



NITYA | Indirect Tax Bulletin

May 2022 | Week 2

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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

Issue 1: Claim of GST paid by ITC utilisation under reimbursement policy of Western Railways

Ruling: The Railways Department incorrectly discriminated between GST paid using Electronic Credit Ledger and Electronic Cash Ledger. The High Court observed that as per reimbursement policy of Western Railways, reimbursement of differential tax paid (i.e. tax to be paid prior to GST and under GST regime) is allowed and the Petitioner is entitled to claim full reimbursement of GST paid. The Court observed that utilization of ITC for payment of GST is as good as GST paid in cash. Basis the same, the High Court directed Western Railways to reimburse GST paid by the Petitioners through Electronic Credit Ledger as well.

Bhagwati Construction v. UOI, 2022-VIL-326-GUJ

NITYA Comments: This ruling is correct. The dispute was commercial in nature and Railways was not allowing full reimbursement of tax on account of utilization of ITC.

PART B: ADVANCE RULINGS

Issue 1: Levy of GST on electricity charges recovered by lessor

Ruling: The AAAR observed that there is lack of clear authorization by lessee to lessor for payment of electricity charges to third party on behalf of lessee. Further, reimbursement of electricity charges is not made on actual basis. Basis this, the AAAR held that the Appellant does not qualify as pure agent and GST is payable on electricity charges recovered by lessor.

Harish Chand Modi, 2022-VIL-44-AAAR-RAJ

NITYA Comments: This ruling is correct that provision of utilities (like electricity etc.) by landlord do not qualify as services provided as pure agent since invoice for such utilities is on landlord (and not on tenant). As utilities are ancillary supplies for better enjoyment of principal supply (renting service), they become part of composite supply of renting service. The AAAR incorrectly covered these charges under Section 15(2)(c).

PART C: CESTAT ORDERS

Issue 1: Refund of Education Cess and Secondary and Higher Education Cess

Ruling: The CESTAT observed that refund of Education Cess and Secondary and Higher Education Cess ('Cess') cannot be denied on ground that credit of Cess could not be utilized prior to GST regime. Since CENVAT credit was vested right, refund of same should be allowed.

Bharat Heavy Electricals Limited v. CCE, 2022-VIL-322-CESTAT-ALH-CE

NITYA Comments: *This ruling is positive for taxpayers who sought refund of Cess post advent of GST regime. However, this ruling is incorrect on merits since the Appellant was not entitled for refund of Cess under any provision of erstwhile law or under transitional provisions of GST law.*

Issue 2: Refund of customs duty paid twice due to glitch on ICES portal

Ruling: The CESTAT held that customs duty paid second time do not qualify as 'duty' and time limit for claiming refund shall not apply thereto. Further, as per Article 265 of the Constitution of India, no tax can be collected beyond authority of law. The CESTAT also held that period of limitation as per the Limitation Act, 1963 will begin from date when the Appellant discovered its mistake.

Ericsson India Private Limited v. CCE, 2022-VIL-324-CESTAT-DEL-CU

NITYA Comments: *This ruling is correct and department cannot retain duty discharged twice by taxpayers. This case was represented by NITYA Tax Associates.*

OTHER UPDATES

1. Extension of due date of GSTR-3B

- Due date of GSTR-3B of April 2022 stands extended to May 24, 2022.

(Notification No. 5/2022-Central Tax dated May 17, 2022)

NITYA Comments: *This extension is on account of technical glitch on GST Portal for incomplete generation of GSTR-2B of April 2022. This glitch was corrected on May 18, 2022 and taxpayers can now download correct GSTR-2B.*

ARTICLE

SHORT PAYMENT OF IGST ON IMPORTS – CUSTOMARY TO RECOVER, BUT WHY DISPUTE CREDIT ELIGIBILITY?

Over a period of time, recovery of differential duty (post clearance of imports) has become a common practice of the department. Typically, the taxpayer pays such differential duty and claims the credit of additional IGST. The GST department has recently begun issuing notices to taxpayers denying credit for such additional IGST paid.

Through this article, Our Partner, **Mr. Deepak Suneja**, Managing Associate, **Mr. Rohit Kumar**, and Executive, **Ms. Sarita Mehra** have examined whether the various disputes raised by the GST department denying credit are even acceptable.

Please [click here](#) to read the article.

RECENT NEWS

1. Revenue dept seeks RTI exemption for its big data wing on GST and tax evasion analytics

<https://government.economictimes.indiatimes.com/amp/news/secure-india/revenue-dept-seeks-rti-exemption-for-its-big-data-wing-on-gst-and-tax-evasion-analytics/91530249>

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KEY ACCOLADES

