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# **NITYA | Indirect Tax Bulletin**

## **April 2022 | Week 3**

**April 21, 2022**

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# LEGAL PRECEDENTS

## PART A: WRIT PETITIONS

### **Issue 1: Re-credit of ITC when erroneous refund voluntarily repaid**

**Ruling:** The High Court noted that output tax refund was erroneously sanctioned to the Petitioner in violation of Rule 96(10) of the CGST Rules. This was because the Petitioner procured inputs duty free under Advance Authorization and exported goods on payment of IGST to claim refund. This refund was voluntarily repaid along with interest through DRC-03 but order for re-credit of refund was not issued despite multiple reminders by the Petitioner. The Court directed the Department to re-credit ITC and held that once the Department accepted repayment of erroneous refund along with interest, ITC utilized for discharging IGST liability must be recredited / restored else same would tantamount to double taxation.

***I-Tech Plast India Private Limited v. SOG, 2022-VIL-259-GUJ***

**NITYA Comments:** *In this case, the Petitioner rightly returned refund claimed by it. Post repayment, taxpayers must file refund claims under Section 54 of the CGST Act read with Rule 89 of the CGST Rules for excess tax paid by utilizing ITC. Further, by virtue of Rule 92(1A) of the CGST Rules, excess amount debited from Electronic Credit Ledger ('ECL') needs to be recredited to ECL through PMT-03.*

*Another important point to note is that there is no substantive provision under the GST law for recovery of interest on repayment of erroneous refund by taxpayers. Hence, the Petitioner paid interest in excess.*

### **Issue 2: Scope and usage of DRC-01A**


**Ruling:** The High Court held that intimation notice issued under DRC-01A is an intimation of tax ascertained by officer and cannot propose recovery of tax on failure to comply with the same. As per law, DRC-01A is followed by DRC-01 (Show Cause Notice) and Order confirming demand therein and demand can be recovered only subsequent to issuance of such Order.

***Agrometal Vendibles Private Limited v. SOG, 2022-VIL-260-GUJ***

### **Issue 3: Jurisdiction of State Tax officer when taxpayer assigned to Central Tax jurisdiction**

**Ruling:** The High Court held that under Section 6 of the CGST Act, State Tax officers are proper officers for all taxpayers and there is no inherent lack of jurisdiction. The Court also noted fact that Minutes of GST Council's meeting read with Internal Circular bifurcated taxpayers between Central Tax and State Tax officers for administrative convenience. Thus, adjudication of case of a taxpayer by State Tax officer who is assigned to Central Tax officer resulted in contributory error of jurisdiction. Since the Petitioner did not highlight the same at initial stage or during adjudication proceedings. The Court held that pointing out such contributory error of jurisdiction at later stage, will not nullify proceedings.

***Ajay Verma v. UOI, 2022-VIL-256-ALH***



**NITYA Comments:** *This ruling is correct. Adjudication proceedings contrary to direction issued by Internal Circular cannot be set aside for want of jurisdiction where no prejudice is caused to taxpayer. On the other hand, Court specifically observed that in case of timely intimation by taxpayer, Officer not having jurisdiction could not have continued with proceedings. Hence, taxpayers can be vigilant in intimating such jurisdictional errors to officers at initial stage itself.*

## OTHER UPDATES

### 1. Amendments in EPCG Scheme to reduce compliance burden and enhance ease of doing business

The following amendments are proposed in Chapter 5 of Handbook of Procedures, 2015-20 (HBP) related to procedural aspects of EPCG Scheme:

- A.** Earlier, Taxpayer could apply for extension of Export Obligation ('EO') period for First Block<sup>1</sup> without any limitation period. As per revised HBP, the Regional Authority ('RA') may extend EO period subject to following:

Timelines for extension of First Block	Composition fee payable	Late fee payable
Within 6 months from expiry of First Block	2% of duty saved proportionate to unfulfilled portion	-
After 6 months from expiry of First Block and up to 6 years from date of Authorization		Rs. 10,000 per authorization
After 6 years of date of Authorization for regularization		Rs. 10,000 per authorization, additional Rs. 5,000 per year per authorization

Taxpayer shall to pay custom duties along with applicable interest within 6 months of expiry of First Block if RA does not extend period.

- B.** Extension of time limit for submitting Annual Report for fulfillment of EO, will be allowed as under:
- Time limit for reporting fulfillment of EO is extended from **April 30** to **June 30** of succeeding financial year.
  - Report needs to contain details like Shipping Bill / GST Invoice Number, date of export / supply, description of product exported / supplied and FOB / FOR value of export / supply for both specific as well as average EO (*no specific content was prescribed earlier*).
  - Delay in filing Annual Report will be regularized on payment of late fee of Rs. 5,000 per authorization for each financial year (*no specific fee was prescribed earlier*).
- C.** Extension in time limit for payment of additional fee for automatic reduction / enhancement in EO up to 10% of duty saved amount, will be allowed as under:

<sup>1</sup> Exporter has to fulfill 50% of EO within 4 years from date of Authorization

- Earlier authorization holder had to pay additional fee to RA within one month of excess imports. Further, application could have been filed after one month but within two years of excess imports subject to payment of composition fee of Rs.5,000 per authorization.
- Authorization holder can now furnish additional fee at time of applying Export Obligation Discharge Certificate. EO will be automatically proportionately enhanced.

**D.** Extension in application for overall EO period (6 years from authorization date) will be allowed as under:

- Earlier, time limit for applying for extension of EO period was 90 days from date of expiry of original EO period. Additionally, request for extension could have been accepted within 180 days from expiry of original EO period on payment of additional composition fee of Rs. 5,000.
- The timelines for application for extension of EO period are now revised as under:

Timeline for extension	Late fee payable
Within 6 months from expiry of EO period	-
After 6 months of expiry of EO and up to 8 years from authorization date	Rs. 10,000 per authorization
After 8 years (for extension of EO period from 6 years to 8 years)*	In addition to fee of Rs. 10,000 per authorization, additional fee of Rs. 5,000 per year per authorization

*\*Notably, EO cannot be extended beyond 8 years from date of authorization and only application can be made post-facto for extension.*

**E.** Excess exports done towards average EO fulfilment of an EPCG authorization during a year, can be offset against any shortfall in other years provided average EO is maintained on an overall basis.

**(Public Notice No. 3/2015-20 dated April 13, 2022)**

## RECENT NEWS

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**1. GST Council not planning to raise tax slab from 5% to 8%, says Centre**

<https://www.hindustantimes.com/business/gst-council-not-planning-to-raise-tax-slab-from-5-to-8-says-centre-101650290472972.html>

**2. Industry wants government to fix small retail's GST compliance problem**

<https://economictimes.indiatimes.com/tech/technology/industry-wants-government-to-fix-small-retails-gst-compliance-problem/articleshow/90942097.cms>

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