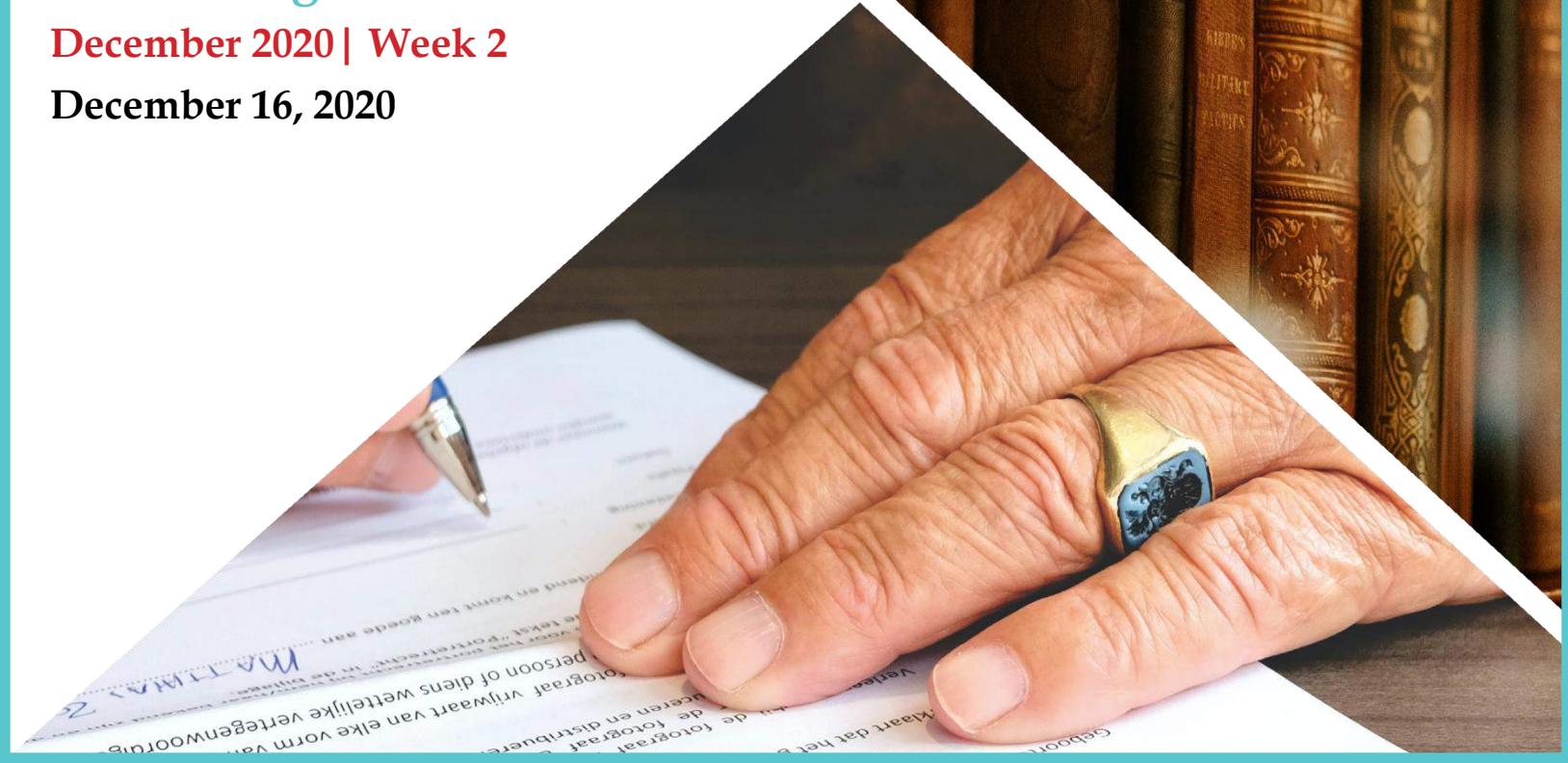




NITYA Legal Precedents

December 2020 | Week 2

December 16, 2020



PART A: WRIT PETITIONS

1. Mode of service of Show Cause Notice and Demand Order

The Petitioner filed appeal against demand order passed under Section 129(3) of the Central Goods and Services Tax Act, 2017 ('CGST Act'). The Appellate Authority dismissed appeal on ground of limitation. The Petitioner filed Writ Petition contending that certified copy of order was never served on it and hence Appellate Authority had incorrectly dismissed appeal.

The High Court held that service of order on driver of truck cannot be deemed to be valid service and thus, period of limitation would commence from day when certified copy of order is made available to the Petitioner. Accordingly, the Court directed the Appellate Authority to decide the case on merits.

Singh Traders v. Additional Commissioners, 2020-VIL-606-ALH

The Petitioner challenged tax demand affirmed by the Appellate Authority on the ground that Show Cause Notices ('SCNs') were never served on it. The department argued that SCNs were served on driver of truck as well as affixed on truck in question.

The High Court set aside orders passed by both Adjudicating as well as Appellate Authority on the ground that SCNs were never served on the Petitioner as prescribed in law and hence, there was non-adherence to principles of natural justice. The Court remanded matter to Adjudicating Authority for decision on merits.

Ranchi Carrying Corporation v. State of UP, 2020-VIL-617-ALH

NITYA Comments: Recently, the High Courts have consistently held that all departmental communications with the taxpayer should be made in the manner prescribed under law. Section 169 of the CGST Act prescribes different modes in which notices, summons, orders etc. can be served on the taxpayer and no other mode of service is valid. The above judgments come as a welcome step in ensuring that notices or orders are not served in arbitrary fashion and the taxpayers are given reasonable opportunity to represent its case.

2. Challenge to confiscation proceedings initiated on mere suspicion

The Adjudicating Authority issued SCN and detained goods of the Petitioner on allegation that driver of vehicle might have contravened GST law by transporting two set of consignments under single E-Way Bill.

The Petitioner filed Writ Petition challenging such detention order. The High Court observed that entire basis for issuance of SCN was conjectures and surmises. The Court set aside the detention order and held that SCN under Section 130 of the CGST Act cannot be issued on mere suspicion.

Nakoda and Company v. UOI, 2020-VIL-604-GUJ

3. Validity of E-Way Bill after goods have reached their destination

In this case, the goods reached their destination (Petitioner's premises) before expiry of validity of E-Way Bills. E-Way Bills expired when goods were unloaded at Petitioner's premises. At that time, the departmental officers visited Petitioner's premises and issued notice.

The Petitioner filed Writ Petition against tax demand affirmed by the Appellate Authority on the ground that there was no contravention of Rule 138 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules').

The High Court observed that goods had reached their destination well before the expiry of E-Way Bills. This fact was not in dispute and goods did not require any further transit. The Court accordingly struck down tax demand.

Hemanth Motors v. State of Karnataka, 2020-VIL-618-KAR

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