



NITYA | Indirect Tax Bulletin

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Index

LEGAL PRECEDENTS	3
PART A: COURT RULINGS.....	3
Issue 1: Demand of Customs Duty when DEPB Scrips obtained fraudulently	3
Issue 2: Service Tax on secondment of employees	3
Issue 3: Challenge to parallel proceedings for same tax period	3
PART B: ADVANCE RULINGS	4
Issue 1: ITC eligibility on Solar Power Panels	4
OTHER UPDATES	5
1. Amendment in Legal Metrology (General) Rules, 2011 for appointment of an officer.....	5
ARTICLES	6
1. GST On Online Gaming: Game, Set, Match!.....	6
2. Amendments Under GST – A Television Series In Making!.....	6
RECENT NEWS.	7
1. Duty refunds likely for steel, pharma and chemical exports.....	7
2. E-invoices must for businesses with over Rs. 5 crore turnover a year	7

LEGAL PRECEDENTS

PART A: COURT RULINGS

Issue 1: Demand of Customs Duty when DEPB Scrips obtained fraudulently

Ruling: The Supreme Court observed that DEPB Scrips were procured fraudulently by transferor and then transferred to the Appellant. Since such DEPB Scrips are *void ab initio*, revenue was justified in invoking extended period of limitation. Basis this, the Court held that Customs Duty liability is payable. The Court further held that knowledge of fraud, due diligence by transferee etc. will be relevant factors for imposition of penalty and upheld Tribunal's decision to remand issue to Adjudicating Authority.

Munjal Showa Ltd v. CCE, 2022-VIL-77-SC-CU

NITYA Comments: Basis current provisions of the Customs Act, recovery can be made from person who fraudulently obtained scrips or importer and such proceedings are mutually exclusive.

Issue 2: Service Tax on secondment of employees

Ruling: In this case, the CESTAT held that no service tax is payable on secondment arrangement between the Respondent and its Parent Company outside India. The revenue preferred an appeal to Supreme Court. The Court has issued Notice and tagged matter with **Commissioner of Service Tax v. Nortel Networks India Pvt. Ltd., Civil Appeal No. 3692/2017** and the same is pending final decision.

Commissioner of GST & CE v. Komatsu India Pvt Ltd, 2022-VIL-79-SC-ST

NITYA Comments: It will be interesting to see final outcome of this case and whether the Supreme Court will follow decision in case of **CC, CE&ST v. Northern Operating Systems Private Limited, 2022-VIL-31-SC-ST** which was delivered by a Three Judge Bench or refer issue to Larger Bench or affirm CESTAT's order by distinguishing case on merits.

Issue 3: Challenge to parallel proceedings for same tax period

Ruling: GST Anti-Evasion wing as well as Range Office issued notices to the Petitioner for same period for which audit proceedings under Section 65 of the CGST Act were already being undertaken by Audit wing. The High Court held that proceedings initiated by Anti Evasion wing and Range Office cannot be continued further.

R. P. Buildcon Private Limited v. Superintendent, CGST & CX, 2022-VIL-682-CAL

PART B: ADVANCE RULINGS

Issue 1: ITC eligibility on Solar Power Panels

Ruling: The Applicant was providing services of maintenance of immovable property to tenants. The Applicant procured, erected and commissioned Solar Panels for generation of electricity at its place of business. The Applicant paid electricity charges to Tamil Nadu Electricity Board for net units consumed after deducting energy units generated by Solar Power Plant. The Applicant recovered gross unit charges of electricity from tenants and paid GST on rental charges and electricity charges.

The AAR observed that electrical energy is 'goods' and exempted *vide* Sl. No. 104 of **Notification No.02/2017 – Central Tax (Rate)** dated **June 28, 2017**. Hence, supply of electrical energy (generated by Solar Panels) by the Applicant to tenants is supply of exempted goods and consequently ITC on Solar Panels is ineligible. Basis this, the AAR did not discuss coverage of solar plant under Section 17(5) of the CGST Act or on inclusion of value of electricity charges in value of supply.

VBC Associates, 2022-VIL-257-AAR

NITYA Comments: *This ruling is incorrect to the extent that the Applicant was treating supply of electrical energy as part of composite supply of rental services and paying GST thereon. Hence, Solar Panels cannot be said to be used for making exempted supply. Further, in terms of Explanation to Section 17(5), Solar Panels will qualify as plant and machinery and hence, ITC will be available thereon.*

OTHER UPDATES

1. Amendment in Legal Metrology (General) Rules, 2011 for appointment of an officer

- Earlier, in terms of Section 49(2) of the Legal Metrology Act, 2009 ('LM Act'), Companies had option to nominate one or more of its 'Directors' as a person responsible for carrying out their business. Further, Explanation thereto permitted nomination of different persons for different establishments, branches or units. Hence, Directors of Companies could only have been nominated for ensuring compliances and were prosecuted for violations done by the Company.
- Government has now amended Rule 29 of the Legal Metrology (General) Rules, 2011 ('LM Rules'). Basis this amendment, Companies having different establishments, branches or units can nominate an 'officer' (other than Director) who has authority and responsibility for planning, directing and controlling activities of such establishments, branches or units.

(Notification No. G.S.R. 763(E) dated October 4, 2022)

***NITYA Comments:** Notably, Rule 29 of the LM Rules only provides for format of nomination of Director. Hence, such amendment ought to have been made under Section 49(2) of the LM Act which still provides that only Directors can be made responsible for any violations under the LM Act. However, as the amendment is beneficial, it will apply and persons other than Directors can also be nominated.*

While the provision uses the word 'Company', Section 49(7) clarifies that this will cover all body corporates, firms and associations of individuals.

ARTICLES

GST ON ONLINE GAMING: GAME, SET, MATCH!

At the time when industry was expecting clarity from GST Council on multiple issues surrounding GST on online gaming, betting, gambling and the likes, online gaming industry was trumped with a demand notice running into thousands of crores.

While this notice has created havoc in the industry, our Managing Partner, **Mr. Puneet Bansal**, Associate, **Ms. Srishti Yadav**, and Associate, **Mr. Rishabh Galhotra**, take a microscopic view on core issues at epicenter of this high-profile litigation and attempt to predict its trajectory in times to come.

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

AMENDMENTS UNDER GST – A TELEVISION SERIES IN MAKING!

Since inception of GST law, industry is regularly witnessing host of amendments and it still seems that not everything has unfolded as planned. The Finance Act, 2022 brought in few more amends, which included debut and washout of certain provisions & extension of timelines for GST compliances. While certain amendments deserve an applaud to remove unnecessary dust from law, others seem like muddying the water even more as they are unready for proper implementation.

In this article, our Associate Partner, **Ms. Aasmee Mangla**, Senior Associate, **Ms. Simran Arora** and Executive, **Mr. Sainesh Agrawal** have discussed some major amendments that have been recently notified and how many of them are yet not enough!!

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

RECENT NEWS

1. Duty refunds likely for steel, pharma and chemical exports

<https://economictimes.indiatimes.com/news/economy/foreign-trade/duty-refunds-likely-for-steel-pharma-and-chemical-exports/articleshow/94747143.cms>

2. E-invoices must for businesses with over Rs. 5 crore turnover a year

<https://economictimes.indiatimes.com/news/economy/policy/e-invoices-must-for-businesses-with-over-5-crore-turnover-a-year/articleshow/94770329.cms>

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