



NITYA
tax associates

NITYA | Indirect Tax Bulletin

March 2022 | Week 4

April 1, 2022

Index

LEGAL PRECEDENTS	3
PART A: WRIT PETITIONS	3
Issue 1: Blocking of Electronic Credit Ledger under Rule 86A	3
Issue 2: Refund of ITC under inverted duty structure where input and output supplies are same	3
Issue 3: Refund of amount deposited by customer in Electronic Cash Ledger under garnishee proceedings	3
PART B: ADVANCE RULINGS	4
Issue 1: Taxability of bundle of healthcare, accommodation and food services.....	4
OTHER UPDATES	5
1. Standard Operating Procedure for scrutiny of returns for Financial Year ('FY') 2017-18 and 2018-19	5
2. Finance Act, 2022 has received Presidential assent on March 30, 2022	6
3. DGFT has extended the operation of Foreign Trade Policy, 2015-2020 till September 30, 2022.....	6
RECENT NEWS.....	7
1. Framework for GST summons in works.....	7

LEGAL PRECEDENTS

PART A: WRIT PETITIONS

Issue 1: Blocking of Electronic Credit Ledger under Rule 86A

Ruling: The High Court observed that unreasoned order blocking Electronic Credit Ledger ('ECL'), is invalid and held that reasons for blocking ECL need to be mandatorily disclosed to taxpayer. The Court applied principles of natural justice to Rule 86A of the CGST Rules and held that if not prior hearing, revenue must provide remedial hearing to taxpayer within two weeks of blocking ECL.

The Court also observed that there is no statutory backing of Rule 86A to empower revenue to block ECL of taxpayer (till Section 43A of the CGST Act is notified). The Court also relied upon several rulings of erstwhile law and acknowledged that till the time matching provisions are kept in abeyance and system-based matching is not being carried out, unmatched ITC shall be eligible to recipient on the basis of invoices.

New Nalbandh Traders v. State of Gujarat, 2022-VIL-217-GUJ

NITYA Comments: *This ruling failed to appreciate that revenue provided reasons to believe to the Court and also recorded such reasons in intimation sent to taxpayer vide DRC-01A. On an independent note, the Court added conditions in Rule 86A viz. communication of reasons to taxpayer and giving a post-remedial hearing. However, observations of the Court on validity of Rule 86A and ITC eligibility to bona-fide recipient are important.*

Issue 2: Refund of ITC under inverted duty structure where input and output supplies are same

Ruling: The High Court observed that Section 54(3) of the CGST Act does not bar refund of ITC on account of inverted duty structure where input and output supplies are same. The Court read down **Circular No. 135/05/2020-GST** dated **March 31, 2020** to that extent. Accordingly, the Court allowed refund of ITC under inverted duty structure where GST on procurement of LPG was 18% whereas GST on supply of bottled LPG to domestic customers was 5%.

Shivaco Associates v. JCST, 2022-VIL-209-CAL

Issue 3: Refund of amount deposited by customer in Electronic Cash Ledger under garnishee proceedings

Ruling: The High Court observed that amount deposited by customer in Electronic Cash Ledger of the Petitioner under Section 79 of the CGST Act (garnishee proceedings) cannot be refunded even if such deposit was pre-mature and bad in law. The Court held that the Petitioner can either utilize such amount against output tax liability or can claim refund under Section 54 of the CGST Act.

MNS Enterprises v. ADGDGI, 2022-VIL-218-MAD

NITYA Comments: This ruling is correct. The Court categorially observed that amount lying in Electronic Cash Ledger of the Petitioner, was not appropriated. However, the Court did not consider that revenue had put Electronic Cash Ledger on hold which barred the Petitioner to utilize such amount and consequently, did not grant relief on that front. On independent note, revenue's direction to the Petitioner to write letter to customer to deposit amount in the Petitioner's Electronic Cash Ledger was also incorrect. Revenue ought to have issued notice in DRC-13 to the Petitioner's customer in terms of Section 79 read with Rule 145(1) of the CGST Rules.

PART B: ADVANCE RULINGS

Issue 1: Taxability of bundle of healthcare, accommodation and food services

Ruling: The AAAR observed that the Appellant is supplying bundle of healthcare, accommodation and food services to its inbound patients availing accommodation facility. The AAAR held that exemption under **S. No.74 of Notification No.12/2017–Central Tax (Rate)** dated **June 28, 2017** available for 'healthcare services' will not be available in the instant case due to below mentioned reasons:

- Healthcare services are provided only to those patients who agree to stay in clinic and major portion of consideration is towards room rental. Therefore, principal supply is of accommodation services.
- The Appellant provides healthcare services other than those recognized in medicine system of India (like physiotherapy, acupuncture treatment, reflexology and acupressure therapy). Therefore, the Appellant would not qualify as clinical establishment providing healthcare services.

Oswal Industries Limited, 2022-VIL-24-AAAR (Gujarat)

NITYA Comments: This ruling is incorrect. Principal supply among bundle of services needs to be determined basis prime intention of recipient. In this case, intention of recipient was to avail healthcare services. Therefore, principal supply in such case will be healthcare service irrespective of proportion of room rental in total cost. The issue has been well settled vide multiple rulings in cases of **Baroda Medicare Private Limited, 2021-VIL-150-AAR (Gujarat)**, **Kindorama Healthcare Private Limited, 2019-VIL-139-AAR (Kerala)** and **Terna Public Charitable Trust, 2019-VIL-227-AAR (Maharashtra)** which consistently held that renting of room and provision of food to in-patients in hospitals will be considered as part of composite supply with healthcare service as principal supply.

Further, if treatment provided is not covered under 'recognized system of medicine' then such services will not qualify as healthcare services nor will be exempt.

OTHER UPDATES

1. Standard Operating Procedure for scrutiny of returns for Financial Year ('FY') 2017-18 and 2018-19

- The CBIC has issued an Instruction laying down Standard Operating Procedure ('SOP') for selection of returns, timelines and methodology to be followed by revenue and other related procedures for scrutiny of returns under Section 61 of the CGST Act. Key elements of SOP are as under:
 - Proper officer needs to inform discrepancies to taxpayer in ASMT-10. Discrepancies need to be specific in nature.
 - Taxpayer may accept discrepancies and pay amount referred in ASMT-10 through DRC-03 or furnish explanation in ASMT-11.
 - Proper officer may drop proceedings if it is satisfied with explanations of taxpayer. Else proper officer may proceed to determine tax and other dues under Section 73 or 74 of the CGST Act.
 - Where there is need for further investigation, proper officer may refer matter to the Principal Commissioner / Commissioner for the decision of further referring matter to Audit Commissionerate or Anti Evasion Wing.
 - Indicative matters for scrutiny of returns as discussed in Instruction are as under:

In case of outward supplies	In case of inward supplies
Matching of Outward tax liability in GSTR-3B with GSTR-1	Matching of RCM liability in GSTR-3B with RCM ITC availed in GSTR-3B, RCM ITC reflecting in GSTR-2A and tax paid in cash in GSTR-3B
Matching of Outward taxable supplies (other than zero rated) in GSTR-3B with net amount liable for TDS and TCS in GSTR-2A	Matching of ITC availed on ISD invoices in GSTR-3B with that available in GSTR-2A
Matching of Tax Outward tax liability in GSTR-3B with that declared in E-way bills	Matching of all other ITC availed in GSTR-3B with that available in GSTR-2A
	Matching of ITC availed on import of goods in GSTR-3B with that available in GSTR-2A or at ICEGATE portal

- Instruction has also suggested following checks:

In case of inward supplies	Other Checks
----------------------------	--------------

ITC availed on supplies received after effective date of cancellation of registration of supplier	Payment of interest under Section 50 of the CGST Act
ITC availed on supplies where supplier has not filed GSTR-3B	Payment of late fee under Section 47 of the CGST Act
ITC availed after due date of availing ITC	
ITC reversals under Rule 42 and 43 of the CGST Rules	

(Instruction No. 02/2022-GST dated March 22, 2022)

NITYA Comments: Taxpayers are already receiving notices for scrutiny of returns. As clarified in Instruction, such notices will culminate into proceedings under Section 73 or 74 and can have significant impact. Therefore, taxpayers are advised to respond to these notices with proper legal and factual grounds.

Further, notices issued on some of above-mentioned points can be challenged before Courts on various grounds, including:

- ITC availed on RCM supplies received from unregistered suppliers and on imports in GSTR-3B is not required to be matched with respective ITC appearing in GSTR-2A.
- ITC cannot be denied if supplier's registration is cancelled post receipt of supply [Refer: **LGW Industries Limited v. UOI, 2021-VIL-868-CAL**].
- ITC cannot be denied for non-payment of GST by supplier where recipient acts in bonafide manner and duly discharges all obligations at its end. For detailed insight on this issue, please refer our update [**NITYA Outlook | Issue 83 | Applicability of 16\(2\)\(aa\) in specific scenarios**](#)

2. Finance Act, 2022 has received Presidential assent on March 30, 2022

3. DGFT has extended the operation of Foreign Trade Policy, 2015-2020 till September 30, 2022

(Notification No. 64/2015-2020 dated March 31, 2022)

RECENT NEWS

1. Framework for GST summons in works

<https://economictimes.indiatimes.com/news/economy/policy/framework-for-gst-summons-in-works/articleshow/90527034.cms?from=mdr>.

.....

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 1201



MAIL US

updates@nityatax.com
info@nityatax.com



REACH US

NITYA Tax Associates
B-3/58, Third Floor,
Safdarjung Enclave,
New Delhi – 110029
www.nityatax.com

KEY ACCOLADES

