



NITYA | Indirect Tax Bulletin

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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

Issue 1: Requirement to issue SCN for demanding interest

Ruling: The High Court observed that revenue issued letter for demanding interest without following adjudication procedure. The Court held that while interest is automatic, fixing of quantum is not unilateral specifically when taxpayer disputes quantum as well as period of liability. Accordingly, the Court held that no interest can be recovered from the Petitioner without initiating any adjudication proceedings under Section 73 or 74 of the CGST Act.

Bluestar Malleable Private Limited v. State of Jharkhand, 2022-VIL-579-JHR

NITYA Comments: *This ruling is correct. It is a settled law that prior to imposing any liability on a taxpayer, principles of natural justice need to be mandatorily followed. Interestingly, in the present case the Petitioner reversed transitional credit wrongly claimed in GSTR-3B in its subsequent return without utilizing such credit. In addition to fact that such credit was not utilized, transitional credit does not become ITC and there are no recovery provisions for interest thereon, hence no interest was payable. Similar view was taken in the case of Mahadeo Construction Company v. UOI, 2020-VIL-185-JHR and LC Infra Project Private Limited v. UOI, 2020-VIL-170-KAR.*

Issue 2: Maintainability of application for advance ruling when investigation is undergoing

Ruling: Section 98(2) of the CGST Act bars application to the AAR if question is already decided or pending under any other 'proceeding'. The High Court held that 'investigation' or 'inquiry' will not come under the ambit of the term 'proceeding'. Further, the Court held that as application before the AAR was filed before initiation of investigation by DGGI, bar will not apply for this reason as well.

Srico Projects Private Limited v. Telangana AAR, 2022-VIL-588-TEL

Issue 3: Denial of budgetary support claim without assigning reasons

Ruling: The High Court observed that revenue erred by not providing reason for rejecting part of claim of the Petitioner under budgetary support scheme. Further, the Court observed that benefit cannot be denied basis office memorandum which was not in existence at the time of passing of order.

Lupin Limited v. UOI, TS-424-HC(J&K)-2022-GST

PART B: ADVANCE RULINGS

Issue 1: Levy of GST on transfer of right to cost centre of the same entity

Ruling: The Applicant was manufacturing vehicles and allowing another cost centre of same entity (located in different State) to carry out integration, testing, installation and marketing of software on such vehicles. The AAR observed that the Applicant was allowing other cost centres to carry out these activities which is an activity in course and furtherance of business. Further, cost centres located in different States are distinct persons. Accordingly, transaction will qualify as supply of service.

Ola Electric Technologies Private Limited, 2022-VIL-222-AAR

Issue 2: ITC on lease premium paid

Ruling: The AAR observed that lease premium for space in building is not related to construction of immovable property but towards renting of immovable property. Further, Section 17(5) only denies ITC on construction services relating to immovable property. Accordingly, ITC on such upfront lease premium will be eligible.

Kamarajar Port Limited, 2022-VIL-223-AAR

NITYA Comments: *This ruling is correct. There have been adverse advance rulings denying ITC on land taken on lease during construction phase. However, such taxpayers may not be able to rely on this ruling for claiming ITC as no construction was involved in this case. In our view, ITC on such cases will also be eligible since such services are not used for construction and both activities are independent.*

OTHER UPDATES

1. Amendments in Legal Metrology law for garments or hosiery sold in loose

- Rule 26 of the Legal Metrology (Packaged Commodities) Rules, 2011 ('LMPC Rules') has been amended to exempt garment or hosiery goods from labelling subject to certain declarations. Exemption will be available only if goods are sold in loose or open in such a manner that the consumer can inspect products before buying.
- The following declarations need to be provided on product as well as on e-commerce website if such product is sold through e-commerce:
 - Name of manufacturer / brand owner
 - Consumer care id and phone number
 - Size with internationally recognizable size indicators
 - Maximum Retail Price
- This amendment will come into force effective **January 1, 2023**. However, the amendment also states that any manufacturer or packer or importer may declare above information with immediate effect as well.

[Notification No. GSR 648(E) dated August 22, 2022]

NITYA Comments: Notably, labelling requirement under Legal Metrology law only applies to pre-packaged commodity which is defined as commodity packed without buyer being present so that package has pre-determined quantity. In case of garments sold in loose or in manner that customer can inspect goods before verification, Legal Metrology law should not apply at first place. This issue is also pending before Larger Bench of Supreme Court for sunglasses in case of **State of Maharashtra v. Subhash Arjundas Kataria, 2012 (275) ELT 289 (SC)**.

ARTICLES & SHORT VIDEOS

ARTICLE: TRANSITIONAL CREDITS - WHO WILL HAVE THE LAST LAUGH?

In ongoing landmark rulings from the Apex Court of the country, the judgment in ***UOI v. Filco Trade Center, 2022-VIL-38-SC*** is sure to be remembered for a long time. This judgment is being hailed for its magnanimity in directing re-opening of GST Portal for filing and revising of TRAN-1 and TRAN-2 forms for all aggrieved taxpayers, thus allowing extraordinary relief, way beyond statute. However, there are various other spill-over effects which are likely to follow from this judgment.

In this Article, our Associate Partner, **Ms. Aasmee Mangla** along with our Associate, **Ms. Srishti Yadav** has analyzed probable long-lasting impacts of this judgment which taxpayers need to be wary of.

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

SHORT VIDEO: UPCOMING CHANGES IN GSTR-3B

47th GST Council meeting proposed multiple changes in GSTR-3B. Proposed changes will have significant impact on compliances required to be undertaken in GST. In this regard, our Manager, **Mr. Prem Daksh** has given his insights in a short video.

Please [click here](#) to watch the Video.

RECENT NEWS

1. **Railways explains the new GST rules applicable on cancelling confirmed tickets**
<https://www.hindustantimes.com/india-news/railways-explains-the-new-gst-rules-applicable-on-cancelling-confirmed-tickets-101661778963837.html>
2. **Centre approaches SC for additional 30 days for opening special window for transitional credit claim**
<https://www.thehindubusinessline.com/economy/centre-approaches-sc-for-additional-30-days-for-opening-special-window-for-transitional-credit-claim-under-gst/article65809841.ece/amp/?s=09>

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