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# LEGAL PRECEDENTS

## PART A: WRIT PETITIONS

### 1. Refund of GST paid on ocean freight under Reverse Charge Mechanism

The Petitioner filed refund claim of GST paid on ocean freight under Reverse Charge Mechanism ('RCM') after decision of Gujarat High Court in the case of ***Mohit Minerals Private Limited. v. UOI, 2020-VIL-36-GUJ***. In Mohit Mineral's case, the Court held levy of GST on ocean freight under RCM as unconstitutional and *ultra-vires* the Integrated Goods and Services Tax Act, 2017. The revenue rejected refund claim filed by the Petitioner being filed beyond time limit given under Section 54 of the Central Goods and Services Tax Act, 2017 ('CGST Act') and this refund is not covered under Section 54 of the CGST Act. The Petitioner filed Writ Petition challenging rejection order.

The High Court held that the Government collected GST on ocean freight under RCM without authority of law as per Article 265 of the Constitution of India, 1950 and accordingly, the revenue is obliged to refund this amount. The Court further held that Section 54 of the CGST Act is applicable only for claiming refund of tax paid under the CGST Act and refund in present case would not be considered as refund of tax. Therefore, the Court held that Section 17(1) of the Limitation Act, 1963 would apply in this case and set aside rejection order. The Court directed the revenue to process refund claim of the Petitioner along with simple interest at the rate of 6 percent per annum.

***Comsol Energy Private Limited v. State of Gujarat, 2021-VIL-477-GUJ***

***NITYA Comments:*** Levy of GST on ocean freight under RCM has been under dispute for long. The revenue has filed SLP against Mohit Mineral's case before the Supreme Court which is pending final adjudication. As far as refund is concerned, this ruling is incorrect in holding that limitation does not apply for consequential refund. An amount paid as tax initially will continue to be in nature of tax even if levy is held unconstitutional. Accordingly, time limit given under Section 54 of the CGST Act would apply on refund of tax paid on ocean freight under RCM.

### 2. Blocking of ITC under Rule 86A of the CGST Rules

The revenue blocked Input Tax Credit ('ITC') of the Petitioner under Rule 86A of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') without serving any notice or communicating reason for the same. The Petitioner filed Writ Petition challenging this action of the revenue.

The High Court observed that even if the revenue exercises power under Rule 86A of the CGST Rules, it is required to provide reasons to the Petitioner for blocking ITC. Basis this, the Court directed the revenue issue notice to the Petitioner.

***Mili Enterprise v. UOI, 2021-VIL-476-GUJ***

**NITYA Comments:** The revenue is indiscriminately using Rule 86A as tool to block ITC of bona fide taxpayers without providing reasons for the same. Rule 86A is unconstitutional as it penalizes a taxpayer without following principles of natural justice. Basis above ruling, in case of blocking of ITC, taxpayers should seek reasons for the same from the revenue.

## PART B: ADVANCE RULINGS

### 1. **Classification and GST rate of track assembly**

The Applicant was engaged in supplying track assembly which was installed under car seat to adjust seat position for comfort and convenience during travelling. The Applicant sought ruling from the Authority for Advance Ruling ('AAR') whether track assembly would fall under Tariff Item 8708 99 00 attracting 28 percent GST or under Tariff Item 9401 90 00 attracting 18 percent GST.

The AAR observed that Tariff Item 9401 90 00 covers only parts of seats while Tariff Item 8708 99 00 covers parts and accessories of motor vehicles. The product in question is fitted to floor of car and it enables forward and backward movement of seat. It does not qualify as part of seat as seat is complete even without track assembly. Accordingly, the AAR held that it would not merit classification under Tariff Item 9401 90 00 (which covers only parts). The AAR held that track assembly is an accessory to motor vehicle and would fall under Tariff Item 8708 99 00 and would attract 28 percent GST rate.

***Daebu Automotive Seat India Limited, 2021-VIL-237-AAR (TN)***

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