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NITYA | Indirect Tax Bulletin

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LEGAL PRECEDENTS

PART A: COURT RULINGS

Issue 1: Taxability of vouchers

Ruling: The High Court observed that vouchers do not have any intrinsic value of their own. They are mere instruments accepted as consideration for supply of goods or services. Since vouchers are instruments, they qualify as 'money' under Section 2(75) of the CGST Act and a mere transaction in money is not leviable to GST. The Court held that issuance of vouchers does not qualify as supply of goods or services.

Premier Sales Promotion Private Limited v. UOI, 2023-VIL-67-KAR

Issue 2: Withholding provisional refund of IGST for risky exporters categorization of supplier's supplier

Ruling: The High Court held that there is no provision in the CGST Act or the IGST Act which mandates the Petitioner to verify genuineness of supplier's supplier. Further, the Petitioner reversed ITC availed on purchases made from alleged supplier along with interest and penalty. The Court relied on case of **Bhagyanagar Copper Private Limited v. CBIC, 2021-VIL-762-TEL** and held that provisional refund should be granted to the Petitioner.

Choksi Exports v. UOI, 2023-VIL-78-GUJ

NITYA Comments: This ruling is correct. The IGST Act or the CGST Act do not mandate verification of genuineness of suppliers as pre-requisite to claim refund of IGST paid on exports.

Issue 3: Rectification of GSTR-3B

Ruling: The Petitioner inadvertently availed ITC on imported goods as CGST and SGST in GSTR-3B (instead of IGST) which led to mismatch between GSTR-3B and GSTR-2A. The Petitioner sought permission from revenue to rectify GSTR-3B which was rejected and revenue issued SCN to demand ITC reversal. The High Court observed that this error was committed in formative years of GST law and there was sufficient evidence to prove that such error was inadvertent. Further, if such rectification was allowed, there was no loss to exchequer nor would lead to any cascading effect. The Court also distinguished the Supreme Court's judgment in the case of **UOI v. Bharti Airtel Limited, 2021-VIL-87-SC**. Accordingly, the Court allowed the petition.

Orient Traders v. DCCT, 2023-VIL-46-KAR

NITYA Comments: The ruling is correct and important particularly in cases wherein taxpayers availed ITC in incorrect head (CGST and SGST instead of IGST or vice-versa). This ruling will also be relevant where taxpayers corrected such mistake in subsequent GSTR-3B.

Issue 4: Jurisdiction of DGGI to initiate proceedings under Service Tax post GST

Ruling: The High Court observed that view ensuring smooth continuity (rather than disruption of flow) is preferable while interpreting repeal and savings clauses. The Court also noted Section 174(2) which states that repeal shall not affect any rights, privileges, liabilities or obligations etc. and held that powers of DGGI to issue SCN was saved.

Amirta International Institute of Hotel Management v. PC, CGST&CE, 2023-VIL-75-MAD

NITYA Comments: *This ruling is correct on saving of powers of proper officer to initiate proceedings under Service Tax law post introduction of GST. Notably, the Court did not give specific finding on whether DGGI will qualify to be proper officer under Service Tax law or not.*

Issue 5: Condonation of delay beyond prescribed statutory period in Writ jurisdiction

Ruling: The High Court observed contradictory Single Bench judgments of the Madras High Court on whether it can condone delay in filing of appeal under Section 107 of the CGST Act beyond prescribed statutory timeline while exercising Writ jurisdiction. Accordingly, the Court referred this question to Larger Bench for determination.

Paul Raj Engineering v. AC, WP 30542 of 2023, Madras High Court

NITYA Comments: *Article 226 of the Constitution of India grants discretionary power to Writ Court and the Court exercises extra-ordinary jurisdiction therein which must be used sparingly. The High Court can entertain writ under Article 226 only if there is a violation of legal and fundamental rights. Hence, the Court cannot condone delay in filing statutory appeal beyond maximum prescribed limitation period unless violation of such rights is established. This position was also well explained by the Supreme Court in the case of **AC v. GlaxoSmithKline Consumer Healthcare Limited, 2022-VIL18-SC.***

PART B: ADVANCE RULINGS

Issue 1: Taxability of design and development service of tools

Ruling: The AAAR observed that dominant intention of parties is to get tools of specific designs. The AAAR held that the Appellant was making this supply on its own account and is not involved in facilitation of supply between OEMs and third-party vendors. Hence, such supply will not constitute as an intermediary service as held by the AAR. The AAAR further held that as ownership of goods remains with OEMs, transaction between them qualifies as supply of tools only and not any composite supply of service.

Precision Camshafts Limited, 2023-VIL-08-AAAR

ARTICLES

Payment to Vendor – Mandatory Condition for availing ITC: Multiple Absurdities (Part – 2)

The Part 1 of Article on captioned topic revolved around various flaws in Second Proviso to Section 16(2) of the CGST Act & also highlighted how corresponding Rule 37 was a procedural failure in its execution. Recently, **vide Notification No. 19/2022-Central Tax** dated **September 28, 2022** and **Notification No. 26/2022-Central Tax** dated **December 26, 2022**, the Government made certain amendments in Rule 37 of the CGST Rules with an intention to cure defects in procedural aspects. These amendments have raised new absurdities.

In this article, our Associate Partner, **Ms. Aasme Mangla** and Senior Associate, **Ms. Simran Arora** have attempted to highlight said tainted spots in amended Rule 37.

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

RECENT NEWS

1. **GST Council meeting likely to be rescheduled to first week of March from February 18**

<https://www.thehindubusinessline.com/economy/gst-council-meeting-likely-to-be-rescheduled-to-first-week-of-march-from-february-18/article66488446.ece>

2. **Center working on implementing new Foreign Trade Policy from April 01**

<https://www.thehindubusinessline.com/economy/centre-working-on-implementing-new-foreign-trade-policy-from-april-1/article66467750.ece>

3. **Flipkart's Instakart platform not an agent, dealer or importer; cannot be subjected to Local Body Tax: Bombay High Court**

<https://www.barandbench.com/news/flipkart-instakart-platform-not-agent-dealer-importer-cannot-local-body-taxinstakart-bombay-high-court>

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