



NITYA
tax associates

NITYA Legal Precedents

February 2021 | Week 3

February 24, 2021



PART A: WRIT PETITIONS

1. Stay of High Court order allowing manual filing of TRAN-1

The department filed SLP against the High Court order that allowed taxpayers to claim transitional credit by filing / revising TRAN-1 electronically or manually.

The Supreme Court has stayed the High Court order and directed department to submit affidavit on assertions made by taxpayers that they could not file TRAN-1 due to technical glitches or portal issues.

UOI v. National Engineering, 2021-VIL-23-SC

NITYA Comments: With Supreme Court staying High Court order, it will be interesting to see how High Courts would deal with such cases in future.

2. Carry forward of closing balance of Cesses

The Petitioner filed writ petition for carry forward of closing balance of Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess into GST regime.

The High Court followed Madras High Court decision in the case of **AC CGST v. Sutherland Global Services Private Limited, 2020-VIL-500-MAD** and dismissed the writ petition.

Jay Ushin Limited v. UOI, 2021-VIL-99-RAJ

NITYA Comments: The Rajasthan High Court has simply relied on Madras High Court's decision and did not consider several legal points in favor of taxpayer. The issue is expected to be settled finally by the Supreme Court. We have discussed the issue in detail in our update **NITYA Legal Precedents | October 2020 | Week 2** dated October 21, 2020.

3. Multiple investigations carried out by different Officers on same issue

The Directorate General of GST Intelligence ('DGGI'), Ludhiana undertook investigations against the Petitioner, alleging that it fraudulently passed Input Tax Credit ('ITC') to its sister concern. Based on information received from DGGI, Lucknow and DGGI, Ghaziabad, Commissioner of Central Tax started another investigation regarding fake availment of ITC by the Petitioner. Further, DGGI, Bhopal started third investigation against the Petitioner regarding availment of ITC on purchases made from Diamond Enterprises (Petitioner's vendor).

The Petitioner challenged multiple investigations being carried out by different officers on same issue, being violative of Section 3 and Section 6 of the Central Goods and Services Tax Act, 2017 ('CGST Act').

The High Court observed that investigations carried out by different officers are independent of each other and the department has assured that one investigation would not cover matter already covered in another investigation. Basis this, the Court held that the said investigations are not violative of Section 3 and Section 6 of the CGST Act and dismissed the writ petition.

Kaushal Kumar Mishra v. Additional Director General, 2021-VIL-102-P&H

4. Reduction in benefit of Budgetary Support post advent of GST

The Petitioner located in tax free zone, was getting 100 percent excise duty exemption before introduction of GST. Post advent of GST, excise duty exemption was converted to refund of 58 percent CGST and 29 percent IGST.

The Petitioner challenged such reduction in benefit and invoked Doctrine of Promissory Estoppel.

The High Court relied on case of ***UOI v. VVF Limited, 2020-VIL-14-SC-CE*** and dismissed the writ petition. The Court held that Doctrine of Promissory Estoppel is inapplicable in the instant case and hold that change in policy by Government was on account of public policy and in public interest.

Sun Pharma Laboratories v. UOI, 2021-VIL-116-SIK

NITYA Comments: The department did not evidence how reduction in benefit was on account of public policy and public interest. We have discussed the issue in detail in our update ***NITYA Insight | Issue 120 | Judgement Update | Doctrine of Promissory Estoppel not applicable against Central Government on reduction of area-based excise duty exemption dated May 13, 2020.***

5. Payment of amount during search / inspection proceedings

The High Court issued following guidelines to CBIC and Central and State Chief Commissioner of Gujarat with respect to search / inspection proceedings:

- No recovery of amount in any mode viz. cash / cheque / e-payment or adjustment of ITC to be made at the time of search / inspection proceedings under Section 67;
- The department should not advise taxpayers to make voluntary payments after end of such proceedings; and
- The taxpayer should have facility for filing complaint against officer if it was forced to make payment during the proceedings and strict disciplinary action should be initiated against such officer if found guilty.

Bhumi Associate v. UOI, 2021-VIL-117-GUJ and 2021-VIL-127-GUJ

NITYA Comments: The decision comes in light of multiple writ petitions filed before different High Courts regarding harassment and use of violence by department to force taxpayers to pay tax. The ruling is expected to provide relief to taxpayers.

PART B: ADVANCE RULINGS

1. Activity of fabrication of tank qualifies as supply of goods

The Applicant received order for fabrication of tanks. The customer supplied steel sheets to the Applicant. Other inputs and consumables were procured by the Applicant itself.

The Applicant sought advance ruling on whether activity of fabrication of tanks was supply of goods or supply of services.

The AAR observed that the Applicant procured substantial inputs and consumables on its own for fabrication of tanks. Further, after fabrication, different commodity (vis-à-vis steel plates) arises which has different name, character and use. Basis this, the AAR held that fabrication of tanks does not qualify as job work and qualify as supply of goods (HSN 7309 and GST 18 percent).

Meera Tubes, 2021-VIL-135-AAR (UP)

NITYA Comments: The decision is incorrect since Schedule II of the CGST Act clearly provides that processing of goods (steel sheets in this case) belonging to another person is service. Several advance rulings as well as CBIC Circular have stated that body building activity qualifies as job-work service. The instant activity (similar to body building) should qualify as job-work service only.

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