

~~~~~ Interpreting Taxing Statute # 63 - Subservient provision (Subject to / Having regard to) and independent provision (Without prejudice to)

When a provision is intended to be subservient to another, the relationship can be indicated by an explicit reference using the formula ‘subject to’ / ‘having regard to’.

SYNOPSIS

Subject to

Having regard to

When a provision is intended to be subservient to another, the relationship can be indicated by an explicit reference using the formula ‘subject to’. By using this the rule of the subjected-section yield (give way) to the rule of another master-section in case of conflict between these two. Eg:

“**Subject to** the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both ...”¹

So, CGST cannot be levied on petroleum products for which Sec 9(2), the master section, reserves the implementation from a date yet to be notified.)

Having regard to

‘Having regard to’ means taking into consideration the matters referred to.

“Any officer not below the rank of Assistant Commissioner may, **having regard to** the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of

¹ CGST Sec 9(1)

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scrutiny, inquiry, investigation or any other proceedings before him.”<sup>2</sup>

So, the officer should take into consideration of the nature and complexity of the case and the interest of the revenue before taking assistance of any expert.

### Without prejudice to

‘Without prejudice to’ is used to make the legal rule of that section independent of the rule in the other named sections. Eg:

“Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, **without prejudice to** any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.”<sup>3</sup>

So, action and other consequences for failure to take registration may entail upon the supplier but the officer may proceed to register such person unhindered.

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<sup>2</sup> CGST Sec 153

<sup>3</sup> CGST Sec 25(8)

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