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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

1. **Validity of SCN issued by DRI**

The Appellant imported goods and filed bill of entry. The goods were physically cross-checked by the Deputy Commissioner of Customs. Post-verification, the Deputy Commissioner of Customs ordered for clearance of such goods as exempt from BCD under **Notification No. 15/2012 – Customs dated March 17, 2012**. Subsequently, Additional Director General, Directorate of Revenue Intelligence ('DRI') issued Show Cause Notice ('SCN') under Section 28(4) of the Customs Act, 1962 ('Customs Act') alleging that goods are not eligible for exemption. The adjudicating authority confirmed the demand which was subsequently upheld by CESTAT.

The Appellant approached the Supreme Court contending that DRI did not have jurisdiction to issue SCN under Section 28(4) of the Customs Act, when clearance order was issued by Deputy Commissioner of Customs.

The Supreme Court referred to Section 28(4) of the Customs Act which empowers 'the proper officer' to issue SCN. The Court observed that powers have been conferred to specific proper officer (due to use of 'the') and not to any proper officer. Basis this, the Court observed that power to recover duty is broadly a power to review earlier assessment and such power should only be available with original assessing authority. Basis this, the Court discharged entire proceedings initiated by DRI being invalid as clearance order was passed by Deputy Commissioner of Customs and SCN was issued by DRI. The Court further held that DRI does not even qualify to be 'proper officer' under Section 28(4) of the Customs Act being not entrusted with the said function under Section 2 of the Customs Act.

Canon India v. Commissioner of Customs, 2021-VIL-34-SC-CU

***NITYA Comments:** The Supreme Court rightly relied on word 'the' i.e. specific proper officer and held that such an officer can only undertake re-assessment. Basis this judgement, all SCNs issued by DRI have become void. As this was an unintended legislative drafting error, retrospective amendment in Customs Act is likely in near future.*

2. **Rectification of GSTR-3B**

The Petitioner inadvertently entered wrong details in GSTR-3B and submitted it on GST portal. Before filing the same, the Petitioner realized its mistake and approached revenue to rectify the same. However, the revenue did not respond to the Petitioner's request.

The Petitioner filed writ petition, seeking direction to revenue for rectification of GSTR-3B.

The High Court relied on the case of **Bharti Airtel Limited v. UOI, 2020-VIL-197-DEL** and directed revenue to permit the Petitioner for rectification of GSTR-3B. The Court also held that the Petitioner is not liable to pay late fee as it was dragged by revenue into unnecessary litigation.

Deepak Print v. UOI, 2021-VIL-197-GUJ

3. Rectification of GSTR-1

The Petitioner inadvertently mentioned incorrect GSTIN of buyer in GSTR-1 vis-à-vis that appearing on tax invoice raised by it. The Petitioner requested revenue to rectify the same. However, revenue rejected such request stating that time limit for amendment in GSTR-1 has expired.

The Petitioner filed writ petition, seeking direction to revenue for rectification of GSTR-1.

The High Court relied on the case of ***Sun Dye Chem v. Assistant Commissioner, 2020-VIL-523-MAD***, observed that the Government have not notified GSTR-2 and GSTR-1A which would have enabled customers to timely identify this error and communicated to Petitioner. Resultantly, the Petitioner could not timely identify its error and the Petitioner could not be penalized for the same. Basis this, the Court directed revenue to enable the Petitioner to rectify its GSTR-1.

Pentacle Plant Machineries v. GST Council, 2021-VIL-193-MAD

NITYA Comments: This judgement is correct on principle of equity and can be relied by taxpayers who could not amend GSTR-1 within specified time limit. Basis this judgement, taxpayers can approach revenue for allowing rectification of GSTR-1.

OTHER UPDATES

1. Refund related clarifications

Recently, CBIC issued Circular ('Circular No.147') clarifying the issues being faced by taxpayers relating to refund. The gist of same is as below:

1. Recipient can avail ITC on deemed export supplies

In **Circular No. 125/44/2019-GST dated November 18, 2019** ('Circular No.125'), it was clarified that recipient was not allowed to avail ITC on deemed export supplies if it intends to claim refund of the same. However, GST portal did not allow recipient to claim refund unless such amount is debited from recipient's Electronic Credit Ledger ('ECL').

Now, CBIC has modified Circular No.125 removing restriction of non-availment of ITC by recipient of deemed export supplies.

NITYA Comments: *Post this clarification, recipient of deemed export supplies need to avail ITC and this amount shall be subsequently debited from recipient's ECL at the time of filing of refund application.*

2. Extension of relaxation for filing refund claim

In accordance with Circular No.125, CBIC gave relaxation to exporter of services or registered persons supplying zero-rated supplies to SEZ regarding declarations in GSTR-3B. Circular No. 125 allowed processing of refund claim for period July 2017 to June 2019 irrespective whether such supplies are shown in Table 3.1 (b) of GSTR-3B (zero-rated supplies) or not. Such refund was allowed only if IGST paid during refund period exceeds refund of IGST being claimed.

Now, CBIC has extended period of relaxation from July 2019 to March 2021. Accordingly, refund of IGST on zero-rated supplies (except on exported goods) will be available even if zero-rated turnover was not declared in GSTR-3B.

3. Manner of calculation of Adjusted Total Turnover under Rule 89(4) of the CGST Rules

Vide **Notification No. 16/2020-Central Tax dated March 23, 2020**, Government amended the definition of 'Turnover of Zero-Rated Supply of Goods' restricting their value to 150% of value of like goods domestically supplied.

Now, CBIC has clarified that this value shall be taken into consideration while calculating value of 'Adjusted Total Turnover' for calculating amount of refund under Rule 89(4) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules').

Circular No. 147/03/2021-GST dated March 12, 2021

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