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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

Issue 1: Classification of railway parts

Ruling: The Supreme Court has rejected review petition filed by revenue against its earlier judgment classifying relays under Heading 8608 as part of railway signaling / traffic control equipment.

CCE v. Westinghouse Saxby Farmer Limited, 2022-VIL-55-SC-CE

NITYA Comments: *In the case of Westinghouse Saxby Farmer Limited v. CCE, 2021-VIL-33-SC-CE, Supreme Court determined classification basis predominant or specific use of product instead of functional test. This judgment created significant confusion for automotive industry as it led to classification of all parts of motor vehicles as parts and accessories under Headings 8708 / 8714, generally taxable at higher rate. To avoid such disputes, CBIC issued Instruction No. 01/2022-Customs dated January 5, 2022 clarifying that law laid down in Westinghouse cannot be generalized and goods need to be classified basis relevant Section Notes, Chapter Notes, HSN Explanatory Notes and past jurisprudence. Effectively, CBIC attempted to nullify judgment of Supreme Court for classification of other goods.*

Notably, Supreme Court's judgment is still law of the land and CBIC cannot nullify the same, more particularly when the Court has rejected review petition as well. On the other hand, revenue is bound by the Instructions issued by CBIC. However, at ground level, revenue is proposing classification of automotive parts basis Westinghouse ruling.

Issue 2: Obligation of invitee of tender to declare HSN Code of concerned goods or services in tender

Ruling: The Supreme Court held that supplier of goods or services / bidder is liable to determine correct HSN and pay GST. On pretext of providing level playing field to all bidders, this liability cannot be transferred to invitee of tender i.e., buyer. Accordingly, the Court held that it cannot direct buyer (Indian Railways) to determine and provide HSN in tender. The Court further held that to ensure correct tax is paid by awardee of contract, invitee of tender should send award document to jurisdictional officer of awardee.

UOI v. Bharat Forge Limited, 2022-VII-52-SC

NITYA Comments: *This ruling is correct. However, there is no provision under GST law requiring recipient to share contract documents with jurisdictional authorities of seller. It needs to be seen how this direction of the Supreme Court will be implemented at ground-level.*

PART B: CESTAT ORDERS

Issue 1: Service Tax demand basis Income Tax return

Ruling: The CESTAT observed that SCN was issued demanding Service Tax only basis data shared by Income Tax authorities. SCN did not specify nature of service provided and relevant provision for its taxability. Accordingly, CESTAT held that SCN was invalid.

Krishna Construction Company v. CCEST, 2022-VIL-600-CESTAT-AHM-ST

OTHER UPDATES

1. Guidelines for arrest and bail for offences punishable under GST Law

Following guidelines have been issued to field formations regarding arrest and bail under GST Law:

- **Conditions to arrest**
 - There must be unambiguous and clear reasons to believe for arrest based on credible material.
 - If accused is cooperating in investigations and appearing in summons, no arrest should be made.
 - Intent to evade tax and element of *mens rea* are pre-conditions of making arrest.
 - Apart from fulfilling legal requirements of Section 132 of the CGST Act, arrest must be made only after considering factors like nature of offence, necessity of arrest to ensure proper investigation, prevent possibility of accused tampering with evidence or influencing witness etc.
 - Arrest should not be made in technical cases involving interpretation of law.
- **Procedure to arrest**
 - Grounds of arrest should be communicated to accused and arrest memo should contain such grounds.
 - Arrest memo should contain valid DIN.
- **Post arrest formalities**
 - If arrest is made for a bailable offence, bail should be granted if proper bail bond is present.
 - For non-bailable offence and only in cases where bail conditions are not fulfilled, arrested person should be presented before the appropriate Magistrate within 24 hours.

[Instruction No. 02/2022-23 (GST Investigation) dated August 17, 2022]

NITYA Comments: These guidelines already form part of GST Law and the Code of Criminal Procedure, 1973. Still, practically authorities were not adhering to these guidelines and using threat of arrest / arrest as a tool to recover tax and interest. These guidelines should bring comfort to taxpayer community, however, their implementation at ground-level still needs to be seen.

2. Guidelines for issuance of summons under GST Law

- Summons may be issued by Superintendent only after obtaining prior written permission from Assistant / Deputy Commissioner with reasons recorded in writing.
- Summon should not be issued to senior Management officials of the Company or PSUs unless there is clear indication of their involvement in decision making process which led to loss of revenue.
- Summon should not be issued to call statutory documents generally available on GST portal.
- Summon should contain valid DIN.
- If person does not appear repeatedly on third summon, revenue should file complaint before Judicial Magistrate.

[Instruction No. 03/2022-23 (GST Investigation) dated August 17, 2022]

NITYA Comments: These are welcome guidelines. Authorities are issuing summons to top Management officials even for conducting routine enquiries. Although, Instruction refers to top officials of Companies and PSUs only, it should be contextually read to include Owners/Partners/senior Management of proprietorship concerns, partnership firms, LLPs and other similar entities.

Pertinently, Section 70 of the CGST Act empowers proper officer to issue summons without need of any authorization. However, Instruction requires Superintendent to take permission of Assistant / Deputy Commissioner for issuing summon. To that extent, Instructions have travelled beyond statutory provisions.

3. Customs duty on import of display assembly of mobile phones

- Back support frame does not alter essential characteristics of display assembly of mobile phone. Display assembly of mobile phone imported with or without back support frame shall be considered as 'display assembly of mobile phone' and subject to 10% BCD.
- Display assembly imported along with other items like sim tray, antenna pin, speaker net, power key, slider switch, battery compartment, flexible printed circuits for volume, power, sensors, speakers, finger-print etc. will not qualify as 'display assembly of mobile phone' and subject to 15% BCD.

[Circular No. 14/2022-Customs dated August 18, 2022]

ARTICLES

ABSENT DETERMINATION, VALIDITY OF GARNISHEE PROCEEDINGS TO RECOVER INTEREST

Lately, it has been witnessed that while imposing any demand upon a taxpayer, the correct procedure laid down by law is often overlooked. It is becoming a trend for the GST Authorities to resort to garnishee proceedings straightaway without giving sufficient chance to taxpayers to provide any sort of clarification.

Through this article, our Partner, **Mr. Dharnendra Kumar Rana**, Managing Associate **Ms. Lipika Rustgi** and Executive, **Mr. Ekum Singh Sethi** have analyzed the legality of recovery of various sums by GST Authorities without issuance of requisite Show Cause Notices.

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

RECENT NEWS

1. CBIC examining issue regarding applicability of GST on cross charges

<https://www.thehindubusinessline.com/economy/cbic-examining-issue-regarding-applicability-of-gst-on-cross-charges-johri/article65797800.ece>

2. IGST on ocean freight likely to be scrapped

<https://economictimes.indiatimes.com/industry/banking/finance/igst-on-ocean-freight-likely-to-be-scrapped/articleshow/93716398.cms>

3. FTA provisions to prevail in rules of origin disputes

<https://economictimes.indiatimes.com/news/economy/foreign-trade/fta-provisions-to-prevail-in-rules-of-origin-disputes/articleshow/93668049.cms?from=mdr>

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