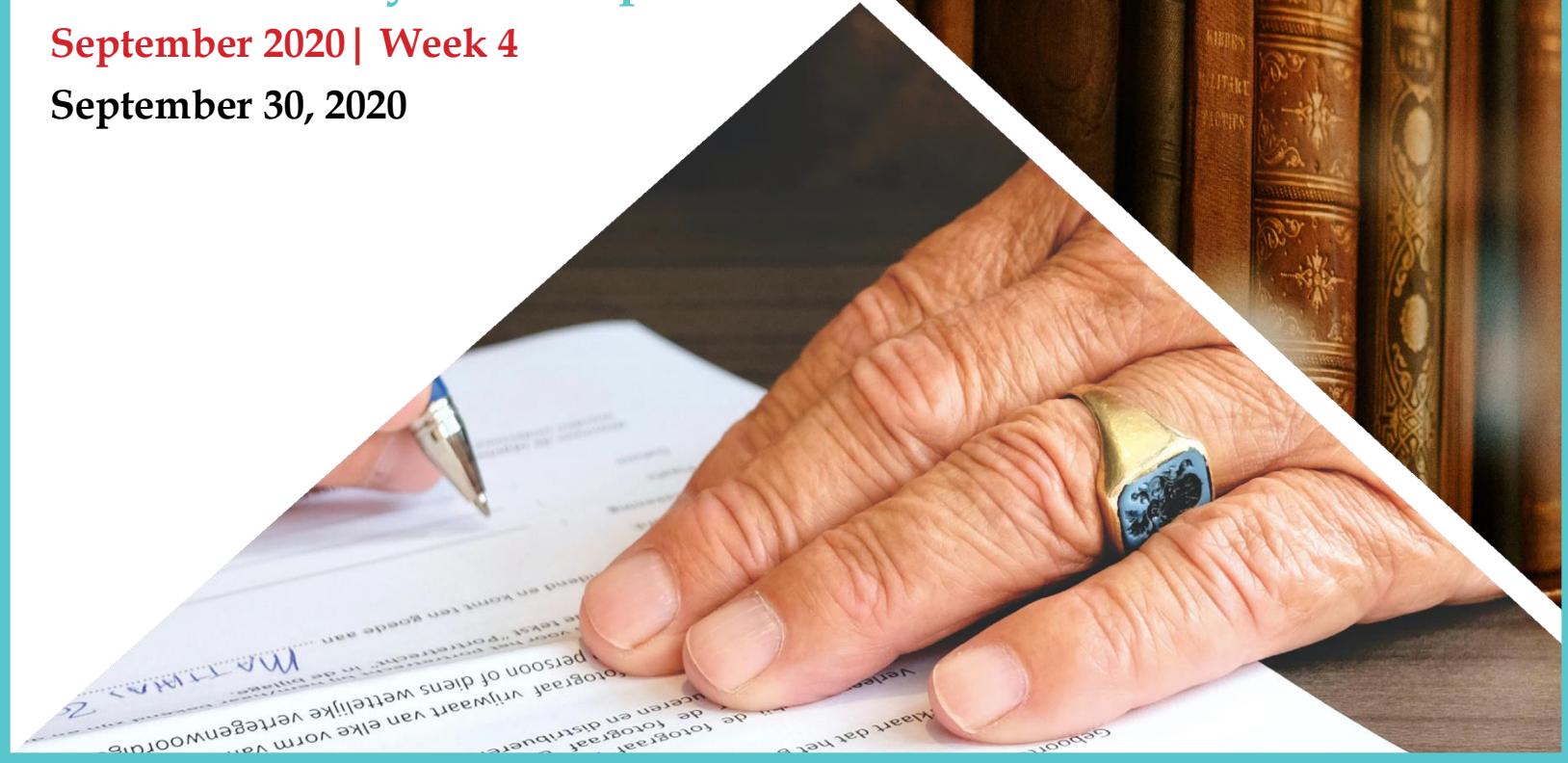




NITYA Weekly Roundup

September 2020 | Week 4

September 30, 2020



PART A: WRIT PETITIONS

1. Challenge to refund procedure under Rule 90(3) of the Central Goods and Services Tax Rules, 2017

Rule 90(3) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') provides for issuance of deficiency memo if refund application is deficient. Once deficiency memo is issued, this Rule requires filing of fresh refund application. The issuance of deficiency memo effectively results in rejection of original refund application without giving any opportunity of hearing to taxpayer and reduces period of limitation available to applicant.

In the instant case, the Petitioner filed refund application for refund of excess tax inadvertently paid by it along with interest. The refund application was returned twice on account of deficiencies.

The Petitioner filed writ petition challenging issuance of second deficiency memo being violative of Article 14 and 19(1)(g) of the Constitution of India, 1950 ('Constitution'). The Petitioner also sought directions to refund tax with applicable interest. In alternative, the Petitioner sought reading down of Rule 90(3) to the effect that rectification of deficiencies should not be treated as submission of fresh refund application for computing limitation period.

The High Court has admitted the matter and the same will be decided in due course.

Insitel Services v. UOI, 2020-VIL-456-DEL

NITYA Comments: *In the context of the Customs Act, 1962, the issue stands decided by the Karnataka High Court in favour of taxpayers in the case of **Gimpex Limited v. CC, 2020 (5) TMI 370-Karnataka High Court**. Additionally, rejection of refund claim and filing of fresh application also has direct bearing on date from which interest accrues.*

2. Challenge to blocking of Input Tax Credit in Electronic Credit Ledger

The Petitioner purchased goods from Indian Oil Corporation Limited ('IOCL') on payment of applicable GST. These purchases were supported by valid tax invoices and IOCL deposited tax in Government account. IOCL wrongly recorded such transaction as sale to unregistered buyer. This led to mismatch of Input Tax Credit ('ITC') in the Petitioner's Form GSTR-2A and ITC availed in Form GSTR-3B.

The revenue blocked ITC of the Petitioner under Rule 86A of the CGST Rules and issued notices for mismatch of ITC. Being aggrieved, the Petitioner filed writ petition challenging blocking of ITC as also notices issued for mismatch of ITC. In the alternative, the Petitioner sought direction from the High Court to direct Respondent to pass speaking order and sought 'reasons to believe' for blocking ITC.

The Court directed the revenue to treat instant writ petition as representation. The revenue agreed to pass reasoned order upon the same.

Goyal Iron and Steel Traders v. Assistant Commissioner, CGST, 2020-VIL-466-DEL

NITYA Comments: Though in this case, the Petitioner did not challenge validity of Rule 86A of CGST Rules, validity of this provision is already under challenge in multiple cases like **Kalpsutra Gujarat v. UOI, 2020-VIL-433-GUJ**. The revenue cannot block ITC legally and validly claimed by taxpayers under Rule 86A without following principles of natural justice. Refer our update '**NITYA Weekly Roundup / September 2020 / Week 2**' for our comments on challenge of validity of Rule 86A. Taxpayers facing similar issue, should approach jurisdictional High Courts for appropriate remedies.

3. Refund of input services under Rule 89 of CGST Rules under inverted tax category

A number of Petitioners challenged constitutional validity of Section 54(3) of Central Goods and Services Tax Act, 2017 ('CGST Act') and Rule 89(5) of CGST Rules before the Madras High Court. The Petitioners *inter-alia* contended that refund on input services should be allowed under Section 54(3) of CGST Act read with Rules 89(5) of CGST Rules under inverted tax category.

The Court rejected the Petitioner's contention and held that definition of the term 'input' specifically excludes 'input services' and 'capital goods'. Accordingly, taxpayers are not entitled for such refund. The Court distinguished Gujarat High Court decision in the case of **VKC Footsteps India Private Limited v. UOI, 2020-VIL-340-GUJ** which allowed such refund. The Court upheld constitutional validity of Section 54(3) and held Rule 89(5) to be in conformity with parent statute. Basis this, the Court disallowed refund on input services under inverted tax category.

TVL Transtunnelstroy Afcons Joint Venture v. UOI, 2020-VIL-459-MAD

NITYA Comments: Refer our update titled '**NITYA Insight / Issue 183 / High Court denies refund on input services under 'inverted tax' category**' for detailed analysis of this judgment.

PART B: ADVANCE RULINGS

1. Levy of GST on statutory levies and notional interest in rental transaction

The Applicant entered into rent agreement for renting out its commercial property. As per agreement, the Applicant collected monthly rent and refundable security deposit. The Applicant was required to discharge statutory levies *qua* property taxes.

The Applicant sought ruling as to whether property tax is deductible and notional interest on refundable security deposit is includable in transaction value for levy of GST.

The Authority for Advance Ruling ('AAR') held that under Section 15(2) of the CGST Act, any taxes, duties, cesses, fees and charges levied under any law for the time being in force are included in the value of taxable supply. The only exclusion is with respect of taxes, duties, cesses, fees and charges levied under the CGST Act and allied statutes if charged separately from the supplier. Thus, property tax levied under the Karnataka Municipalities Act, 1964 is not excludable from the value of renting services.

The AAR also held that notional interest is includable in the value of supply of renting service only if it influences value of such supply. The AAR did not give its conclusion on facts of this case.

Midcon Polymers, 2020-VIL-278-AAR (KAR)

NITYA Comments: *This ruling is correct on both the issues. Notional interest is addable in the value of supply only if it influences price. Similarly, statutory levies (other than GST) are not deductible from the value of supply.*

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