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LEGAL PRECEDENTS

PART A: COURT RULINGS

Issue 1: Eligibility of Cenvat Credit on transportation of employees to workplace

Ruling: The Supreme Court upheld the High Court's Order denying Cenvat Credit on facility of transportation to employees to commute to and fro workplace as it does not qualify as input service.

Solar Industries India Limited v. CCE&ST, 2022-VIL-58-SC-CE

NITYA Comments: *This ruling has been rendered in context of erstwhile regime for the period post April 1, 2011. During this period, definition of 'input service' specifically excluded 'renting of motor vehicle' service from its purview. However, eligibility criteria for ITC under GST regime differs from pre-GST regime. Thus, this judgment is inapplicable in GST regime. Availability and non-availability of ITC on any procurement will only be determined basis statutory provisions under GST law.*

It is pertinent to note that the Court also gave a finding that service of transportation of employees to commute to and fro workplace has no relation with manufacturing activity of the Appellant. In our view, as instant service was specifically excluded from purview of 'input service', such finding was neither relevant nor can be considered as precedent to that extent.

Issue 2: Retrospective application of proviso to Rule 3(5) of the Cenvat Credit Rules, 2004

Ruling: The Supreme Court observed that proviso to Rule 3(5) existed in the Cenvat Credit Rules, 2002 and was inadvertently missed in the Cenvat Credit Rules, 2004 ('Credit Rules') due to legislature slip. This proviso provided for reduced reversal of Cenvat Credit by percentage deduction method on removal of used capital goods. Accordingly, inclusion of this proviso in 2007 under the Credit Rules is mere clarification having retrospective application. Hence, the Court held that taxpayer was entitled to take benefit of this proviso even during intervening years. Accordingly, reversal of Cenvat Credit at abated rate was allowed.

Betts India Private Limited v. CCE, 2022-VIL-62-SC-CE

Issue 3: Refund of Service Tax paid under RCM after filing of Tran-1

Ruling: Respondent paid Service Tax after last date of filing of TRAN-1 under RCM. As Respondent could not take credit of such Tax under the erstwhile regime post introduction of GST nor could transition it to GST regime, the Single Judge had ordered refund of such credit by invoking 'Doctrine of Necessity' on account of absence of appropriate provision to cover this situation. The Division Bench has now upheld the Single Judge Order directing revenue to reconsider assessee's application for refund of Service Tax paid under RCM after last date of filing of TRAN-1 under Section 142(3) of the CGST Act.

ACG&CE v. Ganges International Private Limited, 2022-VIL-596-MAD

NITYA Comments: This ruling is correct. Pertinently, these situations remain unaffected by the Supreme Court's ruling to reopen GST Portal for all taxpayers to file TRAN-1 / TRAN-2 in the case of **UOI v. Filco Trade Center Private Limited, 2022-VIL-38-SC**.

Issue 4: Levy of interest when amount available in Electronic Credit Ledger

Ruling: The High Court observed that mere availability of sufficient amount in Electronic Credit Ledger ('ECL') cannot be presumed to mean debiting of such ledger as that would amount to re-writing of statutory provision. Accordingly, the Court upheld levy of interest on account of delay in filing of GSTR-3B.

India Yamaha Motor Private Limited v. ACSD, 2022-VIL-605-MAD

NITYA Comments: This ruling is correct. Under GST law, tax is considered as paid when taxpayer debits amount in ECL. The High Court correctly held that mere availability of amount in ECL is not a ground for waiver of interest.

PART B: ADVANCE RULINGS

Issue 1: Levy of GST on canteen services for employees

Ruling: The AAR held as under:

- a) In view of clarification issued vide **Circular No 172/04/2022-GST** dated **July 6, 2022** ('Circular 172'), perquisites provided from employer to employee under contractual agreement is not subjected to GST basis Entry (i) to Schedule III of the CGST Act. Accordingly, canteen facility for the Applicant's own employees is not leviable to GST even where the Applicant recovers some amount for the same.
- b) Contractual labour employed by the Applicant will not qualify as its 'employee'. These are rather employed by the Contractor who pays their wages and supplies manpower supply service to the Applicant. Since employer-employee test is not fulfilled in this situation, supply of canteen services to contractual labour from the Applicant is not ousted from levy of GST basis Entry (i) to Schedule III. Thus, these services qualify as outward supply of the Applicant.
- c) ITC on these services availed in respect of employees is eligible in view of mandate under Section 46 of the Factories Act, 1948 ('Factories Act'). The mandate under the Factories Act is not applicable on the Applicant for contractual labour and hence ITC is barred thereon.

Troikaa Pharmaceuticals Limited, 2022-VIL-231-AAR

NITYA Comments: The AAR incorrectly applied Circular 172 to that part of canteen supply for which employer makes recovery from employees. Circular 172 covered only perquisites provided free of cost by employer. Canteen services for which employer makes recovery, is exigible to GST.

The AAR also incorrectly held that the Factories Act does not mandate provision of food to contractual labour. Under the Factories Act, canteen facility needs to be provided to workers including contractual labour. Hence, ITC is available on provision of food to contractual labour.

OTHER UPDATES

1. Guidelines for launching of prosecution under the CGST Act

CBIC has issued Instruction prescribing detailed guidelines for launching prosecution under GST Law. Important highlights of this Instruction are as under:

- Standard of proof required in a criminal prosecution is higher than adjudication proceedings. Hence, even in cases of confirmed demand, evidence should establish *mens-rea* beyond reasonable doubt for recommending prosecution.
- Monetary limit on prosecution is not applicable in following two cases:
 - Arrest cases; and
 - Habitual evaders who are involved in two or more cases of confirmed demand of tax evasion / fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years where evasion, misuse of ITC and fraudulently obtained refund exceeds Rs. 5 Crores.
- In case of Public Limited Companies, prosecution should not be launched indiscriminately against all the Directors of the Company but should be restricted only to persons overseeing day-to-day and who took active part in committing tax evasion etc. or had connived in it.
- Filing of complaint for prosecution should be done within definite time frame. In case an arrest is made and no bail is granted, the Authorities should endeavour to file complaint in 60 days of arrest.
- Prosecution should not be launched in cases of technical nature or where additional claim of tax is based on difference of opinion regarding interpretation of law.

[Instruction No. 04/2022-23 (GST-Investigation) dated September 1, 2022]

RECENT NEWS

1. GST rates could change to correct inverted duty, exemptions: Report

https://www.business-standard.com/article/economy-policy/gst-rates-could-change-further-to-correct-inverted-duty-exemptions-122081600456_1.html

2. 'Do not insist for GST from nursing colleges'

<https://www.thehindu.com/news/national/telangana/do-not-insist-for-gst-from-nursing-colleges/article65854253.ece>

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