



NITYA | Indirect Tax Bulletin

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LEGAL PRECEDENTS

PART A: COURT RULINGS

Issue 1: Validity of Order passed without personal hearing

Ruling: The High Court observed that the Petitioner did not opt for personal hearing while filing reply in DRC-06. Therefore, the Court upheld the Order passed by the Adjudicating Authority without allowing personal hearing as being not violative of principles of natural justice.

Shyam Sundar Girdhar Gopal v. JS, 2022-VII-630-RAJ

NITYA Comments: This ruling is incorrect. Section 75(4) of the CGST Act provides for grant of personal hearing where an adverse decision is contemplated against a taxpayer. Pertinently, non-selection of option for personal hearing in reply of SCN filed under Rule 142(4) of the CGST Rules cannot come in way of right of personal hearing granted by Section 75(4). This view was upheld by Gujarat High Court in the case of **Graziano Trasmissioni India Private Limited v. State of Gujarat, 2022-VIL-512-GUJ** (represented by NITYA Tax Associates).

PART B: ADVANCE RULINGS

Issue 1: Classification of roof mounted Air Conditioner meant for use in railway coaches

Ruling: The AAR observed that Section Note 2(e) to Section XVII of the Customs Tariff Act, 1975 ('CTA') provides that parts and accessories of machines and apparatus of Headings 8401 to 8479 are not considered as parts for classification under Section XVII. Basis this, the AAR held that roof mounted Air Conditioners meant for use in railways are classified under Heading 8415.

Ess Ess Kay Engineering Company Private Limited, 2022-VIL-244-AAR (PUB)

Issue 2: Classification of roof mounted Air Conditioner meant for use in bus supplied in parts

Ruling: The AAR observed that combined reading of Section Note 3 and Note 4 to Section XVI of the CTA provides that parts of machines covered under Chapter 84 which can be fitted together to form a whole, needs to be classified based on component performing principal function. Basis this, the AAR held that roof mounted Air Conditioner meant for use in bus (supplied in parts) are classified under Heading 8415.

Eberspaecher Suetrak Bus Climate Control Systems India Private Limited, 2022-VIL-252-AAR (KAR)

NITYA Comments: Both these rulings are correct. Where a part is specifically covered under a Heading under the CTA, it should not be classified as parts of main equipment solely based on end use test. However, these rulings are against principles upheld by the Supreme Court in the case of **Westinghouse Saxby**

Farmer Limited v. CCE, 2021-VIL-33-SC-CE ("Westinghouse"). Review petition against Westinghouse ruling was also recently dismissed by the Supreme Court [2022-VIL-55-SC-CE].

Issue 3: Classification of Air Conditioner imported in CKD / SKD form

Ruling: The AAR held that as per Rule 2(a) of the General Rules of Interpretation to the CTA, Air Conditioner imported in CKD / SKD form under a common invoice and bill of entry, is classifiable as complete Air Conditioner under Heading 8415.

Mitsubishi Electric India Private Limited, 2022-VIL-69-AAR-CU

NITYA Comments: *This ruling is correct and in line with established jurisprudence and internationally accepted principle of classification of goods in CKD / SKD form. Recently, the Supreme Court of Thailand in the case of Toyota also ruled that vehicles imported in CKD / SKD form will be treated as completed motor vehicles and not eligible for concessional customs duty granted to parts of motor vehicle. This issue assumes importance since revenue analyzes multiple factors including documentation, clearances at multiple points of time (if made to evade duty) etc. for determining classification as parts or a complete machine.*

Issue 4: ITC eligibility on vouchers supplied against loyalty points

Ruling: The AAR observed that vouchers supplied electronically are goods as per Section 2(52) of the CGST Act. The AAR further observed that redemption of loyalty points is not consideration for vouchers. Accordingly, ITC is not available on such vouchers supplied free of cost as gift.

Myntra Designs Private Limited, 2022-VIL-253-AAR (KAR)

NITYA Comments: *This ruling is incorrect. In this case, vouchers are supplied to customers against loyalty points which customers earned through purchase of goods. Therefore, the Applicant was contractually liable to supply such vouchers and these cannot be termed as gifts. ITC on such vouchers should be allowed. Another pertinent question for ITC eligibility will be whether the Applicant will qualify as recipient in this case since GST will be eventually paid on underlying goods / services and not on vouchers per-se.*

OTHER UPDATES

1. Settlement against import and export in Indian Rupee

- Para 2.52(d) has been introduced in FTP stating that importers and exporters of goods and services are allowed to do invoicing, payment and settlements in Indian Rupee with all countries through Rupee Vostro Account in line with RBI **Circular No.10** dated **July 11, 2022**.

Notification No. 33/2015-20 dated **September 16, 2022**

2. No recovery from transferee of RoDTEP scrips

- Recovery cannot be made from transferee of RoDTEP scrips where excess scrips were allotted to transferor or transferor was unable to realize sales proceeds within due time.

Notification No. 75/2022-Customs (NT) dated **September 14, 2022**

3. Validity of RoDTEP scrips

- Validity of RoDTEP scrips has been extended from one year to **two years** from date of generation of scroll.

Notification No. 79/2022-Customs (NT) dated **September 15, 2022**

4. TDS on amount reimbursed to pure agents

- There is no requirement to deduct TDS under Section 194R of the Income Tax Act, 1961 on reimbursement made to a supplier where such supplier acts as “pure agent” of recipient of supply. It is subject to fulfillment of all conditions for non-inclusion of such reimbursement in value of supply under the CGST Rules.

Circular No. 18 of 2022 (CBDT) dated **September 13, 2022**

5. Changes effective from October 1, 2022

- Registered persons having aggregate turnover between Rs. 10 crores to Rs. 20 crores in any financial year from 2017-18 onwards are required to comply with E-invoicing.
- Several amendments in the Legal Metrology (Packaged Commodities) Rules, 2011 including declaration of Unit Sale Price and month and year of manufacture will be applicable.

ARTICLES

INCREASING IMPORTANCE OF LEGAL METROLOGY LAW

In recent past, Legal Metrology Law has gained sight due to multiple factors including proposed changes in labelling requirements, linkage with taxability under GST law and active searches and non-compliance notices being issued.

In this article our Partner, **Mr. Deepak Suneja** and Senior Associate, **Mr. Shubham Agarwal** have attempted to throw light on some important aspects and nuances of Legal Metrology Law.

Please [click here](#) to read Article.

RESIDENTIAL DWELLING – TAXABILITY UNDER GST

In the 47th GST Council meeting, it was proposed to withdraw exemption on services by way of renting of a residential dwelling to a registered person. The Government notified this recommendation and withdrew exemption on such services provided to registered persons and covered them under RCM.

These amendments will have a far-reaching impact on many taxpayers taking residential dwelling on rent for expatriates, directors or employees. Multiple ambiguities relating to RCM and ITC also exist in these amendments. Through this Article, our **Partner, Mr. Dharnendra Kumar Rana, Managing Associate Ms. Akanksha Gupta** and **Executive Mr. Devansh Singhal** have analysed the repercussions of this amendment.

Please [click here](#) to read Article.

RECENT NEWS

1. New Foreign Trade Policy likely to be announced on September 29

<https://timesofindia.indiatimes.com/business/india-business/new-foreign-trade-policy-likely-to-be-announced-on-september-29/articleshow/94335487.cms>

2. Norms for decriminalizing offences under GST soon

<https://www.thehindubusinessline.com/economy/norms-for-decriminalising-offences-under-gst-soon-revenue-secretary-tarun-bajaj/article65913574.ece/amp/>

3. GST Council meet likely to be postponed to October

<https://www.financialexpress.com/economy/gst-council-meet-may-be-postponed-to-october/2675462/lite/>

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