



NITYA
tax associates

NITYA Legal Precedents

January 2021 | Week 4

February 3, 2021



PART A: WRIT PETITIONS

1. **Validity of provisional attachment order passed by Assistant Commissioner**

The Petitioner challenged order passed by Assistant Commissioner ('AC') for provisional attachment of bank account.

Section 83 of the Central Goods and Services Tax Act, 2017 ('CGST Act') empowers **Commissioner** (and not AC) to provisionally attach any property (including bank account). The Petitioner contended that the above order was in contravention of Section 83 and hence invalid.

The High Court agreed with the Petitioner's contention and set aside the order passed by AC.

Himanshu Infraprojects v. Commissioner CGST, 2021-VIL-42-P&H

2. **Refund of Education Cess and Secondary and Higher Education Cess basis Supreme Court judgment that got subsequently over-ruled**

The Petitioner got refund of Education Cess ('EC') and Secondary and Higher Education Cess ('SHEC') basis the Supreme Court decision in the case of **SRD Nutrients Private Limited v. CCE, 2017-VIL-43-SC-CE**. This decision was subsequently overruled by Larger Bench of the Supreme Court in the case of **Unicorn Industries v. UOI, 2019-VIL-42-SC-CE**. The revenue issued Show Cause Notice ('SCN') for recovery of refund amount.

The Petitioner challenged SCN on the ground that refund was granted in consonance with law laid down by the Supreme Court in case of **SRD Nutrients** (*supra*) and was thus not 'erroneous refund'. Subsequent decision would apply to pending proceedings and not to concluded proceedings. Further, subsequent declaration of law by Supreme Court does not allow re-opening of already closed cases.

The High Court agreed with Petitioner's contentions and held that closed proceedings cannot be re-opened basis subsequent Supreme Court decision. Accordingly, the Court quashed SCN.

Tripura Ispat v. UOI, 2021-VIL-45-TRI-CE

PART B: ADVANCE RULINGS

1. Input Tax Credit on goods supplied free of cost at business promotion or marketing events

The Applicant organized various events for marketing and sales promotion of its products. At such events, the Applicant distributed free goods viz. duffle bags, golf balls, T-Shirts, caps, diary, keychain etc. to the participants including existing and potential customers.

The Applicant sought advance ruling on the issue of admissibility of Input Tax Credit ('ITC') on goods distributed 'Free Of Cost' ('FOC') at various marketing and sales promotion events organized by it.

The Authority for Advance Ruling ('AAR') observed that the goods given on FOC basis were without any consideration. Since these goods were voluntarily provided by the Applicant without any contractual obligation, the same qualified as 'gifts'. Hence, ITC on such goods was barred vide Section 17(5)(h) of the CGST Act.

BMW India, 2021-VIL-91-AAR (HAR)

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