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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

1. Issuance of Form C for procurement of petroleum products

The revenue filed Special Leave Petition ('SLP') challenging the Madras High Court decision. In this decision, the High Court directed the revenue to issue Form C for inter-state purchase of petroleum products at concessional rate for specified purposes even post introduction of GST.

The Supreme Court relied on various High Court rulings as well as SLPs dismissed by different benches of Supreme Court and dismissed SLP filed by revenue in this case.

CCT v. Ramco Cements, 2021-VIL-42-SC

NITYA Comments: *Vide the Finance Act, 2021, issuance of Form C will be permitted only for purchase of specified goods for re-sale and manufacture of such specified goods. Hence, the earlier rulings (including this ruling) will cease to have effect after March 28, 2021.*

Notably, certain States (like Uttar Pradesh) permit intra-state procurement of petroleum products at concessional rate of VAT for use in manufacture of non-petroleum products as well.

2. Attachment of bank account in absence of proceedings under GST law

The revenue passed order for attachment of bank account of the Petitioner under Section 83 of the Central Goods and Services Tax Act, 2017 ('CGST Act') without initiation of any proceedings under the CGST Act. Later, Department issued Show Cause Notice ('SCN') under Section 74 of the CGST Act.

The Petitioner challenged this attachment order before the High Court.

The High Court quashed attachment order on the ground that power of attachment under Section 83 of the CGST Act can be exercised only where proceedings are pending under GST law.

Global Enterprises v. Commissioner Central CGST, 2021-VIL-239-DEL

NITYA Comments: *In this ruling, the Petitioner highlighted that no proceedings were initiated / pending at the time of attachment of bank account. Taxpayers can take recourse to this ruling wherein the revenue resorts to attachment of bank account without initiating any proceedings.*

Vide the Finance Act, 2021, Section 83 of the CGST Act has been amended to overcome this ruling. Once this amendment is made effective (from notified date), taxpayers will not be able to take recourse of aforesaid ruling and other rulings pronounced on similar lines.

3. Validity of Form GST DRC 01 for recovery of interest on net tax liability

The Petitioner challenged validity of SCN issued vide DRC-01 under Rule 142(1) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') for recovery of interest on gross liability under Section 50 of the CGST Act.

The High Court held that interest under Section 50 can be levied only on net tax liability. The Court also referred to the amendment proposed vide the Finance Act, 2021 made effective from July 1, 2017. In respect of SCN, the Court held that DRC-01 (summary of SCN) can be issued only for Sections of the CGST Act as specified under Rule 142(1) of the CGST Rules. Pertinently, Section 50 is not covered under Rule 142(1). The Court held that DRC-01 is not legally valid and quashed the same. Further, the Court held that recovery should have been done under Section 79 of the CGST Act vide DRC-07 in terms of Rule 142(5) of the CGST Rules.

Rajkamal Builder Infrastructure v. UOI, 2021-VIL-240-GUJ

NITYA Comments: The ruling incorrectly held that recovery of interest under Section 50 is to be made under DRC-07 since even Rule 142(5) does not refer to Section 79. Notably, Section 73 and 74 refer to issuance of SCN for recovery of tax and interest. Thus, even if only interest is recoverable, SCN needs to be issued under Section 73 / 74 along with DRC-01.

PART B: ADVANCE RULINGS

1. Taxability and admissibility of ITC on goods and services used for construction of immovable property

The Applicant was engaged in business of providing accommodation services and renting of banquet halls. The Applicant received goods and services towards construction of hotel building.

The Applicant sought advance ruling from the Authority for Advance Ruling ('AAR') on eligibility of Input Tax Credit ('ITC') on goods and services received for such construction activities. The application was rejected by the AAR for being sub-judice. The Applicant approached Appellate Authority for Advance Ruling ('AAAR') on the ground that the expression 'an applicant' under Section 98(2) of the CGST Act refers to person making an application and does not include any other person. The AAAR held that the provision employs the term 'an applicant' which is non-specific. Hence, the Applicant's interpretation of the term was incorrect. However, since the AAR's ruling was not properly reasoned, the AAAR directed the AAR to reconsider the matter.

Before the AAR, the Applicant sought ruling on admissibility of ITC on the following:

Goods and services and works contract services procured for construction of hotel building and banquet hall (latter to be further leased out): The AAR observed that ITC is not a vested right and taxpayers can be restricted from availing the same. The AAR held that the ruling of the Orissa High Court (*in case of Safari Retreats Private Limited v. CCGST, 2019-VIL-223-ORI*) is not binding as the same is sub-judice. Further, Section 17(5)(c) and (d) do not violate Article 14 of the Constitution of India, 1950 and are reasonably restricting ITC. However, the AAR refrained from conclusively answering this issue being

sub-judice before the Supreme Court. The AAR also held that the banquet halls cannot be considered as plant as machinery since GST law provides specific definition of plant and machinery, and banquet hall cannot be included in such definition.

Specified goods like lift, sanitary fittings etc: The AAR observed that lifts, sanitary items, underground cables etc. are integral parts of building. Consequently, they qualify as immovable property and cannot be termed as plant and machinery.

Freight paid to GTA on above items, repair & maintenance of aforesaid specified goods and architect services: For freight and architect services, the AAR noted that these services are received for construction of immovable property. Thus, ITC shall not be available thereon under Section 17(5)(d) of the CGST Act. For repair & maintenance, the AAR held that these are not related to construction of immovable property and hence ITC would be admissible thereon.

Vardhan Holidays, 2021-VIL-186-AAR (UK)

***NITYA Comments:** Although the ruling is correct on merits, the Orissa High Court judgement in the case of **Safari Retreats** (supra) allowed ITC on such procurements. The issue will attain finality only by the Apex Court.*

The taxpayers can consider filing writ petitions in respective High Courts wherever quantum of ITC is high. This will allow taxpayers to avail ITC even after passage of statutory time limit.

Further, the findings of AAR to the extent of denying ITC on sanitary fittings is incorrect as these form plant and machinery in themselves.

2. Concessional rate of GST on supply of software to Public Funded Research Institutions

The Applicant was engaged in trading of various IBM SPSS Software ('Software') in India without undertaking any modification / development on such Software. The Applicant supplied such Software to Public Funded Research Institutions for research purposes.

The question before the AAR was whether the Applicant would be eligible to claim concessional rate of GST on supplies made to various Public Funded Research Institutions under **Notification No. 47/2017-IGST (Rate) dated November 14, 2017 or Notification No. 45/2017- IGST (Rate) dated November 14, 2017** ('Notifications').

Notifications allowed concessional rate of GST wherein defined 'goods' were supplied to Public Funded Research Institutions if such institutions produce requisite certificate that these goods are utilized for research purposes. Similar concessional rate was not available for supply of services.

The AAR observed that Software is pre-developed and made available through encryption keys. Thus, it qualifies to be 'goods'. Software would qualify as 'Computer Software' as mentioned in Notifications. All other conditions for concessional GST rate were also fulfilled by the Applicant. In the light of above, the AAR allowed benefit of Notifications on supply of Software.

SPSS South Asia, 2021-VIL-187-AAR (KAR)

NITYA Comments: The ruling is incorrect to the extent it held that Software are 'goods'. The Applicant was supplying services of license to use Software to its customers which is 'service' under Schedule II of the CGST Act. Hence, such software cannot be treated as goods. As the benefit of concessional rate of tax under Notifications is restricted to supply of goods, the Applicant was not entitled to charge concessional rate of GST.

3. Composite supply of erection, commissioning, installation of waste-water treatment plant

The Applicant was awarded contract by Karnataka Power Corporation Limited ('KPCL') for erection, commissioning, installation of waste-water pre-treatment plant ('ZLD Plant') along with operation and maintenance of such plant for 5 years.

The question before the AAR was whether supply executed under the aforesaid contract amounted to composite supply of works contract services to Government entity for erection, commissioning, installation etc. of water treatment plant and attract GST at 12 percent under Entry 3(iii) of **Notification No. 11/2017 – Central Tax (Rate) dated June 28, 2017 ('Service Rate Notification')**.

The AAR held that the supplies rendered by the Applicant are in the nature of composite supply and fulfill all pre-requisites for composite supply viz. supply of two or more taxable supplies which are naturally bundled and are being supplied in conjunction with each other, irrespective of separate consideration highlighted against each element of contract.

Further, the AAR held that erection, commissioning, installation of ZLD Plant amounts to immovable property and is consequently, a works contract service.

In addition, the AAR noted that KPCL is an entity established by State of Karnataka, having equity participation of 90 percent and is engaged in setting up of water-treatment plant. On this basis, the AAR held that the services provided by the Applicant are duly covered under Entry 3(iii) of the Service Rate Notification and will attract 12 percent GST.

Arvind Envisol, 2021-VIL-189-AAR (KAR)

NITYA Comments: This ruling elaborately discusses concept of 'composite supply' and lays down relevant parameters for the same. Importantly, the AAR also held that separate line items for different elements of supply does not change essential nature of supply. We are pleased to inform that **this case was represented by NITYA Tax Associates.**

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