



NITYA
tax associates

NITYA | Indirect Tax Bulletin

October 2022 | Week 3 and 4

November 4, 2022

Index

LEGAL PRECEDENTS	3
PART A: COURT RULINGS.....	3
Issue 1: Applicability of Promissory Estoppel on reduction of tax incentives under GST regime	3
Issue 2: Filing appeal against cancellation of registration	3
Issue 3: Transition of credit under GST by Input Service Distributor	4
PART B: ADVANCE RULINGS	4
Issue 1: GST on supply of coal rejects by Principal.....	4
Issue 2: GST on annuity amount received for construction and maintenance of road	4
OTHER UPDATES	6
1. Payment method of pre-deposit for cases pertaining to erstwhile regime	6
2. Authority for issuance of SCN when enforcement initiated by Centre and taxpayer assigned to State ...	6
ARTICLES	7
1. Export Freight Made Taxable – Overview And Repercussions!!!	7
RECENT NEWS.....	8
1. Game of skill or chance? GST law panel for clear definition	8
2. GST offences up to Rs 5 crore may be decriminalized	8

LEGAL PRECEDENTS

PART A: COURT RULINGS

Issue 1: Applicability of Promissory Estoppel on reduction of tax incentives under GST regime

Ruling: The Petitioner challenged the Budgetary Support Scheme under GST regime that granted reduced incentive vis-à-vis 100 percent excise duty exemption granted to units in pre-GST regime. The Supreme Court observed that there can be no estoppel when legislature is exercising its legislative function. Further, Doctrine of Promissory Estoppel is not applicable when the Government makes change in 'public interest'. The Court held that there is no duty cast on Union to refund 100 percent of tax. However, the Court permitted the Petitioners to file representations before the State Government and the GST Council in the light of the legitimate expectation of the Petitioner.

Hero Motocorp Limited v. UOI, 2022-VIL-82-SC

NITYA Comments: This ruling is incorrect. Doctrine of Promissory Estoppel squarely applies in this case. There was clear promise of the Government to the taxpayers (for full excise duty exemption) and basis such promise, taxpayers set up industrial units. Similar view was also taken by the Bombay High Court in the case of **K. M. Refineries and Infraspace Private Limited v. State of Maharashtra, 2019-VIL-377-BOM**, wherein the Court directed the State Government to restore benefits granted under erstwhile regime viz. exemption from sales tax under the Maharashtra Sales Tax Incentive Scheme. Further, while component of GST received by the Central Government (58% of CGST component / 29% of IGST Component) was allowed, such benefit was restricted to tax paid in cash (and not allowed for tax paid through ITC). Notably, it remains to witness whether the GST Council will direct the States to grant such benefit basis representations that will be made by taxpayers.

Issue 2: Filing appeal against cancellation of registration

Ruling: The Petitioner filed appeal belatedly under Section 107 against order passed for cancellation of registration for not consecutively furnishing returns for more than 3 months. The Appellate Authority rejected appeal treating same as time barred. The revenue argued that the Petitioner opted incorrect remedy of appeal instead of filing revocation application. The High Court directed the revenue to consider the application keeping in mind the public interest and revenue collection since the Petitioner was willing to pay tax, interest, penalty and file requisite returns.

Mayflower Hotels and Resorts LLP v. PCSGST, 2022-VIL-721-GAU

NITYA Comments: This ruling is beneficial for taxpayers as it allows revocation of cancellation beyond prescribed period on payment of tax due and filing of returns. Order cancelling registration is appealable as it is not prescribed under Section 121 as non-appealable order. Basis this, taxpayers can validly file appeal against order cancelling registration instead of filing revocation application.

Issue 3: Transition of credit under GST by Input Service Distributor

Ruling: The Petitioner was registered as Input Service Distributor ('ISD') in pre-GST regime and transited Cenvat Credit balance lying in its Electronic Credit Ledger into GST regime as a normal taxpayer. The revenue initiated recovery of such credit. The Petitioner relied on the rulings in the cases of **Colgate Palmolive India Limited v. UOI, 2022-VIL-611-BOM** and **Unichem Laboratories Limited v. UOI, 2022-VIL-716-BOM**. Basis the same, the High Court restrained the revenue from making recovery and quashed internal instruction prohibiting ISD from transiting credit.

Hero Motocorp Limited v. UOI, 2022-VIL-719-DEL

NITYA Comments: This ruling is correct. Basis this ruling, taxpayers who missed transitioning ISD credit or who incorrectly filled details in TRAN-1 can considering revising TRAN-1 during **October to November 2022**. Importantly, while the Bombay High Court directed taxpayers to revise TRAN-1, the Delhi High Court simply quashed recovery proceedings and validated action taken by taxpayer. For a detailed coverage of this issue, please refer [NITYA Outlook / Issue 103 / Supreme Court extends re-opening of GST Portal by 4 weeks, Bombay High Court directed CBIC to clarify transition of credit for ISD](#) dated September 6, 2022.

Important to note that the Bombay High Court in **Unichem Laboratories Limited** (supra) directed CBIC to issue clarification for transition of credit by ISD. However, the same is still awaited.

PART B: ADVANCE RULINGS

Issue 1: GST on supply of coal rejects by Principal

Ruling: The AAR observed that Compensation Cess on coal rejects is exempt only when these are supplied by coal washeries. Since in this case, principal was issuing invoice on job-worker (latter being coal washery), exemption is not available. Further, the AAR held that principal can claim ITC on coal in proportion of taxable turnover instead of proportionate quantity in absence of any specific mechanism.

Punjab State Power Corporation Limited, 2022-VIL-282-AAR

NITYA Comments: This ruling is incorrect as principal is required to discharge GST on coal rejects. In our view, coal rejects qualify as waste & scrap and principal is not required to discharge any GST on waste generated during job work. Further, the AAR correctly held that in case principal avails ITC, it can claim ITC basis turnover of taxable and exempted goods (and not in proportion of quantity).

Issue 2: GST on annuity amount received for construction and maintenance of road

Ruling: The AAR observed that said service will qualify as works contract service and annuity amount will be taxable at 12 percent.

ULCC Calicut City Infrastructure Development Private Limited, 2022-VIL-268-AAR

NITYA Comments: *This ruling is incorrect. The AAR failed to consider exemption provided to service by way of access to a road or a bridge on payment of annuity. The GST Council also in its 22nd Meeting discussed that annuity received towards construction and maintenance will be exempted by treating it at par with toll charges received towards construction and maintenance. To the contrary, **Circular No.150/06/2021-GST** dated **June 17, 2021** clarified that the exemption is not available when annuity charges are received towards construction. The High Court in the case of **DPJ Bidar-Chincholi (Annuity) Road Project Private Limited v. UOI, 2022-VIL-500-KAR**, held that restriction laid down by Circular is incorrect and annuity received for construction is exempt under GST.*

OTHER UPDATES

1. Payment method of pre-deposit for cases pertaining to erstwhile regime

- Pre-deposit of duties and taxes of erstwhile regime through DRC-03 is not valid. Payment should be made via dedicated portal (<https://www.aces.gov.in/>).
- DRC-03 is not prescribed mode for payment of pre-deposit for GST as well.

(CBIC-240137/14/2022-Service Tax Section-CBEC dated October 28, 2022)

***NITYA Comments:** This instruction is correct. However, it will be relevant to see fate of appeals wherein pre-deposit was made via DRC-03 prior to issuance of this Instruction. Notable in case of **Dell International Services India Private Limited v. CCT, 2019-VIL-73-CESTAT-BLR-ST**, the CESTAT allowed pre-deposit through DRC-03. The CESTAT had even gone on to the extent that such payment could be made by utilizing ITC as well.*

Under GST law, there is no way to make pre-deposit when appeal is filed offline except through DRC-03. Further, the Instruction also indicates revenue's view that balance of Electronic Credit Ledger can also be used for payment of pre-deposit under GST.

2. Authority for issuance of SCN when enforcement initiated by Centre and taxpayer assigned to State

- Taxpayer located within a State is liable for enforcement action by both Central and State authorities. In such cases all consequential action relating to case including (but not limited to) appeal, review, adjudication, rectification, revision etc. will lie with authority which initiated enforcement action.
- Refund shall be granted only by jurisdictional authority.
- Recurring SCN can be only issued by jurisdictional authority.

(F.No.757/Follow-up/GSTC/2018/8198 dated October 19, 2022)

ARTICLES

EXPORT FREIGHT MADE TAXABLE – OVERVIEW AND REPERCUSSIONS!!!

GST Exemption on services of transportation of goods for exports through air or vessel expired on September 30, 2022. As a result, air and ocean freight billed to customers in India will now be subject to GST. While, it is clear that expiry of such exemption poses an additional working capital burden on exporters, other nitty-gritties of taxing such transactions needs to be analyzed.

In the present article, Our Partner, **Mr. Deepak Suneja**, Managing Associate, **Mr. Rohit Kumar**, and Executive, **Ms. Sarita Mehra** have deliberated on various implications arising post expiry of such exemption.

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

RECENT NEWS

1. Game of skill or chance? GST law panel for clear definition

<https://m.economictimes.com/news/india/game-of-skill-or-chance-gst-law-panel-for-clear-definition/articleshow/95214019.cms>

2. GST offences up to Rs 5 crore may be decriminalized

<https://www.financialexpress.com/economy/gst-offences-up-to-rs-5-crore-may-be-decriminalised/2730062/>

Disclaimer:

This Insight has been prepared for clients and firm's personnel only. It is solely for the purpose of general information and does not represent any opinion of NITYA Tax Associates. We are not responsible for the loss arising to any person for acting or refraining from acting on the basis of material contained in this Insight. It is recommended that professional advice be sought based on specific facts and circumstances.
© NITYA Tax Associates. All Rights Reserved.



NITYA
tax associates



CALL US

+91 11 4109 1200
+91 11 4109 1202



MAIL US

updates@nityatax.com
info@nityatax.com



REACH US

www.nityatax.com

Delhi:
B-3/58, Third Floor,
Safdarjung Enclave,
New Delhi – 110029

Mumbai:
91 Springboard Business Hub Private Limited
Plot No. D - 5, Road No. 20, Marol MIDC
Andheri East, Mumbai – 400093

DOWNLOAD OUR APP



FOLLOW US



KEY ACCOLADES

