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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

1. Service Tax on Trade Discount received from Manufacturer *via* Credit Note

The Petitioner was a dealer of motor vehicles chassis. It entered into dealership agreements with various manufacturing entities for purchase of chassis and reselling it on its own account. The manufacturers extended trade discounts during regular conduct of business. The revenue issued Show Cause Notice ('SCN') proposing to recover Service Tax on the premise that the activity of receiving discount qualifies as 'Declared Service' under Section 66E(e) of the Finance Act, 1994 ('Finance Act') and the Petitioner has agreed to perform an obligation. The authorities adjudicated SCN and confirmed the demand.

The Petitioner challenged the Order vide a Writ Petition before the High Court.

The High Court relied on the Ruling of Authority for Advance Ruling (Customs, Excise and Service Tax) in the case of ***AKQA Media India Private Limited, 2016-VIL-12-ARA*** wherein it was held that there is no agreement or contractual obligation between the Petitioner and the manufacturers to give volume discount and discount is given at the discretion of Media Owner. Further, volume discount is gratuitous and not for any service. The Court also observed that an agreement needs to be read as whole. Upon holistic reading of the agreement, it is clear that transaction is one of purchase and sale. Furthermore, the revenue failed to consider binding judicial precedents on the issue. Therefore, the Petitioner is not liable to pay Service Tax under Section 66E(e) of the Finance Act.

The Respondents also questioned the jurisdiction of the High Court to deal with the Order in Writ Petition due to presence of an alternate remedy. To this, the Court held that alternate remedy can be skipped in cases where the proceedings have been conducted without jurisdiction i.e., where lower authorities fail to consider binding judicial precedents.

T.V. Sundram Iyengar & Sons v. Commissioner of CGST & Central Excise, 2021-VIL-391-MAD-ST

NITYA Comments: *The ruling is correct and will equally apply to disputes on Incentives and Discounts received by Automobile Dealers including in GST regime.* Click here *to view NITYA Legal Monologue | Service Tax on Dealers Discounts and Incentives.*

2. Denial of benefit under EPCG Scheme for not mentioning license number in Shipping Bills

The Petitioner obtained licenses under the Export Promotion Capital Goods Scheme ('EPCG Scheme') under the Foreign Trade Policy, 2009-14 ('FTP'). Para 5.7.1 of FTP permitted a license holder to fulfill export obligations attached to the license either directly or through third-party exports. The Petitioner manufactured components of cars / automobiles ('goods') and supplied it to third-party vendors for assembly and export. The third party did not mention EPCG license details in Shipping Bills.

The Petitioner requested customs authorities to amend Shipping Bills to mention EPCG license number. It also submitted that third-party vendors assemble goods procured from various sources and it is

administratively impossible for them to mention license numbers in Shipping Bills. The authorities rejected request for amendment of Shipping Bills. The Petitioner also approached EPCG Committee for waiver of this condition but the same was rejected.

The Petitioner challenged the rejection order passed by customs authorities vide a Writ Petition before the High Court.

The High Court held that while Para 5.7.1 of FTP mandatorily requires mention of both name of supporting manufacturer as well as EPCG license number on Shipping Bill, the requirement can be satisfied constructively and is not fatal to claim of concessional rate of duty. Section 149 of the Customs Act, 1962 provides forum to the Petitioner to establish this by way of contemporaneous records. Thus, an opportunity must be extended to the Petitioner to prove factum of export through third-party by way of supporting materials. Basis this, the Court quashed the order and relegated the matter to the customs authorities for considering submissions of the Petitioner.

YSI Automobile India v. Commissioner of Customs, 2021-VIL-365-MAD-CU

NITYA Comments: *The judgment lays down an important principle that non-mention of EPCG license number in Shipping Bill does not disentitle exporter to claim such benefit and it may evidence exports through other documentary evidence. Having said this, the Petitioner was not entitled for benefit of 'third party exports' in this case. This is because third party was exporting different goods (automobile in CKD form) than those supplied by the Petitioner. Hence, the Petitioner could have discussed with third party at planning stage itself to be a supporting manufacturer to get EPCG benefit.*

3. Rejection of refund claim for non-filing in separate heads

The Petitioner exported goods during October 2017, November 2017 and February 2018 and filed refund claim of CGST, SGST and IGST. While filing refund claims online, entire amount got consolidated into one head of SGST. The revenue passed refund order and allowed refund only to the extent of SGST.

The Petitioner filed a Writ Petition challenging rejection of refund claims.

The High Court observed that there was no dispute on entitlement of refund and correctness of requisite document and issue merely related to refund claims getting consolidated in one head. The Court held that entire issue arose due to technical glitch on GST Common Portal. In any event, the Petitioner submitted refund claims manually as well. Accordingly, the Petitioner should be entitled for refund despite such technical glitches. Basis this, the Court relegated matter to Adjudicating Authority to the extent of refund claims for other heads viz. CGST and IGST.

Mehar Tex v. Commissioner of CGST, 2021-VIL-392-MAD

4. Rectification of GSTR-1

The Petitioner sold goods to its customer (registered dealer) during January 2018 to March 2018, however, reported it in incorrect column as unregistered sale. Subsequently in September 2019, the customer intimated its inability to claim Input Tax Credit ('ITC') due to inadvertent mistake of the Petitioner. Accordingly, the Petitioner applied for rectification of GSTR-1 under Section 37(3) of the Central Goods & Services Tax Act, 2017 ('CGST Act'). This application was rejected on the ground of limitation as the same was due to be filed latest by last date of filing GSTR-3B of September 2018.

The Petitioner filed a Writ Petition challenging the rejection of rectification application.

The Court declined to interfere and held that once statutory provision provides limitation period, condoning such delay would render provision redundant.

Abdul Mannan Khan v. GST Council, 2021-VIL-386-CAL

NITYA Comments: *While the ruling is legally correct, the Madras High Court in case of* ***Sun Dye Chem v. AC, 2020-VIL-523-MAD*** *and* ***Pentacle Plant Machineries v. GST Council, 2021-VIL-193-MAD*** *allowed rectification of GSTR-1 primarily on the ground of that non-availability of matching facility resulted in delay in identification in mistake. Hence, the High Courts are allowing rectification on case-to-case basis.*

PART B: CESTAT Orders

1. Service Tax on Partner for providing services to Partnership Firm

The Appellant entered into the Partnership Agreement. As per Addendum to the Partnership Agreement, the Appellant agreed to provide services to Partnership Firm for promotion and marketing of firm's products for consideration. The Appellant paid Service Tax on such consideration. Upon realization that there was no levy of Service Tax on services provided by Partner to Partnership Firm, the Appellant filed refund claims which were rejected on merits as also on account of not challenging self-assessment.

The Appellant filed an appeal before the CESTAT challenging rejection of refund claims.

The CESTAT held that the Appellant in its capacity as Partner of the Partnership Firm, was obliged to carry out certain activities such as distribution of goods manufactured by the Partnership Firm, marketing of such goods, functioning as consignee and sales agent of the Partnership Firm etc. Basis above, the Appellant carried out the activities assigned to it by the Partnership Firm in the capacity of partner. These activities were not undertaken pursuant to a separate and independent contract for provision of services between the Appellant of the Partnership Firm. Therefore, the activities carried out by the Appellant are not service. Further, the Partnership Firm does not fall under the purview of 'Person' as per its definition in Section 4 of the Partnership Act, 1944 and the General Clauses Act, 1897. Hence, the activity will not be a service as service requires presence of two parties *viz.* Service Provider and Service Recipient.

On the issue of maintainability of appeal on account of not challenging self-assessment, the CESTAT held that there is no provision under the Finance Act, 1994 which allows challenging self-assessment. Section 85 of the Finance Act allows challenging an Order passed by departmental authority and not otherwise.

Cadila Healthcare v CST, 2021-VIL-169-CESTAT-AHM-ST

NITYA Comments: *The ruling lays down an important law that the judgment of* ***ITC Limited v. CC, 2019-VIL-32-SC-CU*** *which held that a refund is allowed only where Bill of Entry is challenged in appeal, does not apply to Service Tax law. The reasoning will equally apply to Excise and GST laws.*

OTHER UPDATES

PART A: AMENDMENTS IN CENTRAL GOODS & SERVICES TAX RULES, 2017

1. Time limit to file refund claims to exclude time for communicating deficiency memo

Rule 90 of the Central Goods & Services Tax Rules, 2017 ('CGST Rules') is amended to insert proviso under Rule 90(3). The proviso excludes the time period between filing of refund claim and communication of deficiency memo from period of 2 years period prescribed under Section 54(1) of the CGST Act for any refund claim filed after curing deficiencies.

NITYA Comments: *Various taxpayers were facing issues on account of rejection of refund claims being filed beyond limitation period upon issuance of deficiency memos. The erstwhile provision impacted the limitation period and accrual of interest for a taxpayer upon filing of fresh refund claims after issuance of deficiency memos. This amendment will avoid disputes in such cases in future. Since amendment is related to procedural aspects, it should be applicable for computing time limit of all refunds filed after this amendment.*

2. Option given to withdraw refund claim

Rule 90(5) and (6) of the CGST Rules have been inserted allowing taxpayer to withdraw refund claim upon filing of application in **GST RFD-01W** before issuance of following:

- Provisional refund sanction order in **Form GST RFD-04**;
- Final refund sanction order in **Form GST RFD-05**;
- Refund withhold order in **Form GST RFD-07**; and
- Notice in **Form RFD-08**

Any amount debited by Applicant from Electronic Credit Ledger shall be credited back to same ledger upon filing of application for withdrawal.

NITYA Comments: *The facility was available on GST Common Portal from past few months. The same finds legal backing vide the aforesaid amendment.*

3. Extension of time limit for revocation of cancellation of registration

The Finance Act, 2020 amended Section 30 of the CGST Act to empower following officers to grant extension in filing revocation application (existing time period being 30 days):

- Additional Commissioner / Joint Commissioner ('AC/DC') – Extend time limit by 30 days
- Commissioner – Extend time limit by another 30 days

Corresponding changes have now been made in Rule 23 of the CGST Rules and Form REG-21 (application format). Post amendment, total time limit for filing application for revocation of cancellation of registration is 90 days.

Further, Central Board of Indirect Taxes & Customs (CBIC) has issued ***Circular No. 148/04/2021-GST*** dated ***May 18, 2021*** providing Standard Operating Procedure for such extensions. Following points merit mentioning:

- Request for extension may be made through letter or email to Proper Officer
- Proper Officer will forward the request to the jurisdictional AC/DC where request for extension of time limit is between 30 days to 60 days
- AC/ DC will take decision and grant personal hearing if it anticipates rejection of application
- Similar procedure will apply for application before Commissioner where extension sought is between 60 to 90 days.

Notification No. 15/2021–Central Tax dated ***May 18, 2021***

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NITYA
tax associates

CALL US

+91 11 4109 1200
+91 11 4109 1201

MAIL US

updates@nityatax.com
info@nityatax.com
www.nityatax.com

REACH US

NITYA Tax Associates
B-3/58, Third Floor,
Safdarjung Enclave,
New Delhi-110 029.