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NITYA | Indirect Tax Bulletin

December 2022 | Week 1

December 9, 2022

Index

LEGAL PRECEDENTS

PART A: COURT RULINGS

Issue 1: Revision of TRAN-1 post filing during reopened window

Ruling: The Petitioner filed TRAN-1 in terms of ***UOI v. Filco Trade Centre Private Limited, 2022-VIL-38-SC***. Inadvertently, the Petitioner filled wrong details. ***Circular No. 180/12/2022-GST*** dated ***September 9, 2022*** restricted revision of TRAN-1 filing during this window. Hence, the Petitioner filed Writ Petition seeking directions for reopening the GST Portal.

The High Court held that Rule 120A of the CGST Rules permits revision of TRAN-1 and Circular or Instructions cannot dilute statutory provision or make them redundant. The Court also noted that the Supreme Court did not restrict applicability of Rule 120A to TRAN-1 filed on reopened GST Portal. Accordingly, the Court directed reopening of Portal and permitted revision of TRAN-1.

Jagdalpur Motors v. UOI, 2022-VIL-783-CHG

Issue 2: No SWS payable where BCD is exempt

Ruling: The Petitioner was importing goods which were subject to Nil BCD being made under MEIS scrips under ***Notification No. 24/2015*** dated ***April 8, 2015***. However, the revenue notionally assessed SWS and debited the same from MEIS scrips.

The High Court relied on ***Circular No. 3/2022-Customs*** dated ***February 1, 2022*** and held that where BCD is Nil, SWS will also be Nil. Accordingly, the Court held that no SWS was payable and debit of SWS in MEIS scrips should be re-credited.

LA Tim Metal & Industries Limited v. UOI, TS-521-HC-2022 (Bom)

NITYA Comments*: This ruling correctly held that no SWS is payable where BCD is NIL. For past period, if any importer paid SWS where BCD was exempt, the importer may file for amendment of BOE under Section 149 of the Customs Act, 1962 and claim refund of SWS. Notably, this decision and Circular are contrary to the Supreme Court ruling in case of* ***Unicorn Industries v. UOI, 2019-VIL-42-SC-CE****. In this regard, please refer our update* ***NITYA Outlook | Issue 82 | Refund of Social Welfare Surcharge paid in past when Customs Duty was exempt*** *wherein we have discussed various scenarios for claiming refund.*

OTHER UPDATES

1. Refund of IGST on export goods for risky exporters

- ***Notification No.14/2022-CT*** dated ***July 5, 2022*****,** inserted sub-clause (c) in Rule 96(4) to restrict claim of refund of IGST on zero-rated supply where verification of credentials of exporter, including availment of ITC, is considered essential.

- Data for such shipping bills is transmitted by ICEGATE to GSTN. Under Rule 96(5A), such refund claims come to jurisdictional GST Officer on back-office system in RFD-01 for verification and approval.

- CBIC has now directed that following procedure needs to be followed for granting refund:

  - Refund claim needs to be immediately processed in terms of Rule 89.

  - Deficiency memo cannot be issued for such refund claims.

  - Proper officer may verify the following:

    - Genuineness of exporter
    - Correctness of availment and utilization of ITC
    - Place of business by physical verification

  - Proper officer needs to pass detailed Order in RFD-06 and follow timelines for processing refund claim.

  - Procedure of review and post audit will also be applicable.

Instruction No. 04/2022-GST dated ***November 28, 2022***

2. Extension of amendments under the Legal Metrology (Packaged Commodities) Amendment Rules, 2022

- Government has extended the operation of amendments under the Legal Metrology (Packaged Commodities) Amendment Rules, 2017 from **December 1, 2022** to **January 1, 2023**.

F. No. W/M-10/22/2021 dated ***November 30, 2022***

RECENT NEWS

1. **Proposal for clear GST structure for cryptos likely to be on the backburner**

   https://www.thehindubusinessline.com/money-and-banking/proposal-for-clear-gst-structure-for-cryptos-likely-to-be-on-the-backburner/article66200552.ece

2. **Centre plans amnesty scheme for exporters**

   https://www.financialexpress.com/economy/centre-plans-amnesty-scheme-for-exporters/2901755/

3. **GoM report on appellate tribunals, decriminalising of GST law top agenda of 48th GST Council meet**

   https://economictimes.indiatimes.com/news/economy/policy/gom-report-on-appellate-tribunals-decriminalising-of-gst-law-top-agenda-of-48th-gst-council-meet/articleshow/96000576.cms

4. **GST Council may lower tax on health insurance**

   https://www.financialexpress.com/money/insurance/gst-council-may-lower-tax-on-health-insurance/2901544/

5. **RoDTEP benefits extended to drugs, chemicals and steel sectors**

   https://www.livemint.com/economy/rodtep-benefits-extended-to-drugs-chemical-steel-sectors-11670434175980.html

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