



NITYA
tax associates

NITYA | Indirect Tax Bulletin

JULY 2021 | Week 3

July 21, 2021

Index

LEGAL PRECEDENTS	3
PART A: WRIT PETITIONS	3
1. GST on Residential Welfare Associations for contributions up to Rs. 7,500	3
PART B: ADVANCE RULINGS	3
1. Classification of parts of railways.....	3
PART C: CESTAT RULINGS	4
1. Service Tax on compensation received for non-performance	4
2. CENVAT credit on free supply of goods along with final manufactured product	4
RECENT NEWS	5
1. Commerce Ministry seeks stakeholders' suggestions for new Foreign Trade Policy	5
2. FY21 compensation: 'GST transfers to states for FY21 fell short by Rs 81,179 crore'.....	5

LEGAL PRECEDENTS

PART A: WRIT PETITIONS

1. GST on Residential Welfare Associations for contributions up to Rs. 7,500

The Petitioner sought advance ruling from the Authority for Advance Ruling ('AAR') on whether Resident Welfare Associations ('RWAs') are liable to pay GST on entire contribution received from its members where monthly contribution exceeds Rs. 7,500 per member. The AAR held that GST is payable. The Petitioner filed Writ Petition before the High Court against this order.

The High Court held that S. No. 77 of **Notification No. 12/2017-Central Tax (Rate)** dated **June 28, 2017** ('Exemption Notification') grants exemption to RWAs for contributions received 'up to' Rs. 7,500. The Court noted that where an exemption is available up to a certain amount, it will be available up to such amount even if amount collected exceeds exemption limit. The Court held that **Circular No.109/28/2019** dated **July 22, 2019** clarifying to the contrary is against the express language of Exemption Notification. Basis this, the Court held that RWAs can avail exemption till Rs.7,500 wherever they are receiving contribution exceeding this amount.

Greenwood Owners Association v. UOI, 2021-VIL-523-MAD

NITYA Comments: *This ruling is correct. Basis this decision, RWAs or members can also consider filing for refund for past period if excess tax was paid.*

PART B: ADVANCE RULINGS

1. Classification of parts of railways

The Applicant was supplying Brush Holder Assembly and its parts, Lead Wires and Insulating Rods for locomotives as per designs and specifications of Indian Railways ('IR'). The Applicant was supplying these products either directly to IR or to other customers who in turn were supplying such goods to IR. The Applicant sought ruling from the AAR on whether products in question would be classifiable under Heading 8503, 8544 and 8547 (attracting 18 percent GST) or Heading 8607 (attracting 12 percent GST).

The AAR observed that Heading 8607 covers parts suitable for use solely or principally with railway or tramway locomotives or rolling stock and not excluded from Note 2 and Note 3 of Section XVII of the Customs Tariff Act, 1975. The AAR held that these products are manufactured as per designs and specifications of IR and ultimately supplied to IR only (either directly or indirectly). Further, Note 2 and Note 3 does not exclude such products and accordingly, the AAR held that these products are classifiable under Heading 8607.

Arco Electro Technologies Private Limited, 2021-VIL-262-AAR

PART C: CESTAT RULINGS

1. Service Tax on compensation received for non-performance

The Appellant (service receiver) entered into contract for maintenance of Wind Turbine Generators. Under the contract, vendor was required to ensure that machine availability does not fall below prescribed limit. If machine availability falls below prescribed limit, vendor was obligated to pay compensation to the Appellant. The revenue demanded Service Tax on compensation received by the Appellant.

The CESTAT noted that purpose of such compensation is to safeguard loss of the Appellant and is imposed to ensure that defaulting act is not repeated. The CESTAT held that this does not constitute to be consideration for service of 'toleration of an act' provided by the Appellant. Accordingly, the Appellant did not render any service to vendor nor any Service Tax was payable on such compensation.

Ruchi Soya Industries Limited v. CCE, 2021-VIL-292-CESTAT-DEL-ST

NITYA Comments: This ruling is correct as it correctly differentiates between compensation and consideration and that 'toleration of an act' does not cover damages, losses or injuries arising from unintended events. The intent of contract was to ensure maintenance of machine and its availability, and not to get compensation. We discussed this issue in detail in our update [NITYA 's Insight | Issue 77 | Compensation not to be considered as 'Toleration of an Act' for levy of Service Tax dated December 18, 2019.](#)

2. CENVAT credit on free supply of goods along with final manufactured product

The Appellant was engaged in manufacture and clearance of toilet soaps, washing soaps etc. The Appellant purchased household plastic buckets which was given free to dealers purchasing specified quantity of soaps. The Appellant availed CENVAT credit on buckets. The revenue denied CENVAT credit on buckets on the ground that buckets do not qualify as 'input' under Rule 2(k) of the Cenvat Credit Rules, 2004 ('Credit Rules').

The CESTAT noted that Rule 2(k) of the Credit Rules uses the expression 'any goods' cleared along with the final product whose value is included in value of final product. This Rule does not restrict itself to accessories. Further, the Appellant was charging cost of bucket against value of final product in its books of accounts. Hence, value of final product of the Appellant included value of buckets. Basis this, the CESTAT held that the Appellant is entitled to avail CENVAT credit on buckets.

Ashique Chemicals and Cosmetics v. CCE, 2021-VIL-291-CESTAT-BLR-CE

NITYA Comments: This ruling is correct and equally relevant under GST regime. The taxpayers face dilemma on eligibility of Input Tax Credit ('ITC') on promotional goods given free along with final products, doubting as to whether such goods qualify as gifts. Since promotional goods are given in combination with main products as contractual obligation, they will not qualify as gifts and ITC will be eligible thereon.

RECENT NEWS

1. Commerce Ministry seeks stakeholders' suggestions for new Foreign Trade Policy

<https://m.economictimes.com/news/economy/foreign-trade/commerce-ministry-seeks-stakeholders-suggestions-for-next-foreign-trade-policy/articleshow/84476828.cms>

2. FY21 compensation: 'GST transfers to states for FY21 fell short by Rs 81,179 crore'

<https://www.financialexpress.com/economy/fy21-compensation-gst-transfers-to-states-for-fy21-fell-short-by-rs-81179-crore/2293743/>

.....

Disclaimer:

This Insight has been prepared for clients and firm's personnel only. It is solely for the purpose of general information and does not represent any opinion of NITYA Tax Associates. We are not responsible for the loss arising to any person for acting or refraining from acting on the basis of material contained in this Insight. It is recommended that professional advice be sought based on specific facts and circumstances.



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.

