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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

Issue 1: Rectification in GSTR-1

Ruling: The High Court directed department to consider representation of the Petitioner requesting correction of GSTR-1 in the light of Madras High Court rulings in ***Sun Dye Chem v. AC, 2020-VIL-523-MAD*** and ***Pentacle Plant Machineries Private Limited v. GST Council, 2021-VIL-193-MAD***.

Mahle Anand Termal Systems Private Limited v. UOI, 2022-VIL-158-BOM

NITYA Comments: *These rulings are correct on the principles of equity wherein Courts allowed rectification of GSTR-1 even after expiry of time limit on account of delay in availability of matching facility at recipient's end. However, this is contrary to Supreme Court ruling in the case of **UOI v. Bharti Airtel Limited, 2021-VIL-87-SC** wherein the Apex Court disallowed rectification of GSTR-3B on the ground that non-functioning of GSTR-2A does not absolve a taxpayer from its obligation of self-assessment and filing of correct returns.*

Issue 2: Provision of reasons of provisional attachment to taxpayer

Ruling: The High Court observed that the Petitioner can effectively object an order of provisional attachment only if it is aware of reasons for passing of the same. The Court directed department to furnish opinion/reasons for provisional attachment to the Petitioner.

Originative Trading Private Limited v. UOI, 2022-VIL-163-BOM

NITYA Comments: *There is no provision under GST law mandating department to furnish reasons of provisional attachment to taxpayer. The Court exercised its discretionary powers while passing this judgment.*

PART B: ADVANCE RULINGS

Issue 1: Levy of GST on electricity charges and DG set rental charges collected by lessor

Ruling: The AAR observed that in absence of clear authorization by lessee for payment of electricity and DG set rental charges to third party, lessor does not qualify as pure agent. The AAR held that collection of electricity and DG set rental charges are ancillary supplies to principal supply of renting of immovable property. Therefore, the same are exigible to GST as composite supply.

Harish Chand Modi, 2022-VIL-59-AAR (Rajasthan)

NITYA Comments: *This ruling is correct. This dispute on taxability of electricity and other facilities provided along with renting of immovable property is vexed with contrary rulings available on the issue. The provision of utilities by landlord like electricity cannot qualify as services provided as pure agent since utilities*

providers raise invoices for these facilities on landlords (not on tenants). These are ancillary supplies for better enjoyment of principal supply (renting service) and become part of composite supply of renting service. Hence, value of utilities is exigible to GST.

Issue 2: Deductibility of refurbishment expenses from sale price of old and used vehicles

Ruling: The AAR held that **Notification No. 08/2018-Central Tax(Rate)** dated **January 25, 2018** ('Margin Scheme Notification') provides deduction of purchase price from selling price to arrive at margin and not purchase cost. Therefore, refurbishment or any other expenses cannot be deducted from sale price to compute margin on which GST is payable.

Mr. Tej Jain, 2022-VIL-69-AAR (Rajasthan)

Issue 3: Eligibility of ITC on construction of Solar Power Plant

Ruling: The AAR observed that Solar Power Plant will qualify as plant & machinery and ITC will be available thereon.

Pristine Industries Limited, 2022-VIL-65-AAR (Rajasthan)

NITYA Comments: *This ruling is correct. Previously also, AARs allowed ITC on construction of Solar Power Plant. Similar analogy applies to other procurements such as fire-fighting equipment, HVAC, lift etc. which qualify as plant and machinery. However, AAARs / AARs have denied ITC on such procurements on the ground that they become part of building.*

Issue 4: Eligibility of ITC on medical insurance policy taken for employees when mandated by law

Ruling: The AAR held that since Applicant is not engaged in supply of medical insurance services, first proviso to Section 17(5)(b)(i) of the CGST Act will not be applicable. Hence, ITC on medical insurance will not be available.

RSWM Limited, 2022-VIL-63-AAR (Rajasthan)

NITYA Comments: *This ruling is incorrect. In this case, the Applicant was claiming ITC on the ground that it was under statutory obligation to provide medical insurance to its employees by virtue of order of Ministry of Home Affairs in wake of COVID-19 measures. The AAR completely ignored second proviso to Section 17(5)(b) which allows ITC on services obligatory for an employer to provide to its employees.*

OTHER UPDATES

1. Scrutiny of GST returns by GST department

- Maharashtra GST department has released internal guidelines, allowing following relaxations during scrutiny of returns in case of *bonafide* errors and mismatches in GST returns for financial years 2017-18 and 2018-19:

Mismatch / Error	Relaxation
Excess turnover reported in GSTR-1 vis-à-vis GSTR-3B	For B2B transactions, undertaking from recipient that it has not availed excess ITC would suffice. For exports, matching of GSTR-3B turnover with turnover reported in refund application would suffice.
Mismatch in ITC as per GSTR-2A and GSTR-3B	For mismatch pertaining to supplier of value less than Rupees Two Lakhs and Fifty Thousand, taxpayer should produce self-attested ledger confirmation of concerned supplier. In other cases, taxpayer should produce Chartered Accountant Certificate of concerned supplier confirming payment of GST.
Forward charge supplies mistakenly reported as supplies liable to reverse charge in GSTR-1	Verification that due tax is paid on such supplies in GSTR-3B, will suffice.
ITC pertaining to previous tax period reversed in GSTR-3B of subsequent tax period	Comparison of total ITC available in subsequent month with that actually claimed owing to reversals from previous month, should be made.

(Internal Circular No. 02A of 2022 dated February 25, 2022)

NITYA Comments: With GST departmental audits on high pace for FY 2017-18 and 2018-19, these guidelines come as big relief for taxpayers as these instructions grant relief for procedural and compliance errors where there is no tax evasion per se.

RECENT NEWS

1. Engage with taxpayers, an upset FM tersely tells CBDT, CBIC

<https://economictimes.indiatimes.com/news/economy/policy/sitharaman-raps-cbdt-and-cbic-for-not-addressing-tax-assessees-grievances/articleshow/90055335.cms>

2. GST Council plans to raise 5% tax slab to 8%

<https://www.livemint.com/economy/gst-council-plans-to-raise-5-tax-slab-to-8-report-11646552015185.html>

3. Taxpayers can check eligibility of E-Invoicing on GSTN portal

<https://www.taxscan.in/taxpayers-can-check-eligibility-of-e-invoice-on-gst-portal-check-complete-details/158243/>

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