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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

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

The Petitioner challenged Show Cause Notice ('SCN') issued by the Directorate General of Goods and Services Tax Intelligence ('DGGSTI') on ground of lack of jurisdiction in the light of decision of Supreme Court in the case of **Canon India Private Limited v. UOI, 2021-VIL-34-SC-CU**.

The High Court stayed the proceedings till further consideration.

Waters India v. UOI, 2021-VIL-260-KAR

***NITYA Comments:** Taxpayers are challenging SCNs issued by DGGSTI in the light of the decision of Canon India (supra) before the Constitutional Courts. The Courts will now examine validity of SCN issued by DGGSTI.*

2. **Validity of concurrent proceedings by Central and State authorities**

DGGSTI undertook search at the Petitioner's premises and seized certain documents. DGGSTI also issued summons to the Petitioner under Section 70 of the Central Goods and Services Tax Act, 2017 ('CGST Act').

The State Tax Department initiated proceedings and issued SCN under Section 74 of the Odisha Goods and Services Tax Act, 2017 ('OGST Act') for recovery of tax short paid and Input Tax Credit ('ITC') wrongly availed. The authorities also passed order confirming these demands despite specific intimation of the Petitioner that the records were seized by DGGSTI and proceeding has been initiated thereto.

The Petitioner challenged the SCN and order passed by State Tax Department. The Petitioner relied on CBIC's letter dated October 5, 2018 as per which once proceedings have been initiated by either Central Tax or State Tax Department, the same Department needs to conclude the same.

The High Court concurred with the Petitioner's contentions and quashed SCN & Order. The Court also refrained the State Tax Department from initiating any coercive action against the Petitioner till conclusion of proceedings before the DGGSTI.

Anurag Suri v. DGGSTI and Others, 2021-VIL-251-ORI

3. Provisional Attachment of Bank Account

The revenue carried out search at the office address of the Petitioner for other companies situated at same address. No search was undertaken for the Petitioner nor any summons were issued. Thereafter, the Petitioner's bank account was provisionally attached under Section 83 of the Maharashtra Goods and Services Tax Act, 2017 ('MGST Act') without serving any order upon the Petitioner.

The Petitioner challenged provisional attachment of bank account on the premise that no proceedings were initiated against it under the CGST / MGST Act.

The High Court observed that entire proceedings were initiated against other companies and authorization for conducting search and seizure under Section 67 was also given for such other companies only. The Court also observed that authorization was given by an officer below rank of Joint Commissioner. In addition, the Court held that proceedings under Section 83 of the CGST Act can be carried out only by Commissioner or any delegated officer. There was no record of delegation to subordinate officer in this case. Accordingly, provisional attachment order was illegal and without jurisdiction. The revenue was directed to withdraw provisional attachment of bank account.

Praful Nanji Satara v. State of Maharashtra, 2021-VIL-246-BOM

NITYA Comments: *It is notable that provisional attachment can be undertaken only in specific manner and by specific officer. Taxpayers must check correctness of proceedings if department takes such action against them.*

4. Manual filing of appeals

The Petitioner preferred an appeal before the first appellate authority against assessment orders passed under the CGST Act and the Andhra Pradesh Goods and Services Tax Act, 2017 ('APGST Act') which were served manually on it. Accordingly, the Petitioner filed manual appeals and not on GST Common Portal ('Common Portal'). The Appellate Authority objected to manual filing of appeals. This was duly responded by the Petitioner that since orders were served manually, it was not able to file appeals on Common Portal despite multiple efforts. The Appellate Authority rejected appeals on the sole ground of non-filing of appeals on Common Portal.

The Petitioner challenged these orders before the High Court on the premise that Rule 108 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') uses the phrase '*either electronically or otherwise as may be notified by the Chief Commissioner*'. It does not mandate filing of appeal only on Common Portal and allows manual filing of appeal.

The High Court held that the terms 'electronically' and 'otherwise' used in Rule 108 is separated by use of conjunctions 'either' and 'or'. These conjunctions are used in relation with some words to indicate alternativity or choice between two persons, things or events. Accordingly, mode of filing of appeal is a choice granted under Rule 108 of the CGST Rules. Basis this, the Court directed the first appellate authority to receive appeals either electronically or manually and pass appropriate orders after allowing opportunity to the Petitioner to rectify any errors in filing the same.

Shri Lakshmi Venkateswara General Merchant and Commission Agent v. State of AP, 2021-VIL-262-AP

NITYA Comments: Taxpayers need to be vigilant regarding receipt of orders (online or manually) and should endeavor to file appeal on Common Portal only. If this is not possible, they must approach GST helpdesk. Filing of appeal on Common Portal will avoid litigations as intent of the Government is that appeal needs to be filed only on Common Portal. In absence of availability of appealable order electronically, taxpayers need to resort to manual filing of appeal.

5. Limitation period for appeal before Appellate Authority for Advance Ruling

The Petitioner sought advance ruling which was decided *vide* order dated September 21, 2019. It filed an application on January 23, 2020 under Section 102 of the CGST Act for rectification of advance ruling. This application was disposed-off *vide* order dated March 23, 2020 holding that there was no error apparent on face of record. The Petitioner preferred an appeal on June 22, 2020 before the Appellate Authority for Advance Ruling ('AAAR') which was held time-barred being filed beyond 30 days.

The Petitioner challenged the order passed by AAAR on the premise that limitation period should be counted from date of rectification order and not from original order basis Doctrine of Merger.

The High Court held that since application for rectification of mistake was summarily dismissed (for not having an error apparent on face of record), Doctrine of Merger will not apply. It further held that time limit for filing appeal before the AAAR was 60 days and the AAAR cannot condone delay beyond such period. Therefore, the Court held that the AAAR was correct in rejecting appeal on ground of limitation.

NMDC v. AAR, 2021-VIL-254-KAR

PART B: ADVANCE RULINGS

1. Taxability of Vouchers

The Applicant is in the business of manufacturing and trading of Jewellery Products. As part of sales promotion, the Applicant introduced different types of Pre-Paid Instruments (PPI's) generally referred to as 'Gift Vouchers / Gift Cards'.

The Applicant sought advance ruling on whether issuance of own closed PPIs to their customers would be treated as supply of goods or services and if yes, rate of tax applicable thereon, time of supply etc. The Authority for Advance Ruling ('AAR') held that PPIs are vouchers and issuance of vouchers is supply of goods. Time of supply of such vouchers shall be date of issuance of vouchers if vouchers are specific to particular goods. Paper vouchers will fall under HSN 4911 (as other printed material attracting GST of 12 percent) and electronically loaded magnetic cards will fall under HSN 8523 (attracting GST of 18 percent).

Aggrieved by the AAR, the Applicant preferred appeal before the AAAR on the ground that vouchers are in nature of actionable claim which are not exigible to GST under Sl. No. 6 of Schedule III of the CGST Act.

The AAAR held that vouchers are means for advance payment of consideration for future supplies of goods or services. Vouchers, being an instrument used as consideration to settle an obligation, is type of money. GST law recognizes vouchers as means of payment of consideration towards future supply of goods or services. Accordingly, the AAAR modified ruling passed by the AAR and held that GST shall be levied at the rate of underlying goods / services (not based on its medium viz. paper / cards). Further, time of supply of vouchers will be determined as per applicable provisions.

Kalyan Jewelers India, 2021-VIL-20-AAAR (TN)

NITYA Comments: The ruling rightly held that vouchers shall be treated as mode of advance payment. For detailed analysis, please refer our update **NITYA's Insight | Issue 16 | Writs, Appeals and Advance Rulings dated January 24, 2020** ([Click here](#)).

PART C: CESTAT ORDERS

1. Qualification of Business Auxiliary Service and Information Technology Support Service as Intermediary Service

The Appellant entered into agreement for provision of Business Auxiliary Services and Information Technology Support Services with its group companies located outside India. The scope of such services entailed creating awareness in Indian market and promoting software products & services of group companies. The agreement was on principal-to-principal basis where once customers are identified, group companies were responsible for negotiating price, terms of contract, timeframe and scope of services. The Appellant did not represent group companies in signing and executing the contract. The consideration was fixed on cost plus basis and not as commission. The Appellant treated such services as export of service under Rule 6A of the Service Tax Rules, 1994.

The revenue contended that the Appellant is an intermediary as per Rule 2(f) of the Place of Provision of Services Rules, 2012 ('PoPS Rules') and place of provision is in India as per Rule 9 of the PoPS Rules. Thus, such services do not qualify as export of service and are eligible to Service Tax.

The CESTAT held that there is no principal-agency relationship as per agreement. Thus, the Appellant is not an intermediary. Accordingly, the activity undertaken by the Appellant qualifies as export of services.

CSG Systems International v. CGST, 2021-VIL-130-CESTAT-BLR

NITYA Comments: This judgment is correct as there was no principal agency relationship in instant case. Further, to qualify as intermediary, a taxpayer needs to satisfy certain parameters viz. facilitation of supply of goods between two or more persons, service of intermediary to be ancillary to main service etc. This ruling will be equally relevant in GST regime. For detailed analysis, please refer our update **NITYA's Outlook | Issue 37 | Intermediary Service: Key tests for determination** dated January 6, 2020 ([Click here](#)).

OTHER UPDATES

PART A: RECENT NOTIFICATIONS AND CIRCULARS

1. **Mandatory identity verification for new importers and exporters**

Vide the Finance Act, 2019, the legislature brought in Section 99B of the Customs Act, 1962 ('Customs Act'). Section 99B empowers Proper Officer to verify any importer or exporter for protecting interest of revenue. The procedure involves undergoing Aadhar based authentication or submission of other prescribed documents. Non-adherence of this provision includes suspension of benefits like clearance of imported goods or export goods, sanction of refund, duty drawback etc.

The Central Government has now introduced ***the Customs (Verification of Identity and Compliance) Regulations, 2021*** ('Regulations') vide ***Notification No. 41/2021-Customs (NT) dated April 5, 2021***. Vide the Regulations, it is mandatory for new importers, exporters and customs brokers to verify their identity which includes furnishing of incorporation documents, PAN and Aadhaar number as well as physical verification of their business location. The Regulations also empowers customs authorities to conduct identity checks on existing importers, exporters and custom brokers.

The Customs (Verification and Identity of Compliance) Regulations, 2021

NITYA Comments: The Regulations provide detailed procedure for verification of identity of new and existing importers and exporters. These are stringent and entail suspension of several benefits in case of non-adherence. Taxpayers are advised to be vigilant of any such notices for verification and properly respond to them within stipulated time limits.

2. **Late cut for MEIS applications for exports made in Financial Year 2019-20**

Exporters can now file MEIS applications for Shipping Bills with Let Export Order ('LEO') between April 2019 to March 2020 without any late cut till **September 30, 2021**. For calculating late cut for application filed beyond September 2021, entire period (date of LEO till filing of application) will be considered.

Public Notice No.53/2015-2020 dated April 9, 2021

NITYA Comments: Exporters are facing problems in filing MEIS applications on DGFT portal. This extension has been issued to ensure exporters do not have to face axe of late cut.

3. **Updated FAQs on E-Invoicing (as on March 30, 2021)**

CBIC has updated FAQs on E-Invoicing. Following points of FAQs merit mentioning:

- No time limit prescribed for generation of E-Way Bill after generation of IRN.
- Generation of PDF copy of invoice is optional. Taxpayers can use their own system and issue invoice copy.

- Aggregate turnover for Financial Year ('FY') 2017-18 shall be reckoned from July 1, 2017 (under Section 2(6) of the CGST Act).
- If aggregate turnover of taxpayer crosses Rs.50 crores during FY and it does not have such turnover in preceding years, then E-Invoicing will be applicable from next FY.
- Taxpayer need to generate ticket where HSNs are not accepted on IRP but are legally valid.
- In case of mismatch in GSTR-1 and invoices uploaded on E-Invoicing portal, taxpayer can manually rectify them.
- Cancellation of IRN in case of discrepancy in E-Invoice is permitted within given time frame, post that amendments / deletions are permitted only in auto-populated GSTR-1.
- Separate field for amortized cost to be examined in next revision of schema. Currently, taxpayers can report amortized cost (where same is not chargeable to customers) as under:
Taxable Value = Base Value + Amortized Cost
Invoice Value = Taxable Value + Tax amount – Amortized Cost
- Offline Utility ('Bulk Generation Tool') introduced for businesses not having Accounting Software (ERP) or have less invoices to upload.

GST E-Invoice/ IRN System, Frequently Asked Questions Version 1.4 dated March 30, 2021

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