



NITYA | Indirect Tax Bulletin

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LEGAL PRECEDENTS

PART A: WRIT PETITIONS

Issue 1: Transitional Credit availed by Input Service Distributor

Ruling: The Petitioner was registered as Input Service Distributor ('ISD') prior to GST regime and transitioned closing balance of Cenvat Credit lying with it into GST regime. Thereafter, the Petitioner issued invoices to transfer transitioned ISD credit to its units. The recipient units reflected such invoices in Table 8 of TRAN-1 (meant for attribution of credit for centralized registration and not for ISD). The revenue issued SCN to the Petitioner denying such transitioned ISD credit.

The High Court observed that the Petitioner can avail credit on invoices received post June 30, 2017 under Section 140(7) of the CGST Act and there was no loss to revenue on account of transition of said ISD credit. Basis this, the Court directed the revenue to open GST Portal in compliance with Supreme Court's Order in case of **UOI v. Filco Trade Center Private Limited, 2022-VIL-32-SC**. The Court also allowed the Petitioner's recipient units to file revised declaration in correct table of TRAN-1 for taking ISD credit already distributed to them. The Court further directed that once credit taken by units is regularized by filing revised TRAN-1, such credit will be considered valid from date of original claim.

NITYA Comments: *This judgment is correct and comes as a big relief for entire industry where transition of closing balance of ISD credit was questioned by authorities. Basis this ruling, taxpayers who missed transitioning ISD credit or who incorrectly filled details in TRAN-1 can file revised TRAN-1 during **October to November 2022**. Importantly, the Court held that credit will be considered valid from date of original claim and hence, there will be no interest implications. For a detailed coverage of this issue, please refer [NITYA Outlook | Issue 103 | Supreme Court extends re-opening of GST Portal by 4 weeks, Bombay High Court directed CBIC to clarify transition of credit for ISD](#) dated September 6, 2022.*

Colgate Palmolive India Limited v. UOI, 2022-VIL-611-BOM

PART B: ADVANCE RULINGS

Issue 1: Extension of limitation period under the Supreme Court's COVID Extension Order

Ruling: In this case, the Order of the AAR was received on February 19, 2022 and the Appellant filed an Appeal against such order on May 26, 2022. The AAAR held that Clause (iii) of Supreme Court's Order **in re, Cognizance for extension of limitation, 2022-VIL-03-SC** for provision of 90 days from March 1, 2022 will not apply in present case as limitation period did not expire between March 15, 2020 to February 28, 2022. However, limitation period (February 19, 2022 to February 28, 2022) falling between this period will be excluded under Clause (i) of the Order. Even after exclusion of this period, Appeal was filed beyond limitation period. Thus, the AAAR held Appeal to be time barred.

Sri. Sairam Gopalkrishna Bhat, 2022-VIL-74-AAAR

Issue 2: ITC on sales promotion schemes

Ruling: The AAR observed that Section 17(5) of the CGST Act has a non-obstante clause and Section 17(5)(g) restricts ITC on goods or services procured for personal consumption even if procured in furtherance of business. In this case, the Applicant procured goods for disbursement to retailers under Sales Promotion Scheme ('Scheme') are for their personal consumption. Basis above, the AAR held that ITC will not be available. Further, the AAR held that goods under Scheme are voluntarily given and hence will qualify as gifts. Basis this, the AAR held that the Applicant is ineligible to avail ITC on inward supply of such goods.

NITYA Comments: *This ruling is incorrect. The test of personal consumption should be applied at taxpayer's end proposing to avail ITC and not at dealers' / customers' end. Further, there is a significant difference between goods distributed as gift and given under contractual obligation. The AAR failed to consider the fact that goods distributed by the Applicant were under contractual obligation (as agreed in schemes offered to customers). This situation was also clarified in Circular No. 92/11/2019-GST dated March 7, 2019.*

Rodec Pharmaceuticals Private Limited, 2022-VIL-240-AAR

RECENT NEWS

1. Tamil Nadu GST dept. prescribes manner of re-credit of amount in Electronic Credit Ledger

<https://www.livelaw.in/news-updates/tamil-nadu-gst-department-tamil-nadu-goods-and-services-tax-rules-electronic-credit-ledger-209309>.

2. SC seeks Centre's response on pleas seeking setting up of GST Tribunal

<https://economictimes.indiatimes.com/news/india/sc-seeks-centres-response-on-pleas-seeking-setting-up-of-gst-tribunal/articleshow/94160172.cms?from=mdr>.

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