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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

1. Supreme Court's extension of limitation period due to COVID-19, comes to an end

The Supreme Court in its recent **Order dated March 8, 2021** ('Order') has ended extension of time limit granted for filing any appeal / petition / application / suit / all other proceedings ('litigation proceedings') under all laws prevalent in India due to COVID-19. The Court observed that country is returning to normalcy and almost all the Courts and Tribunals are functioning either physically or by virtual mode. Pursuant to this, the Court ordered as under:

- 1 year period (between **March 15, 2020** to **March 14, 2021**) shall stand excluded for computation of limitation of litigation proceedings.
- If there was balance limitation period as on **March 15, 2020**, it shall be counted from **March 15, 2021** subject to availability of minimum 90 days from **March 15, 2021**. For example:

Scenario	Balance period on March 15, 2020	Period available from March 15, 2021
I	50 days	90 days
II	110 days	110 days

- 1 year period shall also be excluded in respect of specific provisions under the Arbitration and Conciliation Act, 1996, the Commercial Courts Act, 2015 and the Negotiable Instruments Act, 1881.

This Order shall apply in relation to all laws and for any proceedings before any Courts, Tribunals, Appellate and Adjudicating authorities across India.

Order dated March 08, 2021

NITYA Comments: The Central Government passed the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 dated September 29, 2020 to extend due dates till **December 31, 2020** under various Central Indirect Tax laws (namely the Central Excise Act, 1944, the Customs Act, 1962, the Customs Tariff Act, 1975 and the Finance Act, 1994). Similarly, vide **Notification No. 35/2020 - Central Tax** dated **April 3, 2020**, due dates under the Central Goods and Services Tax Act, 2017 ('CGST Act') was extended till **August 31, 2020**. Some State Governments also extended time limits under erstwhile State VAT laws.

It is pertinent to note that the above Order of Supreme Court was issued pursuant to Article 142 read with Article 141 of the Constitution of India. Notably, Article 142 provides extraordinary power to Supreme Court to **bridge gap created by an insufficient law** to meet full justice.

Post Supreme Court's earlier **Order dated March 23, 2020**, Governments (Central as well as States) had taken measures to extend time limits by passing special legislations or Notifications. Therefore,

wherever such legislations or Notifications extends time limit up to certain date, time limit prescribed by Supreme Court will not apply. The Order will apply only where no specific action has been taken by Government.

2. Computation of limitation period for filing appeal

The Adjudicating Authority passed Order-in-Original ('OIO') against the Petitioner on July 8, 2019. The Petitioner received said order on August 30, 2019. The Petitioner dispatched appeal against OIO on December 2, 2019 which was received by Appellate Authority on December 4, 2019. The Appellate Authority dismissed appeal on the ground that it was filed beyond period prescribed for filing appeal including condonable delay (three months).

The Petitioner challenged the aforesaid dismissal of appeal before the High Court.

The Court relied on Section 9 of the General Clauses Act, 1897 ('General Clauses Act') as per which if a provision stipulates time period which commences with term 'from', then first day in such period shall be excluded. Further, where a provision uses term 'to', then last day shall be included. In addition, reliance was also placed on Section 10 of the General Clauses Act which deems next working day after holiday to be within prescribed period. Basis this, the Court held that appeal filed by the Petitioner was within the period prescribed for filing appeal. The Court set aside the order of the Appellate Authority and remanded matter back to the Appellate Authority to freshly consider application for condonation of delay.

Skoda Auto Volkswagen India v. Commissioner (Appeals), 2021-VIL-204-BOM-ST

NITYA Comments: The said ruling assumes significance under GST laws as well. Section 107 of the CGST Act prescribes time limit for filing appeal within 3 months '**from**' date of communication of order. Section 140 of the CGST Act also stipulates time limit of 30 days for recording receipt of goods in transit. Considering similar language under GST laws, ratio of this ruling would apply and first day of such time period would be excluded.

PART B: ADVANCE RULINGS

1. Classification of warranty service (repair service with parts) as composite supply

The Applicant was engaged in supply of motor vehicles' parts and accessories. It entered into agreement with Hyundai Motors India Limited ('HMIL') for providing repair services to customers on behalf of HMIL during warranty period. HMIL reimbursed cost of repair and replacement of spares (if any) incurred during warranty period.

The question before the Authority for Advance Ruling ('AAR') was whether repair service (occasionally consisting of supply of spares) would amount to composite supply or not.

The AAR observed that repair service was provided only during warranty period. Repair service forms an integral part of warranty. Further, supply of service along with spares are naturally bundled together

and are provided in conjunction with each other in ordinary course of business. Basis this, the AAR held that repair service qualifies to be composite supply where repair service is principal supply.

Premier Car Sales, 2021-VIL-161-AAR (UP)

NITYA Comments: This ruling is correct and such transactions qualify as supply of service under Entry 3 of Schedule II of the CGST Act covering treatment or process on another person's goods as supply of service. However, the ruling contradicts **Circular 47/21/2018 – GST dated June 8, 2018** wherein it was clarified that servicing of cars involving both supply of goods (parts) and services (labour) and will be taxable at respective rates (as applicable to goods and services respectively).

2. GST on transportation recovery from employees

The Applicant was procuring transportation services from third party vendor for its employees. The Applicant recovered subsidized amount from employees as per employment contract.

The question before the AAR was whether transportation facility provided by the Applicant to its employees qualifies to be supply of service or not.

The AAR relied on **Press Release by Ministry of Finance** dated **July 10, 2017** ('Press Release') wherein it was clarified that supply by employer to employee under employment agreement will not be liable to GST. The AAR also observed that activity undertaken by the Applicant was not ancillary or incidental to their business. Basis above, the AAR held that arranging transport facility for employees is not a supply of service under GST.

North Shore Technologies, 2021-VIL-170-AAR (UP)

NITYA Comments: The Press Release clarified that supply by employer to its employees under employment agreement will not be liable to GST. In our view, the Press Release only covered facilities provided by employer to employees **without consideration**. However, the AAR wrongly interpreted it and held that no GST will be payable even if partial recovery is made. There are contrary rulings on levy of GST on employee recoveries. Taxpayers are legally required to pay GST on employee recoveries.

3. ITC on CSR activities

As part of Corporate Social Responsibility ('CSR') activity, the Applicant undertook various activities viz. construction of school buildings, free supply of furniture and fittings, electrical goods and other expenses for charitable purposes.

The questions before the AAR were:

Issue 1: Availability of Input Tax Credit ('ITC') on expenses incurred for undertaking CSR activities:

The AAR observed that CSR expenses were not incurred voluntarily but mandated under the Companies Act, 2013 ('Companies Act'). These form essential part of business. Basis this, the AAR

held that CSR activities are undertaken in the course or furtherance of business and ITC shall be admissible under Section 16 of the CGST Act.

Issue 2: ITC restriction on free supply of goods under CSR under Section 17(5)(h) of the CGST Act:

The AAR held that gifts are voluntary and occasional in nature whereas goods supplied by the Applicant under CSR were mandated by law. Hence, ITC on goods given under CSR would not be restricted under Section 17(5)(h) of CGST Act.

Issue 3: ITC restriction on goods and services used for construction of school building which were not capitalized in books of account under Section 17(5)(c) and (d) of the CGST Act:

Section 17(5)(c) and (d) of the CGST Act specifically restricts ITC on goods and services used for construction of immovable property only to extent of capitalization. Since the Applicant did not capitalize such expenditure in its books of accounts, the AAR allowed ITC on such expenses.

Dwarikesh Sugar Industries, 2021-VIL-168-AAR (UP)

NITYA Comments: *The ruling correctly recognizes mandate of the Companies Act for incurring CSR expenditure and, also rightly recognizes that goods given as part of obligation under law, do not qualify as gifts. In our view, ITC is available on such expenses mandated under law. However, ITC on original construction will not be available irrespective of capitalization. Exception for capitalization (eligibility of ITC if expense is not capitalized) is available only in case of re-construction, renovation etc.*

OTHER UPDATES

1. Issuance and Adjudication of Show Cause Notices by DRI

Post Supreme Court decision in ***Canon India Private Limited v. CC, 2021-VIL-34-SC-CU***, wherein Court held that DRI does not have power under Customs law to issue SCN, CBIC has directed all jurisdictional Commissioners to issue SCN for matters being investigated by DRI. CBIC has also directed to keep adjudication of SCNs already issued by DRI in abeyance till further instructions.

Instruction No.4/2021-Customs dated ***March 17, 2021***

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