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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

1. Validity of levy of GST on total value of bet in hands of totalizator

The Petitioner was *inter alia* engaged in business of race club involving horse races and facilitation of placing of bets. Punter was placing bet with totalizator run by the Petitioner. In lieu of such facilitation, the Petitioner charged commission on bet amount. The Petitioner was paying Service Tax only on commission under *erstwhile* regime.

Post advent of GST, Rule 31A(3) of the Central Goods & Services Tax Rules, 2017 ('CGST Rules') was amended which provided for payment of GST on entire bet amount and not on commission alone. Rule 31A(3) stated that value of supply of actionable claim in form of chance to win in betting, gambling or horse racing in race club shall be 100% of face value of bet or amount paid to totalizator.

The Petitioner challenged *vires* of Rule 31(A)(3) of the CGST Rules being beyond powers conferred under the Central Goods & Services Tax Act, 2017 ('CGST Act').

The High Court in order to tax a transaction, it is important to satisfy ingredients of Section 7 of the CGST Act i.e., there must be supply of goods or services for consideration and such supply is undertaken in course or furtherance of business. The Court observed that the Petitioner does not itself indulge in betting. The Court held that there is no supply of bets by the Petitioner who is merely totalizator and not bookmaker or Punter. Totalizator merely holds money for a particular period and once race is over, the money is distributed to winners after deducting commission. The Petitioner only receives commission as consideration for supply of service of totalizator and stake of money held by totalizator for limited period cannot be construed to be consideration. Additionally, betting is not in furtherance of business of race club. Accordingly, bet amount is not exigible to GST. Accordingly, the Court held Rule 31A(3) to be *ultra vires* the CGST Act and struck it down.

Bangalore Turf Club & Mysore Race Club Limited v. State of Karantaka, 2021-VIL-445-KAR

2. Rejection of appeal for delay in submitting certified copy of Order

The Petitioner filed an appeal before the Appellate Authority within stipulated time period of 3 months and received provisional acknowledgment thereof. Rule 108(3) of the CGST Rules mandates filing of certified copy of Order within 7 days of filing of appeal for obtaining final acknowledgment. Further, Explanation appended to Rule 108 provides that appeal is treated as filed when final acknowledgment indicating appeal number is issued. While the Petitioner submitted downloaded copy of Order within time, it filed certified copy of Order after 3 months (approx.) as lawyer who filed appeal was in quarantine due to Covid-19. The Appellate Authority rejected appeal on ground of delay for delay in submission of certified copy of Order.

The Petitioner filed Writ Petition challenging the Order.

The High Court observed that the Petitioner made substantial compliance and interest of justice should not be constrained based on hyper-technical view. Further, the Petitioner offered plausible explanation for delay. Thus, mere delay in submitting certified copy of Order along with appeal should not come in way of the Petitioner's appeal for being considered on merits by the Appellate Authority. The Court also stated that in Covid-19 pandemic, liberal approach is warranted in matters of condonation of delay. Basis above, Order rejecting appeal on ground of delay was set aside and appeal was restored.

Shree Jagannath Traders v. CST, 2021-VIL-454-ORI

NITYA Comments: *While ruling extended relief to the Petitioner, taxpayers should file certified copy of Orders within stipulated 7 days from filing of appeal. Notable that the High Court considered entire matter as one of condonation of delay in filing of certified copy of Order and consequently the appeal. However, the Court did not deal with question as to whether the Court in ordinary circumstances or the Appellate Authority can condone delay beyond prescribed period of 30 days or not. In our view, delay beyond 30 days can neither be condoned by the Appellate Authority or by a Writ Court in ordinary circumstances being against the law under Section 107 of the CGST Act.*

Having said that, the Government should consider doing away with requirement of filing of certified copy of Order and rejection of appeal for this reason. This is because when entire proceedings are conducted online (service of order, filing of appeal etc.), there is no basis for requirement of separately filing certified copy of Order.

3. Service Tax on take away / food parcel services from restaurant

The Petitioners were running air-conditioned restaurants. The department conducted audit at the Petitioner's premises and alleged that the Petitioners had not paid Service Tax on take-away / food parcel services. The Petitioner contended that there is no liability on sale of food at take-away counter or by parcel since there is no element of service involved. The department issued Show Cause Notice to the Petitioner and passed an Order confirming Service Tax demand.

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

The High Court examined Section 66E(i) of the Finance Act, 1994 ('Finance Act') which deems service portion in an activity, where goods (food or drinks) are supplied as part of said activity, as declared service. The Court held that food when supplied with services encompassing arrangements for seating, décor, music, dance, waiters and use of fine crockery and cutlery (among others) would qualify as restaurant service and subject to Service Tax. In take-away or food parcel, these services are absent. Hence, such take-aways or food parcel will qualify as sale of food and will not attract Service Tax.

Anjappar Chettinad A/c Restaurant & Ors. v. CST, 2021-VIL-442-MAD-ST

NITYA Comments: *The ruling is correct and will have bearing under GST Law as well. There is similar entry under Schedule II to the CGST Act that deems supply by restaurant as service. Various advance rulings have unanimously held that take-away or food parcels do not have any service element within it. Accordingly, the same will not be liable to GST as service..*

Still, the department has been contending that such activity has an element of service and even restaurants have accepted this view & paying GST. This ruling will have ramifications on restaurants (specifically with huge rise in food delivery business) wherein restaurants treat this transaction as restaurant service but department can now demand differential GST based on classification of individual goods

PART B: ADVANCE RULING

1. Meaning of phrase 'a contract' for Tax Deduction at Source

The Applicant was a society formed by Government and registered under the Karnataka Societies Registration Act, 1960. The Applicant admitted its liability to deduct tax at source ('TDS') in terms of Section 51 of the CGST Act. Section 51 imposes liability on specified taxpayers to deduct TDS from payment credited to the supplier of taxable goods or services or both where total value of supply under 'a contract' exceeds Rs.2,50,000.

The Applicant sought ruling from the Authority for Advance Ruling ('AAR') on scope of phrase 'a contract'.

The AAR held that Section 51 of the CGST Act does not refer to value of invoice but only refers to total value of supply under a contract. Hence, supply value under a contract is criteria for determining the liability to deduct TDS. The AAR further held that a contract can be written or oral. Basis this, the AAR deliberated upon various scenarios and held as under:

Scenario	Ruling
Goods and services procured on need basis without any contract i.e. at terms and conditions prevailing at time of purchase	
Value of supply under single invoice is more than threshold limit of Rs.2,50,000	TDS is deductible as value of single invoice exceeds Rs.2,50,000
Value of supply under single invoice does not exceed threshold limit of Rs.2,50,000 but total purchase in a year exceeds limit	TDS is not deductible if entire contract is concluded upon raising of single invoice. However, if there is continuous supply of goods or services which exceeds Rs.2,50,000, TDS is deductible
Goods and services procured on call off basis under continuous supply agreement	
Value of single invoice as well as total supply is less than threshold limit of Rs.2,50,000	TDS applicable only where purchase order / agreement provides for consideration exceeding Rs.2,50,000
Value of single invoice is less than limit but annual supply is more than threshold limit of Rs.2,50,000	

Udupi Nirmiti Kendra, 2021-VIL-229-AAR

OTHER UPDATES

PART A: RECOMMENDATION OF 44TH GST COUNCIL MEETING

1. Change in GST rate on Covid-19 relief material

The 44th GST Council meeting which convened on June 12, 2021, extended relief of lower GST rate on various Covid-19 relief material *viz.* Medicines, Medical Oxygen, Oxygen Generation Equipment, Testing Kits, Pulse Oxymeters, Hand Sanitizers etc.

Notification No. 5/2021 - Central Tax (Rate) dated June 14, 2021

NITYA Comments: *While most of the products witnessed reduction in GST rate from 28% / 18% / 12% to 12% / 5%, there are some drugs for treatment of Black Fungus etc. which will now attract Nil rate of GST. Nil rate of GST will lead to denial of Input Tax Credit reversal at supplier's end which may exceed relief of lowering of GST granted by the Government.*

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