

Supreme Court directs reopening of portal to enable assesses filing Form GST TRAN 1 and 2 for a period of 2 months due to technical glitches

Union of India Vs Filco Trade Centre P Ltd –[2022] 140 Taxmann.com 535 (Supreme Court) 22nd July 2022
In favour of Assessee

Facts :

Multiple writ petitions were filed before various High Courts on account of assesses failing to transition eligible credits under GST regime due to following reasons:

- a) Technical glitches on the portal
- b) Entering of wrong amounts due to lack of clarity
- c) Short claim due to late receipt / accounting of invoices.

It was held by various High Courts that assesses cannot be denied their right to credit on account of technicalities and limitations in portal.

Held :

Considering the High Court judgments on the then prevailing peculiar circumstances the

Supreme Court issued GST Network with the following directions:

- To open common portal for enabling the assesses to file FORM GST TRAN-1 and TRAN-2 for the period of 2 months.
- Enable all the assesses to file the relevant form or revised form irrespective of whether the assessee filed the Writ Petition or not.
- There should be no technical glitches in the portal during the aforesaid period.
- Allow eligible transitional credit to be reflected in the Electronic Credit Ledger.

CNK Comments :

The Supreme Court order has provided an opportunity to enable assesses to claim missed out credits and has also reinforced the principle that transitional credit can be said to be a vested right which has already accrued to the registered person due to total compliance with conditions under the erstwhile law and can't be taken away by procedural lapse on part of registered person.

Activity of building bus bodies of various vehicles falling under Chapter 87 of First Schedule of Customs Tariff Act such as mounting of tankers, tippers etc on chassis provided by owner of such chassis – Held to be supply of service and merits classification under SAC 998882 and taxable at 18%

**GUJ/GAAR/R/2022/40 dt 10th August 2022
– M/s Hasmukhlal Jivanlal Patel c/o
Tirupati Industries
In favour of Assessee**

Facts :

Applicant submits that the activity undertaken by them is working upon the goods i.e., chassis supplied by the Principal and converting the same into a Mounted Tipper, Tanker etc. which involves buying of steel sheets as per requirements, welding, fabrication and assembly. The chassis is supplied to them either by registered person (manufacturer of chassis) or by an unregistered person (owner of chassis).

In this context, the applicant had raised query as to whether activity of bus body building is supply of goods or services and the applicable SAC.

Held :

The Advance Ruling Authority held that services of bus body fabrication on job work basis attracts 18% GST on such service.

Fabrication of buses may involve the following three situations :

- a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, and charges the customer for the value of the bus.
- b) Bus body builder builds body on chassis provided by the registered principal for body building, and charges fabrication charges (including certain material that was consumed during the process of job-work).
- c) Bus body builder builds body on chassis provided by unregistered owner

It was clarified that in case the supply made is that of bus, supply would attract GST @ 28%.

In the case of fabrication of body on chassis provided by the principal (not on account of body builder). the supply would be treated as job work and would merit classification as service and 18% GST as applicable will be charged accordingly.

In cases where the chassis is provided by an unregistered person, the activity would be covered under the description "Manufacturing services on physical inputs (goods) owned by others" as appearing at Sr. No. 26(iv) of Notification No. III2017 Central Tax (Rate) as amended vide Notification No. 2012019 Central Tax (Rate) and the applicable rate would be 18%

CNK Comments :

The ruling has provided clarity on when the activity would be termed as supply of goods or supply of services and has rightly held that in case any activity is undertaken by a person on goods belonging to another registered person, that activity would be considered a job work and would be taxable as supply of services and if goods belong to unregistered person, the activity would still be taxable as supply of services.

Ayurvedic products can be classified as cosmetics or medicaments based on use of product; Products used for cure are medicaments classifiable under Heading 3003 and taxable @ 12%; Products used for care are cosmetics classifiable under Heading 3304 and taxable @18 %

**The Authority of Advance Ruling Telangana Vs Incnut Lifestyle Retail Private Limited-46/2022 dt 15th July 2022
Partly in favour of Revenue and Partly in favour of Assessee**

Facts:

The applicant M/s Incnut Lifestyle Retail Private Limited is in the business of manufacturing hair, oil,shampoos etc., some of which are cosmetics

and others ayurvedic medicaments. They have obtained AYUSH license for each of their product. They are desirous of ascertaining whether the products manufactured by them (52 in number) are cosmetics or medicaments. In this context issue arose whether the products manufactured under the licences issued by AYUSH Department of Government of Telangana and sold as Ayurvedic products fall under HSN No. 3004 or under HSN 3304 of the GST Tariff. The products referred by the applicant are classified as medicament or cosmetic based on the following parameters

- Whether the product has a drug license
- Whether the composition of the product has medical ingredients
- The function or purpose indicated in the label and literature of the product.

Held:

By applying the above parameters, if the products would be used for care, then it would be treated as 'Cosmetics' and classifiable under Heading 3304 which shall be taxable @ 18%. However, ayurvedic products used for cure would be in nature of medicaments and classifiable under Heading 3003 which would be taxable @ 12%.

CNK Comments:

The Authority of Advance Ruling has laid out the principles of classification of goods under GST and has reiterated that basic character, use and function of the product should be given priority over the names used in trade parlance in order to determine correct classification. In other words, those products used for cure are medicaments and those for care are cosmetics.

Interest was payable on tax paid by debiting electronic cash ledger in respect of delayed filing of returns; availability of balance in cash ledger could not be assumed as payment of tax unless it was debited

High Court of Madras – India Yamaha Motor Pvt Ltd Vs Asst Commissioner - WP.No.19044

of 2019 and WMP.No.18404 of 2019 – Order dated 29th August 2022

In favour of Revenue

Facts :

Petitioner filed GST returns for the month of July 2017 but due to errors, the return was merely 'filed' and not 'submitted' and the process was aborted at that stage. According to the petitioner, the output tax liability has been remitted in full into the cash ledger even prior to the 'filing' of the return and the petitioner was making efforts to correct the error in GST portal. Unfortunately, due to this, subsequent returns was delayed as well and proper determination of output tax liability for subsequent months could not be made. Department levied interest u/s 50 of CGST Act for the belated filing of returns to which the petitioner contended that it had sufficient balance in their Electronic Cash and Electronic Credit Ledger and there was no loss caused to revenue and no justification for levy of interest.

Held:

The court held that even though the assessee had sufficient closing balance in input tax credit (ITC) and net tax liability was deposited in Electronic Cash ledger before due date of filing returns, having sufficient balance of ITC in the Electronic Credit Ledger is immaterial unless the Return is filed and the same is debited towards payment of GST. Hence any kind of tax payment is final only when the Returns are electronically filed in the common portal and the actual tax liability is debited in the 'Electronic Credit/ Cash Ledgers' and the assessee cannot claim that the tax was debited in their books of accounts when as admitted, the filing of proper return was delayed.

CNK Comments:

The High Court has laid out that mere availability of electronic credit should not be assumed to be utilization that would insulate the petitioner from the levy of interest and unless an assessee actually files a return and debits the respective registers, the authorities cannot be expected to

assume that available credits will be set-off against tax liability.

Upfront premium paid as per the allotment order/letter of Chennai Port Trust is nothing, but lease rentals paid for services of 'Renting of Immovable property

The Authority for Advance Ruling, Tamil Nadu – Kamarajar Port Limited- Order No 32/AAR-2022 dated 29-07-2022.

In Favour of Assessee

Facts:

Chennai Port Trust has allotted space to the applicant on long term basis till August 2045 for use as Corporate Office. The applicant paid upfront lease charges amounting to Rs 5.39 crores along with GST of Rs. 97.05 lacs. The applicant, in line with Ind -AS, had capitalised the entire lease payment as Right of Use Assets in its Balance Sheet but wanted to avail the amount of GST as ITC and queried the authority regarding the same particularly in light of Section 17(5) of CGST Act which blocks ITC in respect of construction of immovable property.

Held:

The Advance Ruling Authority held that in respect of immovable property, credit on tax paid on goods or services received on own account, for construction of immovable property is allowed only when such immovable property is Plant and Machinery. In this case, upfront lease rentals paid is nothing but rent and not related to construction activity and capitalisation of such lease rentals will not affect eligibility of ITC.

CNK Comments:

The Advance Ruling Authority has looked at the substance of the transaction even though accounting treatment may be different in line with relevant accounting standards and has rightly allowed ITC.

KEY TAKE AWAY

- Supreme Court directs reopening of portal to enable assesses filing Form GST TRAN 1 and 2 for a period of 2 months due to technical glitches.
- Activity of building bus bodies on chassis belonging to the Principal is Service and liable to GST @ 18% under SAC 998882.
- Ayurvedic products can be classified on the basis of use of the product, whether as for cure or care. Products for care are cosmetics and products for cure are medicaments.
- Interest on late filing of returns to apply unless amounts debited from electronic cash / credit ledger.
- Upfront premium paid for leasing of immovable property is nothing but rent paid in advance in absence of any construction activity.



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